

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #394
ON MARCH 1, 2022

DATE OF REPORT MARCH 31, 2022

This report is in response to a complaint filed with our office on behalf of _____ by her 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 #392 (Rose Hill Public Schools) who contracts with the Butler County Special Education Interlocal #638 (BCSBC) to provide special education and related services to students enrolled in USD #392. In the remainder of the report, "USD #392," the "school," the "district" or the "local education agency (LEA)" shall refer to both of these responsible public 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 received the complaint on March 1, 2022 and the 30-day timeline to investigate this complaint ends on March 31, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parents by telephone on March 4, 2022 and again on March 25, 2022.

USD #392 made the following school staff available for a telephone interview on March 22, 2022:

- Lisa Arndt, Assistant Director of Special Education for BCSBC
- Rachel Dalinghaus, Assistant Principal for Rose Hill Primary School
- Cynthia Shavlik, First Grade Classroom Teacher

- Shannon Johnson, School Nurse
- Terri Reilly, Principal for Rose Hill Primary School
- Hannah Price, School Psychologist
- Matthew Neal, School Resource Officer (SRO)
- Courtney Edge, Social/Emotional Learning (SEL) Coordinator

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

- Email dated July 2, 2020 at 3:12 p.m. written by the mother to Courtney Edge who was the school psychologist at Rose Hill Elementary School during the 2020-21 school year
- Email dated August 24, 2020 at 5:04 p.m. written by Ms. Edge to the mother
- Email dated August 24, 2020 at 5:21 p.m. written by the mother to Ms. Edge
- Communication Log entry dated December 10, 2021 handwritten by the mother
- Communication Log entries dated January 18 and 25, 2021 handwritten by the mother
- Communication Log entries dated February 2, 4, 5, 7, 8 and 23, 2021 handwritten by the mother
- Communication Log entries dated March 9, 23, and 25, 2021 handwritten by the mother
- Email dated April 23, 2021 at 11:20 a.m. written by the mother to Terri Reilly, principal at Rose Hill Elementary School
- Email dated April 23, 2021 at 11:44 a.m. written by Ms. Reilly to the mother
- Email dated April 25, 2021 at 3:53 p.m. written by Ms. Reilly to Jennifer Jones, the kindergarten teacher; Ms. Edge; Michelle Neal, the district social worker; Rosemary Klish, the school counselor, and Hannah Price, the school psychologist intern to Ms. Edge during the 2020-2021 school year
- Resource List date May 15, 2021 for comprehensive evaluation/psych evaluation, therapy, and case management provided by Ms. Neal
- Kindergarten grade card
- End of Year AIMSweb Early Literacy Report for kindergarten
- Communication Log entries dated
- Communication Log entry dated August 9, 2021 handwritten by the mother

- Daily Report written by Cynthia Shavlik, First Grade Classroom Teacher, dated between August 12, 2021 and November 18, 2021
- SeeSaw communication log dated August 13, 2021 through March 4, 2022 between the mother and Ms. Shavlik
- Email dated August 24, 2021 at 5:47 p.m. written by the mother to Hannah Price, the school psychologist at Rose Hill Elementary School during the 2021-22 school year
- Email dated August 25, 2021 at 7:02 a.m. written by the mother to Ms. Reilly
- Email dated August 25, 2021 at 10:04 a.m. written by Ms. Reilly to the mother
- Email dated August 25, 2021 at 11:30 a.m. written by the mother to Ms. Reilly
- Email dated August 25, 2021 at 3:00 p.m. written by Ms. Price to the mother
- Email dated August 25, 2021 at 5:29 p.m. written by Ms. Reilly to Ms. Price and copied to the mother
- Email dated August 25, 2021 at 5:44 p.m. written by the mother to Ms. Reilly and Ms. Price
- Prior Written Notice (PWN) for Initial Evaluation and Request for Consent dated August 26, 2021
- Email dated August 27, 2021 at 1:19 p.m. written by Ms. Reilly to the mother
- Email dated August 27, 2021 at 1:42 p.m. written by the mother to Ms. Reilly
- Email dated September 7, 2021 at 3:47 p.m. written by Ms. Shavlik to the mother
- Email dated September 9, 2021 at 8:29 a.m. written by Ms. Price to the mother
- Email dated September 9, 2021 at 7:18 p.m. written by the mother to Ms. Price
- Email dated September 10, 2021 at 10:43 a.m. written by Ms. Price to the mother
- Email dated September 10, 2021 at 11:46 p.m. written by the mother to Ms. Price
- Emergency Safety Intervention Log entry dated September 20, 2021
- Email dated September 21, 2021 at 5:13 p.m. written by the mother to Ms. Reilly
- Social / Medical History completed by the parents
- Notice of Meeting dated October 25, 2021 scheduling an evaluation review and eligibility determination meeting for November 1, 2021 at 2:45 p.m.
- Evaluation and Eligibility Report dated November 1, 2021
- Staffing Committee Report dated November 1, 2021

- PWN for Identification, Initial Services, Educational Placement, Change in Service, Change in Placement, Request for Consent dated November 1, 2021
- General Education Functional Assessment / Behavioral Assessment
- Email dated November 2, 2021 at 12:15 p.m. written by the mother to Ms. Price
- Notice of Short-term Suspension resulting from informal hearing with Mrs. Reilly on November 8, 2021
- Student Support Team General Education Interventions Referral Form dated November 9, 2021
- Letter dated November 12, 2021 written by Ms. Reilly to the parents documenting intervention strategies
- Letter dated November 12, 2021 written by Ms. Reilly to the parents initiating the child study team process
- Email dated November 15, 2021 at 1:50 p.m. written by Ms. Reilly to the mother
- Email dated November 15, 2021 at 2:17 p.m. written by the mother to Ms. Reilly
- Email dated November 15, 2021 at 5:54 p.m. written by Ms. Reilly to the mother
- Email dated November 20, 2021 at 8:59 p.m. written by Ms. Reilly to the mother
- Daily Schedule Notes dates between November 22, 2021 through March 11, 2022
- Email dated November 30, 2021 at 8:34 a.m. written by Ms. Reilly to Randall Chickadonz, Superintendent of USD #394
- Letter dated January 7, 2022 written by Ms. Reilly to the parents scheduling a parent meeting for January 21, 2022 at 2:30 p.m.
- Notice of Short-term Suspension resulting from informal hearing with Mrs. Reilly on January 12, 2022
- Email dated January 12, 2022 at 2:11 p.m. written by the mother to Ms. Price and Ms. Reilly
- Email dated January 13, 2022 at 5:09 p.m. written by Ms. Price to the mother
- Email dated January 17, 2022 at 5:04 p.m. written by the mother to Ms. Price
- Email dated January 14, 2022 at 3:14 p.m. written by the mother to Ms. Price
- Communication Log entry dated January 15 and 18, 2022 handwritten by the mother
- Email dated January 20, 2022 at 10:12 a.m. written by the mother to Ms. Price
- Email dated January 24, 2022 at 12:53 a.m. written by the mother to Ms. Price
- Email dated January 24, 2022 at 1:48 p.m. written by Ms. Price to the mother

- PWN for Reevaluation and Request for Consent dated January 20, 2022
- Communication Log entries dated February 4 through February 8, 2022 handwritten by the mother
- Daily Schedule Notes dated February 7, 8, 9 and 14, 2022
- Communication Log entry dated February 9, 2022 handwritten by the mother
- Email dated February 9, 2022 at 10:51 a.m. written by the mother to Ms. Price
- Notice for use of Emergency Safety Intervention (ESI) dated February 9, 2022
- Email dated February 10, 2022 at 12:04 p.m. written by the mother to Cynthia Shavlik, the student's first grade teacher
- Notice for use of ESI dated February 14, 2022
- Email dated February 14, 2022 at 11:46 a.m. written by the mother to Ms. Price
- Notice of Short-term Suspension resulting from informal hearing with Mrs. Reilly on February 14, 2022
- Email dated February 15, 2022 at 7:49 a.m. written by Ms. Reilly to Ms. Shavlik, Ms. Price, and Ms. Edge
- Email dated February 19, 2022 at 3:58 p.m. written by Ms. Reilly to the child study team
- Email dated February 23, 2022 at 5:09 p.m. written by the mother to Ms. Shavlik
- COMECARE Treatment Note dated February 25, 2022 at 2:45 p.m.
- Communication Log entry dated February 25, 2022 handwritten by the mother
- Email dated February 25, 2022 at 4:57 p.m. written by Michelle Schrama, Rose Hill District Social Worker, to the mother
- Email dated February 25, 2022 at 6:04 p.m. written by the mother to Ms. Reilly
- Email dated February 26, 2022 at 3:26 p.m. written by the mother to Ms. Reilly
- Email dated February 28, 2022 at 1:00 p.m. written by the mother to Ms. Reilly
- Email dated February 28, 2022 at 2:14 p.m. written by Ms. Reilly to the mother
- Email dated March 1, 2022 at 5:14 p.m. written by Ms. Reilly to the mother
- Email dated March 8, 2022 at 8:01 a.m. written by Ms. Price to the mother
- Communication Log entry dated March 9, 2022 handwritten by the mother
- Response to the Allegations dated March 10, 2022 written by Lisa Arndt, Assistant Director of Special Education at BCSBC
- Communication Log entry dated March 23, 2022 handwritten by the mother
- Screenshots of the 2021-22 Student Attendance Record in the district's student information system

- Student Attendance Record for the 2021-22 school year
- Timeline of Events created by USD #394
- Log Entries in the student information system dated between September 17, 2020 and March 4, 2022
- Blank copy of a behavior data collection sheet and weekly rewards sheet
- Grade Report for Quarter 1, Quarter 2, and Quarter 3 of First Grade
- Report of Psychological Evaluation dated March 21, 2022 written by Sarah Coleman, Licensed Psychologist
- Email dated March 28, 2022 at 10:26 a.m. written by the mother to the Complaint Investigator

Background Information

This investigation involves a 6-year-old female student enrolled in the first grade at Rose Hill Elementary School in USD #394. She is currently being evaluated to determine eligibility for special education and related services. The student lives at home with her parents and siblings.

The student began attending preschool at age three in Trenton, Illinois. The family moved to Haysville, Kansas when the student was four and she was enrolled in preschool at Nelson Elementary School in USD #261. Per parent report, the student was not evaluated for early childhood special education and did not have a written intervention plan at school; however, she did receive interventions in the general education setting including a staff member being within arm's reach at all times and counseling through the Kansas Children's Service League because of behavioral concerns.

The family then moved into the USD #394 school district and the student was enrolled in kindergarten at Rose Hill Elementary School during the 2020-21 school year. She and her peers attended school that year moving between in-person and remote instruction. The student was promoted to first grade for the 2021-22 school year and has attended school in-person throughout the current school year.

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 parents raised three issues that were investigated.

ISSUE ONE: The USD #394, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate child find procedures when it failed to suspect the student was a student with a disability during the past 12 months.

Positions of the Parties

The parents reported they have shared their concerns about the student's executive functioning skills, emotional regulation, impulse control, social skills, and pragmatic language with the staff at Rose Hill Elementary School on multiple occasions since the student was first enrolled in kindergarten in August 2020. Despite repeated incidents in kindergarten and first grade of the student hurting herself, staff, and/or peers; eloping from the classroom and the school building; destroying property; eating metal and plastic objects; and having dysregulation/meltdowns/ tantrums resulting in her peers being evacuated from the classroom, USD #394 has failed to suspect that the student may be a student with a disability and to provide appropriate interventions and supports to the student during the past 12 months. The parents believe this failure has negatively impacted both the student's learning as well as the learning of her grade-level peers.

USD #394 reported that it has followed the appropriate child find procedures during the past 12 months. The district first learned of the parent's concerns through an email sent during the summer prior to the student's initial enrollment in kindergarten. The parents shared that the student was receiving counseling in the preschool program in USD #261 but that the student did not have an IEP. The parents indicated USD #261 was attempting the counseling as an intervention prior to testing the student for eligibility for special education.

USD #394 reported the student was successful in kindergarten and made academic gains. School staff indicated there were only a few incidents at the end of that school year that required additional staff to assist in the classroom due to the student's inappropriate behavior, specifically stating,

The SEL coordinator was called once when the student was being non-compliant. The other time was when the teacher was absent and there was a substitute teacher. This was in May 2021 and the student began to struggle with that change. There was one incident in May when the student ran out of the building and down towards a pond next to the elementary building.

In addition, USD #394 reported that the student was evaluated at the parent's request during the first quarter of first grade; however, the student was determined to not be eligible for special education and related services at that time. Instead, USD #394 developed a general education behavior plan and continued general education interventions through the child study team process. USD #394 reported the parent requested another special education evaluation in January 2022 and that reevaluation is currently in process.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #394.

On July 2, 2020 at 3:12 p.m., the mother sent an email to Ms. Edge indicating that the student would be attending kindergarten and was receiving counseling in the preschool program at USD #261 through a grant. The parent reported that the student did not have an IEP because the district was attempting the counseling as an intervention before proceeding to a special education evaluation.

The mother has kept a handwritten log of communications with the district since the student enrolled in USD #394. This communication log documents that Jennifer Jones, the kindergarten teacher, contacted her on December 10, 2020 to discuss concerns related to lying and destruction of property in the classroom. Ms. Jones contacted the mother again on January 15, 2021, and indicated that the student's inappropriate

behaviors were increasing in the classroom and the previous redirection techniques were no longer working. Ms. Jones also reported that the student had been disruptive in the physical education class and had possibly eaten some wire. The parents indicated that x-rays at urgent care that evening had confirmed the student had eaten wire causing stomach upset.

On January 18, 2021, the mother asked Ms. Jones if the school had received any information from USD #261 regarding the counseling services provided when she attended the preschool program. The parent indicated she would like this information to be considered "along with an evaluation to help with her impulsiveness and frequent outbursts." The communication log shows Ms. Jones would "pass on the information."

Ms. Jones contacted the mother on January 25, 2021 to inform her that "it was a hard day, hitting other students with items, being disruptive, disrespectful, screaming while Ms. Reilly was in the classroom, destroying property. The student missed computer lab time in order to calm down."

On February 2, 2021, Ms. Jones stated, "the student is showing increased behaviors, work refusal, disrespect, and tantrums." Ms. Jones informed the mother that any homework assigned to the student was work that she had refused to do in class with assistance.

The communication log shows Ms. Jones informed the mother the student was so disruptive that she had to be removed from the classroom by the school counselor on February 4, 2021. The next day, Mrs. Jones reported the student pulled a peer's hair because that child stood too close to her in line and that the student purposefully destroyed her own shoes. The February 7, 2021 communication log entry reflects the parent letting Ms. Jones know about the student being upset that her peers were calling her "ugly" and an "idiot."

On February 8, 2021, Ms. Jones told the mother that the student was extremely disrespectful and, when ignored, escalated her behavior to get a reaction. The student then destroyed her supplies in the classroom. On February 23, 2021, the student

refused to work and ripped up her worksheets and a second set was sent home as homework.

On March 9, 2021, Ms. Jones notified the mother that the student “really struggled in PE/Gym and was trying to hurt others.” Ms. Jones indicated the student also scratched her own face, tried to eat snack wrappers, and had a disruptive outburst in the classroom on that same date. Ms. Jones reported the student picked at her skin until it bled and eloped from the classroom on March 23, 2021. On March 25, 2021, the mother was notified of the student taking a lunch in the cafeteria, refusing to eat, and subsequently throwing and dumping the food on purpose.

On April 23, 2021, the student received one day of out-of-school suspension (OSS) due to “disruptive and unsafe choices” caused by her noncompliance in the kindergarten classroom and elopement from the school building in order to cross the street and reach a pond near the school grounds.

The mother emailed Ms. Reilly on that same date at 11:20 a.m. stating,

I understand she eloped again today and left the school grounds. The increase in eloping and the ability to get further away from where she’s supposed to be and leave school grounds even with a broken leg is an obvious concern. And she has a bruise on her face that wasn’t there this morning when she went to school she can’t seem to tell us how it got there. We have had a number of conversations with her about following instructions and making safe choices. I think it’s time to have a conversation/meeting about considering looking at possible interventions to ensure she is safe and able to be productive in her class work and not disrupt other students.

Ms. Reilly responded via email at 11:40 a.m. that a meeting would be scheduled.

The communication log dated April 23, 2021 stated,

Request made to teacher and admin (Ms. Reilly) for a meeting to evaluate the need for additional supports in light of increased behavior and eloping off campus to the pond with a broken leg. *No response for an evaluation - agreed to a meeting.

Ms. Reilly sent an email to Ms. Price, Ms. Edge, Ms. Klish, Ms. Neal and Ms. Jones on April 25, 2021 regarding the incident which occurred on April 23 and the parent's request for a meeting. The email stated,

One of Mrs. Jones' std [students] has had difficulty with her behaviors the past few weeks . . . I believe a big variable has been the absence of Mrs. Jones due to her need to be absent with her recent surgery; however, the last incident on Fri. [Friday] prompted Mom to request a team mtg. [meeting] to discuss additional interventions/strategies for her and her safety (eloping) . . . the young lady does not have an IEP and seems to be pretty on target with her academics from my limited interaction with her on academics (I could be incorrect though – we'll get that info from Mrs. Jones). She did have behaviors last year (per mom's input).

The kindergarten grade card shows the student met six of seven reading standards (cannot produce letter sounds); four of five math standards (cannot decompose numbers up to ten in different ways); two of five kindergarten standards (cannot cut on a line, name 11 basic colors, or name the days of the week); eight of nine work habits standards (cannot work neatly); and did not meet the speaking and listening standard (cannot speak clearly to share my thoughts, ideas, and feelings).

The communication log documents a meeting was held on May 5, 2021. School staff reported that the student's behavior had improved since Ms. Jones had returned from leave. The log reflects USD #394 recommended private therapy. The mother stated that she again shared her ongoing concerns with the student's behavior since returning to in-person learning at the meeting and that she wanted interventions and supports for the student. USD #394 reported that no notes were kept from this meeting.

The communication log for May 11, 2021 documents that the student lied at school, lost her shoes and blamed another student in her class, and threw a fit.

On May 14, 2021, Michelle Neal, the social worker for USD #394 provided the parents with a list of possible resources via email including military resources, therapists, and possible options for a psychological evaluation as well as the contact information for

South Central Mental Health Center (SCMHCC) who could provide attendant care and case management services if the student were to qualify for their program. Ms. Neal wrote, "I hope that this is helpful as you explore ways to help bring the student to a better place emotionally."

The mother reported the student began therapy during the summer of 2021. The student was also placed on the waiting list for a neuropsychological evaluation in spring 2022 to determine if the student met the criteria for a diagnosis of autism spectrum disorder.

On August 24, 2021, the mother sent a letter to Ms. Price indicating her belief that the student's behavior was interfering with her ability to learn in the general education setting. The parent listed the following difficulties to support her concern: 1) she is often not cooperative in class. 2) she needs assistance to distinguish between socially acceptable and unacceptable behavioral responses to various situations and environments; 3) she does not recognize situations where her self-control is needed; 4) she does not know how to cope with stress-provoking situations she cannot avoid; and 5) she does not understand the consequences of appropriate and inappropriate expressions of her feelings. She specifically requested a functional behavioral assessment as required by the IDEA and a behavior intervention plan for the student. The mother requested the evaluation be expedited "as the student has already had a number of incidents, including one eating an object at school and needing to go to urgent care on August 24, 2021."

The parent was provided with a Prior Written Notice (PWN) for an Initial Evaluation and Consent on August 26, 2021 in response to her written request for an evaluation.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.111 require school districts to identify, locate and evaluate all children with disabilities who are in need of special education and related services, regardless of the severity of their disability, including children who are suspected of being a child with a disability even though they are advancing from grade to grade.

In this case, the parent alerted USD #394 of the counseling intervention used in the USD #261 preschool setting during the 2019-20 school year upon the student's enrollment in kindergarten. The student attended kindergarten during the 2020-21 school year through a combination of remote and in-person learning.

In December 2020, Ms. Jones reported one instance of problem behavior including destruction of property and lying in the general education setting. In January 2021, Ms. Jones reported two instances of problem behaviors including hitting other students, being disruptive, disrespectful, screaming, destroying property, and eating wire.

Ms. Jones reported four instances of problem behavior including destruction of property, physical aggression towards peers, work refusal, disrespect, and tantrums during February 2021. In March 2021, Ms. Jones shared three instances of problem behaviors including physical aggression towards peers, self-harm, disruptive outbursts in the classroom and cafeteria, elopement from the classroom, and eating foreign objects (snack wrappers).

The student was out-of-school suspended on April 23, 2021 because of "disruptive and unsafe choices" caused by her noncompliance in the kindergarten classroom and elopement from the school building in order to cross the street and reach a pond near the school grounds. On that same date, the mother made a written request to the building principal to hold a meeting to consider looking at possible interventions to ensure the student is safe and able to be productive in her class work and not disrupt other students.

That meeting was held on May 5, 2021 with the classroom teacher, the school counselor, the school psychologist, the building principal and the school social worker and mother in attendance. During this meeting, the mother reported she again shared her ongoing concerns with the student's behavior since returning to in-person learning and that she wanted interventions and supports for the student. The mother reported that the school staff indicated that the student's behavior had improved since Ms. Jones had returned from leave and the kindergarten grade card showed the student was making academic progress towards the kindergarten standards. As a result of this meeting, USD #394 recommended private therapy and provided the parent with a list

of resources to obtain therapy, a psychological evaluation, and case management for emotional issues.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to suspect the student was child with a disability at the May 5, 2021 meeting with the parent in light of the increase in the frequency, duration, and intensity of the problem behaviors in kindergarten over the course of the second semester combined with the fact that the student previously received counseling as a general education intervention at the age of four in the preschool setting even though the kindergarten grade card showed the student was making academic progress.

Federal regulations at 34 C.F.R. 300.301 provide for parents to request an initial evaluation for their child if they suspect a disability. Within a reasonable amount of time of the public agency receiving such a request, the district shall either accept the request and proceed with the evaluation process in accordance with the timelines and requirements set forth in the IDEA or refuse the request and provide the parent with written notice refusing the request. In Kansas, a reasonable amount of time is considered to be within 15 school days of the parent request for an evaluation, unless there are unusual circumstances.

On January 18, 2021, the mother made a verbal request to Ms. Jones for an evaluation to help develop interventions and supports to address the student's impulsiveness and frequent outbursts. There is no documentation to show USD #394 responded to this parent request.

On May 5, 2021, the mother met with the classroom teacher, the school counselor, the school psychologist, the building principal and the school social worker to discuss the increase in the frequency, duration, and intensity of problem behaviors at school during the second semester. During this meeting, the mother reported that she again requested an evaluation to determine what interventions and supports were needed for the student. USD #394 responded by providing the parents with a list of resources to obtain therapy, a psychological evaluation, and case management for emotional issues.

On August 24, 2021, the mother sent a written request for an evaluation to the building principal. She specifically requested a functional behavioral assessment as required by the IDEA and a behavior intervention plan for the student. Documentation shows the district responded on August 26, 2021 by providing the parent with a PWN for Initial Evaluation and Consent.

In this case, USD #394 failed to respond appropriately to the mother's verbal request for an initial evaluation for special education for her child on January 18, 2021 and again on May 5, 2021. On both of these dates, while the mother did not specifically state that she wanted an evaluation for special education, she did express wanting an evaluation to determine interventions and supports to address the increase in frequency, duration, and intensity of the problem behaviors occurring in the school setting. The district did not respond by providing a PWN to respond to either of these requests. There were no unusual circumstances that would justify a failure to provide a PWN to respond to either of these requests. It is noted that USD #394 did respond appropriately to the mother's written request, which specifically referred to the special education and the IDEA, on August 24, 2021.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to respond with a PWN to the mother's verbal requests for an initial evaluation for special education for her child on January 18, 2021 and again on May 5, 2021.

ISSUE TWO: The USD #394, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to evaluate the student in all areas of suspected disability during the special education evaluations conducted during the 2021-22 school year.

Positions of the Parties

The parents reported that USD #394 agreed to conduct an initial evaluation for special education following their written request on August 24, 2021. However, the school staff unilaterally determined what areas needed to be assessed in order to determine eligibility for special education services. The parents indicated they had concerns in regards to the student's impulsivity, sensory dysregulation, and pragmatic language

skills which were not addressed during the evaluation conducted during the first semester of the 2021-22 school year.

USD #394 stated that all fourteen areas of exceptionality were considered by the multidisciplinary team, including the parent, during the initial special education evaluation conducted on November 1, 2021.

USD #394 reported,

All areas of exceptionality were considered during the special education evaluation conducted in November 2021. During the eligibility meeting, the team reviewed the Evaluation and Eligibility Team Report. As a part of that, all fourteen eligibility categories were presented. In each appropriate section of the report, it is documented that the team does not have any concerns at this time. Included in those sections were Health, as there were no known or documented health concerns, the team felt the student didn't qualify for eligibility under Other Health Impairment. Under the other sections including Hearing and Vision, Motor Skills, Cognitive Skills / Adaptive Behavior, and Communication Skills, the team also documented there were no concerns at this time. In the area of Academic Skills, the student scored in the average and above average range. Her combined measure has the student scoring in the above average range. It was explained at the time of the meeting that the student did not meet the criteria for Specific Learning Disability. The only area of concern was Social/Emotional Behavior. At the time of the eligibility meeting team had no reason to suspect Autism and the parent did not disagree. The only area the team felt the student might qualify for was Emotional Disturbance and this was reviewed and rejected. The student did not qualify for special education services and the parent agreed.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #394.

The findings of Issues One are incorporated herein by reference.

In response to the mother written request for an evaluation under the IDEA, Ms. Price responded via email on August 15, 2021 stating,

I received your email regarding a Functional Behavioral Assessment and Positive Behavioral Plan for the student. I wanted to reach out to you to let you know we would be happy to complete that. I just need a couple things from you. The first being a signed consent form. While I do realize that you gave us consent in this email, I just have to have a Prior Written Notice of Evaluation form on file. Secondly I CC'd Courtney Edge, our SEL (Social Emotional Learning) Coordinator to this email as she has worked with the student and has knowledge and information that we could use for the FBA/BIP. I will get that consent form to you as quickly as possible.

Ms. Reilly also contacted the mother that same day to get updated information about the status of the private therapy recommended at the end of the 2020-21 school year. The mother responded that the student had participated in weekly counseling sessions for approximately two months during the summer but was not currently receiving any counseling due to scheduling conflicts between the school and therapist's schedules. The mother shared that the student was referred for "a formal evaluation but the soonest anyone can get her in is the end of January."

The PWN for Initial Evaluation and Request for Consent dated August 26, 2021 shows the proposed action as,

The team is proposing to conduct an initial evaluation of your child. Included in the evaluation are assessment tools and strategies (e.g. record reviews, interviews, observations, tests, your child's response to scientific research-based interventions and information provided by you). Information will be collected in the areas checked on the following page that provide relevant information that directly assist the team in determining a) whether your child is a child with an exceptionality and the educational needs of your child; b) the present levels of academic achievement and related developmental needs of your child; and c) whether you child needs special education and related services.

The areas checked as needing new data on this PWN included Health/Motor Ability; Vision; Hearing, Social/Emotional Status / Behavioral Status; and Academic Performance. The areas of General Intelligence; Communicative Skills; Transition Skills; and Other were left blank.

The explanation of why the action is proposed states, “Despite general education interventions, the student continues to demonstrate a need for further behavioral supports. Parents have requested the team complete a functional behavioral assessment to create a behavioral plan.”

The PWN lists data used as the basis for the proposed action as “team and parent input”. However, the mother reported that she was not contacted to provide any information prior to receiving the PWN requesting consent for an initial special education evaluation. There is no documentation to show that the parent participated in the review of existing data or provided any input into the areas to be assessed during the evaluation other than the August 24, 2021 written request for a functional behavioral assessment in order to create a behavior plan. The mother indicated she had ongoing concerns at that time in regards to the escalation in frequency, duration, and intensity of the student’s problem behaviors which she believed were caused by impulsivity, sensory dysregulation, and pragmatic language delays. Sensory dysregulation and pragmatic language skills were not addressed in the November 1, 2021 evaluation.

School staff noted the mother emailed the written request for an evaluation on August 24, 2021 and that the PWN for an Initial Evaluation and Consent was provided to the mother via email on August 26, 2021. The PWN was signed electronically and returned to the district that same day.

A Notification of Meeting was sent to the parents on October 25, 2021 to schedule a meeting for November 1, 2021 at 2:45 p.m. via GoogleMeet. The purpose of the meeting is to review the evaluation, determine eligibility, and to develop an IEP, if appropriate.

The Evaluation and Eligibility Team Report documents no concerns were noted in the areas of vision, hearing, health, motor, cognitive skills/adaptive behavior, and communication. Additional assessments were conducted in the areas of academic achievement and social/emotional/behavioral skills through observations and standardized assessment.

The report documents the student was observed a total of 230 minutes in the classroom setting. During that time frame, she was on task and transitioning appropriately for 149 minutes (65% of the time). The student was off task (verbal, motor, and/or passive) about 74 minutes (32% of the time). She had a total of 11 outbursts that equaled about 17 minutes (8% of the time).

The report states that behavioral rating scales were completed by the student's kindergarten and first grade teachers as well as her parents but does not identify the specific behavior rating scale used to assess the student. All three raters marked the area of Depression as "clinically significant". The parents and the first grade teacher rated the following behaviors as "clinically significant": Hyperactivity, Aggression, Conduct Problems, Overall Internalizing and Externalizing Problems, Withdrawal, and Adaptability. The following behaviors were rated as "clinically significant" by the parents and "at-risk" by the first grade teacher: Anxiety, Learning Problems, Adaptive Skills, Social Skills, and Functional Communication.

The Kaufman Test of Educational Achievement – Second Edition, Brief Form (KTEA-2 Brief) was used to assess academic achievement. The student scored "Average" in reading and writing and "Above Average" in math and her overall academic achievement level.

The Summary and Recommendations section of the Evaluation Report states,
The student does not appear to qualify for special education service, her behaviors are significant to warrant a general education plan to ensure the student's needs are being met.

The parent was provided with a PWN dated November 1, 2021 recommending a behavioral plan be implemented in the general education classroom, without additional support through special education services. The explanation for this action states that the student does not appear to be demonstrating a need for specially

designed instruction based on the data included in a review of records, observations, interviews, academic testing, team and parent input. The PWN indicates that implementing a behavioral plan through special education was considered, but this was rejected as the student did not meet eligibility for any exceptionalities. The PWN documents the mother consented to the proposed action on November 1, 2021.

The student received two days of OSS on November 9 and 10, 2021 due to destruction of property, physical aggression towards peers and adults, yelling, screaming, attempting to eat inedible objects, noncompliance, and eloping from the classroom and building on November 8 2021. On November 12, 2021, a referral to the Child Study Team was initiated and a general education behavior intervention plan was developed and shared with the parents.

A meeting was scheduled for January 21, 2022 at 2:30 p.m. with the parent and child study team members to review the impact of the intervention; however, this meeting was canceled because the parents emailed a written request on January 12, 2022 for another special education evaluation to specifically consider eligibility in the exceptionality categories of Emotional Disturbance (ED) and Autism.

On January 17, 2022, the mother shared that a neuropsychological evaluation of the student was being conducted by Dr. Sarah Coleman, Psychologist at Hope Point.

A PWN for Reevaluation and Request for Consent was provided to the mother on January 20, 2022. The PWN states, "The LEA has been requested, or proposes, to complete the following action to consider your child's needs for special education services. Please review the items marked. If you have questions, please feel free to discuss them with the LEA educational staff." However, no action was marked in the section of the PWN titled "Special Education Action Proposed." The explanation of why the action is proposed indicates that the student's parents have requested the team to complete an evaluation to determine her eligibility for special education services. The data used as a basis for the proposed evaluation includes a review of records, observations, and parent input.

The PWN documented that existing data is available in the areas of Health/Motor Ability, Vision, Hearing, Social Emotional Status/Behavioral Status, General Intelligence, and Academic Performance. New data was marked as being needed in the areas of

Social Emotional Status/Behavioral Status, General Intelligence, and Academic Performance.

Other factors relevant to the proposed action were described as “While new data for general intelligence, academics, and social emotional/behavioral status has been marked, a formal evaluation in this area may not be required to make determinations of the student’s eligibility.”

The PWN was signed electronically by the parent on January 24, 2022.

On February 8, 2022, a meeting was held with the principal, school psychologist, classroom teacher, and SEL Coordinator. As a result of that meeting the mother requested additional data be collected in the area of Adaptive Behavior and instructional control. On February 14, 2022, the district autism specialist requested the parents complete the Childhood Autism Rating Scale – Second Edition Questionnaire for Parents and Caregivers (CARS-2 QPS).

On February 25, 2022, the student had a meltdown at school that was so severe that the student was evaluated at ComCare for a mental health crisis. The mother reported,

They had 3 staff with her for intake and consulted with each other before talking more with us. They felt there was no mental health crisis and no intervention they could provide. She asked if she was autistic and we explained she was being evaluated by Dr. Coleman. She stated she suspected it was “an autistic meltdown” which can present as aggressive. If another neurodivergence related issue occurs, it can look similar and be a result of being dysregulated from things like overstimulation, trouble with transitioning, or introspection, and not having support needed to regulate or continuing to be overstimulated while being supported. She is not able to make any diagnosis since she does not believe it’s a mental health issue currently. Her recommendation was to follow Dr. Coleman’s treatment plan after the evaluation is complete.

On March 8, 2022, Ms. Price requested the parents complete the Adaptive Behavior Rating Scale for Children (BASC). On March 21, 2022, Ms. Price requested to add an

occupational therapy (OT) evaluation to include the area sensory to the PWN originally dated January 20, 2022. The parent gave electronic consent on that same date.

The parent provided a copy of the Neuropsychological Evaluation Report completed by Dr. Coleman to USD #394 on March 28, 2022. The diagnostic conclusions in this report include a diagnosis of Autism Spectrum Disorder, Level 1 without intellectual disability and General Anxiety Disorder. Per verbal report from both parties, an eligibility determination meeting is scheduled for April 1, 2022 to review the results of the evaluation being conducted by USD #394..

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.304(c)(4) require school districts to assess any child suspected of being a child with a disability in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities.

As part of an initial evaluation, federal regulation implementing the IDEA at 34 C.F.R. 300.305 (a)(1) require that the IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on the child including evaluations and information provided by the child's parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers.

On the basis of that review and input from the child's parents, federal regulations implementing the IDEA at 34 C.F.R. 300.305(a)(2) require school districts to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum.

In this case, the evidence supports a finding that USD #394 in violation of 34 C.F.R. 300.305(a)(1) and 300.305(a)(2), did not include the parents in the review of existing evaluation data, nor did it obtain input from the parents during the review of existing data resulting from the parent's written request for a special education evaluation on either August 24, 2021 or January 12, 2022 in order to determine what additional data, if any, was needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum.

Interviews and documentation found the parents, at a minimum, had concerns in the area of pragmatic language skills for the August 24, 2021 request; however, the Evaluation Report documents that "the team does not have any communication concerns at this time."

Interviews and documentation found the assessment plan described in the PWN resulting from the January 12, 2022 request was amended on March 21, 2022 to add an additional areas of assessment addressing sensory concerns which may be contributing to the mother's concern about dysregulation impacting the student's behavior. It is noted that the current evaluation still does not include the need for additional data in the area of Communication, specifically pragmatic language skills, which are also still a parent concern.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to obtain input from the parents during the review of existing data in order to determine what additional data, if any, was needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum.

Federal Regulations at 34 C.F.R. 300.305(a)(2)(i)(B) states that a reevaluation is conducted to determine if the student with a disability continues to have such a disability and the educational needs of the child. In this case, USD #394 provided the parents with a PWN for a Reevaluation and Request for Consent on January 12, 2022 even though the student was not a student with a disability. This was a procedural error, but it did not result in any deprivation of educational benefit to the student or to the parent's right to participate in the evaluation process.

ISSUE THREE: The USD #394, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate disciplinary procedures for a student suspected of having a disability during the 2021-22 school year.

Positions of the Parties

The parents reported that the student has been out-of-school suspended (OSS) and in-school suspended (ISS) for more than 10 days during the 2021-22 school year. They believe USD # 394 should have conducted a manifestation determination review (MDR) meeting to determine if the suspensions were the result of the student's suspected exceptionalities and services provided.

USD #394 reported it has followed the appropriate disciplinary procedures for a student suspected of having an exceptionalities. According to their records, the student has only been placed on OSS for a total of eight days during the 2021-22 school year. School staff indicated that the student was sent home for medical concerns on one occasion and the parent is considering this as an OSS day. In addition, the student's general education behavior intervention plan allows for the student to move to a quiet location to take tests or to refocus when something was upsetting her in the classroom. USD #394 believes the parents are confusing this intervention with ISS.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #394.

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

The 2021-22 Discipline Log from the Student Information System and copies of Notices to Student of Short-Term Suspension after an Informal Hearing showed the student was removed from the general education classroom for disciplinary reasons on the following dates:

Date	Type of Removal	Disciplinary Infraction
September 20, 2021	ISS	Inappropriate behavior
November 9, 2021	OSS	Unsafe and disruptive behavior; eloping
November 10, 2021	OSS	Unsafe and disruptive behavior; eloping
January 12, 2022	OSS	Unsafe and disruptive behavior
January 13, 2022	OSS	Unsafe and disruptive behavior
February 14, 2022	OSS	Unsafe and disruptive behavior
February 15, 2022	OSS	Unsafe and disruptive behavior
February 16, 2022	OSS	Unsafe and disruptive behavior
February 18, 2022	OSS	Unsafe and disruptive behavior
March 28, 2022	ISS	Unsafe and disruptive behavior

An emergency safety intervention (ESI) physical restraint was used for approximately two minutes with the student on February 14, 2022.

On February 15, 2022, Ms. Reilly noted in an email to the child study team,
Given the number of days that she has had an OSS now, we only have 1 more to utilize before a manifestation mtg [meeting] is required. I've never had to conduct a manifestation mtg [meeting] because I've never had a

student with this many OSS days . . . so I'd need to have Hannah [Ms. Price] and Courtney [Ms. Edge] assist with such a process, I just wanted you to know that this is where we are."

On February 23, 2022, the mother emailed school staff to notify them that the student has a broken left wrist and will be wearing a cast. On February 25, 2022, the student was unsafe with her cast in regards to others and well as herself. The parents were contacted and they took the student at 2:45 p.m. for an emergency evaluation for a mental health crisis at ComCare. The parent notified the district via email that evening that ComCare indicated the student was not suffering from a mental health crisis but instead was having an "autism meltdown" which can present as aggression.

Applicable Regulations and Conclusions

Federal regulations, at 34 C.F.R. 300.534, states that students who have not been identified as a child with a disability may be subjected to the same disciplinary measures applied to students without disabilities if the public agency did not have prior knowledge of the disability. If the public agency is deemed to have knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action, the student may assert any of the protections for students with disabilities in the area of discipline. The public agency has knowledge of the disability when:

- A. the parent has expressed concern in writing that the student needs special education services to supervisory or administrative personnel of the appropriate educational agency or a teacher of the student; or,
- B. the parent has requested an evaluation; or,
- C. the student's teacher or other school staff has expressed specific concern about a pattern of the student's behavior directly to the director of special education or to other supervisory personnel in accordance with the agency's established child find or special education referral system.

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 school-days in a school year, 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, there are two periods during the 2021-22 school year that USD #394 were on notice that the student may be a child with an exceptionality as a result of the parents' request for an evaluation. The first period ran between August 24, 2021 (when the parent made the first request for an evaluation) and November 1, 2021 (when an eligibility team determined that the student was not eligible for special education services). That period included only one day of ISS.

The second period runs between January 12, 2022 (when the parent made another request for an evaluation) and April 1, 2022 (the date on which the second eligibility meeting is scheduled), again, as a result of the parents' request for an evaluation. There were six days of OSS and one day of ISS during this timeframe.

The evidence presented supports the finding that the student was not suspended for more than 10 school-days during any of the time periods in which the district was deemed to have knowledge that the student was a child with a disability. Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to follow appropriate disciplinary procedures for a student suspected of having a disability 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. 300.111 require school districts to identify, locate and evaluate all children with disabilities who are in need of special education and related services, regardless of the severity of their disability, including children who are suspected of being a child with a disability even though they are advancing from grade to grade.

In this case, interviews and documentation showed there was sufficient reason for USD #394 to suspect the student may be a child with a disability

at the May 5, 2021 meeting with the parent in light of the increase in the frequency, duration, and intensity of the problem behaviors in kindergarten over the course of the second semester combined with the fact that the student previously received counseling as a general education intervention at the age of four in the preschool setting even though the kindergarten grade card showed the student was making academic progress.

- B. Federal regulations at 34 C.F.R. 300.301 provide for parents to request an initial evaluation for their child if they suspect a disability. In addition, federal regulations, at 34 C.F.R. 300.503(a), state that within a reasonable amount of time of the public agency receiving such a request, the district shall either accept the request and proceed with the evaluation process in accordance with the timelines and requirements set forth in the IDEA or refuse the request and provide the parent with written notice refusing the request. In Kansas, a reasonable amount of time is considered to be within 15 school days of the parent request for an evaluation, unless there are unusual circumstances.

In this case, interviews and documentation found that USD #394 failed to respond appropriately with a PWN to the mother's verbal request for an initial evaluation for special education for her child on January 18, 2021 and again on May 5, 2021. On both of these dates, while the mother did not specifically state that she wanted an evaluation for special education, she did express wanting an evaluation to determine interventions and supports to address the increase in frequency, duration, and intensity of the problem behaviors occurring in the school setting. There were no unusual circumstances that would justify not providing a PWN in response to either of these requests for an initial evaluation.

- C. Federal regulations at 34 C.F.R. 300.305(a) require school districts to obtain participation in and to obtain input from the parents during the review of existing data in order to determine what additional data, if any, is needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether

any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum.

In this case, the evidence supports the finding that USD #394 did not obtain participation in or input from the parents during the review of existing data in order to determine what additional data, if any, was needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum. Interviews and documentation found the parents, at a minimum, had concerns in the area of pragmatic language skills; however, the Evaluation Report documents that "the team does not have any communication concerns at this time."

Based on the foregoing, USD #394 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #394 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) Federal regulations at 34 C.F.R. 300.111 which require school districts to identify, locate and evaluate all children with disabilities who are in need of special education and related services, regardless of the severity of their disability, including children who are suspected of being a child with a disability even though they are advancing from grade to grade
 - b. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) Federal regulations at 34 C.F.R. 300.301

and 300.503(a), which provide for parents to request an initial evaluation for their child if they suspect a disability, and that within a reasonable amount of time of the public agency receiving such a request, the district shall either accept the request and, after providing a PWN and obtaining parent consent, proceed with the evaluation process in accordance with the timelines and requirements set forth in the IDEA or refuse the request and provide the parent with written notice refusing the request.

- c. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.305(a) which require school districts to obtain participation in and obtain input from the parents during the review of existing data in order to determine what additional data, if any, is needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum.
2. If the student is determined to be eligible for special education and related services at the April 1, 2022 eligibility determination meeting, USD #394 will, within a reasonable time develop an IEP for this student, and at the meeting where the IEP is developed, the district shall involve the parent in a discussion regarding if compensatory services are required in order to provide the student with a free appropriate public education beginning on November 1, 2021. Within 5 school-days of that meeting, the district shall submit to Special Education and Title Services (SETS) either a signed statement from the parent stating that compensatory services are not needed, or a written plan for approval by SETS for providing compensatory services. In addition, USD #394 will provide the parent and SETS with a copy of the resulting IEP and prior written notice provided to the parent within 10 business days following the IEP team meeting. If the student is not determined to be eligible for special education and related services at the April 1, 2022 eligibility determination

meeting, USD #394 will provide the parent and SETS with a copy of the resulting prior written notice provided to the parent within 10 business days following the eligibility determination meeting.

3. No later than May 31, 2022, the Butler County Special Education Interlocal #638 (BCSBC) shall review and revise, if appropriate, its procedures and practices related to conducting the Review of Existing Data as part of the initial evaluation process. No later than June 15, 2022, BCSBC will provide a copy of the written procedures to SETS for review and approval as well as a plan for distribution of the written procedures. Within 10 school-days of approval,, the written procedures will be distributed to all licensed and certificated special education staff, including school psychologists, and building administrators, and written documentation of that distribution shall be provided to SETS.
4. No later than May 1, 2022, USD #394 will arrange for TASN to conduct a training for all licensed and certificated special education staff, including school psychologists, and building administrators working in USD #394 regarding the IDEA requirements related to conducting a Review of Existing Data as part of the initial evaluation process as well as when and how to provide appropriate PWN for an initial evaluation and reevaluation. No later than August 30, 2022, USD #394 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 #394 will provide SETS with any handouts and/or a copy of the presentation.
5. Further, USD # 394 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)