

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #341  
ON JANUARY 3, 2022

DATE OF REPORT FEBRUARY 2, 2022

This report is in response to a complaint filed with our office 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 parents” or “the father” or “the mother” respectively.

The complaint is against USD #341 (Oskaloosa Public Schools) who contracts with Keystone Learning Services to provide special education and related services to students enrolled in USD #341. In the remainder of the report, “USD #341,” the “school,” the “district” or the “local education agency (LEA)” shall refer to both of these responsible agencies.

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 January 3, 2022.

### Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parents by telephone on January 6, 2022. A second interview was conducted with the parents on January 17, 2022.

USD #341 made the following school staff available for a telephone interview on January 18, 2022:

- Doug Anderson, Executive Director of Keystone Learning Services
- Amy Conklin, Assistant Director of Special Education for USD #341

- Patrick Foster, Principal of Oskaloosa Elementary School

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

- Evaluation Team Report / 3-Year Reevaluation dated February 7, 2020 from USD #453
- Individualized Education Program (IEP) dated February 7, 2020
- Prior Written Notice (PWN) for Identification and Initial Services dated February 7, 2020
- Facsimile dated July 8, 2020 from USD #453 of student's transfer IEP
- WebKIDSS log showing the transfer IEP was uploaded on August 6, 2020
- Paraprofessional Time Sheets for January and February 2021
- Employee Paycheck Report for paraprofessionals for January and February 2021
- Written report for IEP meeting dated January 18, 2021 created by Allison Flinn, Third Grade Teacher
- Excusal from Attendance at IEP Meetings of Required IEP Team Members dated and signed by the father on February 5, 2021
- IEP dated February 5, 2021
- Staffing Notes dated February 5, 2021 written by Tammy Givens, Special Education Teacher
- PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent (PWN) dated February 5, 2021
- IEP Goal Progress Reports dated March 15, 2021
- IEP Goal Progress Reports dated May 25, 2021
- Third Grade Report Card from the 2020-21 school year
- AIMSweb Achievement Data Charts for the 2020-21 school year
- 2020-21 Special Education Staff Schedules
- Professional Staff Training Agenda presented by Keystone Learning Services dated August 4, 2021
- Sign-In Sheet for Certified Staff Inservice held on August 4, 2021 from 8:00 a.m.- 3:00 p.m.

- Keystone IEP Requirements showing procedures for annual IEPs, Move-In IEPs, and IEP Amendments
- Email dated August 30, 2021 at 4:36 p.m. written by Mandy Bostwick, Classroom Teacher to the parents
- Email dated August 30, 2021 at 7:02 p.m. written by the mother to Ms. Bostwick
- Email dated August 31, 2021 at 10:26 a.m. written by Ms. Bostwick to the parents
- Email dated August 31, 2021 at 1:25 p.m. written by the mother to Ms. Bostwick
- Email dated August 31, 2021 at 3:25 p.m. written by Ms. Givens to the parents
- Email dated September 1, 2021 at 4:54 p.m. written by the mother to Ms. Givens
- Email dated September 2, 2021 at 2:21 p.m. written by Ms. Givens to the mother
- Email dated September 2, 2021 at 2:44 p.m. written by the mother to Ms. Givens
- Email dated September 2, 2021 at 3:00 p.m. written by Ms. Givens to the mother
- Email dated September 20, 2021 at 4:33 p.m. written by the mother to Ms. Givens
- Email dated September 23, 2021 at 5:49 p.m. written by the mother to Ms. Givens
- Email dated September 24, 2021 at 8:40 a.m. written by Ms. Givens to the mother
- Email dated September 24, 2021 at 8:46 a.m. written by Ms. Givens to the mother
- Email dated September 24, 2021 at 9:09 a.m. written by the mother to Ms. Givens
- Email dated September 24, 2021 at 9:38 a.m. written by Ms. Bostwick to the mother
- Email dated September 24, 2021 at 9:48 a.m. written by the mother to Ms. Givens
- Email dated September 24, 2021 at 12:32 p.m. written by the mother to Ms. Bostwick
- Email dated September 25, 2021 at 9:53 a.m. written by the mother to Patrick Foster, Principal
- Email dated September 26, 2021 at 5:00 p.m. written by Mr. Foster to the mother

- Email dated September 27, 2021 at 4:31 p.m. written by Mr. Foster to the mother
- Phone log dated September 27, 2021 between the father and Amy Conklin, Assistant Director of Special Education
- IEP Update Proposal for the October 1, 2021 IEP Team Meeting written by the parents
- IEP Team Meeting Notes dated October 1, 2021 handwritten by the parents
- IEP Team Meeting Notes dated October 1, 2021 typed by the LEA
- Consent for Release and/or Exchange of Information between Keystone Learning Services and The Guidance Center signed by the parents on October 1, 2021
- Email dated October 15, 2021 at 5:08 p.m. written by the mother to Ms. Conklin
- Email dated October 17, 2021 at 9:01 p.m. written by Ms. Conklin to the mother
- Email dated October 17, 2021 at 2:05 p.m. written by the mother to Ms. Conklin
- IEP Goal Progress Reports dated October 18, 2021
- Email dated October 18, 2021 at 10:53 a.m. written by Ms. Conklin to the mother
- Phone log dated October 18, 2021 at 1:13 p.m. between the mother and Ms. Bostwick
- Notes from Parent Teacher Conference dated October 21, 2021 handwritten by the parents
- Email dated October 27, 2021 at 6:27 p.m. written by Ms. Givens to the parents
- Email dated October 27, 2021 at 6:50 p.m. written by the mother to Ms. Givens
- Email dated October 28, 2021 at 3:08 p.m. written by Ms. Bostwick to the parents
- Email dated October 28, 2021 at 3:38 p.m. written by the father to Ms. Bostwick
- Email dated November 1, 2021 at 3:12 p.m. written by Ms. Bostwick to the parents
- Email dated November 2, 2021 at 12:51 p.m. written by the mother and Ms. Bostwick
- Email dated November 4, 2021 at 3:22 p.m. written by Ms. Givens to the parents
- Email dated November 4, 2021 at 3:47 p.m. written by the mother to Ms. Givens
- Email dated November 4, 2021 at 3:49 p.m. written by Ms. Bostwick to the mother

- Email dated November 4, 2021 at 5:26 p.m. written by the mother to Ms. Bostwick
- Email dated November 8, 2021 at 3:14 p.m. written by Ms. Givens to the parents
- Email dated November 8, 2021 at 3:18 p.m. written by the mother to Ms. Givens
- Email dated November 8, 2021 at 3:26 p.m. written by Ms. Givens to the mother
- Email dated November 9, 2021 at 6:51 a.m. written by the mother to Ms. Givens
- Email dated November 10, 2021 at 9:18 a.m. written by Kristen Caffee, School Social Worker, to the mother
- Psychological Assessment from the Guidance Center dated November 14, 2021
- Email dated November 15, 2021 at 2:49 p.m. written by Ms. Bostwick to the parents
- Email dated November 15, 2021 at 2:57 p.m. written by Ms. Givens to the parents
- Email dated November 15, 2021 at 3:21 p.m. written by the mother to Ms. Givens
- Email dated November 16, 2021 at 11:40 a.m. written by Ms. Bostwick to the parents
- Email dated November 23, 2021 at 2:04 p.m. written by Ms. Givens to the parents
- Email dated November 29, 2021 at 8:25 a.m. written by the mother to Mr. Foster
- Email dated November 29, 2021 at 8:44 a.m. written by Ms. Conklin to the mother
- Email dated December 6, 2021 at 8:44 p.m. written by the mother to Ms. Conklin
- Email dated December 7, 2021 at 3:10 p.m. written by the mother to Michaela Driscoll, School Psychologist
- Email dated December 8, 2021 at 11:33 p.m. written by Ms. Conklin to the mother
- Email dated December 8, 2021 at 1:02 p.m. written by the mother to Ms. Conklin
- Phone log dated December 8, 2021 at 1:20 p.m. between Ms. Conklin and the mother
- Email dated December 8, 2021 at 1:40 p.m. written by Ms. Conklin to the mother

- Email dated December 8, 2021 at 6:44 p.m. written by the mother to Ms. Conklin
- Email dated December 9, 2021 at 9:04 a.m. written by the mother to Ms. Conklin
- Email dated December 9, 2021 at 10:16 a.m. written by Ms. Conklin to the mother
- Email dated December 9, 2021 at 10:21 a.m. written by the mother to Ms. Conklin
- Email dated December 13, 2021 at 12:56 p.m. written by Ms. Givens to the parents
- Email dated December 15, 2021 at 9:47 a.m. written by the mother to Ms. Givens
- Email dated December 17, 2021 at 12:50 p.m. written by the mother to Ms. Conklin
- Email dated December 20, 2021 at 8:49 a.m. written by Ms. Conklin to the mother
- Email dated December 20, 2021 at 8:56 a.m. written by Ms. Conklin to Ms. Driscoll
- PWN for Evaluation or Reevaluation and Notice for Consent dated January 3, 2022
- Behavior Data collected between August 27, 2021 and December 15, 2021 for Back-Talking, Refusing to Work, and Not listening/Following directions
- Special Education Timeline 2016 to 2021
- Formal Complaint dated December 31, 2021
- Response to the Allegations dated January 14, 2022
- January 17, 2022 Inservice Agenda and presentation slide titled "IEP Brush-Up"
- Employee Training/Staff Sign-In Sheet dated January 17, 2022
- Emails dated February 1, 2022 at 6:14 a.m. and 6:25 a.m. written by the mother to the Complaint Investigator

### **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 Other Health Impairment based on the most recent reevaluation conducted on February 7, 2020. He initially began receiving special education services in preschool in USD #453 under

the exceptionality category of Developmental Delay for social/emotional skills and received occupational therapy for sensory support. He was reevaluated in 2017 and continued to be eligible for services including a behavior intervention plan (BIP). He transferred to USD #341 in August 2020 and was enrolled in the third grade. He is currently a fourth grade student at Oskaloosa Elementary School where he continues to receive special education services.

### 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)). In this case, only allegations occurring on and after January 3, 2021 will be investigated.

Based upon the written complaint and an interview, the complainant raised four issues that were investigated.

**ISSUE ONE:** The USD #341, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the special education and related services required by the Individualized Education Plan (IEP) between January 4, 2021 and February 5, 2021.

### Positions of the Parties

The parents reported that the student transferred into USD #341 with an IEP from USD #453 at the beginning of the 2020-21 school year. The IEP from USD #453 was developed on February 7, 2020 and included 60 minutes per day of special education services in the general education setting and 30 minutes per day of special education services in the special education setting as well as a positive behavior intervention plan (BIP) and sensory accommodations.

The parents indicated that the IEP team for the student in USD #341 did not meet until February 5, 2021. They allege that the district failed to follow the appropriate transfer

procedures when the student enrolled at the beginning of 2020-21 school year and failed to provide the services required by the IEP dated February 7, 2020 until a new IEP was developed on February 5, 2021.

USD #341 acknowledge that the student transferred into the district at the beginning of the 2020-21 school year. They reported that the IEP from USD #453 was reviewed by school staff and 60 minutes per day of special education instructional support in the general education classroom was provided to the student.

However, after an internal review, USD #341 acknowledged that 30 minutes per day of specialized instruction to address behavior in the special education setting was not provided as required by the IEP. Doug Anderson, Executive Director of Keystone Learning Services, stated,

For this oversight, Keystone will offer compensatory services with a counselor/social worker above and beyond any future social work/counselor services deemed necessary by the IEP team. This service could be provided in the summer session to avoid missing core content instruction. We feel the total time needed and how it will be scheduled should be determined by the IEP team.

### **Findings of the Investigation**

The following findings are based upon a review of documentation and interviews with the parents and staff in USD #341.

USD #341 received copies of the student's IEP and Evaluation Report prior to the start of the 2020-21 school year and these were uploaded into the WebKIDSS system.

There were two IEPs in effect during the 2020-21 school year. The first IEP was developed on February 7, 2020 and the second IEP was developed on February 5, 2021.

The February 7, 2020 IEP required 60 minutes per day of special education instructional support in the general education classroom and 30 minutes per day of specialized instruction in the special education setting to address behavior.



The February 5, 2021 IEP requires 90 minutes per day of special education instructional support in the general education classroom.

The father gave written consent to add 30 minutes of special education instructional support in the general education classroom for a total of 90 minutes per day and to delete 30 minutes per day of specialized instruction in the special education setting as described in the prior written notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent (PWN) dated February 5, 2021.

Staff schedules for the 2020-21 school year reflect that two paraprofessionals, Ashley Cote and Melissa Evans, were assigned to the third grade classrooms between 8:10 a.m. and 3:10 p.m. daily. The schedule specifically notes that these two paraprofessionals are assigned to support the student and four additional students at the beginning of the school day for 20 minutes per day between 8:10 – 8:30 a.m. The schedule shows Ms. Cote was assigned to support the student and one additional student during the reading/spelling instructional block for 80 minutes per day between 8:30 – 9:50 a.m. daily.

The district acknowledged that 30 minutes per day of specialized instruction in the special education setting to address behavior was not provided during the period between Monday, January 4, 2021 and Friday, February 5, 2021.

The school district was in session a total of 24 days between January 4, 2021 and February 5, 2021.

### **Applicable Regulations and Conclusions**

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 USD #341 did provide 60 minutes per day of special education instructional support in the general education classroom as required by the February 7, 2020 IEP during the 2020-21 school year. However, USD #341 acknowledged 30 minutes per day of specialized instruction in the special education setting to address behavior was not provided between Monday, January 4, 2021 and Friday, February 5, 2021.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to provide a total of 12 hours of special education instruction in the special education setting that was required by the February 7, 2020 IEP between the dates of January 4, 2021 and February 5, 2021.

**ISSUE TWO:** The USD #341, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures to excuse the general education teacher from the February 5, 2021 IEP team meeting.

### **Positions of the Parties**

The parents reported that the IEP team meeting held on February 5, 2021 only included the father; the Oskaloosa Elementary School principal, Patrick Foster; and the special education teacher of the student, Tammy Givens. The parents indicated that the father was told that Allison Flinn, the student's third grade general education teacher was unavailable to attend the IEP team meeting when he inquired about her attendance. The father noted that Ms. Givens asked if he wanted to proceed with the IEP team meeting and he reluctantly agreed because the student had transferred into the district in August 2020 with an IEP and this was the first time the IEP team would be meeting. The parents stated, "Written consent was not requested or provided by either party."

The school district acknowledged that Ms. Flinn did not attend the February 5, 2021 IEP team meeting. However, Ms. Flinn prepared a written report to be shared at the IEP

team meeting and Ms. Givens gave the father the choice to continue or reschedule the meeting. The LEA indicated the father did provide written consent for the excusal of the general education teacher and the IEP team meeting was held as scheduled on February 5, 2021.

### Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and staff in USD #341.

An IEP team meeting was held on February 5, 2021 with the father; the Oskaloosa Elementary School principal, Patrick Foster; and the special education teacher of the student, Tammy Givens, in attendance.

Ms. Finn created a written report on January 18, 2021 to be shared with the IEP team. The report indicates the student is passing all of his classes. The only concern noted in the report was that the student “has an attitude, talks back, asks why.”

An Excusal from Attendance at IEP Meetings of Required IEP Team Members form documenting Ms. Flinn would be unavailable to attend the February 5, 2021 IEP team meeting was signed by the father on February 5, 2021. The father acknowledged he signed the form.

The Staffing Notes from the February 5, 2021 IEP team meeting indicate the *Kansas State Department of Education Parent Rights in Special Education (Procedural Safeguards)* document was offered and accepted by the father at the meeting. The notes state, We talked about how well things are going. We removed the behavior part since we are not seeing anything of concern. We are going to work on the social skills needed to interact with student peers. Discussed the in class supports that will be provided and that there will not be any pull out services at this time.

The school district provided the father with a PWN for change of services and a change in placement following the February 5, 2021 IEP team. The father provided written consent for the change of services and change of placement on February 5, 2021.

## Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.321(a)(2) require at least one general education teacher be in attendance at the IEP team meeting. However, federal regulations implementing the IDEA at 34 C.F.R. 300.321(e) allow a required member of the IEP team to be excused in whole or in part from an IEP team meeting if the excused member provides a written report to be considered by the IEP team in advance and the parent agrees in writing to the excusal.

In this case, the student was in Ms. Flinn's general education third grade classroom at the time of the February 5, 2021 IEP team meeting. Documentation showed that Ms. Flinn provided a written report dated January 18, 2021 for consideration by the IEP team. Documentation also showed the father gave written consent for Ms. Flinn to be excused from the IEP team meeting on February 5, 2021.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to follow appropriate procedures to excuse a required IEP team member from the IEP team meeting held on February 5, 2021.

**ISSUE THREE:** The USD #341, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an appropriate IEP for the student on February 5, 2021, specifically by not considering the concerns of the parents and the results of the most recent reevaluation when developing the measurable annual goals designed to meet the student's needs resulting from the student's disability.

## Positions of the Parties

The parents reported that the IEP developed on February 5, 2021 did not address their concerns related to the student's need for behavioral services and sensory accommodations. The father indicated that the draft IEP presented at the February 5, 2021 IEP team meeting did not include the same or similar behavioral goals, services, sensory accommodations, or a positive behavior intervention plan (BIP), which were all included in the student's IEP when he transferred into the district in August 2020.

The father reported Ms. Givens told him a reevaluation was done and it was determined the student didn't need those services any longer and further stated, "We're not seeing it." The parents indicated the father questioned Ms. Givens and Mr. Foster if removing goals, services and classroom accommodations would negatively impact the student's education in the general education classroom because of his disability. The father stated that he signed the IEP under protest.

The parents said USD #341 never requested nor were provided with consent to conduct a reevaluation of the student during the 2020-21 school year. The parents also stated that the most recent reevaluation of the student was conducted by USD #453 on February 7, 2020 and the results of that reevaluation were not considered by the IEP team in developing the February 5, 2021 IEP.

USD #341 reported that the father's primary concern was whether the student's medication was effective and whether the student was having positive interactions with his peers. Based on the first-hand experience with the student, the classroom teacher reported the student was displaying appropriate behavior in the classroom at that time and was doing well in school. The IEP team recommended removing the BIP and special education services in the special education setting and increasing special education services in the general education setting to support appropriate interactions with peers. USD #341 provided appropriate PWN for the proposed change of services and placement and the father gave written consent for the proposed changes to the IEP on February 5, 2021.

### **Findings of the Investigation**

The following findings are based upon a review of documentation and interviews with the parents and staff in USD #341.

The findings of Issue Two are incorporated herein by reference.

The Evaluation Team Report / 3-Year Reevaluation dated February 7, 2020 from USD #453 was conducted when the student was in second grade. The report indicates no concerns with vision, hearing, fine motor, gross motor, speech/language, cognitive, or

academic skills. The student has a medical diagnosis of attention deficit hyperactivity disorder (ADHD) and displays many minor off-task behaviors in the classroom setting.

The results of Behavior Assessment for Children, third edition (BASC-III) found there were no maladaptive behaviors rated as clinically significant; however, there were several areas that fell within the At-Risk range. For maladaptive behaviors, the special education teacher reported the student is sometimes overly aggressive, hits other children, loses his temper too easily, gets back at others, breaks the rules, lies and hurts others on purpose. For adaptive skills, the special education teacher reported the student sometimes has difficulty accepting change in routines, adjusting to new teachers, presenting ideas clearly, accurately describing feelings/emotions, staying organized, and sometimes demonstrates poor study habits.

USD #341 did not conduct a reevaluation of the student during the 2020-21 school year.

The IEP dated February 5, 2021 lists the concerns of the parent as “The main concern that dad has is the student’s interactions with his peers. Dad wanted to know if we thought meds were still working.”

The IEP dated February 5, 2021 lists the strengths of the child as “The student is a sweet, kind, creative, and quiet boy. He has made friends since he moved here. He has good reading comprehension. He is willing to try and do what is asked of him.”

The Social/Emotional section of the IEP dated February 5, 2021 indicates that based on the results of the most recent reevaluation and ongoing data collection, the student does have needs in this area that require special education services. It was noted that the student is willing to do what is asked of him and he tries his best. He is well behaved and not aggressive but appears withdrawn at times.

The needs of the student including parent concerns notes that “Next steps for the student include learning alternate skills and strategies to maintain on-task behavior, such as asking for help when the work feels hard, using ok or I-statements, and staying engaged during non-preferred activities.”

His current performance in the classroom setting notes that the student engages in escape-based behaviors such as going to the bathroom, making comments, arguing with the teacher/adults when feeling frustrated and/or not knowing where to start several times per day. The student's difficulty staying focused and engaged during less preferred activities can distract from his learning and the learning of others.

The February 7, 2020 IEP included two goals. The first goal was to increase participation in class by following teacher directions within 30 seconds. The second goal was to increase his ability to keep his hands to himself 100% of the time.

The February 5, 2021 IEP includes one goal. The student will follow adult/teacher directions without protest as evidenced by saying "ok" or using "I-messages" when given an assignment.

The Topics and Discussion section of the Staffing Notes from the February 5, 2021 IEP team meeting indicate,

We talked about how well things are going. We removed the behavior part since we are not seeing anything of concern. We are going to work on social skills needed to interact with student peers. Discussed the in-class supports that will be provided and that there will not be any pull out services at this time.

### **Applicable Regulations and Conclusions**

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(a) require school districts to consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the most recent reevaluation of the child, and the academic, developmental and functional needs of the child when developing the student's IEP.

In this case, interviews and documentation show the father attended and provided input into the development of the IEP at the February 5, 2021. The previous IEP included a goal to address increasing class participation by following teacher given

directions and keeping his hands to himself. The IEP team determined 60 minutes per day of special educational support in the general education setting and 30 minutes per day of specialized instruction in behavior in the special education setting were required for the student to meet these annual goals.

The IEP goal proposed and accepted at the IEP meeting on February 5, 2021 also includes a goal for following teacher/adult directives. The goal for keeping hands to himself was deleted because the student was not currently displaying that behavior in the third grade classroom. The IEP team determined that the student no longer required specialized instruction in the special education setting but instead needed more special education instructional support in the general education setting.

It is noted that the student continued to receive 90 minutes per day of special education services and only the location of those services changed to a less restrictive setting following the February 5, 2021 IEP team meeting.

It appears that there is consistency between the February 7, 2020 IEP and the February 5, 2021 IEP with the revisions being based upon current student performance and parent concerns.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to consider the concerns of the parents for enhancing the education of their child and the results of the most recent reevaluation of the child when developing the student's IEP on February 5, 2021.

**ISSUE FOUR:** The USD #341, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parents with appropriate prior written notice (PWN) following the October 1, 2021 IEP team meeting.

#### **Positions of the Parties**

The parents report they provided a six-page IEP Update Proposal to the IEP team at the October 1, 2021 meeting. The proposal included requests for specific goals and additional special education services as well as a positive behavior intervention support plan (BIP). The parents shared how well the student had done previously in



USD #453 with classroom accommodations, a reward system, and documenting behavioral concerns using the STAR system (Situation, Task, Action, and Response). The parents noted that they “did most of the talking and feedback about problem behavior.” The parents reported they were told by Ms. Conklin that it would “take some time to get some information together.”

USD #341 reported the October 1, 2021 meeting was scheduled at the parents’ request as a problem solving session due to an increase in the student’s inappropriate behavior in the fourth grade classroom. The district stated,

During the meeting a number of requests and suggestions were introduced by the parents and other IEP team members. However, amending the IEP was tabled until current behavior data could be analyzed and the Guidance Center, the Jefferson County Mental Health Center, completed their ongoing evaluation.

Because the team felt that this was an expanded parent-teacher conference and not an “official” IEP meeting, and no changes were subsequently made on the IEP, Keystone did not provide PWN following the meeting. The notes from the meeting taken by Assistant Director Amy Conklin reflect that the discussion was limited to behaviors and interventions, and it was recorded that the, “Team would like to take some time to analyze the data to develop a new plan for the student.” The IEP goals were not reviewed and present levels of performance were not discussed.

USD #341 reported that the school staff initially believed the October 1, 2021 meeting served as preparation for an IEP meeting in the near future. However, after conducting an internal investigation into this allegation, USD #341 stated,

In a review of staff notes and emails all team members refer to all meetings as “IEP meetings” even those that are problem solving or conferences rather than IEP meetings. Therefore, we concede that because there is a misunderstanding of the intent of the meeting in October that a new IEP meeting, now scheduled for January 28, 2022, should be held with notice of meeting and PWN provided. Also, Keystone administrators will review the procedures and associated paperwork required for all parental

requests for IEP meetings at the January 17, 2022 inservice. This information will be shared with all special education staff and future IEPs will be reviewed for compliance with these requirements.

### Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and staff in USD #341.

On September 1, 2021 at 4:54 p.m., the mother sent an email to Ms. Givens indicating the parents would like to have a meeting to discuss changing the students IEP due to behavioral issues occurring in fourth grade. Emails were exchanged between the parents and Ms. Givens on September 2, 20, and 24, 2021 trying to schedule this meeting.

The father called Ms. Conklin on September 27, 2021 and requested an IEP team meeting. The phone log for this call stated,

He was concerned that the student's IEP from Leavenworth had more supports. He noted that IEP meeting that was held in February 2021 only had himself, Mr. Foster, and Ms. Givens. He asked that the meeting involve the general education teacher, school psychologist, social worker, principal, and special education teacher. He wanted to make sure that we discussed the student's behavior and that he wanted communication from the teacher. His goals were that the student participate and stay in class.

IEP meeting notes from both the parent and school district staff reflect the following persons attended the meeting on October 1, 2021: the father, the mother, and the student; the special education teacher, Ms. Givens; the general education teacher, Ms. Bostwick; the school psychologist, Ms. Driscoll; the school social worker, Ms. Caffee; the principal, Mr. Foster; and the assistant director of special education, Ms. Conklin.

The parents created and shared an IEP Update Proposal document with the other members of the IEP team on October 1, 2021. In this document the parents requested two behavior goals and a positive behavior intervention support plan (BIP) be added to the IEP. In addition, the parents requested adding specialized instruction for

150 minutes per week in the special education setting to address behavior; adding an additional 210 minutes per week of special education instructional support in the general education setting to address positive behavior supports; and adding 10 minutes per month of occupational therapy consult services to sensory accommodations that would enable the student to be more successful in the educational environment.

USD #341 acknowledged that the parents were not provided with a PWN either proposing or refusing the changes in services and placement proposed in the parents' document titled IEP Update Proposal following the IEP team meeting on October 1, 2021. Instead, the district told the parents that the "Team would like to take some time to analyze the data to develop a new plan for the student."

Keystone Learning Services conducted an inservice training with all special education staff on January 17, 2022 to review the procedures and associated paperwork required for when a parent requests and IEP team meeting. Dr. Anderson reported that all IEPs will be reviewed for compliance with these procedures in the future.

USD #341 obtained written consent to reevaluate the student on January 3, 2022. An IEP team meeting was held on January 28, 2022 to review the results of the reevaluation and to review and revise the IEP, as appropriate. The mother reported, "They [USD 341] provided a draft and I presented my questions and I believe we came to a great solution. The reevaluation they did uncovered things I don't think any of us knew about. Apparently, a lot of the behavior is stemming from deficits in executive functioning and math computation."

### **Applicable Regulations and Conclusions**

Federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) require school districts to provide the parent with PWN a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to the child.

In this case, an IEP team meeting was held on October 1, 2021 and the parents made requests for multiple changes to be made to the student's IEP. The district failed to

respond appropriately to each request by either proposing to make the change requested by the parents or refusing to make that requested change and explaining the rationale for the decision in writing.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to provide the parent with appropriate PWN a reasonable time before the school district proposes or refuses to initiate or change the educational placement, or provision of FAPE to the child during the 2021-22 school year.

It is noted that after an internal review, USD #341 acknowledged this noncompliance and subsequently provided training for staff as well as reevaluated the student and used this data to review and revise the student's IEP.

### **Corrective Action**

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following areas:

- A. Federal regulations at 34 C.F.R. 300.300.323(c)(2) which 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, the IEP in effect between January 4, 2021 and February 5, 2021 was developed on February 7, 2020. That IEP required 60 minutes per day of special education instructional support in the general education classroom and 30 minutes per day of specialized instruction in the special education setting to address behavior. USD #341 provided the 60 minutes per day of special educational instructional support in the general education classroom; however, USD #341 acknowledged the 30 minutes per day of specialized instruction in the special education setting

were not provided on the 24 school days between January 4, 2021 and February 5, 2021.

- B. Federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) which require school districts to provide the parent with PWN a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to the child.

In this case, an IEP team meeting was held on October 1, 2021 and the parents made requests for multiple changes to be made to the student's IEP. USD #341 failed to respond appropriately to each request by either proposing to make the change requested by the parents or refusing to make that requested change and explaining the rationale for the decision in writing.

Based on the foregoing, USD #341 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #341 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:
  - a. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.323(c)(2) and state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) that 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.
  - b. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.503(a) which require school districts to provide the parent with PWN a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to the child.

2. No later than February 28, 2022, USD #341 shall make a written offer of compensatory services to the parent for providing not less than 12 hours of compensatory special education services to address behavior. The offer must include a schedule that would accomplish the completion of all compensatory services prior to the beginning of the 2022-23 school year. USD #341 shall provide a copy of this written offer, including the schedule, to Special Education and Title Services (SETS) on the same day it is provided to the parents. The parents can accept all, part, or none of the compensatory services offered and has 15 school days from the date they receive the offer to notify the district of their decision. Within 15 school days of making this written offer to the parents, USD #341 shall notify SETS, in writing, of the parents' decision regarding the offer of compensatory services. If the parent accepts all or part of the compensatory services offered, USD #341 shall notify the parents and SETS when the compensatory services have been completed.
3. It is noted that USD #341 has already conducted a reevaluation of the student and held an IEP team meeting to review the results and the reevaluation and to review and revise the IEP as appropriate. No later than February 15, 2022, USD #341 will provide SETS with a copy of the IEP developed on January 28, 2022 and a copy of any PWN provided to the parents as a result of that IEP team meeting.
4. It is also noted that Keystone Learning Services has already conducted training on January 17, 2022 with all special education staff to review the procedures and associated paperwork required for instances when a parent requests and IEP team meeting. Dr. Anderson reported that all IEPs will be reviewed for compliance with these procedures in the future. No later than February 15, 2022, USD #341 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 #341 will provide SETS with any handouts and/or a copy of the presentation.
5. Further, USD # 341 shall, within 10 calendar days of the date of this report, submit to Special Education and Title Services one of the following:

- a) a statement verifying acceptance of the corrective action or actions specified in this report;
- b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
- c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f). Due to COVID-19 restrictions, appeals may either be emailed to [formalcomplaints@ksde.org](mailto:formalcomplaints@ksde.org) or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

### 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)