

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #111
ON FEBRUARY 10, 2022

DATE OF REPORT MARCH 11, 2022

This report is in response to a complaint filed with our office on behalf of _____ by her 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 #111 (Doniphan West Public Schools) who contracts with the Doniphan County Education Cooperative #616 (DCEC) to provide special education and related services to students enrolled in USD #111. In the remainder of the report, “USD #111,” 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 In this case, the KSDE initially received the complaint on February 10, 2022 where the parent originally made four allegations. The Complaint Investigators found that one of the allegations did not fall under the state and federal regulations implementing the IDEA and thus they did not have the authority to investigate those allegations. The mother was provided with resources for addressing that allegation on February 14, 2022.

Investigation of Complaint

Donna Wickham and Nancy Thomas, Complaint Investigators, interviewed the mother by telephone on February 11, 2022, February 21, 2022, and again on February 24, 2022 as part of the investigation.

USD #111 made the following school staff available for a telephone interview on February 24, 2022:

- Shay Carter, Director of Doniphan County Education Cooperative # 616 (DCEC)
- Chris Lackey, Principal of Doniphan West Jr./Sr. High School in USD #111
- Becky Feuerbacher, Special Education Teacher at Doniphan West Jr./Sr. High School in USD #111
- Marie Moore, School Psychologist, at DCEC

The Complaint Investigators also had phone calls and email exchanges with _____ (the parent) and Mr. Chris Lackey and Ms. Shay Carter between February 11, 2022 and March 4, 2022 to gather additional information and to clarify documentation provided by each party.

In completing this investigation, the Complaint Investigators reviewed documentation provided by both the parent and the district. It is noted that the parents and the district both provided documents including emails and phone logs 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:

- Functional Behavior Assessment/Behavior Intervention Plan, Keystone Learning Service, Doniphan West Grade School dated October - December 2019
- Doniphan County Education Cooperative 616 Initial Evaluation and Re-Evaluation Team Report dated December 9, 2019
- Individualized Education Program (IEP) dated December 7, 2020
- Doniphan West Jr./Sr. High School 2021-2022 Student Handbook
- DCEC #616 Mini-Handbook dated August 2021
- Email dated August 17, 2021 at 2:23 p.m. from Ms. Feuerbacher to general education teachers in USD #111
- Attendance records for the student dated August 23, 2021 through February 16, 2022
- Behavior Detail Report dated December 3, 2021 through February 15, 2022
- Counseling Contact Log dated October 4, 2021 through January 13, 2022
- Weekly or daily summaries from Ms. Feuerbacher to parent for the following dates: November 1-8, 2022; November 8-12, 2022; December 8, 2022; December 10, 2022; December 13, 2022; December 14, 2022; January 11,

2022; January 13, 2022; January 21, 2022; January 24, 2022; January 25, 2022; January 26, 2022; January 28, 2022; January 31, 2022; February 1, 2022; February 3, 2022; February 7, 2022; February 8, 2022; February 9, 2022; February 10, 2022; February 15, 2022; February 16, 2022

- Email dated October 12, 2021 at 9:56 a.m. from principal to student and parent
- Email dated November 10, , 2021 at 2:43 p.m. from principal to parent
- Email dated November 11, 2021 at 8:42 a.m. from principal to student
- Email dated November 11, 2021 at 5:34 p.m. from principal to parent
- Email dated December 1, 2021 at 1:25 p.m. from principal to parent and student
- Email dated December 6, 2021 at 3:20 p.m. from principal to parent
- Email dated February 3, 2022 at 2:55 p.m. from principal to parent
- Email dated February 7, 2022 at 9:29 a.m. from principal to student
- Email dated February 7, 2022 at 11:07 a.m. from principal to student
- Email dated February 9, 2022 at 1:18 p.m. rom principal to parent and copied to school staff
- Email dated February 10, 2022 at 6:17 p.m. from principal to parent and copied to school staff
- Infinite Campus screenshots noting refusals to participate, come to class and take a quiz dated November 8, 2021; January 5, 2022; January 20, 2022;
- Behavior Contract November 10, 2021 (unsigned)
- IEP dated November 11, 2021
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Content (PWN) dated November 30, 2021
- Email dated January 7, 2022 at 11:55 from Ms. Feuerbacher to general education teachers in USD #111
- Formal Complaint filed by the parents on January 27, 2022
- Phone Log from Mr. Lackey dated February 2, 2022 and February 7, 2022
- Summary/Recommendations from the February 3, 2022 meeting with IEP team
- Notice of Special Education Meeting, dated February 3, 2022
- Response to the allegations dated February 17, 2022 written by Mr. Carter
- In-School Suspension (ISS) Expectations (undated)

Background Information

This investigation involves a 13-year-old female student who is eligible for special education and related services under the exceptionality category of Autism. The student lives at home with her family.

The student was initially evaluated and found eligible for special education and related services at age four under the exceptionality category of autism by the Cameron R-1 School District in Missouri. She received occupational therapy and specialized instruction for academics and social skills in a special education setting until the family relocated to Kansas when the student was in the second grade. She continued to be eligible for special education and related services in Kansas and received those services from the second through fifth grade at the Riverside Primary School in USD #114.

The student then attended sixth grade at the Doniphan Elementary School in USD #111 where both the parent and school district reported the student displayed significant behavioral concerns including “dumping, throwing and destroying items, eloping from her classroom as well as hitting and kicking staff. The student was reevaluated on December 9, 2019 including a Functional Behavior Assessment (FBA) and continued to be eligible for special education and related services under the eligibility category of autism. At that time, the student's IEP was reviewed and revised to include a Behavior Intervention Plan (BIP).

For the seventh grade, the student attended the Doniphan West Jr./Sr. High School in USD #111. Both the parent and district staff reported that the student was much more successful in the seventh grade and there were minimal behavioral incidents during that school year. The student’s IEP was reviewed and revised and the BIP was removed.

The student is currently enrolled in the eighth grade at Doniphan West Jr./Sr. High School in USD #111 and continues to receive special education and related 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)).

Based upon the written complaint and an interview, the parent raised three issues that were investigated.

ISSUE ONE: The USD #111, 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 parent alleged that USD #111 failed to provide her with a copy of the November 30, 2021 IEP until February 10, 2022, despite requesting it twice. The mother indicated she finally received a copy of the IEP as an email attachment after giving written consent for school documents, including the IEP, to be distributed electronically at the February 3, 2022 IEP team .

USD #111 reported the district's procedure and practice is to send a copy of the IEP to parents no later than ten school days following an IEP team meeting. School staff indicated that the IEP team meeting for the student was held on November 30, 2021 and a copy of that IEP was sent home with the student on December 10, 2021. In January 2022, the parent informed school staff that she had not yet received a copy of the IEP and requested another copy of the document. School staff responded by sending home another copy of the IEP with the student on January 24, 2022. The school staff reported the parent provided written permission for the district to send school documents electronically at the February 3, 2022 IEP team meeting and a third copy of the November 30, 2021 IEP was then provided electronically to the parent.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #111.

The DCEC #616 Mini-Handbook states that the completed IEP is to be turned into the district office and a copy sent home to the parent within ten school days following an IEP team meeting.

An IEP team meeting was held on November 30, 2021. The parent signed the Consent for Electronic Communication contained within the IEP document on that same date.

The special education teacher reported she updated the IEP paperwork to reflect the decisions made at the November 30, 2021 IEP team meeting and, per district procedures, she sent a completed IEP to the Doniphan County Education Cooperative # 616 (DCEC) on December 10, 2021. DCEC records show that the completed IEP was processed and locked into the electronic IEP system on December 13, 2021.

The special education teacher stated that her practice is to send a copy of the IEP home when she turns in the completed IEP to DCEC. For this reason, she believes that she sent a printed copy of the November 30, 2021 IEP home to the parent with the student on December 10, 2021. USD #111 acknowledged that there is no documentation showing that a copy of the IEP was provided to the parent on December 10, 2021.

The parent reported she did not receive a copy of the November 30, 2021 IEP and she contacted USD #111 January 13, 2022 to request a copy of the document. The January 21, 2022 teacher log states, "Left a message for the mother that I sent home student's IEP in December but I would be happy to get her another copy." The January 24, 2022 teacher log states, "I sent a copy of her IEP with her for mom" and "Tried to call mom again at 3:50 but she didn't answer." However, the parent reported she did not receive this copy of the IEP either.

The special education teacher acknowledged both printed copies of the November 30, 2021 IEP were sent home with the student and that a copy was never mailed to the parent. She also indicated that she was unable to email a copy of the IEP to the parent because consent to send school documents electronically had not yet been provided by the parent.

A meeting was held with the IEP team on February 3, 2022 to discuss the parent's allegations and attempt to find a resolution. The Summary/Recommendations notes

from that meeting reflect that USD #111 requested the parent give permission to receive the IEP via email and that the parent signed permission on February 3, 2022. The parent and district agree that the IEP and any other educational documents will be sent via email in the future. The parent acknowledged she received an electronic copy of the November 30, 2021 approximately one week following this meeting.

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. While there is no timeline specified in federal and state regulations, USD #111 has a written procedure for compliance with these requirements described DCEC #616 Mini-Handbook, which states that the completed IEP is to be turned into the district office and a copy sent home to the parent within ten school days following an IEP team meeting.

In this case the IEP team meeting was held on November 30, 2021 and a copy of the IEP should have been provided to the parent no later than December 14, 2021. USD #111 reported that a printed copy was sent home with the student per district procedure on December 10, 2021 ; however, the parent reported she never received this copy and USD #111 acknowledged that there is no documentation to show this copy was provided. According to the special education teacher, she chose to send a printed copy of this IEP home to the parent with the student because she believed she had not received signed consent to electronically provide a copy to the parent; however, documentation shows the parent signed the Consent for Electronic Communication contained within the IEP document on November 30, 2021.

On January 13, 2022, the parent reported she had not yet received a copy of the IEP and the special education teacher again chose to send a printed copy home with the student rather than mailing a copy to the parent. Even though there is documentation from the teacher indicating the printed copy of the IEP was sent home with the student on January 24, 2022, the parent reported she still did not receive a copy of the IEP.

On February 3, 2022 a meeting was held with the parent and IEP team. The parent again requested a copy of the student's November 30, 2021 IEP. USD #111 requested the parent provide written permission to send school documents electronically and the

parent provided this consent on that same date. The parent acknowledged she received an electronic copy of the November 30, 2021 IEP approximately one week following the February 3, 2022 meeting.

In this case, documentation and interviews found that USD #111 reported sending the printed copies of the November 30, 2021 IEP home with the student at no cost to the parent on December 10, 2021 and again on January 24, 2022; however, the parent reported that she never received these copies. Both the parent and the district acknowledged that an electronic copy of the student's November 30, 2021 IEP was provided to the parent at no cost following the February 3, 2022 meeting.

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, based on the undocumented and unreliable method used to send the IEP home with the student on two separate occasions, USD #111 is advised to review its written procedures and practices in regards to how parents are provided with their copies of IEPs at no cost within ten school days following the IEP team meeting.

ISSUE TWO: The USD #111, 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 by not following the student's behavior intervention plan (BIP), during the 2021-22 school year.

Positions of the Parties

The parent alleged that the school district is not following the student's Behavior Intervention Plan (BIP) by assigning her discipline points that have led to her being assigned to after school detention, in-school suspension (ISS), out-of-school suspension (OSS), and a potential change of placement to an alternative school during the 2021-22 school year.

USD #111 contends they are complying with the student's BIP as written into the IEP dated November 30, 2021 which individualizes the interventions and consequences, but holds the student to the Doniphan West Jr./Sr. High School 2021-2022 Student

Handbook Expectations and Consequences. The district reported that guidance and support for the full implementation of the BIP is underway with Kansas Technical Assistance System Network (TASN). They met virtually on February 4, 2022 and were scheduled for an initial observation on February 15, 2022. The TASN consultant was sick on that date and rescheduled for February 22, 2022. Inclement weather and teacher illness caused USD #111 to reschedule the initial observation to March 11, 2022 with a post-observation conference with the parent and staff scheduled for March 15, 2022.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #111.

The findings of Issue One are incorporated herein by reference.

The student's December 7, 2020 IEP does not contain a BIP.

The Board of Education policy outlined in the Doniphan West Jr./Sr. High School 2021-2022 Student Handbook states, "All students must abide by policies adopted by the Board of Education." Further, the Board of Education "may authorize any certified employee to suspend or expel any student guilty of acts of behavior which interfere with the maintenance of a good learning environment."

The Code of Conduct states,

Students are expected to be responsible for their own learning and to behave in a positive, responsible manner appropriate for the workplace. Students who take responsibility for doing their assigned work and meeting the school's behavioral expectations and attendance policies will maintain the privileges of all school activities.

Students violating these expectations will be dealt with on an individual basis at the discretion of the administration. In addition to disciplinary actions taken by the principal or administrative designee, inappropriate acts considered to be against the law (weapons, assault, battery, tobacco,

theft, etc.) will be reported to the appropriate law enforcement agency. Consequences for classroom behavior will be the responsibility of the individual teacher; however, if a student continues to misbehave after teacher intervention, the student will be referred to the office. Consequences for behavioral referrals may be detention, in-school suspension, or out-of-school suspension depending on the severity of the infraction and the number of previous infractions. A report of the referral and consequence will be sent to the parent/guardian either via student, phone or email.

The principal created an individualized behavior contract titled, "My Contract" for the student on November 10, 2021 that identified three goals. The first goal was for the student to follow through on all reasonable requests made by staff. The second goal was for the student to attend all classes and be present on time. The third goal was for the student to communicate her needs either verbally or in writing/typed. The consequences for not meeting the goals included: 1) not earning credit for in class work, 2) counting absences as unexcused, 3) after school time, 4) earning discipline points (with detention or suspension) and 5) not attending assemblies, field trips or other school activities. Earning eight discipline points would result in the student not being in good standing per the distinct policy and may result in the student being placed at the Riverside Alternative School.

A BIP was added to the student's IEP at the November 30, 2021 IEP team meeting that included the individualized behavior contract with the principal dated November 10, 2021 and incorporated the expectations and consequences of the Doniphan West Jr./Sr. High School 2021-2022 Student Handbook. The special education teacher, school psychologist, principal, student, and parent were participants in the development of the BIP.

The BIP developed at the November 30, 2021 IEP team meeting identified the problems behaviors as refusing to work, unpredictable verbal/nonverbal disruptions, and elopement. The functions of the behaviors were identified as escape or avoidance as well as sensory needs.

The replacement behavior was described as “the student will do as asked with minimal prompting or use calm words to request a break”. The BIP listed eight interventions to address the target behavior:

- 1) provide preferential seating
- 2) make teachers aware of her disability
- 3) use the resource room or office to de-escalate the problem behavior
- 4) implement a behavior contract with the principal
- 5) discussion after an incident
- 6) use of social stories or programs such as Zones of Regulation
- 7) make up time she does not work in class
- 8) receive a choice of activity at the end of the day if she meets her behavior goals

The parent reported that she was provided a copy of the principal’s individualized behavior contract ahead of the November 30, 2021 IEP team meeting; however she did not agree with the contract and voiced her concern with the team. The individualized behavior contract with the principal was not changed as a result of the IEP team meeting and both the parent and the student refused to sign the principal’s individualized behavior contract at the IEP team meeting. The principal indicated that his understanding was that the parent did not have to agree to the individualized behavior contract, just be provided with a copy.

USD #111 presented the parent with Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Content (PWN) following the IEP team meeting. The PWN stated,

To access grade level curriculum, the student needs accommodations and supports during assignments in the classroom and during testing situation. With these accommodations and supports, the student is able to academically participate with her general education peers.

Due to the student’s defined disability, the team agrees that not providing special education services would not meet her needs. The student will benefit from the special education supports provided in the general education classroom.

The student will receive 225 minutes per day in the General Education Classrooms to supplement her special education needs via accommodations and classroom support.

The student will receive 30 minutes per day in the IRC Classroom to reteach, review, and work on concepts taught in the general education classroom.

The PWN was signed by the parent on November 30, 2021.

Teacher notes reflect the student receiving preferential seating.

Staff reported that the Zones of Regulation has shown promise with the student, but there have been delays with consistent use. TASN has also provided resources and offered to assist with implementation.

The school staff acknowledged that social stories have not yet been implemented. However, at the parent request, USD #111 held a virtual meeting to discuss behavioral concerns and interventions with the Kansas Technical Assistance System Network (TASN) consultant on February 4, 2022. An onsite visit from TASN is scheduled to occur on March 11, 2022 after a number of cancellations due to inclement weather and illness. USD #111 reported that TASN will be assisting with social story development and use as required by the student's BIP.

Emails from the principal to the student and parent, the Counseling Contact Log dated October 4, 2021 through January 13, 2022, as well as the Behavior Detail Report dated December 3, 2021 through February 15, 2022 reflect instances of the student refusing reasonable requests by:

- 1) not going to her general education class, which resulted in an absence for that class period and an after-school detention and one discipline point for each instance
- 2) not attempting her classwork, which resulted in after-school detention to complete her assignments
- 3) not serving an ISS on December 3, 2021, which resulted in one day of OSS on that same date

There is no documentation to determine if the use of the resource room was for de-escalation or as part of her service minutes as specified in the November 30, 2021 IEP.

There is no documentation or staff report to determine if the student did not receive a choice of activity at the end of the day or did not meet her behavior goal.

The Summary /Recommendations from the February 3, 2022 meeting show that the IEP team reviewed the BIP and discussed revising it to align with restorative discipline principals. The team decided to focus on one goal: "The student will follow through on all reasonable requests made by staff". They further discussed and agreed that a 30 minute detention was a reasonable consequence for refusing reasonable requests. The IEP team agreed these revisions were acceptable as refinements and clarifications of the BIP. The Summary/Recommendations dated February 3, 2022 stated "The IEP Team agreed it was not necessary to amend the IEP at this time".

An email dated February 10, 2022 at 6:17 p.m. written by the principal to the parent summarized a plan that would allow the student to earn back points in smaller increments so she could achieve success more quickly.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(a)(2)(ii) require school districts to develop an IEP which includes positive behavioral interventions, supports, and other strategies to address any behavior that impedes the learning of the student or the learning of others.

Federal regulations at 34 C.F.R. 300.300.323(c)(2) requires that school districts 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.

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) must be met.

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.

In this case, the student's IEP did not include a BIP until November 30, 2021. Until that date, the student was subject to the district's school expectations as described in the student handbook.

The BIP included in the IEP dated November 30, 2021 listed eight specific interventions that were to be provided to the student to address the target behavior. USD #111 did provide several of the interventions including preferential seating, making teachers aware of the student's disability, making up missed class time after school, and implementing an individualized behavior contract with the principal. However, USD #111 provided inconsistent use Zones of Regulation and has not yet implemented the use of social stories. It is unclear if the resource room was used to de-escalate and if the student received a choice of activity at the end of the day.

Based on the foregoing a violation of special education statutes and regulations is substantiated for not implementing the student's IEP, specifically not implementing the BIP as required.

It is also noted that the IEP team reviewed and revised the student's IEP at the November 30, 2021 IEP team meeting by adding a BIP. However, USD #111 did not provide the parent with appropriate PWN of this proposed change to the provision of

FAPE to the student. As well, although the parent disagreed with the individualized behavior contract this was not recorded on the PWN. Based on the foregoing a violation of special education statutes and regulations is substantiated for failing to provide the parent with appropriate PWN when adding the BIP to the student's IEP and failing to respond appropriately to the parent request for changes in the individualized behavior contract following the November 30, 2021 IEP team meeting.

In addition, the BIP was reviewed and revised at the February 3, 2022 meeting with the parent. The revisions to the BIP included the behavior goal being changed to focus on only one behavior, determining that a 30-minute detention was an appropriate consequence for refusing a reasonable staff request, and allowing the student to earn back discipline points in smaller increments. However, USD #111 erroneously determined that it was not necessary to amend the BIP as a part of the IEP at this time. Based on the foregoing a violation of special education statutes and regulations is substantiated for not appropriately amending the BIP as part of the IEP.

ISSUE THREE: The USD #111, 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 by not providing the accommodation for testing in a separate setting during the 2021-22 school year.

Positions of the Parties

The parent alleged that the accommodation for testing in a separate setting listed on the student's IEP was not routinely provided to her during the 2021-22 school year. She stated that her daughter was given the choice of going to the Instructional Resource Classroom (IRC) to take her tests/exams. The mother indicated that the accommodation applies to all tests/exams and the student should not have a choice of whether or not to take the test/exam in a separate setting.

The district responded that the classroom teachers always reminded the student that she may go to the IRC to take any exam, test or quiz. They acknowledged that the student sometimes declined this accommodation and that they honored her request.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #111.

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

The student's December 7, 2020 IEP states "Alternative setting for exams weekly in all areas starting on December 8, 2020 and ending on December 7, 2021".

The student's November 30, 2021 IEP states "Alternative setting for exams daily in all classes starting on November 30, 2021 and ending on November 29, 2022".

USD #111 did not provide any documentation to show that the student took exams in a separate setting from the beginning of the school year through November 30, 2021 when the annual IEP was reviewed and revised. Documentation shows the student was frequently in the IRC, the designated alternative exam setting, but it does not specify that this was for exams. During the interview the LEA stated that it is a school practice to offer all students the option of taking exams in an alternative setting.

Between November 30, 2021 and March 11, 2022, Teacher notes show use of the accommodation on four occasions, December 3, 2021 during reading quiz; January 26, 2022 for a reading quiz; January 28, 2022 to make up missed Social Studies and Reading tests; and February 15, 2022 for a Social Studies quiz. Two other occasions were documented that she refused to go to Social Studies to pick up her test to take in the alternate setting on January 25, 2022 and February 15, 2022 a Science test was completed, but the location not noted.

The district reports the decision of the IEP team on February 3, 2022 was that the student would no longer be offered a choice of testing in the general classroom. This is consistent with the description of the alternative exam setting accommodation as described in the November 30, 2021 IEP.

Applicable Regulations and Conclusions

Federal regulations, at 34 C.F.R. 300.323(d)(2) and K.A.R. 91-40-16(b)(5) require that the IEP contain the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

In this case, the student's December 7, 2020 IEP and the November 30, 2021 IEP both included an accommodation requiring the student to take exams in an alternative setting. Neither IEP indicates that the student is allowed to choose whether or not to use this accommodation. While both parties agree that the alternative exam setting was offered, interviews and documentation showed that USD #111 did not consistently provide this accommodation as required by the student's IEP.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for not implementing the student's IEP, specifically not implementing the accommodations required by the 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, USD #111 did not fully or consistently implement the BIP created at the November 30, 2021 IEP team meeting. In addition, USD #111 did not consistently provide the accommodation of the student taking all exams in an

alternative setting as required by both the December 7, 2020 IEP and the November 30, 2021 IEP.

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 November 30, 2021 and a BIP was added to the IEP to address targeted behavior. USD #111 failed to provide appropriate PWN proposing this change in the provision of FAPE to the student. It is also noted that during the IEP team meeting, the parent disagreed with the principal's proposed individualized behavior contract and the district failed to appropriately respond to her request for changes.

C. Federal regulations implementing the IDEA 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.

In this case, USD #111 met on February 3, 2022 and the parent and school staff agreed to revise the student's BIP. However, the district erroneously determined that the BIP and IEP did not need to be amended.

Based on the foregoing, USD #111 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #111 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. 300.300.323(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. Implement the BIP as written and document its implementation by behavior.

- b. Comply with federal regulations at 34 C.F.R. 300.503(a) which 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.
 - c. Comply with 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.
2. It is noted that USD #111 has already addressed the identified noncompliance for implementing the student's IEP and BIP as written. On February 3, 2022, school staff and the parent met and agreed to no longer allow the student the choice of where to take exams; instead the student will consistently take exams in an alternative setting. In addition, USD #111 has already scheduled technical assistance with TASN for implementation of social stories and Zones of Regulation on March 11 and March 15, 2022. For these reasons, no individual corrective action regarding implementation of the IEP is being ordered at this time.
3. No later than March 31, 2022, USD #111 will arrange for TASN to provide training to school staff members of the student's IEP team, specifically the special education teacher and the LEA representative regarding the provision of appropriate PWN as well as the procedure to appropriately amend an IEP. No later than April 30, 2022, USD #111 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 #111 will provide SETS with any handouts and/or a copy of the presentation.
4. Further, USD # 111 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 on 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.

Donna Wickham

Donna Wickham, Complaint Investigator

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)