

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #465
ON JANUARY 12, 2022

DATE OF REPORT FEBRUARY 18, 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 _____ and _____ will be referred to as “the parents” or “the father” or “the mother” respectively.

The complaint is against USD #465 (Winfield Public Schools who contracts with the Cowley County Special Services Cooperative (CCSSC) to provide special education and related services to students enrolled in USD #465. In the remainder of the report, “USD #465,” 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 initially received the complaint on January 12, 2022; however, the original complaint was 29 pages and included 18 allegations. The Complaint Investigator found that several of the allegations did not fall under the state and federal regulations implementing the IDEA and thus she did not have the authority to investigate those allegations and the parents were provided with resources for addressing those allegations. Additional time and research was required to conduct a thorough investigation of the six allegations that did fall under the IDEA, and for this reason, the 30-day timeline to investigate this complaint was extended by seven days and ends on February 18, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parents by telephone on January 21, 2022 and again on February 8, 2022.

USD #465 made the following school staff available for a telephone interview on February 2, 2022:

- Ron Sarnacki, Director of Special Education
- Deana Waltrip, Assistant Director of Special Education
- Jennifer Ray, Principal of Lowell Elementary School
- Christina Allen, Special Education Teacher
- Andrew Brenn, Adaptive Physical Education (APE) Teacher
- Kathleen Marler, Kindergarten Teacher
- Karli Dillon, Speech/Language Pathologist
- Jeff Belden, Occupational Therapist (OT)

The Complaint Investigator also had multiple phone calls with Dr. Sarnacki and Ms. Waltrip between January 18, 2022 and February 14, 2022 to gather additional information and to clarify documentation provided by the LEA.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. It is noted that the parents and the district both provided numerous documents including emails, work samples, data sheets, and videos related to allegations that were not investigated and, while all of this documentation was reviewed, it was not found to be relevant to the allegations that were investigated. The following materials were used as the basis of the findings and conclusions of the investigation:

- Multidisciplinary Team Report of Reevaluation dated April 13, 2021
- Individualized Education Program (IEP) dated April 13, 2021
- Prior Written Notice (PWN) for Identification, Initial Services, Educational Placement, Change in Service, Change in Placement, Request for Consent dated April 13, 2021
- PWN dated September 2, 2021
- Updated Meeting Invitation for an IEP team meeting on September 9, 2021 at 9:00 a.m.
- Email dated September 9, 2021 at 11:29 a.m. written by Christina Allen, Special Education Teacher to the IEP team members including the parents

- PowerPoint presentation created by the parents for the November 4, 2021 IEP team meeting
- IEP Amendment Between Annual IEP Meetings dated November 10, 2021 provided to the parent on November 10, 2021 with handwritten notes from the parent
- PWN dated November 10, 2021 provided to the parent on November 10, 2021
- IEP Amendment Between Annual IEP Meetings dated November 10, 2021 provided to the parent on November 29, 2021 with handwritten notes from the parent
- PWN dated November 10, 2021 provided to the parent on November 29, 2021
- IEP Amendment Between Annual IEP Meetings dated November 10, 2021 provided to the parent on December 14, 2021 with handwritten notes from the parent
- PWN dated November 10, 2021 provided to the parent on December 14, 2021
- Weekly Kindergarten Classroom Schedule
- Weekly Paraprofessional Schedule
- The student's Weekly Schedule (two versions showing before and after November 10, 2021 IEP amendment)
- Adaptive Physical Education (APE) Progress Monitoring Form
- Occupational Therapy Medicaid Log
- APE Services Log
- Speech/Language Therapy Services Log
- Meeting notes dated October 14, 2021 and November 4, 2021 written by Jennifer Ray, Principal at Lowell Elementary School
- Meeting Notes from Ron Sarnacki, Director of Special Education dated October 13, 2021
- Parent meeting notes dated November 11, 2021 handwritten by Dr. Sarnacki,
- Observation notes dated November 18, 2021 handwritten by Dr. Sarnacki
- Summary of the November 22, 2021 meeting between the parents and Dr. Sarnacki
- Notes from the staffing held on November 29, 2021 between Dr. Sarnacki; Ms. Ray; Christina Allen, Special Education Teacher; and Kathleen Marler, Kindergarten Teacher

- Email dated November 29, 2021 at 11:05 a.m. written by Ms. Allen to the parents
- Email dated December 6, 2021 at 10:06 a.m. written by the mother to Ms. Allen
- Email dated December 7, 2021 at 8:54 a.m. written by Ms. Allen to the parents
- Email dated December 7, 2021 at 9:13 a.m. written by the mother to Ms. Allen
- Email dated December 13, 2021 at 11:15 p.m. written by the mother to Ms. Allen
- Phone log notes dated January 20, 2022 of phone call between the parents and Dr. Sarnacki.
- Kansas State Board of Education Teaching License for Christina Allen
- Summary of paraprofessional training provided by Ms. Allen during the 2021-22 school year dated January 28, 2022
- Tiered Paraeducator Inservice Planning Worksheet for Ashli Wilson
- Tiered Paraeducator Inservice Planning Worksheet for Gabbie Lemon
- Tiered Paraeducator Inservice Planning Worksheet for Marlaina Willett
- Cowley County Special Services Cooperative (CCSSC) Para Educator In-service documentation signed by Ms. Lemon on September 1, 2021
- CCSSC Para Educator In-service documentation signed by Ms. Willett on August 20, 2021
- CCSSC Para Inservice Sign-in Sheet dated August 10, 2021 with signatures from Ms. Wilson, Ms. Willett, and Ms. Lemon
- 2021/2022 CCSSC Para Educator Staff Development Record for Ms. Lemon
- Email dated November 16, 2021 at 9:00 p.m. written by Kylee Brenn, the student's early childhood special education teacher, to the parents, Dr. Sarnacki, and Ms. Allen
- Winfield USD 465 Comprehensive Assessment Plan and Schedule
- The Kindergarten Skills Assessment listing the student's scores on the Quick Phonics Screener (QPS) and the Phonological Assessment Screening Test (PAST) for the 2021-22 school year
- FastBridge Individual Benchmark Report for Early Math
- FastBridge Individual Benchmark Report for Early Reading English
- The student's PAST protocol dated September 20, 2021 and January 7, 2022
- YouTube videos of the student matching letter sounds to pictures, matching words to pictures, copying and naming shapes, and rote counting

- Email exchange dated February 14, 2022 at 10:41 a.m. and 11:58 a.m. between Ms. Marler and Deana Waltrip, Assistant Director of Special Education
- The student's PowerSchool Attendance Record for the 2021-22 school year
- The Discipline Log Reports for the 2021-22 school year
- USD #465 Notice to Parents of Short-term Suspension dated November 10, 2021
- The student's PowerSchool Discipline and Contact Log for the 2021-21 and 2021-22 school years
- Email dated September 29, 2021 at 7:55 a.m. written by Ms. Marler to Ms. Ray; Ms. Allen; Gabbie Lemon, one-to-one paraprofessional for the student; Beth Lundgren, classroom paraprofessional; and Peggy Staubs, classroom aide
- Response to the allegations written by Ms. Ray
- Three photos showing bite marks dated September 22, September 28, and October 13, 2021
- Email dated October 13, 2021 at 9:54 a.m. written by Ms. Ray to the mother
- Email dated October 15, 2021 at 11:08 a.m. written by Ms. Allen to the mother
- Behavior Major Office Referral dated December 17, 2021 at 11:45 a.m.
- Email dated December 17, 2021 at 11:59 p.m. written by the mother to Kerrie Bryant, Lead Teacher during the incident that happened on that date
- Email dated December 21, 2021 at 9:37 a.m. written by Ms. Bryant to the mother
- Technical Assistance Recommendations from Observations on January 7 and January 27, 2022 from the Kansas Technical Assistance System Network (TASN)
- Screenshots of text messages dated August 25, 2021 and December 2, 2021 between the mother and Ms. Allen
- Formal Complaint filed by the parents on January 12, 2022
- Response to the allegations dated January 31, 2022 written by Ms. Waltrip
- Response to additional questions dated February 15, 2022 written by Ms. Waltrip

Background Information

This investigation involves a 6-year-old male student who is eligible for special education and related services under the exceptionality category of Developmental Delay (DD). The student lives with his parents who were both born and educated in a

foreign country. The parents speak both in English and the foreign language in the home.

The student received early intervention services through the Individuals with Disabilities Education Act (IDEA) Part C Birth to Age Three program in Kansas. He was initially evaluated and found eligible for special education prior to age three and transitioned to the IDEA Early Childhood Special Education program in USD #465 upon his third birthday to receive special education and related services at the Winfield Early Childhood Center.

He was reevaluated on April 13, 2021 and found to continue to be eligible for special education and related services under the eligibility category of Developmental Disability when he transitioned into the IDEA Part B School Age program during the 2021-22 school year. The student is currently enrolled in kindergarten at Lowell Elementary School in USD #465 and receives special education and related services through an IEP.

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 parent raised six issues that were investigated.

ISSUE ONE: The USD #465, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate disciplinary procedures during the 2021-22 school year.

Positions of the Parties

The parents believe the student is being punished for behaviors associated with his disability at Lowell Elementary School in USD #465. They reported the student will use his behavior to communicate with others because of his speech/language delays. They indicated that the student has received both out-of-school suspensions (OSS) as well

as in-school-suspensions (ISS) for physical aggression towards his peers and school staff.

The parents were upset that the student received OSS despite the fact that the student was calm when they arrived to pick him up on November 10, 2021. The parents were also upset in December when the emergency medical services and ambulance came to the school along with the police as result of an incident that happened at recess. The parents have requested the district conduct a functional behavioral assessment (FBA) to develop a positive behavior intervention plan (BIP) to address these behaviors at school since the September 9, 2021 IEP team meeting.

The district acknowledged that the student has received five office referrals related to physical aggression towards peers and school staff since his enrollment in kindergarten during the 2021-22 school year. USD #465 staff reported the student has only been assigned to one half day of OSS and one day of ISS during the 2021-22 school year. School district staff also reported that a Safety Plan was developed at the end of September and a functional behavior assessment is being conducted at this time. The district believes it has followed the disciplinary procedures required by the IDEA in regards to this student.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #465.

The first office referral occurred on September 22, 2021 in the kindergarten classroom. The student did not want to clean up following a learning lab activity. He became agitated and bit a peer on the back of his leg leaving deep marks in the skin without punctures. School staff reported and documentation show there was no disciplinary consequences as a result of this act of physical aggression and that a safety plan was developed.

The second office referral occurred on September 28, 2021 in the kindergarten classroom. The student did not want to sit on the carpet during calendar time. He became upset and agitated and bit a different peer on the upper thigh leaving visible teeth marks and bruising. Again, the student did not receive any disciplinary

consequences as a result of this incident. Instead, the school staff explored proactively adding sensory input into the student's daily routine.

The third incident occurred on October 13, 2021 in the special education classroom when the student entered and found a peer near his desk. He bit this student's arm and was assigned an ISS in the special education classroom for the remainder of the school day.

The fourth incident occurred on November 10, 2021 in the kindergarten classroom. The student became angry when he was told they could not go outside for recess due to the rain. The student screamed and kicked his paraprofessional multiple times. He fell to the ground and began spitting at the adults. The spit was approximately the size of a quarter and landed on the school staff as well as the floor. In addition, the student spread spit onto his face, arms, and clothing. The student was assigned one half day of OSS due the health and safety concerns resulting from this behavior even though he had calmed down when the parents arrived to pick him up from school.

The fifth incident occurred on December 17, 2021 during the recess following lunch. The student was playing red light / green light with his peers. One student stopped running during a green light and the student began to choke this student aggressively. His paraprofessional intervened and separated the two students. The school nurse reported the other student's neck was very red following this incident. The student calmed down using sensory strategies and continued with his school day with an accommodation of a separate recess from his peers.

School staff reported emergency medical staff in an ambulance and police arrived at the school later that same afternoon as a result of the other's student's parent's concern for her health and safety.

The parent and school staff both acknowledge that a reevaluation is currently being conducted for an FBA as the first step in the development of a BIP.

Applicable Regulations and Conclusions

Federal regulations, at 34 C.F.R. 300.530, allow for students with disabilities to be removed from their current educational placement for up to 10 days in a school, without educational services, and before specific procedures and timelines must be followed to ensure the behavior resulting in the disciplinary action is not a manifestation of the child's disability.

In this case, the student received one day of ISS on October 13, 2021, which was served in the special education classroom with no loss of specialized instruction or related services. In addition, the student was assigned to one half day of OSS on November 10, 2021 as a result of a disciplinary incident that occurred during the 2021-22 school year.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to follow appropriate disciplinary procedures during the 2021-22 school year.

ISSUE TWO: The USD #465, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately certificated and trained special education staff, specifically the special education teacher and paraprofessionals, to provide the special education services to the student during the 2021-22 school year.

Positions of the Parties

The parents report many concerns related to the competence of the special education teacher and paraprofessionals in USD #465 who work with the student. The parents indicated that the special education teacher is not always truthful with the information she shares with the parents. For example, the special education teacher told the parents the student attended a balloon party in the kindergarten classroom from 3:00 until 3:15 p.m. on December 10, 2021. However, the student was not included in the video on the kindergarten Facebook page and according the general education schedule, the student was not in the classroom between 3:00 until 3:15 p.m. The parent stated:

Ms. Allen was not saying the truth. Therefore the student did miss the balloon party. When parents showed the class video to the student, he

loved it and wanted to watch again and again. This clearly showed that our child missed an opportunity to socially interact with other kids. Can Ms. Allen [special education teacher] or Ms. Gabbie [one-to-one paraprofessional] replace or provide that experience for the student again?

The parents also indicated that Ms. Allen was not able to perform her professional duties as the special education teacher efficiently or effectively. For example, they complained that the IEP and PWN sent home following the November 4, 2021 IEP team meeting was not accurate and contained many errors that had to be changed before they could provide written consent.

In addition, the parent indicated Susan Rush, Parent Educator in USD #465, observed the student on November 3, 2021. The report included the statement:

This child had many more transitions in environment today that he could adapt to and as the day went on he became more violent in his protests. One of the issue with the schedule is that it is time based. Several times, just as he was making progress or engaging, it was time to leave while the other children stayed.

The parents noted, "She clearly stated the student struggles with the schedule created by Ms. Allen." The parent concluded that this shows, "her lack of ability to design the best schedule that fits well for a child considering his needs, supporting his education and social emotional development."

The parent also expressed concerns that the paraprofessionals working with the student are not appropriately trained. They understood that Ms. Allen was supposed to train Gabbie Lemon, the one-to-one paraprofessionals assigned to work with the student during September, October, and November of the 2021-22 school year. However, the parents indicated they are unsure if this training was ever provided because Ms. Allen told the parents in a meeting on December 15, 2021 that "Ms. Gabbie is a very nice person but she doesn't have the training".

The parents noted they were also told that Kylee Brenn, the student's early childhood special education teacher at the Winfield Early Learning Center during the 2020-21 school year, was supposed to train the new paraprofessional, Marlaina Willett, Ms.

Lemon as well as Ms. Allen on November 17, 2021; however this training was postponed and has not yet been provided.

USD #465 reported that all school staff assigned to work with the student are appropriately certificated and trained according to the standards set by the KSDE. The district indicated:

All classified staff receives a one-day training provided at the COOP office by the Director of Special Education and the Para Facilitator when they are originally hired. This training covers basic information for paras to know when working with Special education students. They also get 90 minutes of training on CHAMPS [CHAMPS. stands for Conversation (which level voice the students may use during the task), Help (how students signal for help during a task), Activity (what is the task or objective), Movement (how much movement the students are allowed within the classroom is permitted during the activity), Participation (what students do or sound like that demonstrates they are participating), and Successful students (the end result when a student follows the program)] to help with Behavior and visual schedule introduction and 15 minutes of Emergency Safety Intervention Training. In addition, all paras in this classroom have completed the 20-hour requirement of Professional development for the year. The current para is also trained in MANDT [evidenced-based training designed to promote prevention, de-escalation and intervention approaches] and we had attempted to train other new staff, but they quit prior to the training. In addition to this training, Ms. Allen has provided training for the para specific to the student and his needs, and so has the instructional coach Katie Frankie.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #465.

There were three IEPs in effect during the 2021-22 school year. The annual IEP was developed on April 13, 2021 and then amended on September 2, 2021 and again following an IEP team meeting on November 4, 2021. Both the parents and school

staff acknowledge that none of the IEPs include any specialized training for school personnel.

The district's website shows two special education teachers are assigned to Lowell Elementary School. Ms. Allen is listed as the "Interrelated Teacher" while Katie Griffin is listed as the "3-5 IRC Teacher."

Deana Waltrip, Assistant Director of Special Education for the CCSSC, stated the acronym describing Ms. Griffin's position means "third through fifth grade interrelated classroom teacher." She reported that Ms. Allen would be considered the "K-2 IRC Teacher" using this same acronym pattern. Ms. Waltrip indicated she was unsure why the two teachers have different job titles on the website but indicated that each member district participating in the special education cooperative are responsible for how the staff are listed on their district's website.

Ms. Allen was issued a teaching license from the Kansas State Board of Education on August 6, 2019 allowing her to teach general education for grades kindergarten through sixth grade and to teach special education for high incidence students in preschool through third grade. Her teaching license will expire on June 21, 2025.

The student has had two paraprofessionals assigned to support him for the majority of the 2021-22 school year. It is noted that Ashli Wilson was initially assigned to work with the students at the beginning of the 2021-22 school year but that she quit after a couple of weeks to take another job. Gabbie Lemon was then assigned to be the student's paraprofessional until Marlaina Willett transferred to that position on December 1, 2021. Currently Ms. Willett is with the student providing one-to-one support throughout the school day except for lunch when Ms. Lemon provides support to the student. School staff reported that Ms. Allen is responsible for the student before school when the paraprofessionals have not yet started their contracted school day.

Ms. Lemon was originally hired at USD #465 on September 15, 2020. Documentation shows she received the CCSSC Para Educator Inservice Training on September 1, 2021. Her 2021/2022 CCSSC Para Educator Staff Development Record shows that she has attended 20.25 hours of inservice training during the current school year.

Ms. Willett was originally hired at USD #465 on March 9, 2021. Documentation shows she received the CCSSC Para Educator Inservice Training on August 20, 2021. Her 2021/2022 CCSSC Para Educator Staff Development Record shows that she has attended 23 hours of inservice training during the current school year.

Ms. Allen reported that she provided student specific training on the visual schedule, structured work systems, de-escalation strategies, and data collection to all three of the paraprofessionals assigned to work with the student during the 2021-22 school year.

Ms. Waltrip explained that the original date for the training with the student's previous early childhood special education teacher, Kylee Brenn, was cancelled in November because of Covid concerns. Ms. Waltrip indicated she is unsure if that training will be rescheduled since consultants from the Kansas Technical Assistance System Network (TASN) are now involved with the student and his IEP team.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.156 require each state education agency (SEA) to establish and maintain qualifications to ensure that personnel necessary to provide special education and related services in accordance with the IEP are appropriately and adequately prepared and trained.

The KSDE details personnel qualifications in the [2021-22 Special Education Reimbursement Guide State for Categorical Aid](#). Per the *Special Teacher Reimbursement Licensing Requirements* chart in Appendix C, a Licensed Personnel Report for High Incidence Special Education is required for the teacher of an interrelated program.

In this case, Ms. Allen is assigned as the interrelated classroom teacher for grades kindergarten through third grade at Lowell Elementary School in USD #465. She holds a current teaching license issued by the Kansas State Board of Education allowing her to teach special education for high incidence students in

preschool through third grade. Based upon that information Ms. Allen meets the KSDE requirements to be the teacher of an interrelated program.

Per the *Tiered Paraeducator Inservice Planning Worksheet* in Appendix F of the 2021-22 Special Education Reimbursement Guide State for Categorical Aid, paraprofessionals who have not worked more than three years as a paraprofessional are required to obtain 20 hours of inservice training during the current school year of employment. It is noted that new hires during the current school year would require a pro-rated number of hours of inservice training based on the date of hire.

In this case, all three of the paraprofessionals assigned to work with the student received student specific training from the special education teacher on the visual schedule, structured work systems, de-escalation strategies, and data collection.

Ms. Lemon and Ms. Willett were each hired at USD #465 less than three years ago and each of them has documented more than the required 20 hours of inservice training during the current school year. Based upon that information Ms. Lemon and Ms. Willett meet the KSDE requirements to be considered appropriately and adequately trained paraprofessionals.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to provide appropriately certificated and trained special education staff, specifically the special education teacher and paraprofessionals, to provide the special education services to the student during the 2021-22 school year because Ms. Allen, Ms. Willett and Ms. Lemon all meet the SEA requirements to be considered appropriately and adequately prepared and trained.

ISSUE THREE: The USD #465, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's Individualized Education Plan (IEP), specifically participation in district-wide assessments, during the 2021-22 school year.

Positions of the Parties

The parents reported that Ms. Allen told them that the student was not capable of the skills required to take the Phonological Assessment Screening Test (PAST). However, upon their request, Kathleen Marler, the kindergarten classroom teacher, provided the parents with examples of the skills necessary to be assessed and the parents worked with the student at home to learn these skills. The parents have videos showing the student demonstrating the skills needed to participate in the PAST type of assessments.

The parents stated:

As a special education teacher, Ms. Allen should be aware that every autistic child is differently able and autism is a spectrum. Therefore, parents believe that Ms. Allen does not have the right to assume the student's capabilities without trying. By law, students are supposed to participate in the district-wide assessments with accommodations agreed upon on his IEP. The student should be assessed as other kids. If the teachers communicate with parents about the format and nature of the assessment ahead of time, parents can work on it at home. Then it will be easy for the student to complete his tasks at school.

USD #465 noted that the student's IEPs state that he will participate in district assessments such as the PAST and the Quick Phonics Screening (QPS) in addition to the FastBridge Reading and Math Assessments, which combines Computer Adaptive Tests (CAT) and Curriculum-Based Measures (CBM) to screen students for early reading delays and/or dyslexia as well as early math delays, identify skill gaps, and offering proven recommendations for reading/math instruction and diagnostic reading/math interventions. The district indicated that the student has participated in the same district-wide assessments as his kindergarten peers during the 2021-22 school year.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #465.

The findings of Issue Two are incorporated herein by reference.

According to the *Winfield USD 465 Comprehensive Assessment Plan and Schedule*, their assessment plan includes four steps: universal screeners, informal diagnostic assessments, progress monitoring of interventions, and formal diagnostic processes and assessments. School staff stated that all students participate in universal screeners but only students who are determined to be “at-risk” participate in the informal diagnostic assessments and progress monitoring of interventions and that only the “at-risk” students who do not make progress through the use of interventions receive formal diagnostic processes and assessments.

The universal screener for reading and math for grades kindergarten through eighth grade is the FastBridge assessments, which is to be administered to all students in September, January, and April each school year.

The FastBridge, QPS and the PAST are listed as informal diagnostic assessments for reading for selected students in kindergarten through twelfth grade while the FastBridge is the informal diagnostic assessment for math for selected students in kindergarten through twelfth grade. Informal diagnostic assessments are scheduled to be administered in September, January, and April each school year.

The FastBridge assessments for both reading and math are also the progress monitoring measures for selected students in grades kindergarten through twelfth grade.

Regardless of the district’s written assessment plan, both the parents and school staff acknowledge that all three IEPs require the student to participate in the following district-wide assessments: PAST, FastBridge, and QPS. The IEP requires the following accommodations on these district-wide assessments: fidgets, frequent breaks, separate setting, and preferential seating.

Individual FastBridge Math and Reading Benchmark Reports for the student show he took these assessments in both the fall and winter of school years 2020-21 and again during the 2021-22 school year.

The student's records also show the student was informally assessed using the QPS assessments in both the fall (September) and winter (January) of the 2021-22 school year. In addition, the student's records show the PAST was administered on September 20, 2021 and January 7, 2022.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.320(a)(6)(i) require school districts to develop an IEP for a student with a disability that includes a statement of any individual appropriate accommodations that are necessary to measure the academic and functional performance of the child on state- and district-wide assessments.

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 this case, even though the PAST and QPS are listed as "informal diagnostic assessments" in the district's assessment plan, all of the student's IEPs include a statement listing the accommodations to be provided during district-wide assessments and specifically name the PAST, FastBridge, and QPS as those district-wide assessments. Interviews and documentation show the student participated in the PAST, FastBridge, and QPS in both the fall and winter as required by the *Winfield USD 465 Comprehensive Assessment Plan and Schedule*

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to implement the student's IEP, specifically the requirement that the student participate in district-wide assessments, during the 2021-22 school year.

ISSUE FOUR: The USD #465, 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)) during the 2021-22 school year.

Positions of the Parties

The parents reported that an IEP team meeting was held on November 4, 2021 when they presented a 12-slide PowerPoint of questions and recommendations to be included in the student's IEP including a request for a functional behavioral analysis (FBA) and the creation of a behavior intervention plan (BIP). The parents indicated that Ms. Allen provided them with an incomplete and inaccurate copy of the IEP amendment and PWN on November 10, 2021. The parents refused to provide written consent until both of the documents were accurate. After multiple requests for changes, the mother gave her written consent for the proposed material changes in services and substantial change of placement on December 15, 2021.

USD #465 reported that the student's IEP was amended and PWN provided to the parents twice during the 2021-22 school year. The first amendment was a result of an IEP team meeting held on September 2, 2021. It was the determination of that meeting to add an additional speech/language goal to address the use of a picture exchange system (PECS) to increase communication skills. This was not a material change of services or a substantial change of placement so parent consent was not required.

The second amendment was a result of an IEP team meeting held on November 4, 2021 to discuss the parent's questions and recommendations contained in a PowerPoint presentation. A draft IEP amendment with an implementation date of November 11, 2021 and PWN were provided to the parent on November 10, 2021; however, the parents were not in agreement with the proposed IEP amendment and requested changes be made. School staff worked with the parents to incorporate their requested changes into the IEP amendment and PWN. These documents were provided again on November 29, 2021; however, the parents were still not in agreement with the proposed changes. School staff noted that the final copy of the IEP amendment and PWN dated November 10, 2021 proposing a reduction of special education instruction in the special education setting and increasing the special education support in the general education setting, updated speech/language goals,

and adding swimming as an adaptive physical education (APE) service as well as numerous accommodations was provided to the parent via email on December 14, 2021 and written consent for the proposed changes was obtained on December 15, 2021.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #465.

The annual IEP was reviewed and revised at IEP team meeting held on April 13, 2021. As a result of that meeting, the parents were provided with PWN dated April 13, 2021 for a material change of services and a substantial change of placement. The PWN shows both parents agreed to these changes virtually on that same date and that the mother sent an email dated April 13, 2021 at 12:20 p.m. providing the written consent.

The April 13, 2021 IEP was amended at an IEP team meeting held on September 9, 2021, which was rescheduled from September 2, 2021. At this meeting, school staff proposed adding additional special education instruction in the special education setting to the student's IEP; however, the parents did not agree with that recommendation. After meeting, the parents were provided with PWN dated September 2, 2021 proposing to add an additional speech/language goal to address the use of PECS to increase communication skills. School staff reported the change was implemented but that the written consent for the change was not provided by the mother until October 12, 2021.

On November 4, 2021, the IEP team met again to discuss amending the student's IEP dated April 13, 2021 and amended on September 2, 2021. The parents shared a PowerPoint presentation which included a request for an FBA and a BIP. Following that meeting, an IEP amendment and PWN were created by Ms. Allen and provided to the parents on November 10, 2021. The PWN did not address the parent's request for an FBA and a BIP.

The parents were not in agreement with IEP amendment and PWN provided and requested additional changes be made. It was noted that the parents made multiple

requests for changes to be made to the IEP amendment and multiple additional IEP amendments and PWNs were provided to the parent. Ms. Allen stated:

Amendment was written following a team meeting called by parents on 11/4/21 asking for the changes reflected in this amendment. Amendment was sent to parents to sign on 11/10/21. A follow up email was sent on 11/15/21 about the forms. At this time, parents sent a request on items to be added to the amendment. This adjusted amendment was sent via email on 11/29 for review prior to sending a printed copy home on 12/09. On 12/14, parents requested additional changes to the amendment. These changes were made and the new amendment was hand delivered to parents on 12/15 during a team meeting, as well as emailed on 12/14/21.

Karli Dillon, Speech-Language Pathologist, indicated she had a phone conference with the parents on November 18, 2021 to discuss change his speech/language goals. She reported that the student had met the PECS goal which was added as a result of the September 9, 2021 IEP meeting and recommended adding goals for answering Blanks level questions and receptive language (i.e. following 2-step directions). The IEP amendments and PWN provided to the parents on November 29, 2021 and again on December 14, 2021 both include the four proposed measureable speech/language goals. However, neither of these PWNs addressed the parents request for an FBA and BIP.

In addition to the updated speech/language goals and several accommodations, the November 29, 2021 and the December 14, 2021 versions of the PWN included four proposed actions that would ultimately result in a material change of services and a substantial change of placement as noted below:

1. A reduction in special education services within the special education classroom from 60 minutes to 25 minutes 4 days per week and 55 minutes 1 day per week.
2. An increase of special education minutes within the general education classroom of 25 minutes per day to equal 400 minutes 1 day per week, 315 minutes 3 days per week, and 370 minutes 1 day per week of inclusion services (inclusion services will be provided by a 1:1 para), 5 days a week for assistance in social/emotional development.

3. The student will attend swimming/rec center one time per week for 60 minutes at Ark City high school [sic] as swimming permits. Services will be provided by the APE.
4. Transportation services provided to and from Ark City high school [sic] for 30 minutes 1 day per week.

All versions of the PWN documents are dated November 10, 2021 and note the reason for the proposed change in services and placement are due to request of the parents and that the change in the speech/language goals was due to student progress towards his current IEP goals.

The PWN that the parent signed on December 15, 2021 includes a handwritten parent note and correction. The document states, "On Wednesday, November 10, 2021, we met to review . . ." and the parents noted, "IEP team met on November 4."

School staff noted that they began implementing the proposed changes following the provision of each of the versions of the IEP amendment and the PWN to the parents because the parents were requesting these changes be made.

Documentation shows a total of three versions of the IEP amendment and PWN that were all dated November 10, 2021 were created by Ms. Allen based on requests and recommendations for edits made by the parent following the IEP team meeting held on November 4, 2021. School staff noted that they began implementing the proposed changes following the provision of each of the versions of the IEP amendment and the PWN to the parents on November 10 and 29, 2021 and on December 14, 2021 because the parents were requesting these changes be made even though written consent was not obtained for the material change of services and substantial change of placement until December 15, 2021.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the

provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability.

State regulations at K.A.R. 91-40-27(a)(3) require school districts to obtain parent consent before making a material change in services or a substantial change in placement. "Material change in services" is defined at K.A.R. 91-40-1(mm) as an increase or decrease of 25% or more of the frequency or duration of a special education service, related service, or supplementary aid or service specified in the child's IEP. "Substantial change in placement" is defined at K.A.R. 91-40-1(sss) as the movement of an exceptional child for more than 25% of the child's school day from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment.

Federal regulations, at 34 C.F.R. 300.324(a)(4) and 300.324(a)(6), allow for changes to be made to the current IEP by amending the IEP rather than by redrafting the entire document either with or without an IEP Team Meeting. The changes may be made by the entire IEP Team at an IEP Team Meeting. Or the changes may be made without a meeting if the parent of a child with a disability and the school district representative both agree not to convene an IEP Team Meeting for the purposes of making the agreed upon changes and instead develop a written document to amend or modify the child's current IEP. In either case, the PWN requirements in 34 C.F.R. 300.503(a) and K.A.R. 91-40-27(a)(3) must be met.

The August 15, 2008 Letter to Heidi Atkins-Lieberman from the Office of Special Education Programs (OSEP) provides guidance for when PWN must be provided. The letter clarifies whether the provision of a free appropriate public education (FAPE) refers to only the provision of the type/amount/location of the special education and related services or if a change in an IEP goal is also considered to be a "provision of FAPE." OSEP's response states:

Under 34 C.F.R. 300.17(d), FAPE means, among other things, special education and related services that are provided in conformity with an IEP that meets the requirements of federal regulation at 34 C.F.R. 300,320 through 300.324. Therefore, a proposal to revise a child's IEP, which typically involves a change to the type, amount, or location of the special

education and related services being provided to a child, would trigger notice under 34 C.F.R. 300.503.

In this case, interviews and documentation found USD #465 amended the student's IEP on two occasions during the 2021-22 school year. The first time was on September 9, 2021 when an additional speech/language goal was added to the IEP. This was not a new goal area requiring the addition or change to the special education or related services in the student's IEP and, as a result, did not result in a material change of services or a substantial change of placement. Therefore, no PWN was required to be provided to the parents for this change. However, USD #465 provided the parents with a PWN dated September 2, 2021 and the mother's written consent for this change was not obtained until October 12, 2021; however, the change in the speech/language goal was implemented following the IEP team meeting.

The second IEP amendment and PWN were the result of the November 4, 2021 IEP team meeting where the parents presented a PowerPoint to the team with questions and recommendations for changes to the IEP. As a result of that IEP team meeting, an IEP amendment and PWN was created by Ms. Allen and provided to the parents on November 10, 2021. Interviews and documentation show the parents made multiple requests for changes to be made to this IEP amendment and PWN which resulted in Ms. Allen creating two additional IEP amendments and two additional PWNs that were then provided to the parents on November 29, 2021 and December 14, 2021.

The mother provided written consent for the material change in services and substantial change of placement by signing the third version of the PWN on December 15, 2021. However, USD #465 acknowledged that they began implementing the parents' requested changes prior to receiving the written consent from the parents.

It is noted that even though consent was not required, the PWN dated September 2, 2021 was not signed by the parent until October 12, 2021 giving the impression that parent consent was necessary for the proposed change to take effect. All versions of the IEP amendments and PWNs dated November 10, 2021 included proposals for both changes that do not require parent consent such as changing the speech/language IEP goals as well as changes to the amount and location of special education services that

would be considered a material change of services and a substantial change of placement. By including all of these on the same PWN, it gives the impression to the parent that all of the proposed changes cannot take effect until USD #465 has obtained the parent's written consent.

USD #465 also failed to respond to the parents' request for an FBA and development of a BIP made at the November 4, 2021 IEP team meeting by either agreeing to conduct the FBA and develop a BIP, if appropriate, or provide PWN refusing the parents' request and explaining the rationale.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to provide the parents with appropriate prior written notice (PWN) during the 2021-22 school year.

ISSUE FIVE: The USD #465, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's Individualized Education Plan (IEP), specifically specialized instruction, one-to-one paraprofessional support, adaptive PE services, and accommodation related to crayons, alphabet letters, and cell phones during the 2021-22 school year

Positions of the Parties

The parents complain that USD #465 has removed the student from the general education setting more than the student's IEP allows since his enrollment in kindergarten. The parent provided a listing of multiple dates where the student was placed in the special education classroom for more than the 60 minutes per day required by both the April 13, 2021 IEP and the September 2, 2021 amendment to the April 13, 2021 IEP. The parents also reported multiple dates the student received more than the required 25 minutes per day of the special education services in the special education classroom following the November 4, 2021 IEP team meeting.

The parents shared multiple dates and situations to show USD #465 did not provide the student with the one-to-one paraprofessional support or the swimming activity during his weekly adaptive PE class as required by the IEP. In addition, the parents

reported they have talked to staff on numerous occasions about classroom accommodations for limiting or stopping his access to crayons, alphabet letters, and cell phones to decrease his repetitive behaviors related to these items; however, school staff continue make these items available to the student in the classroom.

USD #465 reports they have provided the services required by the student's IEP throughout the 2021-22 school year. The staff indicated they have made multiple changes to the student's IEP based on the parents' requests and recommendations this school year.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #465.

The findings of Issue Four are incorporated herein by reference.

At the beginning of the 2021-22 school year, the student was supposed to be provided a total of 60 minutes per day of specialized instruction in the special education setting, 15 minutes per week of APE, and 1,735 minutes per week of one-to-one paraprofessional support in the general education setting.

The parents reported that an IEP meeting was held on September 9, 2021 where Ms. Allen proposed a schedule that would have the student placed in the special education classroom for a total of 210 minutes per day. The parents did not agree to this recommendation and wanted the student in the special education classroom for only the 60 minutes per day required by the current IEP so that the student would have more opportunities for academics and social interaction in the general education classroom.

The parents requested another IEP team meeting which was held on November 4, 2021. At that meeting, the parents shared a PowerPoint presentations with questions and recommendations related to reducing the amount of time in the special education setting, adding additional special education support in the general education setting, adding additional APE minutes, and multiple accommodations related to crayons, alphabet letters, and use of the cell phone.

As a result of that meeting, the parents were provided with an IEP amendment and PWN on November 10, 2021 that included some but not all of the changes discussed at the November 4, 2021 IEP team meeting. The parents disagreed with the IEP amendment and refused to sign the PWN.

On November 18, 2021, the parents and Ms. Dillon held a phone conference and agreed to amend the student's IEP by changing the speech/language goals because the student had made progress and mastered the current PECS goal. These changes were added to the second version of the IEP amendment and PWN provided to the parents on November 29, 2021 but dated November 10, 2021.

Between November 15, 2021 and November 29, 2021, the parents had multiple conversations with multiple different staff in USD #465 and all of these agreed upon changes were incorporated into a second version of an IEP amendment and PWN which was provided to the parents on November 29, 2021. However, the parent once again disagreed with the IEP amendment and refused to sign the PWN.

Ms. Allen incorporated the additional information requested by the parents into the IEP amendment and PWN and provided a third version to the parents on December 14, 2021 proposing to change the services in the special education setting to 25 minutes four days per week and 55 minutes one day per week and the special education support minutes within the general education classroom to equal 400 minutes one day per week, 315 minutes three days per week, and 370 minutes one day per week for assistance in social/emotional development. In addition, 45 minutes per week of APE was added for swimming and the recreation center activity along with 30 minutes per week of transportation as a related service to access the APE services for swimming/rec center. The mother granted written consent to start these services on December 15, 2021.

The district believes the statements included in the IEP amendment and PWN agreed to by the parent on December 15, 2021 regarding the alphabet letters and cell phones are clarifications and not accommodations. In regards to alphabet letters, the IEP amendment states:

Teachers working with the student will only allow the use of alphabet letters when other students are using them as part of the curriculum and not as a play activity. Other activities to keep his mind active when there is wait time within the classroom.

In regards to cell phones, the IEP amendment states:

Parents have requested that technology only be used at times that other students are using screens. In a case where other strategies (fidgets, books, visuals, or preferred activities) have been used in an attempt to assist the student in self-regulation and are unsuccessful, technology can be used as a very last resort and should be discontinued as quickly as possible.

The district acknowledged that the IEP amendment and PWN agreed to by the parent on December 15, 2021 mistakenly did not include the clarification regarding crayons requested by the parents. The district proposes the following:

The district proposes to reconvene the IEP team, write a PWN, and add the following statement to the IEP, "Also, the use of crayons will be carefully monitored (i.e., use of one crayon at a time, putting the crayon back in the box, and then getting another crayon)."

The district acknowledged that the special education and APE services provided in both the special education setting and general education setting were materially changed resulting in a substantial change in the student's placement following the November 4, 2021 IEP team meeting based upon that parents' requests even though written consent for these changes was not obtained until December 15, 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, the IEP in effect between August 23, 2021 and December 15, 2021 was developed at an IEP team meeting held on April 13, 2021 and amended at an IEP team meeting held on September 9, 2021. These IEPs required a total of 60 minutes per day of specialized instruction in the special education setting, 15 minutes per week of APE, and 1,735 minutes per week of one-to-one paraprofessional support in the general education setting. These IEPs do not include any mention of alphabet letters or cell phones. The district acknowledged the parents requested a material change in services and a substantial change of placement at the November 4, 2021 IEP team meeting and that those requested changes were implemented prior to obtaining the written consent from the parents on December 15, 2021.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing implement the student's Individualized Education Plan (IEP), specifically specialized instruction, one-to-one paraprofessional support, and adaptive PE services during the 2021-22 school year.

ISSUE SIX: The USD #465, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parents with a copy of the Individualized Education Plan (IEP) in a timely manner during the 2021-22 school year.

Positions of the Parties

The parents allege that USD #465 did not provide them with a correct copy of the IEP developed at the November 4, 2021 IEP team meeting until December 14, 2021. The parents report that the first copy was sent home on November 10, 2021 but it did not accurately reflect the decisions made at the IEP team meeting so we had to communicate numerous times to get Ms. Allen to make the corrections. The mother indicated she finally received a corrected final copy of the IEP amendment via email on December 14, 2021.

USD #465 reported that the IEP team initially met on November 4, 2021 to review the parents' PowerPoint presentation of questions and recommendations for the student's

IEP. Following that meeting, Ms. Allen prepared an IEP amendment reflecting the decisions made at the IEP team meeting and this was provided to the parents on November 10, 2021. The parents were not in agreement with the IEP amendment as written and contacted Ms. Allen on November 15, 2021 with recommendations for updates.

On November 18, 2021, a phone conference was held between the parents and Karli Dillon, the speech/language pathologist, and additional speech/language goals were proposed as the student had mastered the PECS goals.

Multiple school staff continued to be in contact with the parents for their recommendations and Ms. Allen made all necessary changes and provided the parent with another copy of the November 10, 2021 IEP amendment on November 29, 2021. However, the parents were still not in agreement with the changes and updates and shared additional changes and recommendations for updates on December 14, 2021. Ms. Allen made those changes as well and provided the parents with a copy of the final IEP amendment via email on December 14, 2021 and in-person on December 15, 2021.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #465.

The findings of Issues Four and Five are incorporated herein by reference.

Ms. Allen created three versions of the IEP amendment dated November 10, 2021 based on parent requests. The first version was provided on November 10, 2021 but the parents returned the IEP amendment on November 15, 2021 with recommendations for changes.

Ms. Dillon and the parents discussed updating the speech/language goals in a phone conference on November 18, 2021 because the student had mastered the PECS goals added following the September 9, 2021 IEP team meeting. The parents were in agreement with this change to the IEP. The parents were provided with an IEP

amendment and PWN dated November 10, 2021 incorporating these additional speech/language goals on November 29, 2021 and again on December 14, 2021

Ms. Allen and the parents continued to discuss accommodations such as the use of the alphabet letters and clarifying the transportation for the swimming activity. All of these changes were incorporated into the second version of the IEP amendment and the parents were provided with another copy of the IEP amendment dated November 10, 2021 on November 29, 2021.

However, the parents were still not in agreement with the changes and updates and shared additional changes and recommendations for updates on December 14, 2021. Ms. Allen made those changes as well and provided the parents with a copy of the third and final version of the IEP amendment dated November 10, 2021 via email on December 14, 2021 and provided another copy in-person on December 15, 2021.

USD #465 acknowledged that this IEP amendment and PWN did not include the information about the use of crayons in the classroom.

The district reported that their practice is to provide the parents with a copy of the final IEP within a reasonable amount of time following the IEP team meeting, usually no more than 10 days after the meeting date.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.322(f) and State regulations at K.A.R. 91-40-18(d) require that parents be provided with a final copy of the IEP at no cost.

Federal regulations, at 34 C.F.R. 300.324(a)(4) and 300.324(a)(6), allow for changes to be made to the current IEP by amending the IEP rather than by redrafting the entire document either with or without an IEP Team Meeting. The changes may be made by the entire IEP Team at an IEP Team Meeting. Or the changes may be made without a meeting if the parent of a child with a disability and the school district representative both agree not to convene an IEP Team Meeting for the purposes of making the agreed upon changes and instead develop a written document to amend or modify the child's current IEP.

In this case, the IEP team meeting was held on November 4, 2021 and the parent was provided with a copy of the resulting IEP amendment on November 10, 2022. However, the parents were not in agreement with this version of the IEP amendment.

The parents and various school staff subsequently had multiple contacts and the IEP amendment was actually amended on November 18, 2021 in the phone conference between the parents and the speech/language pathologist when they agreed to add the additional speech/language goals. However, an IEP amendment describing these changes agreed upon on November 18, 2021 was not provided to the parent; instead, these changes were incorporated in the IEP amendment and PWNs dated November 10, 2021 and provided to the parents on November 29, 2021 and again on December 14, 2021.

Ms. Allen and the parents continued to be in contact to discuss recommendations to be added to the IEP amendment. On November 29, 2021, Ms. Allen provided a second copy of an IEP amendment with all of these changes as well as the speech/language goal updates incorporated; however, this IEP amendment continued to be dated November 10, 2021. But again, the parents were not in agreement with this second version of the IEP amendment.

The parent pointed out that the IEP amendment was dated November 10, 2021 even though the IEP team meeting where the amendment was discussed was held on November 4, 2021. Ms. Allen explained the discrepancy in the dates in an email dated November 29, 2021 as follows:

At the meeting on the 4th, we discussed the changes that were requested to be made on the IEP. At this time, you requested to have an amendment written. Since it was not written on the 4th prior to the meeting and your request, I cannot use the 4th date as a starting date as the amendment has to be written prior and signed by parents prior to it being able to begin. I wrote the amendment and got it sent home by the 10th (4 school days after the formal request for an amendment was made), with this amendment set to begin on the 11th. This is the reason for the date reflected.

The parents continued to provide Ms. Allen with recommendations and clarifications to the November 29, 2021 version of the IEP amendment. Ms. Allen again incorporated these changes into an IEP amendment and provided a third version of an IEP

amendment dated November 10, 2021 to the parents via email on December 14, 2021. The parents were in agreement with this third and final version of the IEP amendment and provided written consent for the material change in services and substantial change of placement described in accompanying PWN on December 15, 2021.

Based upon the foregoing, it appears that the April 13, 2021 IEP was amended at an IEP team meeting held on September 9, 2021 but the date of the amendment is documented as September 2, 2021. It also appears that the September 2, 2021 amendment to the April 13, 2021 IEP was amended again on November 18, 2021 without an IEP team meeting when the parents and Ms. Dillon, the school district representative, agreed to the new speech/language goals. The parents received an IEP amendment incorporating these changes on November 29, 2021 in an IEP amendment and PWN dated November 10, 2021.

The student's IEP was amended again on December 14, 2021 without an IEP team meeting when the parents and Ms. Allen, the school district representative, agreed upon the changes to be made as described in the third version of the IEP amendment. All of the previous versions of the documents titled IEP Amendment including the original version dated November 10, 2021 resulting from the IEP team meeting held on November 4, 2021 were never agreed upon by the parents and thus did not meet the requirements to be an IEP amendment.

The parents were provided a copy of the third and final version of the IEP amendment via email on December 14, 2021, which is the same date the parents and Ms. Allen, the school district representative, agreed to amend the student's IEP without holding an IEP team meeting. Therefore the parents did receive a copy of the IEP within a reasonable amount of time following the final decision to amend the student's IEP.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to provide the parent with a copy of the IEP at no cost. However, a violation of special education statutes and regulations was substantiated for failing to follow the appropriate procedures to amend the student's IEP during the 2021-22 school year.

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. 300.503(a) that require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability and state regulations at K.A.R. 91-40-27(a)(3) that require school districts to obtain parent consent before making a material change in services or a substantial change in placement.

In this case, USD #465 proposed to amend the student's IEP at the parents' request through an IEP team meeting held on November 4, 2021. Several, but not all, of the proposed actions would result in a material change of services and a substantial change of placement so the parents were provided with PWN on November 10, 2021 requesting written consent for the proposed changes to be implemented on November 11, 2021. However, the parents were not in agreement with the PWN and refused to grant written consent until it had been updated to reflect all the changes discussed at the IEP team meeting. USD #465 provided the parent with two additional versions of the PWN dated November 10, 2021 and the parent finally gave written consent for the proposed changes described in the PWN on December 15, 2021; however, USD #465 began implementing the material change in services and the substantial change of placement on November 11, 2021.

It is also noted that even though consent was not required, USD #465 provided the parent with a PWN dated September 2, 2021 giving the impression that the parent consent was necessary for the proposed change to take effect.

Finally, USD #465 failed to appropriately respond to the parents' request for an FBA and BIP following the November 4, 2021 IEP team meeting.

B. 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 August 23, 2021 and December 15, 2021 was developed at an IEP team meeting held on April 13, 2021 and amended at an IEP team meeting held on September 9, 2021. These IEPs required a total of 60 minutes per day of specialized instruction in the special education setting, 15 minutes per week of APE, and 1,735 minutes per week of one-to-one paraprofessional support in the general education setting. The district acknowledged the parents requested a material change in services and a substantial change of placement at the November 4, 2021 IEP team meeting and that those requested changes were implemented prior to obtaining the written consent from the parents on December 15, 2021.

C. Federal regulations, at 34 C.F.R. 300.324(a)(4) and 300.324(a)(6), which allow for changes to be made to the current IEP by amending the IEP rather than by redrafting the entire document either with or without an IEP Team Meeting. The changes may be made by the entire IEP Team at an IEP Team Meeting. Or the changes may be made without a meeting if the parent of a child with a disability and the school district representative both agree not to convene an IEP Team Meeting for the purposes of making the agreed upon changes and instead develop a written document to amend or modify the child's current IEP.

In this case, the parents and the school district staff held an IEP team meeting on November 4, 2021 to discuss amending the current IEP but the parents were not in agreement with the proposed changes. Multiple contacts with multiple school staff were made, but the parent continued to disagree with the proposed IEP amendments. Finally, the parents and Ms. Allen, the school district representative agreed to the third and final version of the IEP amendment on December 14, 2021 but that document continued to be mislabeled as occurring on November 10, 2021 causing confusion for all parties.

Based on the foregoing, USD #465 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #465 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. 300.503(a) that require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability and state regulations at K.A.R. 91-40-27(a)(3) that require school districts to obtain parent consent before making a material change in services or a substantial change in placement.
 - b. 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.
 - c. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.324(a)(4) and 300.324(a)(6), which allow for changes to be made to the current IEP by amending the IEP rather than by redrafting the entire document either with or without an IEP Team Meeting.
2. No later than March 18, 2022, USD #465 will reconvene the IEP team as proposed by USD #465 to address the parent's request regarding crayons. USD #465 will provide the parent and SETS with a copy of the resulting IEP or IEP amendment and any appropriate prior written notice provided to the parent within 10 business days following the IEP team meeting.

3. It is noted that noncompliance was identified for not responding to the parents' request for an FBA and BIP at the November 4, 2021 IEP team meeting. It is noted that USD #465 is currently working with TASN to conduct the FBA and provide technical assistance to the student's IEP team for developing a BIP. For this reason, no individual corrective action is ordered at this time.
4. It is noted that noncompliance was identified for providing the special education and related services because the USD #465 implemented a material change in services and substantial change of placement following the November 4, 2021 prior to obtaining written consent from the parent. However, the parents clearly thought this change was to take place immediately following the IEP team meeting because one of their allegations was that the district was not implementing the IEP. For this reason, no compensatory services are ordered as a corrective action; however, USD #465 shall reconvene the IEP team meeting to review and revise the IEP and then provide the parents with appropriate PWN for any changes in services compared to the September 2, 2021 amendment to the April 13, 2021 the IEP and obtain written consent, if appropriate. USD #465 will provide the parent and SETS with a copy of the resulting IEP or IEP amendment and any appropriate prior written notice provided to the parent within 10 business days following the IEP team meeting.
5. No later than March 30, 2022, USD #465 will arrange for TASN to conduct a training for all licensed and certificated special education staff and administrators working at Lowell Elementary School regarding the IDEA requirements related to amending an IEP as well as when and how to provide appropriate PWN. No later than April 15, 2022, USD #465 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 #465 will provide SETS with any handouts and/or a copy of the presentation.
6. No later than April 15, 2022, USD #465 shall arrange with Families Together to conduct parent training regarding the special education process including the development and revision of IEPs as well as when and how PWN must be provided. This training will be made available to all parents of students with disabilities at Lowell Elementary School. USD #465 shall provide SETS with the name and

credentials of the person providing this training along with copies of training materials as well as a sign-in sheet documenting the persons who participated in the training no later than April 30, 2022.

7. Further, USD # 465 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 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. 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)