

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #246
ON OCTOBER 12, 2022

DATE OF REPORT NOVEMBER 11, 2022

This report is in response to a complaint filed with our office on behalf of Student by his mother, Parent. In the remainder of the report, cc will be referred to as “the student” and Parent will be referred to as “the mother” or “the parent”.

The complaint is against USD #246 (Northeast Public Schools) who contracts with Southeast Kansas Interlocal #637 to provide special education and related services to students enrolled in USD #246. In the remainder of the report, “USD #246,” the “school,” the “district” or the “local education agency (LEA)” shall refer to both of these responsible agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE and USD #246 received the complaint on October 12, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on October 18, 2022. A second interview was conducted with the parent on November 7, 2022.

USD #246 made the following school staff available for phone interviews as noted below:

- Chris Hattabaugh, Principal at Northeast Junior High School (NEJHS) in USD #246 on October 28 and November 7, 2022
- Renee Scales, Special Education Teacher at NEJHS, on October 28, 2022

- Ray Streeter, Superintendent of USD #246, on October 31, 2022
- Stacey Thompson, Paraeducator at NEJHS, on November 2, 2022
- Erik Stone, Paraeducator at NEJHS, on November 2, 2022
- Starla Parsons, General Education Teacher at NEJHS, on November 4, 2022
- Wendy O’Rand, General Education Teacher at NEJHS, on November 4, 2022
- Amanda Hribar, General Education Teacher at NEJHS, on November 4, 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:

- Individualized Education Program (IEP) dated April 11, 2022
- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent for a substantial change of placement dated April 11, 2022
- Emails dated August 17, 2022 at 12:20 p.m., 12:24 p.m., and 12:32 p.m. between the special education teacher, Ms. Scales, and the parent
- Emails dated August 23, 2022 at 7:19 a.m., 9:02 a.m., 9:04 a.m., and 9:15 a.m. between the NEJHS principal, Mr. Hattabaugh, and the parent
- Parent Meeting Notes dated August 29, September 30, and October 20, 2022 written by Mr. Hattabaugh
- Parent Meeting Notes dated September 30, October 4, and October 20, 2022 written the USD #246 superintendent, Mr. Streeter
- IEP dated October 19, 2022
- Copies of IEP team meeting notes from the October 19 and October 21, 2022 IEP team meeting
- PWN for a material change of services and a substantial change of placement dated October 19, 2022 and signed by the parent on October 21, 2022
- 2021-22 School Year Calendar for USD #246
- Copy of the student’s class schedule between August 18 and August 25, 2022
- Copy of the student’s class schedule between August 25 and August 29, 2022
- Copy of the student’s class schedule between August 29 and September 12, 2022
- Copy of the student’s class schedule between September 13 and October 2, 2022

- Copy of the student's class schedule between October 3 and October 24, 2022
- Copy of the student's class scheduled from October 24, 2022 to present time
- Chart showing the student's schedule changes and rationale for each change
- Paraeducators' class assignments for the 2022-23 school year
- Billing records and case notes for the Social Worker between September 1 and October 31, 2022
- Student's attendance records for the 2022-23 school year
- Student's discipline records dated between December 22, 2021 and October 24, 2022
- Text message, phone and correspondence log between Mr. Streeter and the parent dated September 28 through October 20, 2022
- Emails between Mr. Hattabaugh, and the parent dated August 17 through October 24, 2022
- Emails between the special education teacher, Ms. Scales; the three general education teachers, Ms. O'Rand, Ms. Parsons, and Ms. Hribar; and the athletic director/coach, Kevin Wicker, dated August 30 through September 13, 2022
- Response to the allegations dated October 26, 2022 written by Jessica Crager, Assistant Director, SEK Interlocal #637
- The Viking Virtues, school-wide positive behavior support plan
- Discipline Chart for the 2022-23 school year created by Mr. Hattabaugh

Background Information

This investigation involves an eleven-year-old male student with medical diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) and Disruptive Mood Dysregulation Disorder (DMDT) who is enrolled in the sixth grade in USD #246. The student transferred into the Northeast Junior High School from Northeast Elementary School at the beginning of the 2022-23 school year. He was originally evaluated and found eligible for special education and related services on February 13, 2020 under the exceptionality category of Other Health Impaired (OHI). In addition to the services required by his IEP, the student currently receives services from a therapist and medication management through the Crawford County Mental Health Center.

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 four issues that were investigated.

ISSUE ONE: The USD #246, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP as written, specifically the special education and related services, during the 2022-23 school year.

Positions of the Parties

The parent reported that the school district did not follow the student's IEP when he transitioned to sixth grade at NEJHS at the beginning of the 2022-23 school year. The parent believes this failure resulted in multiple behavioral incidents which caused the student to be suspended from school at the beginning of the 2022-23 school year.

In fifth grade, the student had many disciplinary incidents and the IEP team tried multiple interventions to help the student be successful. During second semester, the student was placed in the special education setting for the majority of the school day and this was found to be effective. The student's IEP was reviewed and revised on April 11, 2022 to reflect this more restrictive setting and USD #246 provided the parent with a PWN requesting consent for a significant change of placement during the 2022-23 school year.

However, USD #246 placed the student in all general education classes with paraeducator support for sixth grade. Once school started, the student began displaying inappropriate behaviors at school and USD #246 changed the student's schedule multiple times to include more services and supports; however, the student continued to have multiple disciplinary referrals. The parent noted the IEP team met

on October 21, 2022 and changed the student's placement to be in the special education setting the majority of the school day.

In addition, the parent reported that the April 11, 2022 IEP was revised to add ten minutes of social work services for a total of 20 minutes per week beginning in sixth grade. However, the student did not start to receive these services until mid-September because of a staffing issue and then he missed several sessions because of being suspended.

USD #246 acknowledged that the social work services were not provided until September 16, 2022 due to a late resignation and the new social worker not being available to start until after the school year began. The district noted that the IEP team met on October 21, 2022 and developed a plan to provide compensatory social work services to the student.

USD #246 also acknowledged that the April 11, 2022 IEP was not implemented as intended at the beginning of sixth grade due to a paperwork error. The IEP document provided to the district by Southeast Kansas Interlocal #637 (SEK #637) was not updated to reflect the changes made at the April 11, 2022 IEP team meeting. The error in the IEP document was not found until the parent filed this child complaint on October 12, 2022 because none of the staff at NEJHS had any reason to suspect the IEP was incorrect. USD #246 noted that staff were all unfamiliar the student because he had just transferred from the elementary school to NEJHS and the superintendent, building principal, and special education teacher all started employment in USD #246 at the beginning of the 2022-23 school year.

However, once USD #246 became aware of the error, the student's IEP team was reconvened on October 19 and again on October 21, 2022 and the IEP was changed to include the more restrictive setting with parent consent.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #246.

The student had two IEPs in effect during the 2022-23 school year. The first IEP was developed on April 11, 2022. This IEP showed the student was to receive 175 minutes per day of specialized instruction in the special education setting, 85 minutes per day of special education support in the general education setting, 10 minutes of behavior consultation every ninth week, and 10 minutes per week of social work services through the end of fifth grade during the 2021-22 school year. Beginning in the sixth grade, this IEP showed the student was to receive 20 minutes per week of specialized instruction in the special education setting, 85 minutes per day of special education support in the general education setting, and 10 minutes per week of social work services.

However, the parent reported and the Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent for a substantial change of placement dated April 11, 2022 stated that during the "IEP school year" the student would receive 85 minutes of para support during specials and recess and 175 minutes of pull-out services in the special education setting every day due to "his explosive behavior". In addition, the IEP team agreed to add 10 additional minutes per week of social work for a total of 20 minutes per week. The PWN signed by the parent on April 11, 2022 does not address the deletion of the behavior consultation services for the 2022-23 school year.

The second IEP was developed during IEP team meetings held on October 19 and continued on October 21, 2022. This IEP showed the student was to receive 330 minutes per day of specialized instruction in the special education setting and 50 minutes per day of special transportation. In addition, this IEP requires that the student receive 30 minutes per week of social work services between October 24 and November 25, 2022 to include 50 minutes of compensatory services. Beginning on November 28, 2022, the student will receive 20 minutes per week of social work services. The PWN for a significant change in placement and a material change in services was signed by the parent on October 21, 2022 included this same information.

Documentation and interviews found that the April 11, 2022 IEP provided by the SEK #637 did not match the PWN provided and consented to by the parent on that same

date. USD #246 acknowledged that the April 11, 2022 IEP was not implemented as intended at the beginning of sixth grade due to this paperwork error.

School staff reported the error in the IEP document was not found until the parent filed this child complaint on October 12, 2022 because none of the staff at NEJHS had any reason to suspect the IEP was incorrect. USD #246 noted that staff were all unfamiliar the student because he had just transferred from the elementary school to NEJHS and the superintendent, building principal, and special education teacher all started employment in USD #246 at the beginning of the 2022-23 school year.

As a result of this situation, Chris Hattabaugh, Principal, reported he has created a chart that compares the NEJHS students' schedules with the services shown in their IEP document and PWN as a means of verifying data received from the SEK #637. Mr. Hattabaugh also reported NEJHS will start a school-wide positive behavior support plan for all students based on the "Viking Virtues" at the beginning of the second semester of the 2022-23 school year.

Ray Streeter, Superintendent, noted that he now visits with staff from SEK #637 on a weekly basis to monitor for any concerns. Mr. Streeter reported the district has 34 students with IEPs in the elementary building; 31 students with IEPs in the middle school building, and 27 students with IEPs in the high school building. He indicated that the district is reviewing its procedures to ensure more efficient and effective transitions between school buildings for these students.

Documentation found that August 17, 2022 was the first day of school for the student in the 2022-23 school year. On August 17, 2022 at 12:20 p.m., Renee Scales, Special Education Teacher, emailed the parent stating,

I just wanted to reach out and touch base with you about the student's class schedule. I have put him out in the regular education class with para support in all classes to see how he does. If I find that this is not working, we will set up a meeting to see how to proceed.

The parent responded to this email at 12:24 p.m. and asked, "What is the reason for para support? Sene [sic] he is out in regular class room?" Ms. Scales responded back at

12:32 p.m. stating, "Para support is to help him if he is struggling with his work and to help keep him on task."

The parent reported that she believed that the student would be spending the majority of his day in the special education setting so there would be no need to provide a paraeducator to support services in the regular education setting. However, the parent acknowledged she did not communicate any further with staff in USD #246 about the apparent discrepancy between the services required by the April 11, 2022 IEP and the sixth grade class schedule proposed from the special education teacher.

USD #246 acknowledged that the social work services were not provided during the first three weeks of the school year until September 16 and again on October 2, 2022 due to a staffing issue. Documentation subsequently shows the social work services were not provided to the student on September 23, September 30, and October 21, 2022 due to the student being assigned to either in-school or out-of-school suspensions on these dates. Interviews and documentation found the LEA and the parent discussed the missing social work services and determined a total of 50 minutes of compensatory services to be provided to the student at the IEP team meeting held on October 21, 2022.

Applicable Regulations and Conclusions

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, USD # 246 acknowledged that the special education and social work services in the student's IEP dated April 11, 2022 IEP were not provided as required at the beginning of the 2022-23 school year. Interviews and documentation found the student did not receive the required 20 minutes per week of social work services prior to the employment of a social worker at NEJHS during the weeks of August 22, August

29, and September 5, 2022. In addition, social work services were not provided prior to IEP team meeting held on October 21, 2022 during the weeks of September 19, September 26, and October 17, 2022. A total of only 40 minutes out of a possible 160 minutes of social work services was provided prior to the October 21, 2022 IEP team meeting. However, the district and the parent did agree to the provision of 50 minutes of compensatory social work services between October 25 and November 28, 2022.

USD #246 also acknowledged that the student only received 85 minutes per day of specialized instruction in the general education setting and a total of 20 minutes per week of specialized instruction in the special education setting for the first eight weeks of the 2022-23 school year instead of the required 175 minutes per day of specialized instruction in the special education setting between August 17 and October 21, 2022.

Based on the foregoing, a violation of special education statutes and regulations is 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 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 during the 2022-23 school year.

In addition, federal regulations at 34 C.F.R. 300.503(a) that 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. Kansas state regulations at K.A.R. 91-40-27(a)(3) require school districts to obtain parent consent before making a material change in services or a substantial change in placement. A material change in services is defined as a 25% or more change in the amount of any one service and a substantial change of placement is defined as any change that affects 25% or more of the student's school day.

In this case, the April 11, 2022 IEP required behavior consultation services once every ninth week beginning April 11 and ending on May 18, 2022. However, the PWN dated April 11, 2022 does not mention the deletion of these services from the student's IEP

beginning in the sixth grade on August 18, 2022. This proposed alteration to the IEP resulted in a 100% change in services for the student.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to comply with federal regulations at 34 C.F.R. 300.503(a) and state regulations at K.A.R. 91-40-27(a)(3) which require school districts to obtain parent consent before making a material change in services during the past 12 months.

ISSUE TWO: The USD #246 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP as written, specifically the behavior intervention plan (BIP), during the 2022-23 school year.

Positions of the Parties

The parent stated in her original complaint form, "I am concerned that my child's IEP is not being done and followed. We have met and I've made requests for things to be changed and updated and followed. He is still having tremendous troubles so I know they're not doing what I asked and was agreed to."

The parent clarified this concern during an interview on October 18, 2022 and indicated her concern was that the student's behavior intervention plan was not being followed by the new principal and new classroom teachers. She reported that the student had been suspended both in-school and out-of-school multiple times already this school year.

USD #246 denied the parent's allegation and reported that all staff working with the student at NEJHS were provided a copy of the student's "IEP at a Glance" prior to the first day of day of school for the 2022-23 school year. The BIP was further clarified with staff through emails from the special education teacher and principal during the first quarter. School staff reported that the BIP requires staff to use a step-by-step system of "re-direct, re-direct, take a break". The Discipline Log in the district's student information system is used to document the effectiveness of the BIP. School staff also indicated that the BIP was updated at the October 21, 2022 IEP team meeting to include strategies for successfully transitioning between classes at parent request.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #246.

The findings of Issue One are incorporated herein by reference.

Every school staff interviewed consistently reported that the steps in the student's BIP were followed by all staff as the way to respond to inappropriate behavior in the classroom. The steps were to 1) re-direct, step away for 5 minutes 2) re-direct and step away for 5 minutes 3) give the student a brain break to walk around in order to re-focus and 4) Remove from class if student becomes disruptive.

Notes of the August 29, 2022 meeting between the parent, the principal and the special education teacher state the purpose of the meeting was "to make sure we are following the student's behavior intervention plan." The notes indicate that the special education teacher and the principal wanted to be "crystal clear in expectations".

USD #246 provided copies of multiple emails dated August 30 through September 13, 2022 documenting questions and clarifications steps in the student's BIP. These emails were between the special education teacher, Ms. Scales; the three general education teachers, Ms. O'Rand, Ms. Parsons, and Ms. Hribar; and the athletic director/coach, Kevin Wicker.

The April 11, 2022 IEP indicated that the student's behavior impedes his learning and the learning of others. This IEP included two reading goals and one goal related to behavior as well as a BIP and the functional behavioral assessment (FBA) completed when the student initially qualified for special education services in the third grade.

The student's goal states, "In one IEP year, when the student is presented with a situation which upsets him, he will practice safe and respectful prosocial skills 100% of the time during a two week period."

The present level of functional and academic performance (PLFAAP) states,

The student easily responds after he has calmed down. The team had identified it is not a skill he cannot do, rather managing his anger and frustration. It has been determined Social Skills Instruction is not necessary at this time as the student knows the skill, he just doesn't apply it until he is calm . . . The team has increased the student's resource time to include math and science and social studies due to the amount of negative behavioral outbursts. The team will be monitoring the student's progress in that setting to earn back more time in the general education setting. When the parent expressed concern about being away from peers and wanting to reinitiate peers, the data didn't encourage re-integration at the time.

The BIP states,

When the student's behaviors increased before Christmas 2021, the principal called a team meeting early in January 2022 to discuss restricting the student's placement based on inability to stay in the general education setting. The student was angry, telling staff "No", cussing, throwing materials, running out of class, and unable to calm down as exhibited successfully prior. Mom agreed to pull the student in to the resource room as an intervention knowing his IEP was coming up shortly and we would discuss progress at that meeting if we were to continue or not . . . Meeting 4/11/22: the team discussed progress as identified through data collection of daily point sheets . . . 3rd Quarter: Goal met. Placement appropriate. The team assumes if put around grade level peers at this time he may be able to handle it. The team will continue to monitor . . . 4th quarter: Goal on track to be met. Even though data sheets show the placement is appropriate, it is a concern for both mom and school staff that the student is away from non-identified peers for 43% of his school day with a para to two students. This is the most intense behavioral intervention in the general education setting.

The BIP then states,

The team has agreed to: a) continue placement as status quo b) discussion of a more restrictive environment c) discussion of a plan of reintegration d) when the student exhibits the following behaviors he will be suspended e) when the student exhibits the following behaviors, he will be in-school suspension f) when the student exhibits the following behaviors he will be removed to the resource room short term g) when the student exhibits the following 2 behaviors he will earn back the inclusionary setting h) the team will review as designated by the school calendar (end of first quarter 2022 as a 6th grader) and decide if placement is still appropriate.

USD #246 acknowledged that the student's placement was not "status quo" as described in the April 11, 2022 IEP due to a clerical error which caused school staff to mistakenly change the student's placement in the special education setting from the original 43% of the school day in the special education setting to all general education classes with daily paraeducator support and 20 minutes per week of special education support in the special education setting.

USD #246 also acknowledged that the no data sheet or data charts were used to monitor the student's behavior during the first quarter of the 2022-23 school year. No documentation was provided to demonstrate the sixth grade team discussed and determined the specific behaviors that would lead to suspension, in-school suspension, removal to the resource room, or earning back the inclusionary setting as outlined in the BIP.

The October 21, 2022 IEP also indicates that the student's behavior impedes his learning and the learning of others. This IEP includes one reading goal, one math goal, and one goal related to behavior as well as a BIP. The student's goal states, "Beginning 10/24/22, and for the duration of the current IEP, the student will demonstrate appropriate social behaviors by recognizing and expressing feelings to both peers and adults in an appropriate manner, with no more than 1 report of an inappropriate behavior each week." The baseline for this goal reflects the student currently displaying inappropriate behavior on a daily basis.

The BIP included in the October 11, 2022 IEP identifies disrespect and refusal and the problem behaviors to be addressed. The “re-direct, re-direct, take a break” steps are included in the step-by-step plan for addressing minor behaviors and ultimately removal from the classroom for major behaviors. The BIP then describes specific behaviors that are considered minor and those that are considered major; includes a plan for positive reinforcement for appropriate behavior; a plan for preventing behavior in the classroom and hallway settings, and a system for collecting data.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.324(a)(2)(i) require school districts to consider the use of positive behavioral intervention and supports, and other strategies to address any behavior that impedes the child’s learning or the learning of others. The IDEA does not specify any requirements for what must be included in a BIP; however, if a BIP is developed, it must be part of the student’s IEP.

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 student’s IEP in effect at the beginning of the 2022-23 school year was dated April 11, 2022 and included a description of behavioral concerns in the PLFAAP, an IEP goal to address the behavioral concerns, and a BIP that called for a “status quo” placement of 43% of the school day spent in the special education setting as well as a list of items that the IEP team had agreed to:

- a) continue placement as status quo
- b) discussion of a more restrictive environment
- c) discussion of a plan of reintegration
- d) when the student exhibits the following behaviors he will be suspended
- e) when the student exhibits the following behaviors, he will be in-school suspension

- f) when the student exhibits the following behaviors he will be removed to the resource room short term
- g) when the student exhibits the following behaviors he will earn back the inclusionary setting
- h) the team will review as designated by the school calendar (end of first quarter 2022 as a 6th grader) and decide if placement is still appropriate.

USD #246 provided no documentation showing any of the items on the list included in the BIP were ever discussed or determined.

It is noted that school staff met with the parent on August 29, 2022 to review the student's behavior intervention plan so that everyone was "crystal clear" on the expectations. However, It is unclear if the entire copy of the April 11, 2022 IEP was ever reviewed by school staff because the BIP specifically addresses the percentage of time in the special education setting and the PLAAFP states "When the parent expressed concern about being away from peers and wanting to reinitiate peers, the data didn't encourage re-integration at the time." Even with the clerical error on the services summary of the IEP, had the entire IEP been reviewed, school staff would have been on notice that the PLAAFP, BIP, and services summary were not aligned and further investigation and clarification was needed in order to determine a free appropriate public education (FAPE) for this student.

Based on the foregoing, a violation of special education statutes and regulations is 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 to ensure that as soon as possible following the development of the IEP, special education and related services, including the BIP, are made available to the child in accordance with the child's IEP during the 2022-23 school year.

ISSUE THREE: The USD #246, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate disciplinary procedures during the 2022-23 school year.

Positions of the Parties

The parent reported USD #246 has not implemented the student's IEP or the BIP since the beginning of the 2022-23 school year which has resulted in a significant increase in inappropriate behavior and multiple in-school (ISS) and out-of-school (OSS) suspensions. The parent believes the school staff are targeting him because they do not want to deal with his behaviors and would prefer to just "kick him out of school."

According to school records, USD #246 reported the student has not been suspended from school ten consecutive school days or a total of ten school days cumulatively with a pattern. The school believes no special disciplinary procedures were required by the IDEA at that point in time.

However, as a result of conducting an informal internal review of policies, procedures, and practices related to discipline of students with disabilities, USD #246 indicated staff will now keep written documentation of the implementation of the IEP during any assigned ISS. In addition, the SEK #637 will train all key district decision makers on Chapter 13, Suspension and Expulsion of Children with Disabilities for Disciplinary Violations, from the Kansas State Department of Education Special Education Process Handbook.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #246

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

Documentation and interviews found that the student began exhibiting inappropriate behavior in the school setting on August 17, 2022. The student's class schedule was changed on August 25, August 29, September 13, October 3, and October 24, 2022 in an effort to avoid "personality clashes" with teachers and other students and to provide more support in the special education setting.

According to school records and the discipline log, the student was assigned ISS on September 23, September 25, October 6, October 12, October 13, and October 14, 2022. The student was assigned OSS on September 29 and September 30, 2022.

District staff reported the student did not receive any special education services while in ISS and, therefore, those days would count as a full days of OSS for the purposes of determining if any special procedures were required under the IDEA.

On October 20, 2022, the parent, superintendent, and principal met to discuss concerns with the most recent disciplinary incident. The parent reportedly stated that the student would not go to ISS or he will not be in OSS because the issues resulting in disciplinary action were the school's fault.

Applicable Regulations and Conclusions

Federal regulations, at 34 C.F.R. 300.530, allow for students with disabilities to be removed from their current educational placement for up to 10 school-days consecutively or up to 10 school-days cumulatively with a pattern of behavior in a school year, without educational services, and before specific procedures and timelines must be followed to ensure the behavior resulting in the disciplinary action is not a manifestation of the child's disability.

In this case, the student has only been assigned ISS and OSS for a total of eight days during the 2022-23 school year. For this reason, there is no reason for the district follow any special procedures related to discipline of students with disabilities at this time.

The evidence presented supports the finding that USD #246 has followed appropriate disciplinary procedures required by the IDEA at this point in time. Based on the foregoing, a violation of special education statutes and regulations is not substantiated.

ISSUE FOUR: The USD #246 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 the student to transition between classes at a different time than peers during the 2022-23 school year.

Positions of the Parties

The parent reported that the school did not include her request for the student to be supervised during class transitions in the hallway in the IEP even though she met with the building principal and the superintendent several times during the first quarter of the 2022-23 school year.

The school district reported,

USD #246 administration, in an attempt to resolve parental concerns for a variety of issues, including concerns outside of the scope of the IEP, met with the parent and communicated with the parent a number of times. There may have been times where administration was attempting to solve concerns by addressing them as they for any student and did not believe it was directly related to the student's special education plan. In regards to transition between classes, USD 246 administration were operating off what they would do for any student and agreed to provide supervision between classes using school-wide supports available for all students. They did not believe this was an IEP issue as it is an accommodation they would do for any student.

On 10/21/22, the team developed a specific plan for transitioning between classes, beyond what was previously provided as USD 246 would do for all students, and is now part of the IEP as an accommodation as well as a preventative measure in the BIP. As there may be some confusion between what requests are available as accommodations for all students as part of school-wide supports, and what are IEP specific requests related to his disability, we have appointed two main points of contact for the parent. When she has a request related to the IEP, it shall be directed to the special education teacher, and all other requests will be directed to the building principal. This strategy is to ensure requests can be appropriately responded to as required.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #246.

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

Documentation shows that a re-entrance meeting between the principal and the parent was held on September 30, 2022 following an out-of-school suspension. During this meeting, the parent requested that the student have supervision during transition time. The principal arranged for a classroom paraeducator to accompany the student in the hallways during each transition time.

On October 4, 2022, the parent, superintendent, and Chris Ratzlaff, the SEK #637 representative, met to discuss the student's behavior. School staff indicated that the student was not being cooperative with the paraeducators during transition periods and often refused to wait, argued with staff, and was disrespectful. An IEP team meeting was scheduled for October 19, 2022 to discuss the ongoing behavioral concerns.

Notes from the IEP team meeting held on October 19, 2022 and concluded on October 21, 2022 state,

Team discussed parent request regarding transitions between classes. Currently, school staff were attempting to transition with the student but he would run from staff and take off in the hallway. Team determined the best option is for the student to be prompted to leave the classroom 2 minutes early and will sit in the front office in order to avoid any issues during the transition process. Once all kids are out of the hallway, the student will go to his classroom on his own.

The meeting was continued until October 21, 2022 at which time the IEP team determined the best placement for the student was in the special education setting for all core classes with continued participation in Fitness, PE and Lunch. School staff provided the parent with a PWN and the parent gave written consent for the material change of services and a significant change of placement.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.322(a) require school districts to ensure that parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate.

In this case, the parent met with USD #246 administration regarding her request for supervised transition between classes on September 30, October 4, and October 19 and October 21, 2022. During the first meeting, the principal made arrangements for the classroom paraeducators to accompany the student in the hallways between classes. During the second meeting on October 4, 2022 school staff reported that the plan was not successful as the student refused to cooperate with the school staff. An IEP team meeting was scheduled for October 19, 2022 to discuss the behavioral concerns. Notes from that IEP team meeting reflect that the IEP team did consider the parent's input regarding transitioning between classes. In addition, the October 21, 2022 IEP includes specific accommodations related to transitioning in the hallway.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for a failure to provide the parent with an opportunity to participate in the IEP team meeting.

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. 300.323(c)(2) and state regulations at K.A.R. 91-40-19(a) which require each school district 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 this case, USD #246 failed to implement the services proposed at the April 11, 2022 IEP team meeting and consented to by the parent in the PWN dated April 11, 2022. The student was not provided with a total of

120 minutes per week of social work services during the 2022-23 school year. It is noted that the school district agreed to provide a total of 50 minutes of compensatory social work services at the October 21, 2022 IEP team meeting.

In addition, USD #246 only provided a total of 200 minutes of specialized instruction in the special education setting (20 minutes per week x 10 weeks of school as of October 21, 2022) instead of the 8,050 minutes of specialized instruction in the special education setting (175 minutes per day x 46 school days as of October 21, 2022). There is documentation to support that the student was provided at least 85 minutes per day of specialized instruction in the general education setting between August 17 and October 21, 2022.

Finally, USD #246 failed to implement the BIP included in the April 1, 2022 IEP.

- B. Federal regulations at 34 C.F.R. 300.503(a) and state regulations at K.A.R. 91-40-27(a)(3) which require school districts to obtain parent consent before making a material change in services.

In this case, the USD #246 deleted the behavior consultation services for 10 minutes every ninth week beginning on August 18, 2022 without the parent's consent. Deleting this service resulted in a 100% reduction in the amount of services the student receives.

Based on the foregoing, USD #246 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #246 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. 300.323(c)(2) and state regulations at K.A.R. 91-40-19(a) which require each school district to ensure that as soon as possible following the development of the IEP, special education and related services, including the BIP, are made available to the child in accordance with the child's IEP.

- b. Comply with federal regulations at 34 C.F.R. 300.503(a) and state regulations at K.A.R. 91-40-27(a)(3) which require school districts to obtain parent consent before making a material change in services.
2. No later than November 30, 2022, USD #246 shall make a written offer of compensatory services to the parent for providing not less than 134 hours of compensatory special education services in the special education setting and not less than 70 minutes of social work services to address behavior. The offer must include a schedule that would accomplish the completion of all compensatory services prior to the beginning of the 2023-24 school year. USD #246 shall provide a copy of this written offer, including the schedule, to Special Education and Title Services (SETS) on the same day it is provided to the parents. The parent can accept all, part, or none of the compensatory services offered and has 15 school days from the date they receive the offer to notify the district of their decision. Within 15 school days of making this written offer to the parent, USD #246 shall notify SETS, in writing, of the parents' decision regarding the offer of compensatory services. If the parent accepts all or part of the compensatory services offered, USD #246 shall notify the parents and SETS when the compensatory services have been completed.
3. No later than December 30, 2022, USD #246 shall review the most recent IEPs and PWNs of all children with disabilities enrolled in NEJHS and compare the services required by the IEP with any change in services being proposed in the most recent PWN. If any discrepancies are found between any proposed changes in services in the most recent IEP and PWN, USD #246 shall repeat the process described in the previous corrective action for each identified student.
4. No later than January 15, 2023, USD #246 will arrange for TASN to conduct a training for all licensed and certificated special education staff in USD #246 as well as all special education staff at SEK #637 working with USD #246 regarding the IDEA requirements related to when and how to provide appropriate PWN to parents. No later than January 30, 2023, USD #246 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 #246 will provide SETS with any handouts and/or a copy of the presentation.

5. It is noted that IEP team, with the parent in attendance, met on October 21, 2022 to review and revise the April 11, 2022 IEP. This most recent IEP includes special education services in the special education setting for the majority of the school day and an updated BIP which includes a data collection system to monitor progress. For these reasons, no individual corrective action is ordered to address the noncompliance related to the implementation of the BIP.
6. 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)