

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #233  
ON FEBRUARY 21, 2022

DATE OF REPORT MARCH 1, 2022

This report is in response to a complaint filed with our office on behalf of \_\_\_\_by \_\_\_\_ his mother, \_\_\_\_\_. In the remainder of the report, \_\_\_\_\_ will be referred to as “the student” and \_\_\_\_\_ will be referred to as “the parent” or “the mother”.

The complaint is against USD #233 (Olathe Public Schools). In the remainder of the report, the “school,” the “district” or the “local education agency (LEA)” shall refer to this responsible agency.

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 received the complaint on February 21, 2022 and the 30-day timeline to investigate this complaint ends on March 23, 2022.

### **Investigation of Complaint**

Nancy Thomas, Complaint Investigator, interviewed the mother by telephone on February 24, 2022. Deb Chappell, Assistant Director of Special Services for USD #233, was also interviewed by the Complaint Investigator on February 24, 2022.

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

- Formal Complaint Request Form signed by the parent on February 21, 2022

### **Background Information**

This investigation involves a preschool student who is eligible for special education and related services. His current Individualized Education Program (IEP) was developed on December 1, 2021. The student currently receives his special education and related services at the Harmony Early Childhood Center in USD #233.

### 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 one issue that was investigated.

**ISSUE ONE:** The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), will reduce the student's special education program by 60% from the current 30 hours per week (6 hours for five days per week) to 12 hours per week (3 hours for four days per week) due to a unilateral change in the structure of the district's early childhood program beginning in the 2022-23 school year.

### Positions of the Parties

The parent reported that Dr. Kim Hawkins, Assistant Director of Early Childhood for USD #233, informed them on February 4, 2022 that the Harmony Early Education Center would be changing to a half-day program instead of the current full-day program in order to align with other early childhood programs. The mother indicated that this decision was "a closed door decision" made by the superintendent and the leadership team of USD #233. The parent believes this decision was not based on research or any consideration for the IEPs of students with disabilities currently receiving special education and related services at the Harmony Early Education Center.

The mother reported that this unilateral change will result in a 60% reduction in the student's services from 30 hours per week (6 hours for five days per week) to 12 hours per week (3 hours for four days per week) beginning in the 2022-23 school year.

On February 9, 2022, the parent reported that she and her husband met with Dr. Hawkins during parent/teacher conferences. The mother reported they told Dr. Hawkins that they believed this change would not provide a free appropriate public education (FAPE) to the student as described in his current IEP, which was reviewed and revised on December 1, 2021. They also indicated that they would not consent to this material change in services and substantial change of placement. The mother indicated that Dr. Hawkins then informed them that, if the parents did not consent to the changes, the student's IEP would be reduced by 24.99% without the parents' consent during the next school year.

USD #233 reported that the structure of the district's early childhood program at Harmony Early Education Center is being changed beginning in the 2022-23 school year in order to align with other early childhood programs. However, Ms. Chappell noted that the student's IEP team has not yet met to review and revise, if appropriate, the December 1, 2021 IEP in light of the programmatic re-structuring of the early childhood program. The district is in the process of scheduling IEP team meetings for all students with disabilities who will be affected by the programmatic change in order to make individualized decisions for providing FAPE.

### **Findings of the Investigation**

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #233.

USD #233 acknowledged the structure of the district's early childhood program at Harmony Early Education Center is being changed beginning in the 2022-23 school year in order to align with other early childhood programs.

The parent acknowledged that the student's IEP team has not yet met to review the student's IEP in light of the programmatic changes being made at the Harmony Early Education Center in the 2022-23 school year and that USD #233 has not provided any prior written notice for a proposed change in the special education and related services or placement from those required by the student's December 1, 2021 IEP.

### **Applicable Regulations and Conclusions**

Federal regulations at 34 C.F.R. 300.320(a)(4) require school districts to develop an individualized education program (IEP) for each student with a disability that includes a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, that will be provided to enable the student to receive a free appropriate public education (FAPE).

Federal regulations at 34 C.F.R. 300.324(b)(1) require school districts to review and revise, if appropriate, each student's IEP periodically, but at least annually, to address any lack of expected progress towards the annual goals and in the general education curriculum, any information about the student provided by the parents, the student's anticipated needs, or other matters.

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. 300.153(c) and state regulations at K.A.R. 91-40-51(b)(1) require that a state child complaint allege a violation of the IDEA that has occurred not more than one year prior to the date the complaint is received by the state education agency.

In this case, the programmatic changes being made at the Harmony Early Education Center in the 2022-23 school year by USD #233 would certainly be considered "other matters" and would require that the student's IEP team to meet to review and revise

the student's IEP, if appropriate. It is noted the mother expressed concerns that the programmatic changes at the Harmony Early Education Center would result in a 60% reduction in the student's current services from 30 hours per week (6 hours for five days per week) to 12 hours per week (3 hours for four days per week) beginning in the 2022-23 school year and indicated that she would not consent to such a material change in services or substantial change of placement. The mother was then told by USD #233 that the student's special education and related services would unilaterally be reduced by 24.99%, even if she disagreed and did not provide consent.

The parent filed the state child complaint on February 21, 2022. However, the parent acknowledged that USD #233 has not yet held an IEP team meeting to discuss the provision of FAPE to the student in light of the programmatic changes in the early childhood program. In addition, the parent acknowledged that USD #233 has not provided a prior written notice to her for any proposed change to the special education and related services or placement from those required by the student's December 1, 2021 IEP at this time.

At this time, the mother's allegation is that a violation of the IDEA will occur when the student's special education and related services are changed in accordance with the programmatic changes to the structure of the early childhood program at Harmony Early Education Center which will take effect in the 2022-23 school year. Based on the foregoing, a violation of special education statutes and regulations is not substantiated because a violation of the IDEA has not yet occurred. It is noted that the parent may file another state child complaint if, and when, she believes USD #233 has violated the IDEA.

### 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)

