

## SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #203  
ON MARCH 4, 2022

DATE OF REPORT: APRIL 5, 2022

This report is in response to a complaint filed with our office by \_\_\_\_\_ and \_\_\_\_\_, on behalf of their daughter, \_\_\_\_\_. For the remainder of this report, \_\_\_\_\_ will be referred to as "the student." Mr. and Mrs. \_\_\_\_\_ will be referred to as "the parents." Mr. \_\_\_\_\_ will be referred to as "the student's father." Mrs. \_\_\_\_\_ will be referred to as "the student's mother."

### Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on March 28, 29, and 31, 2022. On March 15 and 24, 2022, the investigator spoke via telephone with Dr. JaKyta Lawrie, Executive Director of the Wyandotte Comprehensive Special Education Cooperative.

In completing this investigation, the complaint investigator reviewed the following materials:

- Eight Exhibits provided along with the formal complaint form including
  - Annual IEP for the student dated November 3, 2021 (Exhibit A)
  - Correspondence dated December 14, 2021 from the counsel for the parents to the counsel for the district (Exhibit B)
  - Email dated February 4, 2022 from the transition specialist to the parents (Exhibit C)
  - Email exchanges dated February 9 and 14, 2022 between the student's parents and the transition specialist (Exhibit D)
  - Correspondence dated February 8, 2022 from the counsel for the parents to the counsel for the district (Exhibit E)
  - Email exchanges on February 28 and March 1, 2022 from the counsel for the parents to the counsel for the district (Exhibit F)
  - Amended IEP for the student dated January 26, 2022 (Exhibit G)

- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated November 3, 2021 (Exhibit H)
- IEP for the student dated November 9, 2020
- Meeting Summary dated September 20, 2021
- Settlement Agreement signed by the parties on October 21 and October 25, 2021
- Email exchange dated October 25, 2021 between the transition specialist and the student's mother
- Email exchange dated November 16, 2021 between the volunteer manager for the volunteer agency and the transition specialist
- Email dated November 29, 2021 from the parent to district staff
- Email exchange dated January 7 to 12, 2022 between the transition specialist and the student's mother
- Meeting Summary dated January 26, 2022
- IEP Amendment Between Annual IEP Meetings dated January 26, 2022
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated January 26, 2022
- March 8, 2022 email from a special education coordinator
- Worksite Evaluation Report dated February 14, 2022
- Email dated March 11, 2022 from the transition specialist to district staff
- Email dated March 22, 2022 from the transition specialist to the parents
- Online Academic Calendar for the district for the 2021-22 school year

### Background Information

This investigation involves a 21-year-old girl who is enrolled in the district's program for students ages 18 to 21. The student is nonverbal. She has multiple diagnoses including epilepsy, cerebral palsy, Autism, hydrocephalus with a working shunt, failure to thrive, MTHFR (Methylenetetrahydrofolate reductase) dystonia, PTSD, and gastric reflux. She has an oral fixation and frequently places items in her mouth.

The student meets eligibility criteria to receive special education services under the category of Multiple Disabilities as well as Speech Language Disabilities. She requires full adult assistance to navigate through and participate in most activities throughout the school day. She is supported by a 1:1 nurse as well as a 1:1 paraeducator. The

student receives Occupational and Physical Therapy, Adapted PE, Vision services, Speech/Language therapy, Music Therapy and transition services in addition to special education classroom services..

### Issues

In their complaint, the parents identify three concerns.

**Issue One:** The district has failed to implement transition services at Heart to Heart International (HHI) as specified in the student's IEP and sought to change these services without IEP Team or parental input and in disregard for the student's safety.

### Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. A district must implement a student's IEP as written.

When developing a student's IEP, the IEP team makes decisions regarding the student's placement. Prior Written Notice must be provided when the school refuses a parent's request to initiate or change the identification, evaluation, or educational placement of the child, or to make a change to the provision of special education and related services (FAPE) to the child (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.503(a)(2)).

Educational placement refers to the educational environment for the provision of special education and related services rather than a specific place, such as a specific classroom or school building (K.A.R. 91-40-1(t)).

### Parent's Position

The parents assert that the failure on the part of the district to provide the student with agreed-upon vocational opportunities through HHI has deprived the student of a FAPE (free appropriate public education).

### District's Position

The district asserts that while the student has not worked on-site at HHI, the student has had the opportunity at the school to work on tasks similar to those in which she would have been engaged at HHI and therefore has not been denied a FAPE.

### Investigative Findings

After completing high school, the student will, according to the “Desired Post School Outcomes” section of her November 9, 2020 IEP, “volunteer or work in the community utilizing appropriate supports.” On August 26, 2021, the special education transition specialist for the cooperative made a visit to Heart to Heart International (HHI) to “evaluate the potential of a volunteer placement for [the student].” As stated in the “Worksite Evaluation Report” included in the student’s November 3, 2021 IEP, Heart to Heart International (HHI) is a “nonprofit organization with a mission of improving health care access in the U.S. and around the world. It strives to achieve this mission by distributing resources, conducting training, engaging volunteers, and responding to disasters.”

According to the evaluation, HHI volunteers’ work hours “depend upon the need for disaster or humanitarian aid at any given time. Three days per week would probably be the norm.”

The student first attended school for the 2021-22 school year on September 20, 2021. At a meeting on September 20, 2021, the team talked about the “new job opportunity” for the student [at HHI] where she would be “working on ‘take out’ and ‘put in’ tasks.” The meeting summary states that the “parents would like [the student] to get acclimated in her school routine before introducing the job.”

On October 21, 2021, the parents signed a “Settlement Agreement” with the district in connection with a lawsuit filed against the district by the parents which addressed issues associated with the student’s late start for the 2021-22 school year. The agreement was signed by the director of the cooperative on October 25, 2021. The parties agreed that “a vocational opportunity (volunteer position)” for the student would be provided through HHI. The parties also agreed that the district would maintain a “separate log specifying the date, start time, end time, place, staff/outside party providing...additional instruction/service, and description of the additional services or instruction provided...identified by the term ‘Additional Services’...[and shall provide the parents] a copy of the log on a weekly basis.” This log was to be used to document the district’s provision of compensatory special education and related services including 240 minutes of compensatory CBI services.

On October 25, 2021, the transition specialist sent an email to the student's mother to "confirm if Wednesday, Nov. 10<sup>th</sup> works for a start date at H-to-H. As mentioned, they want two weeks' notice, so I'll need to email them right away." The student's mother responded, "How about we wait until the IEP to make that determination on a start date."

The annual IEP team meeting for the student was held on November 3, 2021.

In the "Development of Employment and Other Post-Secondary Adult Living" portion of the "Needed Transition Services" section of the student's November 3, 2021 IEP the team included the following statement:

"[The student] will begin working at Heart to Heart International. She will be continuously evaluated progress (sic) in her work skills will be documented."

The student was scheduled to begin volunteering at HHI during the week of November 15, 2021, but the student was absent from November 16 through November 19, 2021 and again on November 22 and 23, 2021. On November 16, 2021, the transition specialist contacted the volunteer manager for HHI to let her know the student would be absent. The volunteer manager responded, noting "since the week after next is the start of December and we will be winding down volunteering for the year, we should reconvene in January to talk about the 2022 availability...While it does not look like 2021 worked to get things started, I think we learned a few things that will help us plan next year's schedule."

On November 29, 2021, the student's mother sent an email to the district informing staff that she had just spoken to the "coordinator at Heart to Heart and it seems they honestly don't know when [the student] would start next year. It all depends on funding and product. Her words were 'it would be a few months into the new year, possibly May.'" The parent wrote:

There were concerns at the IEP meeting and in several emails, that the school district doesn't have a vocational backup plan for [the student]. Our question is how are you going to meet [the student's] vocational needs?

[The student's] start date for Heart to Heart International was to be the 17<sup>th</sup> of November but she was out sick. Nobody informed us that that would be her

only day there. It was stated to [the parents] that Heart to Heart would close down sometime in December but that's not true, they are closed now.

On December 14, 2021, the attorney for the parents sent a letter to the attorney for the district noting that "the Heart to Heart volunteer coordinator recently advised that there might not be [an opportunity for the student to receive vocational training at HHI] until May 2022." The attorney said that the parents did not agree with the district's position that the student would receive CBI services "through her experiences with the class" and stated that "the District [was] not taking steps to identify any other vocational opportunities for [the student] that meet her needs."

In the December 14, 2021 letter, the attorney wrote that the parents requested the district "1) identify and propose additional vocational opportunities for the student; 2) revise the student's IEP to reflect greater specificity regarding the vocational/transitional services and programming the district would provide; and 3) revise the student's post-secondary goals to help guide transition related vocational/transitional programming." The letter also stated that the parents requested an IEP Team meeting to discuss matters raised in the letter.

Winter Break for the district began on December 20 and extended through December 31, 2021. Monday, January 3, 2022 was a teacher work day, and students did not attend school on that date. Students in the district returned to school on January 4, 2022, but the student was absent from January 4-7, 2022.

On January 7, 2022, the transition specialist sent an email to the student's mother stating that HHI had "developed a regular volunteer schedule for Monday mornings and would like [the student] to join that team! She is invited to start on either February 7<sup>th</sup> or the 14<sup>th</sup> – whichever works best for us. Will Mondays work?"

According to the student's mother, she continued to be frustrated over the district's failure to develop alternative volunteer opportunities for the student in view of HHI's scheduling limitations. After seeing a news story regarding another local volunteer agency, the student's mother sent an email to the transition specialist on January 11, 2022 stating, "This might be worth looking into for [the student's] vocational training." The parent provided a link to ScrapsKC.

An IEP team meeting was held on January 26, 2022. The student's November 2021 IEP was amended to include the following statement:

The specificity of the vocational experience at Heart to Heart International was updated to include “once a week trips with a one hour duration at the worksite to begin, with the possibility of increasing the duration up to 3 hours maximum once [the student] is comfortable with the environment. [The student’s] 1:1 paraprofessional and 1:1 nurse will be prepared with her lunch, water, medical supplies, toileting supplies, etc. when on trips to the worksite.”

Postsecondary goal for independent living skills is changed to read: “Following High School Graduation, I will live at home with my parents and participate in my daily care routines and household activities to the maximum extent possible.

The above statements were also included in a prior written document emailed to the parents on January 26, 2022.

According to the written summary of the January 26, 2022 IEP meeting, the student was scheduled to start at HHI on February 7, 2022. She would begin “on a trial basis, an hour at a time.” The team also discussed “in-district opportunities – job at CTE building, in an effort to get [the student] out of [her school building] and complete a work task. Job at district elementary school and work in the lunch room. [The parents] did not seem agreeable to these options; they indicated that being a school environment would not be suitable for vocational skills.”

In a telephone conversation with the investigator on March 28, 2022, the student’s mother stated that she did not believe that working in a school lunch room would provide the student with the opportunity to build the “put in/take out” skills she would be using in her volunteer settings – skills specifically addressed through a goal in the student’s November 3, 2021 IEP.

The January 26, 2022 meeting summary documented that the transition specialist would be speaking with ScrapsKC to evaluate the possibility of a volunteer opportunity for the student with that organization, noting that the student’s mother had brought the organization to his attention.

The transition specialist had made an initial visit to ScrapsKC during the week of January 24, 2022 and returned on February 8, 2022 to complete his worksite evaluation. He believed the organization could be an appropriate setting for the student. The district asserts they were prepared to offer the program as a community site beginning in February, but the parents declined the option, stating they were concerned about her handling “gross” items there.

In the March 28, 2022 conversation with the investigator, the student's mother stated that because the student is so "oral," the parents were concerned that the materials she would be handling might be dangerous to the student. The student's mother also stated that after talking with ScrapsKC staff, she was concerned that the student could be put at risk because volunteers did not undergo background checks. According to the parent, she had been told that a volunteer had come to the facility drunk and had to be removed.

During the time that HHI was closed in December 2021 and January 2022, the Omicron variant of Covid-19 had become widespread. As a result, HHI established a requirement mandating proof of vaccination for anyone working in the facility. On January 31, 2022, the transition specialist became aware that HHI would not allow unvaccinated individuals on-site. Vaccination was not a requirement for employment in the district. While the student had been vaccinated, neither her 1:1 paraeducator nor her 1:1 nurse had received a Covid vaccination.

On February 4, 2022, the transition specialist sent an email to the parents to inform them that the district would "not be able to comply with the HHI safety protocol for COVID vaccinations...[because HHI] is unable to provide accommodations for unvaccinated staff." The transition specialist wrote that the student "has an opportunity to volunteer at ScrapsKC" and could begin "immediately."

On February 9, 2022, the student's father sent an email to the transition specialist asking "why can't a vaccinated staff member who is trained, attend the vocational job with [the student] to Heart to Heart International?" The transition specialist responded on February 9, 2022 stating "staff supporting [the student] who are not vaccinated is the only barrier to her volunteering there. Let me pass on to the team the possibility of training and switching around staff."

On February 14, 2022, the student's mother sent an email to the transition specialist again asking why a trained staff member who was vaccinated could not be sent with the student to HHI. The student's mother stated that she and the student's father did not consent to a placement at ScrapsKC due to "environmental conditions and content she would be exposed to and handling due to her being oral."

The transition specialist replied to the student's mother on February 14, 2022 writing "...you realize [the student's] para and nurse are unvaccinated? Are you fine with only a trained para accompanying her, or are you requesting a nurse for the HHI trip as well?" The student's mother wrote back stating "[the student's father] and I want [the district]

to continue providing all services specified in [the student's] IEP/BIP (behavior intervention plan) including nursing and para services for the Heart to Heart International vocational trips.”

The transition specialist sent another email to the student's mother on February 14, 2022, which included his Worksite Evaluation Report regarding ScrapsKC. In the email, the transition specialist wrote the following:

...I want to address your worries about the cleanliness of items [the student] might handle in their facility. I appreciate your concerns, as I was taken back by the scale of the operation, the crowds, and the massive inventory on my first visit to their converted warehouse. However, after hearing about their processes, I do not have any fears in this area. First...the volunteer coordinator closely supervises the volunteers and their projects during the 10:00 to noon time period (the facility does not open to the public until noon). [The volunteer coordinator] personally assigns projects, and I am sure she would be responsive to our request to closely monitor [the student's] materials for cleanliness. Part of their normal process is the disinfecting of tables and work areas after each use by a volunteer. Also, the organization has guidelines for materials which are accepted and allowed into the building...”

On February 8, 2022, the attorney for the parents emailed a letter to the attorney for the district. In his letter, the attorney stated that the parents were requesting that if district employees responsible for assisting the student (such as her para and nurse) were not vaccinated, then a vaccinated employee should be trained in order to be able to accompany the student.

The attorney also asserted that the district had not sufficiently evaluated the ScrapsKC facility to determine whether the student's medical, vocational, or transitional needs could be met there. According to the attorney, the executive director for the organization had reported that she could not guarantee a separate room for the student's tube feedings or in case she exhibited self-injurious behaviors. The attorney also asserted that the student would be handling “gross” items – a problem due to the student's oral fixation.

On February 28, 2022, the attorney for the district sent an email to the attorney for the parents stating that the district proposed sending the special education teacher and the school nurse (who had been trained by the 1:1 nurse) with the student to HHI for

one hour per day. The district proposed a second option of having the student go to a middle or elementary school to assist during lunch.

The attorney for the parents replied to the attorney for the district via email on February 28, 2022 asking in part:

- 1) IEP Team discussions and [student's] IEP anticipate increased frequency of trips and of longer duration, as [the student's] comfortability increases. Does this proposal anticipate that, or is it solely 1 day per week for 1 hour?
- 2) Commute is about 25 minute. Is it one hour at heart to heart (sic) plus commute time, or one hour total?
- 3) What is the district's proposal to make up for missed time at Heart to Heart?

The parents did not receive a response from the district and filed this complaint on March 4, 2022.

On March 8, 2022, a special education coordinator for the district sent an email to district staff stating that the district was "planning to move forward with providing alternate staff members to accompany the student to HHI beginning on March 28, 2022 noting that a special education teacher and school nurse would accompany the student on the trip to and from the site and for "one hour of work time there (in addition to travel time)."

On March 11, 2022, the transition specialist sent an email to the director of the cooperative and others to report that he had just heard from HHI "with not good news." According to the transition specialist, the request to bring the student back to HHI had come "at the worst possible time for them." The transition specialist wrote that HHI "would like to continue the relationship with [the student], but the volunteer director had reported that she "would not be able to give [the student] the attention she deserves."

On March 22, 2022, the transition specialist sent an email to the parents to let them know that HHI was not going to be a workable placement option for the student for the foreseeable future as HHI shifted focus to "outside events to bolster their resources." Further, the volunteer director of HHI had informed the transition specialist that "she couldn't give [the student] the time she deserved" because of staffing issues. According to the email, HHI was open to future opportunities for the student, but for now, the transition specialist suggested that the team move ahead to "get a VR case opened, and look at possibilities at the elementary school."

The district asserts that the student has been provided with CBI and classroom instruction that have provided the student with the same services she would have received had she gone to HHI. As of the writing of this report, the student has never attended HHI and is not currently participating in any other volunteer/vocational placement outside of the school.

### Summary and Conclusions

Both the parents and the district agreed that the community, not the classroom, was the best place for the student to develop some of the skills that she would need once she transitioned out of the school environment. Any number of community-based settings might provide an appropriate environment for that instruction. However, for a number of reasons, Heart to Heart International appeared at the outset to be an ideal volunteer/vocational setting for the student. The district and the parents agreed that HHI would serve as the volunteer/vocational placement for the student. The decision was documented in settlement agreements, through prior written notice, in the student's IEP, and in amendments to that IEP.

The student was scheduled to begin a placement with HHI on November 17, 2021 but was absent on her first day. Neither the school district nor the parent would have expected that the student would have had only that one day to work at the facility.

The hours of operation for HHI are controlled by the organization and are driven by the organization's response to the presence of disaster or humanitarian need around the world. As a result, the district could not guarantee that the student would have the opportunity to volunteer at the site on any given day. While it was anticipated that the student could at some point spend up to three hours a day at the facility if it was open, the district did not control the hours of operation established by HHI. HHI shut down its operation in December 2021. The first day the student would have been able to return to the site would have been February 7, 2022.

In December 2021, when HHI was closed, the parents had asked the district for a back-up plan and had offered the name of another possible volunteer site – knowing only that the agency (ScrapsKC) had been covered in a local news show. The transition specialist conducted a worksite evaluation and believed that ScrapsKC could work well for the student, who could have started with the agency in early February. However, the parents objected to the ScrapsKC setting and to other school-based options.

As a private entity, HHI was able to establish its own requirements with regard to Covid vaccination. While the district did not require vaccination as a condition of employment for the student's 1:1 paraeducator or her 1:1 nurse, HHI could – and did – require proof of vaccination for anyone entering the facility as the transition specialist learned at the end of January 2022. Once the district had been informed of the HHI vaccination requirement and became aware that the two staff members supporting the student on a daily basis were not vaccinated, the district began looking at options including a change in staff assignments.

The student was to go to HHI with vaccinated staff beginning on March 28, 2022, but when the transition specialist reached out to HHI on March 11, 2022 to confirm the student's start day, he learned that HHI had shifted their priorities and no longer were able to offer the student a position. The transition specialist notified the parents of this new complication on March 22, 2022. The parents continued to state their objections to both the ScrapsKC and to other school settings as alternative sites.

Typically, a change in the setting in which a student's services are delivered would not require either prior notice or the written consent of the parent so long as the educational environment for the provision of special education (in this case, the community) remained unchanged. However, in this case, the parties had on numerous occasions confirmed that services were to be delivered specifically at HHI. That specificity restricts the district's ability to shift the setting for service delivery to another site without first providing the parents with prior notice.

The student has not – for reasons that were in some instances beyond the control of the district – received the HHI-based services called for in her November 3, 2021 IEP, in the January 26, 2022 amendment to that IEP, in settlement agreements, and prior written notice. The district took steps to secure a position for the student in an alternate setting but stopped that process when the parents objected. Instead, the district continued providing other community-based experiences for the student such as outings to Walmart or Target.

Since November 22, 2021, school has (at the time of this report) been in session for a total of 16 weeks. The student has been absent for three of those weeks and an additional two days. During that period, the district failed to provide the volunteer/vocational services at HHI that were specified in the student's November 3, 2021 IEP and related documents and failed to develop alternative settings when it became clear that the availability of HHI was limited. A violation of special education statutes and regulations has been identified.

### Additional Comments

It is not the responsibility of the parents to come up with the solution to the problem that occurred at HHI. It is the responsibility of the district to develop and implement a plan to address the student's transition needs and to modify that plan with input from the parents when the situation demands change. However, when determining compensatory services to address the unavailability of the HHI setting, the investigator cannot compel the district to provide access to a facility over which it has no control. Rather, it will be up to the district to determine an appropriate community-based setting where services to the student can be delivered.

Issue Two: The district failed to provide the Community Based Instruction (CBI) specified in the student's IEP.

### Parents' Position

It is the position of the parents that the district failed to provide the amount of CBI services specified in the student's November 3, 2021 IEP. According to the parents, the district has agreed to provide the student with 1440 minutes of compensatory CBI services in addition to the "280 minutes per week" of CBI services specified in the student's November 2021 IEP. The parents contend that, as of February 25, 2022, the district had failed to provide a total of 1,065 minutes of CBI services.

### District's Position

It is the position of the district that all required CBI-related services have been provided for the student.

### Investigative Findings

As noted above under Issue One, the parents and the district developed a settlement agreement in October 2021 to resolve a dispute over the district's provision of special education and related services - including CBI - that arose prior to the 2021-22 school year. The parties agreed that the district would, during the 2021-22 school year, provide 240 minutes of CBI services to the student above and beyond the services required by the student's current IEP. The provision of compensatory CBI services was to be documented in a communication log.

The district did not provide CBI opportunities at the start of the 2021-22 school year. When the IEP team met for an annual IEP review on November 3, 2021, the special education teacher reported that she planned to begin CBI outings for her students on November 17, 2021. The parties discussed the provision of additional compensatory CBI services to address services missed prior to November 12, 2021 and agreed that 1440 minutes of compensatory services would be provided during the 2021-22 school year in addition to the 240 minutes previously agreed to by the parties.

The plan for the delivery of these additional services was spelled out in a prior written notice form emailed to the parents on November 5, 2021. According to the prior written notice, the 1440 minutes of compensatory service would be delivered in 60 minute per week increments over 24 weeks during the 2021-22 school year. The prior written notice also included the statement that the student would “continue to receive her regular community based instruction service minutes as outlined in the 11-3-21 IEP.”

At the November 3, 2021 meeting, the team reviewed a proposed IEP. That document was provided by the parents in their complaint. That version of the IEP included two references to Community Based Instruction. The first showed that the student was to receive “100 minutes” of CBI services one day a week. The second shows that the student is to receive “90 minutes” of CBI services one day a week.

However, according to the “Meeting Summary” for the November 3, 2021 meeting, changes were made to that initial version of the document. The summary contained the following statement:

Community-based instruction trips have not occurred yet this year. [The special education teacher] plans to have trips starting the week of November 15-19. Account for past weeks that have not been occurring [8 weeks, 1440 total minutes, 60 minutes for 24 weeks] – will address in PWN. Change line for CBI to 90 minutes, 2 times weekly.

The “Community” portion of the “Needed Transition Services” section of the student’s November 3, 2021 IEP contains the following statement:

“[The student] will participate in community based instruction weekly.”

In a March 28, 2021 telephone call with the investigator, the parent confirmed that the IEP submitted along with this complaint had been modified to require two ninety minute CBI opportunities per week.

On December 14, 2021, the attorney for the parents sent a letter to the attorney for the school district alleging that the district had failed to provide the parents with an agreed-upon log documenting the “date, start time, end time, place, staff/outside party providing the additional instruction/services, and a description of the additional service or instruction provided...on a weekly basis.” This documentation was to be in addition to a home/school notebook being used to provide communication between the parents and the district.

The parents and the district provided the investigator with a spreadsheet entitled “Additional Services Log” which includes documentation of the CBI activities for the student beginning on November 17, 2021. The parent noted that the log was updated after the filing of this complaint and asserts that the data in the log does not in every case mirror the information recorded in the home/school communication notebook. Those discrepancies will be discussed below.

In recording the CBI opportunities provided to the student, the district provides a total of the number of CBI minutes delivered and breaks out minutes in categories designated as “settlement,” “additional IEP,” and “180 IEP” used to derive that total. The log includes minutes for CBI activities that would have been available to the student had she been in attendance on a given day even though the student was actually absent. The district also includes minutes for days when CBI opportunities would have been offered had school not been cancelled due to “snow days.”

Generally, CBI opportunities were scheduled on Wednesday, Thursday, and Friday of the week. Based upon information provided by the district and the parents, the investigator calculates that, the district has provided a total of 3,355 minutes of CBI opportunities during the period starting with the week of November 15, 2021 and ending the week of March 21, 2022.

Calculating on the basis of two 90-minute CBI services per week, plus 60 minutes of additional services per week as agreed upon by the parties, times 16 school weeks, the district would have been required to provide 3,840 minutes of CBI. However, as noted above under Issue One, the student has been absent on some days when CBI outings were conducted. Additionally, the district experienced 3 “snow days” that kept scheduled outings from occurring. School was in session for half days only on

December 16 and 17, 2021, changing the schedule on two days when CBI outings would have been conducted. During the week of February 13, 2022, there was no school on two of the days CBI trips were normally scheduled, and there was an “early release” that changed the schedule for the third day.

The parent has provided information regarding discrepancies between the log and home/school communication notebook that reduce the number of CBI minutes actually provided by the district by 200 minutes.

When allowing for the times CBI services were available but the student was not present, and when considering days when school was cancelled due to a snow event on a typical CBI day, the district should have been expected to provide 3,000 minutes of CBI services. Adding 200 minutes for discrepancies as shown by the parents’ data, the district’s expected total would be 3,200 minutes, 155 minutes less than the total number of minutes the district has actually made available to the student. The district was also obligated under their October 2021 settlement agreement to provide an additional 240 minutes of CBI over a 24-week period (an average of 10 minutes per week or 150 minutes to date).

### Conclusions

Based upon evidence provided by both parties in this complaint, the district has provided the total number of minutes of CBI opportunities that were required by the student’s November 3, 2021 IEP and two additional settlement agreements. A violation of special education statutes and regulations is not substantiated on this issue.

### Additional Comments

In a telephone call with the investigator on March 31, 2022, the parent reported that the district had not provided CBI opportunities to the student for the week of March 28, 2022 due to the absence of the student’s assigned 1:1 paraeducator and/or 1:1 nurse. The district is reminded that these are opportunities that will need to be “made up” since staffing absences cannot be the reason a student’s services are not delivered.

Issue Three: The district has not consistently allowed the student to participate with non-disabled peers during lunch as required by her IEP.

### Parents’ Position

The parents contend that comments made to the student's mother by the student's 1:1 paraeducator and 1:1 nurse suggested that the student has not routinely been allowed to go to the lunchroom

### District's Position

The district contends that the student consistently eats lunch in the cafeteria.

### Investigative Findings

The "Regular Education Participation" section of the student's November 3, 2021 IEP contains the following statement:

[The student] will participate with non-disabled peers during lunch and passing periods (if her walks happen during this time).

In their complaint, the parents report that the student's 1:1 paraeducator and the student's 1:1 nurse told the student's mother about the student's participation in "Inclusion Day." According to the complaint, the staff members stated that they had taken the student "down to see the kids in the lunchroom." By report of the student's mother, the staff told her that they had thought the student wouldn't like the experience, "but she did." These comments led the parent to believe that the lunchroom opportunity was unusual and reflected a failure on the part of the district to provide the daily interaction with non-disabled peers called for in the student's IEP.

According to the district, the student routinely eats lunch in the lunchroom with non-disabled peers. According to the district, "World Inclusion Day" was a special day of celebration at the student's school. Inclusion Day, celebrated this year on March 2, 2022, was a day set aside to celebrate people of all abilities, backgrounds, age, race, religion, and gender being welcomed, accepted, and treated equally. On that date, the school made available a poster in the lunchroom that contained an "inclusion pledge" which students could sign. Members of the student's classroom went to the lunchroom during periods other than their regular lunch periods to join other lunch groups for the celebration.

### Summary and Conclusions

This investigation did not find any evidence to support the parents' contention that the district has failed to provide the student lunch-time integration with non-disabled

peers. Inclusion Day was a special day of celebration at the school, and the student and her classmates participated in the activities of the day which included joining different groups of students in the lunchroom.

A violation of special education statutes and regulations is not substantiated on this issue.

### Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Specifically, violations occurred with regard to 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) which require that the district provide a FAPE to students by implementing their IEPs as written.

Therefore, USD #203 is directed to take the following actions:

- 1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with
  - 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) by implementing this student's IEP as written and by providing the student with appropriate CBI opportunities.
- 2) a) No later than 40 days after the date of this complaint, USD #203 shall submit to SETS for review and approval a plan for the delivery of 900 minutes of compensatory CBI services to this student in a community-based setting.

These minutes are calculated on the basis of 60 minutes per week for 15 weeks – through March 25, 2022. While the IEP team had determined that time at HHI could be increased up to 3 hours per day, only one hour of compensatory services per week are required because the investigator has no way to determine when or if the student could have tolerated these extended hours.

Unless or until the student's IEP is amended and CBI services through HHI are no longer included, an additional 60 minutes of compensatory services will be ordered for every week between March 25 and May 27, 2022 that the student

does not receive CBI at HHI up to a maximum total of compensatory services of 1,440 minutes.

The compensatory minutes of CBI instruction do not include travel time to and from the work site.

- b) The district's plan must propose three setting options for the delivery of the student's CBI services so that back-ups can be identified should circumstances at the selected setting make that setting unavailable. All settings must allow for the student to practice the "put in/take out" skills listed in her November 3, 2021 IEP.
- 3) Within 10 school days of the date the plan for compensatory services has been approved by SETS, the district shall present the plan to the parent who will have the option of either accepting the plan as written, or accepting a portion of the plan, or rejecting it.
- 4) Within 5 school days of the date the plan is presented to the parent, the parents must notify USD #203 of their decision to accept or reject the plan.
- 5) Within 5 school days of receiving the parents' decision, USD #203 must notify SETS of that decision.
- 6) Further, USD #203 shall, within 10 calendar days of the date of this report, submit to SETS 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).

## Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to [formalcomplaints@ksde.org](mailto:formalcomplaints@ksde.org) or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such 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.



Diana Durkin  
Complaint Investigator

K.A.R. 91-40-51(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)

Further, USD #364 shall, within 10 calendar days of the date of this report, submit to Special Education and Title Services one of the following:

- 1) a statement verifying acceptance of the corrective action or actions specified in this report;
- 2) 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
- 3) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f).