

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON MARCH 8, 2022

DATE OF REPORT APRIL 13, 2022

This report is in response to a complaint filed with our office on behalf of _____ by his parents, ___ and _____. In the remainder of the report, _____ will be referred to as “the student” and _____ and _____ will be referred to as “the parents” or “the father” or “the mother” respectively.

The complaint is against USD #259 (Wichita Public Schools). In the remainder of the report, “USD #259,” the “school,” the “district” or the “local education agency (LEA)” shall refer to this responsible public agency.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE received the complaint on March 8, 2022; however, due to the district’s spring break, the 30-day timeline to investigate this complaint was extended and now ends on April 13, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parents by telephone on March 10 and March 31, 2022 and again on April 3, 2022. It is noted that while the student’s biological mother, _____, participated in the initial interview, she was not a party to the Formal Complaint.

USD #259 made the following school staff available for a telephone interview on March 29, 2022:

- Amy Godsey, Mediation and Due Process Supervisor
- Lura Jo Atherly, Principal for Stucky Middle School
- Tricia Loehr, Assistant Principal for Stucky Middle School

- Keith Butler, IEP Manager
- Elizabeth Quinn, Speech/Language Pathologist (SLP)
- Belinda Tummons, School Counselor

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. It is noted that the parents and the district both provided numerous documents including emails, meeting notices, discipline records, special education records from prior school years, a mask exemption, newsletters, and Facebook posts related to allegations that were not included in the Formal Complaint Request Form received by the KSDE on March 8, 2022 and, while all of this documentation was reviewed, it was not all found to be relevant to the allegations that were investigated. The parents are aware that they may file additional Formal Complaint Request Forms to address their additional concerns.

The following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Educational Program (IEP) dated May 13, 2021
- May 13, 2021 IEP-at-a-Glance, printed on August 12, 2022
- Copy of the "I need a BREAK!" card dated May 2021
- 2021-22 School District Calendar for Stucky Middle School
- Parents' Access Data Sheets for ParentVUE, the electronic system for parents to access and view school documents
- USD #259 Technical Assistance document titled "Beginning of the Year Checklist for Secondary: Opening Procedures for IEP Managers", dated June 2021
- USD #259 Technical Assistance document titled "How to Create a Progress Report", dated August 2021
- Copy of the "Purposeful Pause Pass" card dated August 2021
- Email dated August 12, 2021 at 5:42 p.m. written by Elizabeth Quinn, Speech/Language Pathologist, to the student's seventh grade general education teachers
- Email dated August 31, 2021 at 11:28 a.m. written by Ms. Quinn to Belinda Tummons, School Counselor
- Email dated August 31, 2021 at 12:54 p.m. written by Ms. Tummons to Ms. Quinn

- Email dated September 31, 2021 at 2:48 p.m. written by Ms. Quinn to Ms. Tummons
- Email dated January 20, 2022 at 11:34 a.m. written by the mother to the school team
- USD #259 Technical Assistance document titled "Using ParentVUE", dated January 30, 2022, noting that parents can view IEPs and IEP goal progress report in ParentVUE
- Email dated February 9, 2022 at 11:05 a.m. written by the mother to Ms. Quinn
- Email dated February 10, 2022 at 10:43 a.m. written by Ms. Quinn to the parents
- Email dated February 15, 2022 at 1:00 p.m. written by Tami Allen, Co-Executive Director of Families Together, the federally funded Parent Information Center in Kansas, to the mother
- Email dated February 15, 2022 at 1:13 p.m. written by the mother to Ms. Allen
- Audiotape of the February 16, 2022 IEP team meeting, recorded by the parents
- IEP Amendment dated February 16, 2022 and agreed to by the parent in writing on March 21, 2022 to increase counseling services and add transportation as a related service
- Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent for a functional behavioral assessment (FBA) dated February 16, 2022 and signed by the father on February 23, 2022
- Email dated February 16, 2022 at 2:45 p.m. written by Ms. Tummons to the student's school team
- The Therapy Center Psychological Evaluation dated February 18, 2022 written by Sarah Rogers, Licensed Professional Counselor
- Email dated February 19, 2022 at 11:05 a.m. written by the mother to Ms. Quinn and Ms. Tummons
- Email dated February 22, 2022 at 12:36 p.m. from Ms. Tummons to the school team
- Copies of the student's assignment notebook / agenda for February 3, 4, 10, 11, 14, 15, 16, 17, and 18, 2022
- Email dated March 1, 2022 at 11:00 a.m. written by the mother to the school team
- Email dated March 2, 2022 at 1:24 p.m. written by the mother to Keith Butler, IEP Manager

- Email dated March 2, 2022 at 2:10 p.m. written by Lura Jo Atherly, Principal, to the mother
- PWN for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated March 3, 2022
- Email dated March 4, 2022 at 9:34 a.m. written by the mother to Ms. Quinn and copied to the school team
- Email dated March 4, 2022 at 9:39 a.m. written by the mother to Mr. Butler; Debbie Openheimer, Tier 3 Behavior Specialist; and Ms. Atherly
- Email dated March 4, 2022 at 3:03 p.m. written by the mother to
- Email dated March 7, 2022 at 4:26 p.m. written by Mr. Butler to the parents
- Email dated March 8, 2022 at 10:40 a.m. written by Ms. Allen to the mother
- PWN for Identification, Initial Services, Placement, Change in Services, Change in Placement and Request for Consent to increase counseling services, add transportation as a related service, and to add a sensory break and a bathroom break as a classroom accommodation dated March 3, 2022 and signed by the father on March 23, 2022
- Copies of the “Restroom Break”, “Rain Delay”, and “Alternate Passing Period” cards dated February 2022
- Response to the Allegations dated March 23, 2022 written by Ms. Tummons
- Summary of accommodations provided to the student dated March 24, 2022 written by Mr. Butler
- PWN for Evaluation or Reevaluation and Request for Consent for an occupational therapy (OT) and speech/language evaluation dated March 24, 2022 and not signed by the parent
- Student’s Class Schedule for Quarters 1-4 of the 2021-22 school year
- General Education Teacher Report Pages (TRPs)
- IEP Goal Progress Reports dated May 25, 2021, October 10, 2021, December 17, 2021, and March 11, 2021
- Parent Contact Log dated August 31, 2021 through March 24, 2022
- Email dated March 25, 2022 at 8:27 a.m. written by the mother with responses to questions from school team members
- Response to the Allegations dated March 25, 2022 written by Amy Godsey, Mediation and Due Process Supervisor

Background Information

This investigation involves a 12-year-old male student enrolled in the seventh grade at Stucky Middle School in USD #259. His most recent special education evaluation was conducted on May 13, 2021 and the multidisciplinary team, including the parents, determined that he continued to be eligible for special education and related services under the exceptionality category of Autism.

The student was first diagnosed with Autism at age five and was initially found eligible for special education and related services during kindergarten in USD #508. He transferred to the Savannah R-III School District when the family moved to Missouri and continued to receive special education and related services in first through fifth grades. The family moved back to Kansas and the student transferred to Stucky Middle School USD #259 at the beginning of sixth grade. He is currently in the seventh grade and receives special education services support in the general education setting. In addition, the student receives 15 minutes per week of counseling and 40 minutes per week of speech/language therapy.

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 four issues that were investigated.

ISSUE ONE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's Individualized Education Plan (IEP), specifically by not providing the required classroom accommodations, during the 2021-22 school year.

Positions of the Parties

The parents indicated that the student was successful during the 2020-21 school year at Stucky Middle School when his IEP was being implemented. However, there has been a significant increase in the student's inappropriate behavior both at school and home because the accommodations in the student's IEP have not been provided during the entire 2021-22 school year.

They stated that the school staff at Stucky Middle School is unable and/or unwilling to provide shortened assignments, to allow extended time to complete homework/classwork, to provide para/teacher support to maintain the student's assignment notebook/agenda, to read directions to the student, to provide an alternate setting for small group work, and to allow the student to use a break pass when he is feeling overwhelmed. The parent also noted that the student has not received the scheduled 15 minutes per week of counseling services required by the IEP during the 2021-22 school year.

The parents believe the failure of USD #259 to implement the student's IEP has resulted in significant regression of the student's social and emotional behavioral skills. The parents stated that the student is constantly being bullied and harassed by his peers at Stucky Middle School which has resulted in the student threatening suicide and pulling out five of his own teeth over the course of this school year.

The parents have made school staff aware of the bullying and harassment on multiple occasions but reported that nothing has been done. On January 20, 2022, the mother sent an email to the principal, the school counselor, and the SLP stating,

I wanted to make everyone aware that the student is continuing to encounter the student that is telling him that he should "kill himself" or "just die" in Robotics and also in class.

On March 2, 2022, the mother sent an email to the IEP Manager and principal stating,

The student had to ride the regular bus home, and upon arriving home his father witnessed a complete and total meltdown from the student. Three boys taunted the student the majority of the ride home saying things like "You have a reverse Peppa pig face", "You have to wear special shoes because you don't know how to tie your laces", "I am going to come to your and F__ you mom", cussed him out, and many other things regarding his

facial appearance. The three boys were allowed to sit on the floor behind the last seat on the bus and taunt the student.

On March 4, 2022 at 9:33 a.m., the mother emailed the principal, the school counselor, and the IEP Manager to request assistance and support for her son because he had called her upset and crying in the bathroom because he stood during the Pledge of Allegiance and the other students were laughing at him.

Also on March 4, 2022, the mother shared additional concerns with school staff in an email stating,

It looks like the student had an issue in Ms. Probasco's [Literacy teacher] class again. We have serious concerns regarding the way she speaks with our special needs student. Ms. Probasco has told the student to "shut up" when he has asked to make up work in the past, publicly humiliates him in front of other students, repeatedly denies extensions on his assignments per his IEP, does not write in his agenda per his IEP, does not halve his homework per his IEP, told the student today he was not good at making friends and also asked him today why he didn't follow "her rules."

The parents recently requested the student be transferred to another middle school building within USD #259 where he can have a "fresh start" with his IEP being implemented as written; however, this has not yet occurred because USD #259 procedures require the new school building to "accept" the transfer.

Representatives of USD #259 believe the accommodations on the student's IEP are being implemented because the student is making passing grades in all of his classes. Keith Butler, the IEP Manager stated,

I expect that all accommodations are followed by teachers and paras in the classroom. On the converse, if I see that a student's performance is falling or grades drop, follow-up is completed to determine if accommodations/modifications are being followed in the student's or other student's classes and if necessary revised measures are addressed and proposed. The student has maintained good grades, passing grades in all classes, until failing in his pass/fail intervention classes. Verbal inquiry with teachers on or about October 10, before Christmas break and the week of March 7-10, 2022 was conducted to understand if

accommodations were being implemented correctly, any changes suggested, and to determine the student's progress in individual classes. Before Parent Teacher conference (PTC), the student was identified by Ms. Probasco and Mr. Bixler in their intervention classes that he was "failing" due to not completing assignments. This was also discussed with parents at March 3 PTC with myself. Explained that these classes are self-paced and individualized for students at their grade level progress. With coaching and refocusing, the student did a great job completing assignments and brought Fs up to Ps in both classes before the cutoff for report cards for 3rd quarter.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #259.

The first day of the 2021-22 school year was August 12, 2021.

The IEP in effect during at the beginning of the 2021-22 school year was developed on May 13, 2021 and requires 15 minutes per week of counseling as a related service as well as the following nine classroom accommodations:

Accommodation	Rationale	Frequency	Location	Duration
Alternative setting	Student gets overwhelmed in large groups and needs small group setting	During work time in class	Small group setting away from the large group	For the duration of the activity
Read test to student	The student needs a human reader to understand questions and responses	During quizzes and tests	In small group of individual testing location	Until assessment is completed
Extended time or shortened assignments	Gets frustrated easily and will shut down if given time limits	All assignments and assessments	In the general education classroom	100% for daily assignments and assessments, up to 3 days for long term activities or repetitive tasks reduced by half
Directions given in a variety of ways	In order to understand material, student	All directions	In the general education classroom	For the duration of the reading activity

	will may [sic] need to have directions read to him or have him read them to the teacher/para or have an electronic reader read directions and texts to him.			
Frequent reminders of rules	With the student's exceptionality, he will need gentle reminders of class and school rules to reinforce proper behaviors	At the start of the activity or when a behavioral redirection is required	In all school settings	Provide reminder and then wait before providing another prompt.
Check often for understanding	In order to make sure the student understands materials, assignments, etc. in class he will need someone to verify that he understands what is needed.	Daily for each activity	In the general education classroom	Until the student understands expectations
Preferential seating or proximity control	He gets unfocused easily and will need to be in close proximity to the para or teacher	Daily in each class	All classes, in close proximity to the staff member	Throughout the class period.
Maintain assignment notebook / agenda	He needs to have written access to assignments when given of which a para can write them in his notebook to take home	Daily in each class	In the general education classroom	Until all homework has been recorded
Use of a break pass	The student gets frustrated or overwhelmed when too much work is done for long periods of time. The student will have a break pass which he can show to the teacher to take a break.	Daily in each class period	In the general education classroom	Not to exceed 5 minutes

The IEP included multiple accommodations. The investigator will not address each of these accommodations separately because the parent is not requesting compensatory

services. The parent is requesting that student be transferred to a school that will address his exceptionality appropriately. Therefore, the investigator need only make conclusions on the central allegation in this issue, which is that the district has not provided the classroom accommodations specified in the student's IEP. For this purpose, the Complaint Investigator narrowly focused on two of the accommodation that appeared to have the most obvious multiple sources of documentation: 1) Maintain assignment notebook / agenda; and 2) Use of a break pass.

The parents provided copies of the student's assignment notebook / agenda for eight days in February. On Thursday, February 3, 2022, notes were written for one class period and indicated no homework and to study for the test. On Friday, February 4, 2022, notes were written for the same class period and again reminded the student of a test the next Tuesday. On Thursday, February 10 and Monday, February 14, 2022, the pages were blank. On Tuesday, February 15 and Wednesday, February 16, 2022, notes were written for one class period and indicated the student subtracted integers and multiplied integers on each day respectively. Both Thursday, February 17 and Friday, February 18, 2022 were left blank.

The Art Teacher reported that the student "struggles to stay focused and finish a task" and that he needs reminders to turn in assignments on the Teacher Report Pages document. The Math Intervention Teacher indicated the student needs to apply his skills in his class work while the Literacy Teacher stated, "He spends more time worried about what everyone else is doing. He will waste an entire class focused on everything but class." The Science Teacher noted the student only works under "direct supervision" and requests to take work home for homework. In regards to the Social Studies class, Mr. Butler stated, "The student, like all middle school students, needs to organize, write down assignments and strategize how tackle them in his agenda when needed for work that needs to go home."

USD #259 staff pointed out that the accommodation in the IEP does not require the para to write in his assignment notebook / agenda; instead the accommodations only states the para "can" write in the notebook. While that is a correct reading of the IEP, it does not negate the requirement to provide the student with written access to assignments by maintaining an "assignment notebook/agenda."

At the beginning of the school year, there was some confusion about how the break passes worked. Ms. Quinn noted in the August 31, 2021 email to Ms. Tummons at 11:28 a.m.,

I was hoping you could provide some clarification on the student's break pass. In his IEP it states that the student can utilize the pass every class period for no more than 5 minutes. The student has shared w/ the mother that he's only allowed 6 breaks/week. I know our policy this year is different than last year in that students are allowed to use the restroom during class. The student believes that a restroom break counts against him if you will as one of his breaks w/ his break pass. Perhaps this is something that needs to be reviewed with his teachers, too?

Ms. Tummons clarified in an email dated August 31, 2021 at 12:54 p.m. that she was providing counseling to the student on Fridays and provided him a "Purposeful Pause Pass" so that he could go to visit with her from any class. She also indicated that she "checks in" with the student every morning and during lunch.

On January 14, 2022, Ms. Tummons unilaterally changed the break pass procedure because the student has had numerous instances of coming to the school counselor's office to report multiple students for their inappropriate behavior. Ms. Tummons stated, "Once I met with ALL of the students involved in each incident, I found that the student most often had started the confrontation and reported the other students for what he had actually done."

Ms. Tummons sent an email that same day to the student's teachers, support staff, and administration. She reported that the student's break card was removed from his agenda and his teachers were notified to keep an eye on his behaviors. If he wants to see a support staff member, he has been told that he has to email the person he wants to see and wait for that person to send a pass for him – when they are available to do so.

On February 9, 2022, the mother sent an email to Ms. Quinn and Ms. Tummons requesting that the break pass be reinstated so he would be able to access help as

needed. The mother indicated that the “bullying and comments made at Stucky are becoming too much for him to focus every day in class and feel this is an unfair expectation for him until appropriate plans have been put into place by the IEP team.”

On February 10, 2022, Ms. Quinn responded to the parent stating that Ms. Tummons had returned the break pass to the student during second period that day and that Ms. Tummons was planning to meet with the student to review the expectations for the use of the break pass.

The IEP team met on February 16, 2022 at the parent’s request to review the student’s IEP due to their ongoing concerns that the IEP was not being followed by the staff at Stucky Middle School. Participants in the meeting included the SLP, the school social worker, the school psychologist, the school nurse, the special education campus support staff, the principal, the assistant principal, the IEP manager and general education social studies teacher, the school counselor, as well as the student, the parents, and the student’s biological mother. The Co-Executive Director of Families Together participated in the meeting virtually.

As a result of the February 16, 2022 meeting, USD #259 proposed to conduct a functional behavioral assessment as part of a reevaluation of the student. The parents were provided with a PWN for a Reevaluation and Request for Consent dated February 16, 2022 which they signed on February 23, 2022.

The team also discussed the IEP accommodations at the meeting and the school staff reported on how each was implemented at school. In addition, the parents specifically asked when the student was scheduled to receive the 15 minutes per week of counseling. Ms. Tummons responded that the student was coming to see her at a regularly scheduled time on Fridays at the beginning of the school year; however, that had stopped because the student was using his break pass multiple times per day to go to the counselor’s office during the week. Ms. Tummons reported that she stopped the scheduled time on Fridays because she was seeing him for more than 15 minutes per week and she didn’t want to pull him out of class any more than necessary. The parents shared their belief that the counseling services were different than using the break passes and Ms. Tummons then offered to start the scheduled counseling again.

As a result of the February 16, 2022 meeting, USD #259 proposed adding five minutes of counseling for a total of 20 minutes per week and adding transportation as a related service. An IEP amendment dated February 16, 2022 documenting these updates was provided to the parents; however, they did not provide written consent until March 21, 2022.

On March 3, 2022, USD #259 provided the parents with a PWN for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent proposing to add an amendment to the May 13, 2021 IEP in order to increase the counseling services, to add transportation as a related service, and to add a sensory pass and a bathroom pass to the classroom accommodations. It is noted that the IEP amendment proposed by the district on February 16, 2022 did not mention the change in break passes. The parent provided written consent for these changes on March 23, 2022.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.300.320(a)(4) require school districts to develop an individualized education program (IEP) for each student with a disability that includes a statement of the program modifications that will be provided to enable the student to advance appropriately toward attaining the annual goals, be involved in and make progress in the general education curriculum, and to be educated and participate with other students with disabilities as well as their nondisabled peers.

Federal regulations at 34 C.F.R. 300.300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, the IEP in effect during the 2021-22 school year included an accommodation for use of a break pass and for maintaining an assignment notebook / agenda. In addition, this IEP required 15 minutes per week of counseling as a related service. Interviews and documentation found that USD #259 did not consistently provide the accommodations for the use of a break pass and for maintaining an assignment notebook / agenda nor did USD#259 consistently provide the 15 minutes per week of counseling services to the student.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to implement the student's Individualized Education Plan (IEP), specifically by not consistently providing two of the required classroom accommodations and the 15 minutes per week of counseling services, during the 2021-22 school year.

ISSUE TWO: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a copy of the Individualized Education Plan (IEP) to all school staff responsible for its implementation during the 2021-22 school year.

Positions of the Parties

When school staff were asked why certain accommodations were not being provided to the student in the general education classroom, the parents reported several of the staff at Stucky Middle School told them that they were unaware of the accommodations in the student's IEP. The parents believe that USD #259 failed to inform all of the staff working with the student about their responsibilities for implementing the IEP during the 2021-22 school year.

USD #259 reported that multiple procedures are in place to ensure that IEPs are accessible to all staff working with a student's IEP through the district's electronic student information system, Synergy, in TeacherVUE. The USD #259 Instructional Technology Department provides annual Synergy training to teachers which includes demonstrating how to access a student's IEP.

In addition, the district uses a Secondary Beginning of the Year (BOY) Checklist for IEP Managers to ensure all teachers are aware of the IEP of any student assigned to their class. Amy Godsey, Mediation and Due Process Supervisor stated,

USD #259 acknowledges that it [the BOY Checklist] does not contain explicit instructions directing the IEP Managers to inform all teachers of a child with an IEP on their caseload to access the student's IEP via TeacherVUE. Updating the elementary and secondary documents [the BOY Checklists] to remedy this omission is in progress. Additionally, a statement regarding IEP Managers' responsibility to inform all teachers of a child with an IEP on their caseload to access the full IEP in Synergy and to ensure that other staff responsible for implementing the IEP (para educators, etc.) receive a copy of the IEP if they do not have access to TeacherVUE will be included in the April Student Support Services newsletter that is distributed to all USD #259 employees.

Mr. Butler reported that he followed all district procedures for notifying all staff responsible for implementing the student's IEP of their responsibilities.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #259.

The findings of Issues One are incorporated herein by reference.

The district provided a copy of the student's May 13, 2021 IEP-at-a-Glance, showing that it was printed on August 12, 2022, the first day of the 2021-22 school year.

Ms. Tummons sent an email dated September 21, 2021 at 2:43 p.m. to Ms. Quinn requesting directions for how to print the student's IEP-at-a-glance because two of the student's paras had come to her to request a copy.

Ms. Quinn sent an email to Ms. Tummons on September 21, 2021 at 2:48 p.m. which stated,

Here ya go – I was actually going to email you & tell that the student and I went thru [sic] his IEP during speech. He said he “kind of” knew what it was but I wanted him to know what his goals were & what accommodations he has, etc. I told him you were working on compiling a list of late/missing assignments, but emphasized that he has extended time. I encouraged him to self-advocate & talk w/ each of his teachers if he was needing extended time to determine how long he has. He said he wouldn’t feel comfortable doing that necessarily so I told him we’d start w/ seeing what work he was behind on. I’m not surprised to hear the paras have no idea about the IEP-at-a-Glance. Even though that was on the checklist for IEP managers to complete at the beginning of the year . . . who knows if it got done?

When asked about providing the student’s teachers, related service providers, and other staff working with the student with information about their responsibilities for implementing the IEP, Ms. Quinn further stated,

Per the Beginning of the Year Checklist for Secondary, it is the responsibility of the IEP manager to provide staff members (general education teachers, specials teachers, para educators, administrators) a copy of the IEP-at-a-glance. An IEP-at-a-glance was generated in Synergy on 8/12/21. Since the student is on my speech/language caseload, I emailed all teachers who were on his schedule at the beginning of the school year to notify them of how I support the student. I received an email from Belinda Tummons on Tuesday, September 21, 2021 at 2:43 p.m. inquiring how to print the IEP-at-a-glance as two of the student’s paras were in need, but usually the IEP managers send it out.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.323(d) require school districts ensure the each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for the implementation of the IEP is informed of his or her specific responsibilities related to implementing the student’s IEP and the specific

accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

In this case, the evidence supports a finding that USD #259, in violation of 34 C.F.R. 300.323(d)), did not provide at least two of the para educators working with the student with a copy of the student's IEP and did not inform them of their responsibilities for implementing the student's IEP until September 21, 2021

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to provide a copy of the Individualized Education Plan (IEP) to all school staff responsible for its implementation during the 2021-22 school year.

ISSUE THREE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's Individualized Education Plan (IEP), specifically by not providing the required periodic reports of student progress towards IEP goals, during the 2021-22 school year.

Positions of the Parties

The parent reported they have not received the quarterly IEP Goal Progress Reports during the 2021-22 school year in a timely manner. They indicated that they made USD #259 staff aware of this oversight and requested copies of these reports at the February 16, 2022 IEP team meeting. School staff informed the parents that these reports were available in ParentVUE; however, the parents reported they were having difficulty accessing the district's student information system and were unable to view these documents. The parents acknowledged that Ms. Quinn printed the IEP Goal Progress Reports for Quarter 1 and Quarter 2 and provided them with copies at the February 16, 2022 meeting.

USD #259 reported that the IEP Goal Progress Reports are available on ParentVUE in Synergy, the electronic system for parents to access and view school documents. USD #259 noted that procedures are in place to ensure that all parents are aware of and have access to ParentVUE. School staff stated that all parents receive a copy of the

ParentVUE guidance document as part of annual enrollment process which reminds parents of the school documents available to be viewed. In addition, a Facebook post is made at the beginning of each school year to remind parents to login to ParentVUE,

Ms. Godsey acknowledged that the October 2021 Student Support Services Newsletter incorrectly told staff that IEP Goal Progress Reports did not need to be printed and sent home to parents since parents could access them via ParentVUE. Ms. Godsey noted,

This inaccurate directive is in the process of being remedied . . . a correction for the April newsletter informs staff that parents are to receive a copy of the special education progress report each quarterly reporting period per their preferred method of contact. The Student Support Services newsletter is sent to all district employees.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #259.

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

The May 13, 2021 IEP requires that “a report of progress toward meeting annual goals will be provided to the parents in the manner and frequency as general education report cards.”

Both the school staff and parents agreed that grade cards and the IEP Goal Progress Reports were to be provided on a quarterly basis.

USD #259 acknowledged that copies of the student’s IEP Goal Progress Reports were only made available to the parent during the first and second quarters of the 2021-22 school year through ParentVUE. Both the parents and the district acknowledge a printed copy of these IEP Goal Progress Reports was provided at the February 16, 2022 IEP team meeting.

Mr. Butler stated,

For the March 11 progress report, an electronic copy of the 3rd quarter progress report was sent to the student’s three parents on record to their

emails on March 11. I did not notify the student's parents that it was available in ParentVUE or Synergy in the past.

The district was unable to provide documentation that the parents of the student had consented to receive electronic copies of special education documentation as their preferred method of contact during the 2021-22 school year.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.320(a)(3) require school districts to develop an IEP for each student with a disability that includes a statement of how the student's progress towards meeting the annual goals will be measured as well as a statement of when those periodic reports must be provided to the parent.

Federal regulations at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, the May 13, 2021 IEP in effect during the 2021-22 school year requires that the IEP Goal Progress Reports will be provided to the parents on a quarterly basis via the parent's preferred method of receiving notifications. Interviews and documentation found that, while the parents did have access to the IEP Goal Progress Reports through the ParentVUE system, the parents did not consent to receive notifications via an electronic method during the 2021-22 school year.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to develop an IEP with a statement of when the periodic reports of student progress will be provided to the parent. Instead, a violation of special education statutes and regulations is substantiated for failing to implement the student's IEP by actually providing the parents of the student with the required periodic reports of student progress towards IEP goals during the 2021-22 school year.

ISSUE FOUR: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an Individualized Education Plan (IEP), specifically measurable goals to meet the student's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.

Positions of the Parties

The parents reported being confused about how the student's progress towards meeting his annual IEP goals was being measured and why the IEP did not include any goals to address the significant regression in social and emotional behavior during the 2021-22 school year. At the February 16, 2022 IEP team meeting, the parents questioned school staff about the measurement of the goals and were told the IEP Manager, in consultation with the student's general education teachers, determined the student's progress towards meeting his annual goals each quarter. However, the school staff were unable to provide any data sheets to support how each annual goal was rated at the meeting.

USD #259 stated that, according to the KSDE Special Education Process Handbook, there are four critical components of a well-written IEP goal: 1) Timeframe – when the goal will be accomplished; 2) Conditions – how the goal will be measured; 3) Behavior – the skill being targeted in the goal; and 4) Criterion – how much, how often, or to what standard the behavior must occur in order to demonstrate the goal has been reached.

Ms. Godsey stated,

It is the position of USD #259 that the student's current IEP contains five goals that meet the components of a well-written goal. The goals are indeed measureable and were written from need identified throughout the IEP with parent input. Further, parents signed consent for implementation of the IEP on May 13, 2021, and again on March 23, 2022, for the amendment to the IEP.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #259.

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

The May 13, 2021 IEP describes how his disability impacts him in the general education setting as follows:

The student is in special education due to his exceptionality of Autism. This affects his skills in the areas of socialization, communication, and processing information at the same rate as peers. The student diagnoses of ADHD-combined type [Attention Deficit Hyperactivity Disorder], OCD [Oppositional Defiant Disorder], and Autism which affect him in the academic setting. The student has delays in his emotional response, adaptation to change, and fear or nervousness. Due to the student's OCD, he experiences intrusive thoughts which may affect his behavior and emotional state.

The May 13, 2021 IEP includes one speech goal, one social goal, one study skills goal, and two behavioral goals. The speech goal is to be measured by "data/observation". The social goal is to be measured by "observation charts". The study skills goal is to be measured by "teacher/para observation". The first behavior goal is to be measured by "observations and performance assessment" and the second behavior goal is to be measured by "anecdotal records."

USD #259 provided copies of the IEP Goal Progress Reports for the first, second, and third quarters of the 2021-22 school year showing the student is making progress toward his five annual IEP goals.

During the February 16, 2022 meeting with the IEP team, the parents specifically asked to see how the social goal was being measured. The goal states,

By the next annual IEP, given a situation where the student has an opportunity to initiate with peers in a small group setting (lunch/recess, small group work time), the student will initiate with peers by gaining their attention by using appropriate personal space, and asking a question or making a comment about a relevant topic 4/5 opportunities, as measured by observation charts.

Staff responded by stating, "So if you are asking if there is any observational chart, it has not been charted. It has not been measured." The mother responded, "Ok, so no one is actually making observations?" Staff then stated, "There are several people making observations in the hallway and things like that . . ." and the parent clarified, "So when is it being charted and how is it being measured from last year to this year?" Staff then shared information about the IEP goal progress reports and how to access that document in ParentVue.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.320(a)(2) require school districts to develop an IEP for each student with a disability that includes a statement of measureable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and to meet each of the student's other educational needs that result from the student's disability.

Federal regulations at 34 C.F.R. 300.300.320(a)(3) require school districts to develop an IEP for each student with a disability that includes a statement of how the student's progress towards meeting the annual goals will be measured as well as a statement of when those periodic reports must be provided to the parent.

Federal regulations at 34 C.F.R. 300.300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, the May 13, 2021 IEP appears to include goals consistent with the concerns noted in the student's present level of academic achievement and functional performance related to the student's deficits in pragmatic language, social skills, study skills, and behavioral skills resulting from his disability. The five IEP goals are measureable; however, USD #259 acknowledged that no observation chart data was

kept on the social skills goal with which to determine if the student was actually making progress towards achieving that goal.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to develop measureable annual IEP goals based on the student's needs; however, a violation is substantiated for failing to implement the IEP by measuring the student's progress toward his annual IEP goals as required by the IEP.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following areas:

- A. Federal regulations at 34 C.F.R. 300.300.323(c)(2) which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, interviews and documentation showed USD #259 failed to consistently provide the accommodations of maintaining an assignment notebook/agenda and using a break pass during the 2021-22 school year. The district also failed to consistently provide the required 15 minutes per week of counseling to the student. USD #259 acknowledged the parents were not provided with the IEP Goal Progress Reports on a quarterly basis in their preferred communication method during the 2021-22 school year. In addition, interviews and documentation found USD #259 did not collect measureable data as required by the student's IEP goal for social skills in order to determine his periodic progress towards his annual IEP goals.

B. Federal regulations at 34 C.F.R. 300.323(d) require school districts ensure the each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for the implementation of the IEP is informed of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

In this case, the evidence supports a finding that USD #259, in violation of 34 C.F.R. 300.323(d)), did not provide at least two of the para educators working with the student with a copy of the student's IEP and did not inform them of their responsibilities for implementing the student's IEP until September 21, 2021

Based on the foregoing, USD #259 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #259 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:
 - a. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300. 300.323(c)(2) which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP and comply with state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) which require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.
 - b. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA)at 34 C.F.R. 300.323(d) require school districts ensure the each regular education teacher, special education teacher, related services provider, and any other service provider who is

responsible for the implementation of the IEP is informed of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

2. It is noted that USD #259 is in the process of updating its procedures through the revising the technical assistance guidance documents related to IEP goal progress reports as well as the responsibility of each IEP manager to ensure each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for the implementation of the IEP is informed of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. No later than July 1, 2022, USD #259 will provide SETS with a copy of these updated documents.
3. No later than May 15, 2022, USD #259 will arrange for TASN to conduct a training for all licensed and certificated special education staff, including IEP managers, school psychologists, and building administrators working at Stucky Middle School in USD #259 regarding the IDEA requirements related to implementing the IEP as written and how to collect data on the annual IEP goals. No later than August 30, 2022, USD #259 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 #259 will provide SETS with any handouts and/or a copy of the presentation.
4. No later than ten days from the date the parents make a new request to transfer the student to another middle school within the boundaries of USD #259, USD #259 shall meet with the parents and present at least two options for a transfer to a middle school where the special education staff have appropriate certification and additional training in working with students with Autism. In presenting these two options, USD #259 shall take into consideration the distance of the options from the student's home, with a preference toward minimizing the distance. In addition, USD #259 shall offer to transport the student to the selected option and to the student's home each school day. The

parent may then choose to transfer the student to the school building of their choice or keep the student enrolled at Stucky Middle School. USD #259 shall provide SETS with meeting notes documenting the discussion and parents' decision no later than 10 days from the date of the parent meeting.

5. Further, USD #259 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)