

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON JULY 19, 2022

DATE OF REPORT AUGUST 26, 2022

This report is in response to a complaint filed with our office on behalf of ----- by her mother, ----- . In the remainder of the report, ----- will be referred to as "the student" and ----- will be referred to as "the mother" or "the parent".

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 and USD #259 received the complaint on July 19, 2022. The 30-day timeline to investigate this complaint was extended for seven days until August 26, 2022 in order to facilitate the use of an interpreter because the parent's native language is Spanish.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, used a KSDE contracted interpreter to interview the parent by telephone on July 27, 2022. The parent was contacted on August 1, August 10, August 17, and August 18, 2022 via translated email offering the opportunity to schedule an additional interview and to provide additional documentation. However, the parent reported she was unavailable for another interview within the investigation timeline and did not provide any additional documentation.

Amy Godsey, Mediation/Due Process Supervisor for USD #259, was interviewed by telephone on August 15, 2022.

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

- Notification of IEP Meeting dated January 15, 2021
- Individualized Education Program (IEP) dated January 25, 2021
- 2021-22 School Year Calendar for USD #259
- IEP Amendment dated August 30, 2021 to the January 25, 2021 IEP
- Assistive Technology Consultation Request Form dated September 1, 2021
- Notification of IEP Meeting dated December 16, 2021
- Notification of IEP Meeting dated December 16, 2021 translated into Spanish
- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent dated January 7, 2022
- IEP dated January 11, 2022
- PWN for Material Change in Services dated January 11, 2022
- PWN for Material Change in Services dated January 11, 2022 translated into Spanish and provided to and signed by the parent on that same date
- IEP dated January 11, 2022 translated into Spanish and provided to parent on May 13, 2022
- Calendar Invitation for Sarahadid Matos, Interpreter, to the May 18, 2022 IEP meeting
- PWN refusing parent request for 1:1 personal paraprofessional on May 18, 2022
- PWN refusing parent request for 1:1 personal paraprofessional on May 18, 2022 translated into Spanish and mailed to the parent on May 25, 2022
- School Records Request from USD #265 dated May 25, 2022
- Parent Contact Log for May 2022
- School Nurse Contact Summary Log for the 2021-22 School Year
- IEP Goal Progress Reports for the 2021-22 School Year
- Formal Complaint written by the parent on July 19, 2022
- Email dated August 1, 2022 written by Amy Godsey, Mediation/Due Process Supervisor for USD #259, to the parent
- Email dated August 1, 2022 written by Ms. Godsey to the parent translated into Spanish

- PWN dated January 7, 2022 translated into Spanish and provided to the parent on August 1, 2022
- Written Statement written by Jamie Mude, Speech/Language Pathologist at USD #259, dated August 2, 2022
- Written Response to Allegations written by Trisha Stevenson, IEP Case Manager for the student, dated August 4, 2022
- USD #259 Proposed Resolution of 23FC259-001 written by Ms. Godsey, dated August 5, 2022
- Email dated August 8, 2022 at 10:54 a.m. written by the mother to the complaint investigator
- USD #259 Response to the Allegations written by Ms. Godsey, dated August 9, 2022
- PowerPoint slide titled Procedural Safeguards – Due Process Updates presented at the August 9, 2022 Beginning of Year Professional Development for all USD #259 Special Education Staff Meeting
- Email dated August 10, 2022 at 7:30 a.m. written by the complaint investigator to the mother
- Email dated August 15, 2022 at 3:34 p.m. written by Ms. Godsey to the complaint investigator
- Email dated August 16, 2022 at 10:59 a.m. written by the mother to the complaint investigator
- Email dated August 17, 2022 at 7:50 a.m. written by the complaint investigator to the mother
- Email dated August 17, 2022 at 7:55 written by the mother to the complaint investigator
- Email dated August 17, 2022 at 8:46 a.m. written by the complaint investigator to the mother
- Email dated August 17, 2022 at 9:16 a.m. written by the mother to the complaint investigator
- Email dated August 17, 2022 at 1:10 p.m. written by the complaint investigator to the parent
- Email dated August 18, 2022 at 6:56 a.m. written by the mother to the complaint investigator

- Email dated August 18, 2022 at 8:39 a.m. written by the complaint investigator to the mother
- Email dated August 19, 2022 at 8:38 a.m. written by the mother to the complaint investigator
- Email dated August 18, 2022 at 12:36 p.m. written by the complaint investigator to the mother
- Email dated August 22, 2022 at 9:11 a.m. written by Ms. Godsey to the complaint investigator
- Kansas Department of Education Teaching License for Haley Holland with expiration date of April 26, 2025 as an Early Childhood Unified Teacher
- Kansas Department of Education Teaching License for Trisha Stevenson with expiration date of September 18, 2023 as Early Childhood Unified Teacher
- Kansas Department of Education Teaching License for Beth Bach with expiration date of June 30, 2023 as an Emergency Substitute Teacher
- Kansas Department of Education Teaching License for Kimberly Knafla with an expiration date of March 18, 2026 as a Functional Skills Teacher
- Kansas Department of Education Parent Rights in Special Education (Procedural Safeguards) dated February 2020 translated into Spanish

Background Information

This investigation involves a seven-year-old female student with a medical diagnosis of Down Syndrome who was enrolled in USD #259 for the past two school years. She lives at home with her parents whose native language is Spanish. The student was most recently evaluated on January 24, 2021 and determined to be eligible for special education and related services under the disability category of Developmental Delay. During the 2021-22 school year, she attended first grade at McCollom Elementary School where she received special education and related services in a functional skills mixed abilities special education classroom with four additional students, one special education teacher, and four paraprofessionals.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of

noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parent raised five 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 IEP, specifically by not keeping the student inside from recess on days the wind chill temperature was below 50 degrees during the 2021-22 school year.

Positions of the Parties

The parent believes USD #259 has not implemented the student's IEP in regards to the accommodation for the student to remain inside for recess when the wind chill is below 50 degrees Fahrenheit. The parent stated,

Due to her medical condition, she is to remain inside when the wind chill temperature is below 50 degrees Fahrenheit. This is a requirement on her IEP that has not been followed. I had to be constantly vigilant of the weather and make teachers and school aware and remind them of the IEP weather restriction. I needed to send messages and emails to school staff on a daily basis to remind them of the IEP restriction. When I did not send messages, the school would take the student out to the playground despite the weather as evidenced by the playground rocks in her shoes and the student's difficulty breathing at night.

USD #259 acknowledged that the parent often communicated with school staff regarding the weather and the physician recommendation that the student remain inside for recess when the wind chill fell below 50 degrees Fahrenheit. However, the district reported that the student's IEP was implemented regardless of the parent communication concerning the weather restriction as evidenced by recess procedures for the student's supervision on days the wind chill fell below 50 degrees Fahrenheit.

Findings of the Investigation

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

The student had two IEPs in effect during the 2021-22 school year. The first IEP was developed on January 25, 2021 with both the parent and a Spanish-language interpreter in attendance. This IEP includes two accommodations related to the weather. First, the student shall remain inside for recess when the temperature is colder than 40 degrees outside because the student gets ill easily and she has a doctor's note that states in order to keep her healthy, she needs to stay inside when the temperature is below 40 degrees Fahrenheit. The second accommodation requires the student to wear a hat outside at recess when the wind chill temperature falls below 50 degrees Fahrenheit. These IEP accommodations were in effect between August 12, 2021 and January 11, 2022.

The second IEP was developed on January 11, 2022 with both the parent and a Spanish-language interpreter in attendance. This IEP includes one accommodation related to the weather which states that the student shall remain inside for recess when the wind chill temperature falls below 50 degrees Fahrenheit because the student gets ill easily and she has a doctor's note that states in order to keep her healthy, she needs to stay inside when the wind chill temperature is below 50 degrees Fahrenheit. This IEP accommodation was in effect for the remainder of the 2021-22 school year which ended on May 25, 2022.

Trisha Stevenson, the student's special education classroom teacher for the 2021-22 school year reported that the following procedure was in place in regards to outside recess and provided photographs of picture communication boards:

- 1) The teacher and/or paras checked weather app prior to recess to ensure the wind chill was at or above the target temperature prior to each recess.
- 2) If the wind chill temperature was below the target temperature, the student was notified she could not go outside and was shown a visual (picture card of recess with a no overlay).

- 3) The student was frequently given a choice of which teacher/para stayed with her for support when she stayed inside from recess.
- 4) The student did one of the following activities when she stayed inside from recess: a) the sensory room, b) wagon ride around the school to greet people in the hallway with her assistive technology device, c) played in a buddy room (Mrs. Kimberly Knafla) and worked on greetings and asking peers to play.

Ms. Stevenson reported the following procedure was in place when the district could not provide 1:1 support for indoor recess times due to a staff shortage:

- 1) The teacher or paras would check with the buddy room, another functional skills classroom at McCollum Elementary School taught by Kimberly Knafla, and ask if they could supervise the student during indoor play.
- 2) Ms. Knafla and her paras would supervise the student for the duration of recess and we would stop by her classroom after recess was over to have the student rejoin our class.

Mrs. Stevenson reported the following plans were in place to support the student's social and emotional well-being for these procedures:

- 1) Provided a warning and visual supports to notify the student of Indoor or outdoor recess.
- 2) Offered choices whenever possible.
- 3) Took the student to another classroom to engage with peers during recess.
- 4) Targeted gaining attention and asking peers to play.
- 5) Encouraged movement during indoor play times.

USD #259 acknowledged that the parent often communicated about the weather conditions with school staff; however, the recess procedures were in place to ensure compliance with the IEP. In addition, Ms. Stevenson reported that staff ensured the student wore a winter hat to and from the bus.

Applicable Regulations and Conclusions

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 parent did not provide any specific dates that the student went to outside recess when the wind chill factor was below 50 degrees Fahrenheit which would have triggered a weather related accommodation in one of the two IEPs in effect during the 2021-22 school year. Interviews and documentation provided by the district document that detailed procedures had been created by Ms. Stevenson to monitor the temperature at the time of any outdoor recess and to implement a plan for providing any triggered weather related accommodation.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to comply with federal regulations at 34 C.F.R. 300.300.323(c)(2) and state regulations 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 as soon as possible following the development of the IEP 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 implement the student's IEP, specifically by the school nurse failing to contact the parent when incidents or accidents would happen to the student during the 2021-22 school year.

Positions of the Parties

The parent reported that the school nurse at McCollom Elementary School USD #259 failed to notify her when accidents happened at school as required by the student's IEP. The mother stated, "The student had many incidents and accidents throughout the 2021-22 school year." She reported a history of the student coming home with bruises on her back and right wrist as well as blows to the head and forehead. The mother also stated, "They always said she hadn't cried at all and I noticed red eyes". The mother also reported that the student came home with her pants ripped in the crotch area and that she was very concerned when the student subsequently began to touch her private areas at home.

The mother stated that the only call she received during the 2021-22 school year occurred on May 2, 2022 when she received a phone call from the school nurse laughing and informing her that the student had fallen and hit her head.

USD #259 denied the parent's allegation that the school nurse did not contact the parent during the 2021-22 school year and provided a School Nurse Contact Summary Log dated between August 16, 2021 and May 26, 2022. The log verifies a phone call to the parent on May 2, 2022 when the student was in the physical education class and a peer accidentally ran into her causing her to fall and hit the back of her head twice on the floor. In addition, the log summarizes phone calls and personal interactions made between the school nurse and the parent on August 16, August 30, September 14, September 21, October 1, October 22, and December 7, 2021 as well as on January 8 and April 19, 2022.

Findings of the Investigation

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

The findings of Issue One are incorporated herein by reference.

Neither the January 25, 2021 IEP nor the January 11, 2021 IEP includes any requirement for the school nurse to contact the parent.

Applicable Regulations and Conclusions

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, there is nothing in the January 25, 2021 IEP or the January 11, 2022 IEP that requires the school nurse to be in contact with the parent. Since communication with the nurse is not a service specified in this student's IEP, any communication between the parent and the school nurse would fall under local school board policy, procedures and practices. As such, I have no jurisdiction to investigate or make findings on matters that are not related to allegations of noncompliance with the IDEA.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to comply with federal regulations at 34 C.F.R. 300.300.323(c)(2) and state regulations 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 as soon as possible following the development of the IEP 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 appropriately respond to the parent's request for paraprofessional support and the use of an augmentative communication device during the past 12 months.

Positions of the Parties

The parent reported USD #259 refused to teach the student how to use an electronic augmentative communication device which was purchased for the student by Rainbows United, Inc. The mother believes the district “is not equipping her with the tools to succeed in school or in the community”.

In addition, the parent reported that USD #259 refused to provide a 1:1 personal paraprofessional despite the parent’s request based on the student’s need for a higher level of supervision in the school setting to keep her safe and included in the least restrictive environment (LRE).

USD #259 reported that school staff referred the student for an assistive technology consultation at the beginning of the 2021-22 school year after the student’s mother shared concerns with the delay in obtaining an electronic augmentative communication device from Rainbows United, Inc. School staff reported that a variety of augmentative communication systems including an iPad were used throughout the school day by the student in order to achieve her IEP goals for increasing her expressive communication skills.

USD #259 also indicated the district responded appropriately to the parent’s request for 1:1 personal paraprofessional support at the end of the 2021 -22 school year by reconvening the student’s IEP team to discuss and consider the parent’s request and providing the parent with prior written notice (PWN) following that IEP team meeting.

Findings of the Investigation

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

The student and her family work with Rainbows United Inc. for case management and obtaining resources and services. Rainbows United Inc. is a local agency that provides center based, community based, and home based service options for young children with special needs. Service components added in the past decade include hearing and vision specialty services, respite care for individuals across the life span, case management services, autism waiver services, supported family living, foster care for children with special needs, outpatient therapies, and therapeutic child care. The

mother reported that Rainbows United Inc. obtained an electronic communication device, an iPad, for the student during the first semester of the 2021-22 school year.

Jamie Mude, the speech/language pathologist at USD #259, reported that in August 2021 the student's mother shared that Rainbows United, Inc. was in the process of obtaining an iPad for the student but the process was at a standstill due to the case manager's maternity leave. Ms. Mude offered to assist the parent in obtaining funding for a dedicated communication device through the student's Medicaid plan and the mother agreed.

On September 1, 2021, an Assistive Technology Consult Request Form was completed on behalf of the student by Ms. Mude. The form indicated that the student currently uses simple signs, a Picture Exchange Communication System (PECS) book and a core-fringe communication book to communicate her thoughts and ideas.

Ms. Mude reported that an iPad was purchased for the student through Medicaid; however, the parent chose to not send that iPad to school with the student; therefore, another iPad device was obtained and used in the classroom setting to be consistent with the device used in the home.

Both the January 25, 2021 IEP and the January 11, 2022 IEP document that the student requires assistive technology. The January 11, 2022 IEP states:

The student has very limited verbal communication. The student has an iPad with a communication app on it that was obtained through Rainbows. At this point the device remains at home. She has a paper point and carry communication book at school with the same vocabulary on it as her communication app. Both communication systems are used to model aided language input by adults in her environment. Her communication book should be available to her throughout her school day.

The IEP goal progress reports for third and fourth quarters of the 2021 -22 school year reflect that the student making progress toward her communication goal to use five new core words in order to communicate, using her picture based communication system and/or words, when given a leading question and visual supports by an adult. The student is now able to use the core words "help", "stop", and "go".

Both Ms. Mude and Ms. Stevenson reported the student regularly used the iPad and her communication book in embedded communication opportunities throughout the school day to support the student using augmentative communication in the school setting during the 2021-22 school year.

Ms. Stevenson stated:

On 4/28, the mother emailed me with some questions and also requested that a higher level of supervision be written into the IEP. I sent her a follow up email and asked for clarification. On 4/29, the mother emailed to clarify that she wants "a higher level of supervision, that at all times and in all places the student is accompanied and supervised by a teacher". I sent a follow up email on 5/2 to answer the questions posed and also let the mother know that "the student has a staff member from my classroom with her at all times during the school day. She is fully supervised. There are no times when the student is left unsupervised." On 5/2, I contacted my Principal and Special Education Campus support to help set up a meeting with the mother to discuss her concerns.

The Parent Contact Log for May 2022 documents that attempts were made to contact the parent on May 4, May 6, May 9 and May 10, 2022 and voicemail messages were left each time to try and set up an IEP team meeting date. The log states that the parent was contacted by telephone on May 11, 2022 and that the IEP meeting was scheduled for May 18, 2022. The log documents that the parent sent an email on May 17, 2022 confirming the IEP meeting and informing the district of her intent to invite the case manager and coordinator from Rainbows United, Inc. to the meeting on May 18, 2022.

Interviews and documentation confirm that an IEP team meeting was held on May 18, 2022 with the parent and a Spanish-language interpreter in attendance. The May 2022 contact log shows the parent contacted the district on May 19, 2022 to inform school staff of their decision not to have the student return to USD #259.

On May 25, 2022, USD #259 provided the parent with a PWN translated into Spanish refusing the parent's request for a 1:1 personal paraprofessional stating:

On May 18, 2022, parents requested that the student receive the special education related service of 1:1 attendant care support for the duration of each school day due to the concern parents had of the student not being

monitored closely enough during the school day. The school-based members of the IEP team refuse this request as the student is in a Mixed Abilities classroom where the students in the classroom are supported by 5 adults both in and out of the classroom and the behavior intervention plan, as part of student's IEP, is being followed with fidelity. The addition of the related service of 1:1 attendant care for additional support for the student is not warranted and would result in an unnecessary change to the level of restrictiveness in how the student is provided special education services.

USD #265 sent the district a request for the release of school records signed by the parent on May 25, 2022.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.324(b) require school districts to respond to a parent's request to review and revise a student's IEP as appropriate. The IDEA does not specify a timeline for the district to respond to a parent's request but the KSDE has recognized 15 school days as a reasonable amount of time.

In this case, there is no documentation to support that the parent made a request for an IEP team meeting to discuss the use of assistive technology during the 2021-22 school year. Both IEPs in effect during the school year already included a statement that the student requires assistive technology as well as communication goals which required the use of augmentative communication systems in order to achieve those goals.

Instead, the documentation shows USD #259 staff assisted the parent in obtaining an iPad through the student's Medicaid. Documentation and interviews found the student was exposed to a variety of picture-based communication systems and had opportunities to use the assistive technology on a regular basis throughout the school day.

However, there is evidence to support that the parent requested an IEP team meeting on May 2, 2022 to discuss their request to add the support of a 1:1 personal

paraprofessional to the student's IEP. Documentation shows USD #259 contacted the parent on May 4, May 6, May 9 and May 10, 2022 and left voicemail messages in an attempt to schedule an IEP team meeting. The parent was contacted by phone on May 11, 2022 and an IEP team meeting was scheduled for May 18, 2022. The first contact with the parent to attempt to schedule the meetings was just two school days from the date of her initial request to reconvene the IEP team and the IEP team meeting was held a total of 14 school days from the parent's request thus documenting that USD #259 was responding to the parent request in a reasonable amount of time.

The evidence presented supports the finding that USD #259 has appropriately responded to the May 2, 2022 parent request for an IEP team meeting to discuss adding a 1:1 personal paraprofessional. Based on the foregoing, a violation of special education statutes and regulations is not substantiated.

Federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability. Federal regulation implementing the IDEA at 34 C.F.R. 300.503(c)(1)(ii) require that school districts provide parents with this prior written notice in the native language of the parent.

In this case, the parent requested an IEP team meeting to discuss their request for a 1:1 personal paraprofessional on May 2, 2022 and USD #259 reconvened the IEP team on May 18, 2022 to discuss the parent request. The district provided the parent with a PWN translated into Spanish refusing the parent request on May 25, 2022. Based on the foregoing, there is evidence to support a finding that USD #259 provided PWN in a timely manner and in the parent's native language.

ISSUE FOUR: The USD #259 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide an appropriately credentialed and trained special education teacher for the student during the 2021-22 school year.

Positions of the Parties

The parent reported that the student was not taught by appropriately certificated teachers during the 2021- 22 school year. The parent stated, “Ms. Stevenson is not capable or trained to work with kids and help kids with special needs”.

USD #259 reported that all staff working with the student during the 2021-22 school year were appropriately certificated by the Kansas Department of Education (KSDE).

Findings of the Investigation

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

The student was assigned to the functional skills mixed abilities classroom taught by Trisha Stevenson during the 2021-22 school year.

Ms. Stevenson graduated from Wichita State University with a bachelor’s degree in psychology and a master’s degree in Early Childhood Unified. She holds a teaching license issued by the KSDE with an endorsement for Early Childhood Unified (ECU) for students ages birth to grade 3 which is valid until September 18, 2023.

Ms. Stevenson went on maternity leave from August 23, 2021 to November 4, 2021. USD #259 reported that neither a teacher with a KSDE teaching license for a functional skills classroom nor a KSDE substitute teaching license was available for hire during that timeframe so the district hired Beth Bach as the long-term substitute teacher in the student’s classroom. Ms. Bach holds a teaching license issued by the KSDE with an endorsement for Emergency Substitute for students in grade pre-kindergarten through grade 12 which is valid until June 30, 2023.

USD #259 assigned Haley Holland, another functional skills classroom teacher at McCollom Elementary School who holds a teaching license issued by the KSDE with an ECU endorsement for students ages birth to grade 3 which is valid through April 26, 2025, to supervise and assist Ms. Bach during the period of the maternity leave.

USD #259 also reported that an IEP amendment was made to the January 25, 2021 IEP on August 30, 2022 at the parent’s request and agreed upon by Kimberly Knafla, the

special education teacher who facilitates the bus transportation for students in the functional skills mixed abilities program. Ms. Knafla holds a teaching license with a functional skills endorsement for students in pre-kindergarten through grade 12 which is valid through March 18, 2026.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.156 require each state education agency (SEA) to establish and maintain qualifications to ensure that personnel necessary to provide special education and related services in accordance with the IEP are appropriately and adequately prepared and trained.

State regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-31-34(b)(1) require school districts to employ persons who hold licenses or certificates with specific endorsements for the position held.

The KSDE details personnel qualifications in the 2021-22 Special Education Reimbursement Guide State for Categorical Aid. Per the *KSDE Special Teacher Endorsements for Reimbursement* chart in Appendix B, an endorsement of Early Childhood Unified (ECU) is an approved licensure for a teacher of a functional skills or low incidence classroom.

State regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-31-34(b)(4) allows school districts to employ a person who holds a baccalaureate degree and an emergency substitute certificate issued by the KSDE if an appropriately endorsed teacher or a certificated substitute teacher is not available.

Federal regulations, at 34 C.F.R. 300.324(a)(4) and 300.324(a)(6), allow for changes to be made to the current IEP by amending the IEP rather than by redrafting the entire document either with or without an IEP Team Meeting. The changes may be made by the entire IEP Team at an IEP Team Meeting. Or the changes may be made without a meeting if the parent of a child with a disability and the school district representative both agree not to convene an IEP Team Meeting for the purposes of making the agreed upon changes and instead develop a written document to amend or modify the child's current IEP.

In this case, the student was assigned to a functional skills classroom taught by Trisha Stevenson for the 2021-22 school year. Ms. Stevenson holds a teaching license issued by the KSDE with an Early Childhood Unified (ECU) endorsement valid through September 18, 2023. Ms. Stevenson went on maternity leave from August 23, 2021 to November 4, 2021. During that time frame, Beth Bach, who holds a teaching license issued by the KSDE with an Emergency Substitute endorsement valid through June 30, 2023, was hired to teach the class under the supervision of Haley Holland, another functional skills classroom teacher at McCollom Elementary School who holds a teaching license issued by the KSDE with an ECU endorsement valid through April 26, 2025. On August 30, 2021, the parent made a request for an amendment to change the seating accommodation for the transportation as a related service to Kimberly Knafla, the special education teacher who facilitates transportation for students in the functional skills mixed abilities program. Ms. Knafla, who is a KSDE licensed teacher for a functional skills classroom, acted as the district representative and agreed to the amendment.

Based on the foregoing, USD #259 hired appropriately certificated staff to provide special education and related services in accordance with the KSDE requirements during the 2021-22 school year and is found to be in compliance with federal regulations at 34 C.F.R. 300.156 and state regulations at K.A.R. 91-31-34(b).

ISSUE FIVE: The USD #259 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide special education documents in the parent's home/native language and to provide an interpreter at meetings held between school staff and the parent during the 2021-22 school year.

Positions of the Parties

The parent reported that USD #259 failed to provide them with a copy of the student's IEP translated into Spanish. The parent stated, "I requested the IEP be provided in my preferred language (Spanish) on 1/11/22. I did not receive the IEP in Spanish until 5/13/22."

The parent also stated:

The school would not provide an interpreter for communication / interactions with my husband or I [sic] on a regular basis. The school only provided an interpreter a couple of times. The school assumed we were not knowledgeable due to the language barrier. The teacher also assumed that the student did not understand English. The student understands both English and Spanish. The teacher was not culturally sensitive and did not provide the necessary resources to help the student thrive.

After conducting an internal review of the student's special education file, USD #259 reported that the parent was provided with copies of all documents required to be translated into the parent's native language with one exception. USD #259 acknowledged that a PWN proposing to change the accommodation for transportation as a related service from the use of a car seat to the use of a safety harness on the bus because of the student's height and weight on August 30, 2021 was not provided to the parent in Spanish until August 1, 2022. The district also acknowledged that this PWN was not initially provided to the parent until January 7, 2022 due to an oversight while the special education teacher was out of school due to maternity leave.

Based on this internal finding of noncompliance, USD #259 trained all special education staff in the district on August 9, 2022 through the beginning of the year professional development presentations which highlighted that all PWN must be provided within 15 school-days of any special education related request. In addition, Translation Guide was provided to assist IEP Case Managers in providing the required documents which must be translated into the parent's native language.

The district noted that the December 16, 2021 meeting notification for the annual IEP was translated into Spanish although this was not required by the IDEA.

USD #259 also reported that an interpreter was provided at both of the student's IEP team meetings held during the 2021-22 school year in order to facilitate parent participation.

Findings of the Investigation

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

The findings of Issues Three and Four are incorporated herein by reference.

During the 2021-22 school year, two IEP team meetings were held for the student. USD #259 provided a written notification of the first IEP team meeting in Spanish on December 16, 2021 and both documentation and interviews found that the parent attended the IEP team meeting held on January 11, 2022.

The Special Education Contact Log shows the parent verbally requested the second IEP team meeting on May 11, 2022 to discuss concerns with the student's supervision at school. Documentation shows that the parent confirmed via email on May 17, 2022 that the case manager and the coordinator from "Rainbows" would also be in attendance at the IEP meeting.

The first meeting was held on January 11, 2022 as the annual IEP team meeting to review the January 25, 2021 IEP and revise, if necessary. The IEP participation page documents that Sarahadid Matos served as the interpreter for the IEP team meeting. A prior written notice proposing the elimination of physical therapy (PT) services was created and translated into Spanish by Ms. Matos at the IEP team meeting and the parent signed consent for the proposed material change in services at the conclusion of that IEP team meeting.

The second IEP team meeting was held on May 18, 2022 to consider the parent's request for a 1:1 paraprofessional attendant care as a means of providing the student with a higher level of supervision at school. The IEP and an electronic calendar invitation documents that Ms. Matos again served as the interpreter at this IEP team meeting. A prior written notice refusing the parent's request translated into Spanish was mailed on May 25, 2022.

An IEP amendment was made to the January 25, 2021 IEP on August 30, 2022 at the parent's request. USD #259 reported that while Ms. Stevenson was out of the district for maternity leave, the parent spoke to Kimberly Knafla, the special education teacher

who facilitates the bus transportation for students in the functional skills mixed abilities program, and they agreed to amend the student's IEP in regards to the seating accommodations for the transportation as a related service. Documentation found that the parent was not provided with a PWN proposing the change of accommodations for transportation as a service until January 7, 2022. This same PWN was not provided to the parent in Spanish until August 1, 2022.

USD #259 provided a copy of the Procedural Safeguards written in Spanish and the IEP dated January 11, 2022 documents that the parent acknowledged receipt of this document.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.322(e) require that school districts take whatever action is necessary to ensure that the parent understands the proceedings of an IEP Team meeting, including arranging for an interpreter for parents whose native language is other than English.

Federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability. The KSDE has determined that 15 school-days from the date of any IDEA related proposal or refusal meets the definition of "timely". Federal regulations implementing the IDEA at 34 C.F.R. 300.503(c)(1)(ii) require that school districts provide parents with this prior written notice in the native language of the parent.

Federal regulations implementing the IDEA at 34 C.F.R. 300.504(a) requires school districts to provide parents with a copy of the their IDEA Procedural Safeguards at least annually and upon the initial referral or parent request for an evaluation; upon receipt of the first State child complaint; in accordance with the discipline procedures; and upon parent request. Federal regulations implementing the IDEA at 34 C.F.R. 300.504(d) require that school districts provide parents with these IDEA Procedural Safeguards in the native language of the parent.

The Office of Special Education Programs (OSEP) published a Dear Colleague Letter dated June 14, 2016 which explicitly states there is no requirement under the IDEA that IEPs must be translated. The letter indicates the only documents that are required to be translated into the parent's native language are the Procedural Safeguards and all prior written notices proposing or refusing to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability are also provided in the parent's native language. However, the Dear Colleague Letter makes it clear that school districts have independent responsibilities under other federal laws including Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974 to provide parents of children with disabilities whose native language is not English with meaningful access through timely and complete translation and oral interpretation. Please note that these "Dear Colleague" letters from OSEP are guidance letters. They reflect the opinion of OSEP. They do not have the force of law. Moreover, as stated below, an IDEA complaint investigator does not have jurisdiction to investigate or make findings or conclusions related to Title VI of the Civil Rights Act of 1964 or the Equal Educational Opportunities Act of 1974.

In this case, both documentation and interviews found USD #259 provided the parent with a Spanish translation of the IDEA Procedural Safeguards dated February 2020 at the January 11, 2022 IEP team meeting. In addition, a Spanish interpreter participated in both of the student's IEP team meetings held on January 11, 2022 and May 18, 2022. The parent was provided with a PWN translated into Spanish and the parent signed written consent for the material change of services proposed by the district at the end of the January 11, 2022 IEP team meeting and, on May 25, 2022, USD #259 provided the parent with a PWN translated into Spanish refusing the request for a 1:1 personal care attendant discussed at the May 18, 2022 IEP team meeting.

It is noted that the parent's request for the January 11, 2022 IEP to be translated into Spanish was not fulfilled until May 13, 2022, more than four months following the IEP team meeting. However, the IDEA does not require that the IEP be translated into the parent's native language. The school district may or may not have an independent responsibility to provide the IEP in the parent's native language under other federal

laws / regulations but I have no jurisdiction to investigate or make findings for those laws / regulations.

The district acknowledged that it failed to provide the parent with timely PWN for the August 30, 2021 IEP amendment to the January 25, 2021 IEP until January 7, 2022. In addition, the district acknowledged that it failed to provide the parent with the PWN translated into Spanish until August 1, 2022. Based upon the foregoing, a violation of 34 C.F.R. 300.503(a) and (c) is made for failing to provide the parent with timely PWN as well as failing to provide the PWN in the parent's native language.

However, it is noted that this procedural noncompliance did not impact the provision of FAPE to the student as the parent requested the change in the accommodation for transportation as a related service and the LEA representative, Ms. Kalfa, was in agreement with the parent's request.

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. 300.503(a) and (c) is made for failing to provide the parent with timely PWN as well as for failing to provide the PWN in the parent's native language.

In this case, the USD #259 amended the January 25, 2021 IEP through an agreement between the parent and the LEA representative, Kimberly Kalfa, on August 30, 2021. However, the parent was not provided with a PWN proposing the change to the IEP until January 7, 2022, which is more than the 15-school days the KSDE considers to be "timely". In addition, the parent was not provided with PWN proposing this change in the parent's native language until August 1, 2022.

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 at 34 C.F.R. 300.503(a) and (c) to provide parents with timely PWN in the parent's native language.
2. It is noted that USD #259 has already provided professional development to all special education regarding the identified noncompliance. For this reason no further systemic corrective action is ordered.
3. The identified procedural noncompliance did not impact the provision of FAPE to the student as the parent requested the change in the accommodation for transportation as a related service and the LEA representative, Ms. Kalfa, was in agreement with the parent's request. It is also noted that the student is no longer enrolled in USD #259. For these reasons, no individual corrective action is ordered.
4. 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)