

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #408
ON NOVEMBER 28, 2022
DATE OF REPORT JANUARY 9, 2023

This report is in response to a complaint filed with our office on behalf of Student A and Student B by their parents, The parents. In the remainder of the report, Student A will be referred to as "student A" and Student B will be referred to as "student B". The mother will be referred to as "the mother" and The father will be referred to as "the father". Together, The parents will be referred to as "the parents" or "the complainants".

The complaint is against USD #408, Marion-Florence Public Schools, who contracts with the Marion County Special Education Cooperative (MCSEC) to provide special education and related services to students residing within the district. In the remainder of the report, "USD #408," "the "school," the "district", and the "local education agency (LEA)" shall refer to both of these responsible public agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on November 28, 2022 and the 30-day timeline ends on December 28, 2022. However, the timeline to investigate the complaint was extended until January 9, 2023 due to the district's almost two week holiday break when school staff were unavailable to participate in the investigative process.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, contacted the parents by telephone on December 2, 2022 to clarify the issues of the complaint. The Complaint Investigator interviewed the parents by telephone on December 13, 2022.

USD #408 made the following administrative staff available for telephone interviews on December 16, 2022:

- Robert Diepenbrock, Director of Special Education for MCSEC
- Jeremy Gooch, Assistant Director of Special Education for MCSEC
- Justin Wasmuth, Principal of Marion Elementary School

USD #408 made the following staff at Marion Elementary School available for telephone interviews on December 20, 2022:

- Rebecca Hofer, First Grade Teacher
- Denise May, First Grade Teacher
- Cierra Goodwin, Special Education Teacher

In addition, the Complaint Investigator spoke to Mr. Lee Leiker, Superintendent for USD #408, on January 6, 2022.

In completing this investigation, the Complaint Investigator reviewed the following documentation provided by the complainants and the district:

- KSDE Teacher License for Ms. Goodwin to teach elementary education in grades Kindergarten through sixth grade dated May 27, 2021
- High Incidence Special Education Initial Waiver Approval Letter for Ms. Goodwin dated October 11, 2022 signed by Randall Watson, Kansas Commissioner of Education
- Plan of Study: PK-12 High Incidence Program at Fort Hays State University for Ms. Goodwin
- Emporia State University Transcript for Ms. Goodwin showing she graduated with a bachelor's degree in education on May 11, 2019
- MCSEC Application and Professional Development Record for Lisa Unruh, Paraprofessional
- MCSEC Application and Professional Development Record for Lena Hall, Paraprofessional
- MCSEC Application and Professional Development Record for Robin Arocha, Paraprofessional
- MCSEC Application and Professional Development Record for Echo Smith, Paraprofessional
- The Individualized Education Program (IEP) for Student A dated April 13, 2022

- Multidisciplinary Team Meeting Notes dated April 13, 2022 for Student A
- The IEP for Student B dated April 13, 2022
- Multidisciplinary Team Meeting Notes dated April 13, 2022 for Student B
- IEP Amendment Form for Changes Not Requiring a Full IEP Team Meeting for Student B dated August 24, 2022
- Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, And/Or Request for Consent dated August 24, 2022 and signed by the parent on August 30, 2022
- The 2022-23 School Calendar for USD #408
- K-1 Resource Schedule for 2022-23 School Year showing schedules for Ms. Goodwin and the four paraprofessionals
- Lesson Plans dated December 12 through December 16, 2022 written by Ms. Goodwin
- IEP Goal Progress Reports for Student A for the IEP dated April 13, 2022
- IEP Goal Progress Reports for Student B for the IEP dated April 13, 2022 and amended on August 24, 2022
- MCSEC Interlocal Response to Allegations for USD #408 written by Dr. Diepenbrock dated December 12, 2022
- Educational Software for Guiding Instruction (ESGI) for Math Score Report for Student A dated October 24, 2022
- MCSEC Confidentiality Agreement signed by Ms. Goodwin on July 1, 2022
- Email from father to Robert Diepenbrock dated September 16, 2022 at 1:56 pm
- Dr. Diepenbrock's notes of meeting with father (undated)
- Email from Ms. Goodwin to Dr. Diepenbrock and Larry McManaman dated September 19, 2022 at 8:46 pm, including her professional notes with entries dated August 22-26, September 12, September 14, September 15, September 16, September 19, 2022
- Email from Dr. Diepenbrock to Ms. Goodwin dated September 21, 2022 at 9:26 am
- Email from Mr. Wasmuth to Dr. Diepenbrock and others dated September 21 at 10:48 am
- Emails confirming meeting time on September 21, 2022 among Ms. Goodwin, Mr. Wasmuth, Dr. Diepenbrock and Larry McManaman, School Psychologist

- Email from Mr. Wasmuth to Mr. Gooch and Dr. Diepenbrock dated September 23, 2022 at 3:40 pm
- Email from Mr. Gooch to Mr. Wasmuth and Dr. Diepenbrock dated September 23, 2022 at 2:51 pm
- Email from the mother to Ms. Goodwin and others dated September 28, 2022 at 8:05 am
- Email from Ms. Goodwin to parents and others dated September 29, 2022 at 3:53 pm
- Email from mother to Ms. Goodwin and others dated September 29, 2022 at 5:08 pm
- Areas of concern for SPED given to Adm (October 27 2022, October 28, 2022)
- Documentation of conversations and interactions by parents (Entries dated: September 15, September 19, September 28, September 30, October 3, October 24, October 25, October 26, October 27, October 31, November 3, November 6, November 21, 2022)
- Documentation of interactions and classroom occurrences by C. Goodwin (Entries dated August 22, September 12, September 14, September 15, September 16, September 19, September 20, September 21, September 22, September 26-30, October 6, October 13, October 20, October 24, October 25, October 26, October 26, November 21, 2022)
- Progress assessment for Student A from Rebecca Hoffer dated October 24, 2022
- Mr. Wasmuth's notes from Student A's Parent Teacher Conference on October 24, 2022 from 2:50-3:47 pm
- Mr. Wasmuth's notes from Student B's Parent Teacher Conference on October 24, 2022 from 3:50-4:25 pm
- Formal (announced) Observation of Ms. Goodwin Report by Mr. Gooch dated October 25, 2022
- Email from mother to Ms. Goodwin and others dated October 27, 2022 at 9:07 pm
- Email from Ms. Goodwin to parents and others dated October 28, 2022 at 9:04 am
- Dr. Diepenbrock's notes of meeting with father and Mr. Gooch dated October 27, 2022

- Dr. Diepenbrock's notes of meeting with TASN Consultant (Doug) dated October 27, 2022
- Robert Diepenbrock's copy of parents areas of concern dated as following October 27, 2022 meeting
- Letter from Dr. Diepenbrock to Parents dated October 31, 2022
- Email from mother to Lee Leiker, Superintendent for USD #408, and Mr. Wasmuth dated October 28, 2022 at 8:45 am
- Email from Mr. Leiker to mother dated October 28, 2022 at 5:17 pm
- Email from mother to Dr. Diepenbrock dated November 3, 2022 at 5:11 pm
- Email from Ms. Goodwin to parents and others dated November 6, 2022 at 9:53 am
- Email from mother to Ms. Goodwin and others dated November 7, 2022 at 7:56 am
- Email from Ms. Goodwin to parents and others dated November 7, 2022 at 1:43 pm
- Email from mother to Ms. Goodwin and others dated November 7, 2022 at 2:35 pm
- Email from Dr. Diepenbrock to parents and others dated November 7, 2022 at 8:21 am
- Email from Mr. Wasmuth to Dr. Diepenbrock, parents and others dated November 7, 2022 at 9:13 am
- Email from father to Dr. Diepenbrock and others dated November 7, 2022 at 1:11 am
- Email from Dr. Diepenbrock to father and others dated November 8, 2022 at 12:42 pm
- Email from father to Dr. Diepenbrock and others dated November 10, 2022 at 8:59 pm
- Email from Dr. Diepenbrock to parents and others dated November 17, 2022 at 11:44 am
- Email from father to Dr. Diepenbrock and others dated November 22, 2022 at 7:36 am
- Email from Dr. Diepenbrock to Parents dated December 1, 2022 at 3:56 pm
- Observation of Ms. Goodwin Report by IEP Specialist, Regina Kimbrel, dated November 14, 2022

- Observation of Ms. Goodwin Report by Reading Specialist, Eileen Hiebert, dated November 3, 2022
- Observation of Ms. Goodwin and Classroom by Briana Jamieson, Social Emotional Learning (SEL) and Behavior Specialist dated November 15, 2022
- Ms. Goodwin Plan of Improvement dated November 16, 2022
- Email from Mr. Wasmuth to Matthew Fox, Dr. Diepenbrock, Ms. Goodwin and Mr. Gooch dated November 16 2022 at 12:48 pm
- Email from Dr. Diepenbrock to Mr. Wasmuth and others (above) dated November 16, 2022 at 2:13 pm
- Email from Matthew Fox to Dr. Diepenbrock and others (above) dated November 16, 2022 at 2:29 pm
- Email from Mr. Wasmuth to Matthew Fox and others (above) dated November 16, 2022 at 2:34 pm
- Letter from Dr. Diepenbrock to Ms. Goodwin requesting information for complaint dated December 5, 2022.
- Email from Ms. Goodwin to Dr. Diepenbrock replying to his letter dated December 5, 2022 at 10:50 pm
- Ms. Goodwin notes of Student A's spelling and reading word data dated August 26, September 2, September 9, September 14, September 16, September 22, September 23, October 7, October 11, October 27, 2022
- Email dated January 5, 2023 at 6:04 p.m. written by the father to the complaint Investigator regarding Student A's IEP goal progress report for second quarter...

Background Information

This investigation involves a two six-year old first grade students enrolled at Marion Elementary School in USD #408. The students are a fraternal set of twins, a brother and sister, who live with their adoptive parents in USD #408. Both students have been diagnosed with Post-traumatic Stress Disorder (PTSD) and Attention Deficit Hyperactivity Disorder (ADHD). The children are prescribed medication as well as receive behavioral, psychological, occupational, and neurological therapy on a weekly basis to address emotional and behavioral dysregulation concerns.

The students were initially evaluated for special education and related services at the age of three. The students were found eligible under the exceptionality category of

Young Child with a Developmental Delay (YCDD) and received early childhood special education instruction and speech therapy until they started kindergarten at Marion Elementary School during the 2021-22 school year.

The students continued to receive special education instruction in both the general education and special education classrooms as well as speech therapy until the end of kindergarten when Student B was dismissed from speech therapy. Triennial reevaluations were conducted and the students were found to continue to be eligible for special education and related services during first grade and identified as eligible under the exceptionality category of Other Health Impaired (OHI). USD #408 has continued to make special education and related services available to both students through the current date.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parents raised five issues that were investigated.

ISSUE ONE: The USD #408, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide specialized instruction by appropriately trained and certificated staff, specifically the K-1 special education teacher and the special education paraprofessionals instruction Student A, during the 2022-23 school year.

Positions of the Parties

The complainants alleged that Student is being provided the majority of his specialized instruction from the paraprofessionals in both the general education and special education classrooms. The parents believe that Student A's special education teacher does not have the training or credentials to effectively teach their child. They indicated

the special education teacher is not addressing the educational standards and goals set by the state nor is she providing enough direct instruction to the student.

The district responded that all staff working with the student hold the appropriate credentials and have received the required training necessary to meet the state requirements to provide special education services to the students.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #408.

The IEP in effect during the 2022-23 school year for Student A was developed on April 13, 2022 with the parents in attendance. This IEP requires specialized instruction in the special education setting for reading and writing for 135 minutes per day. In addition, the IEP requires 120 minutes per day of paraprofessional support for math and social sciences in the general education classroom.

Interviews and documentation found these special education services were provided by the following staff during the first semester of the 2022-23 school year:

- Cierra Goodwin, Special Education Teacher
- Echo Smith, Paraprofessional
- Lena Hall, Paraprofessional
- Robin Arocha, Paraprofessional
- Lisa Unruh, Paraprofessional

Ms. Goodwin received a bachelor's degree in education from Emporia State University on May 11, 2029. She currently holds a license in Kansas to teach elementary education in grades kindergarten through sixth grade. USD #408 sought and received approval for an initial waiver for Ms. Goodwin to teach high incidence special education in grades pre-kindergarten through 12th grade during the 2022-23 school year.

Interviews and documentation show that Ms. Goodwin is currently enrolled in special education classes and is working towards her Master's degree in Education.

Bob Diepenbrock, Special Education Director at MCSEC, reported that KSDE requires paraprofessionals to have received either a high school diploma or General Equivalency Diploma (GED) and participate in ongoing tiered levels of professional

development depending upon years of employment in compliance with Kansas personnel standards.

Ms. Smith originally submitted an application to be employed as a paraprofessional at MCSEC on November 19, 2021. She was hired the following year and her four hour orientation was provided on March 7, 2022. She received nine additional hours of training during the spring of 2022 and has currently completed 20.75 hours of training during the 2022-23 school year.

Ms. Hall originally submitted an application to be employed as a paraprofessional at MCSEC on October 21, 2020. Orientation was provided on October 22, 2020 and she received a total of 21 hours of training during the 2021-22 school year. Ms. Hall has currently completed 18 hours of training during the 2022-23 school year.

Ms. Arocha originally submitted an application to be employed as a paraprofessional at MCSEC on June 13, 1999. She received her original orientation on August 7, 1995 and has been employed as a paraprofessional in MCSEC since that time. She received a total of 21 hours of training during the 2021-22 school year and has currently completed 18 hours of the required training during the 2022-23 school year.

Ms. Unruh originally submitted an application to be employed as a paraprofessional at MCSEC on November 8, 2021. Orientation was provided on November 12, 2021 and she received a total of 24.50 hours of training during the 2021-22 school year. She has also completed 12.75 hours of training during the first half of the 2022-23 school year.

Applicable Regulations and Conclusions

Federal regulations, at 34 C.F.R. 300.156(a), require public agencies to ensure that children with disabilities are provided special education and related services by appropriately and adequately prepared and trained personnel who have the content knowledge and skills to serve children with disabilities.

Federal regulations, at 34 C.F.R. 300.156(c), requires that each special education teacher providing special education services has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator), or passed the State special education teacher

licensing examination, and holds a license to teach in the State as a special education teacher, and holds at least a bachelor's degree.

According to the 2022-23 Kansas Special Education Reimbursement Guide for State Categorical Aid, the minimum requirements to be employed as a special education paraprofessional include being a high school graduate or holding a General Equivalency Degree (GED) certificate, and completing an orientation session addressing confidentiality, the services to be provided, and the policies and procedures of the local education agency concerning special education.

In addition, there is a tiered paraprofessional training requirement that describes the number of hours of professional development that must be provided to persons employed as paraprofessionals based on the number of years of experience working as a paraprofessional. Paraprofessionals with three or fewer years of experience must have a minimum of 20 hours annually while paraprofessionals with more than three years of experience must have 10 hours of professional development annually.

In this case, the special education teacher working with Student A holds a bachelor's degree and was granted an initial waiver to teach high incidence special education during the 2022-23 school year by the state of Kansas. As such, she meets the requirements to be assigned as a special education teacher.

Each of the four paraprofessionals working with Student A have a high school diploma and have participated in more than the minimum number of hours of professional development during the previous school year. Documentation shows they have obtained at least half of the required professional development for the 2022-23 school year during the first semester.

Based on the foregoing, a violation of the IDEA requirements and Kansas special education regulations to have appropriately trained and certificated staff is not substantiated.

ISSUE TWO: The USD #408, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEPs for Student A and Student B as written, specifically the special education instruction for reading and writing, to ensure both students are making progress towards their IEP goals during the 2022-23 school year.

Positions of the Parties

The complainants alleged that Student A is not receiving the required special education services for reading, writing and math from the special education teacher. The parents believe Student A is being provided the majority of his specialized instruction from the paraprofessionals in both the general education and special education classrooms. Direct instruction by the special education teacher is provided for less than half of the time the student is in the special education classroom with the balance of the time being spent on “independent task boxes.” The parents are also concerned that his special education services are sometimes provided in the hallway.

The parents also reported that Student B only receives specialized instruction for writing two to three days per week due to the special education teacher working with and assessing more than one student during the same timeframe.

The district responded that the IEPs of both students are being implemented as written by the special education teacher and the four paraprofessionals assigned to work with the students. USD #408 acknowledged that special education paraprofessionals provide support and instruction to Student A but believe this is allowed under Kansas regulations. Dr. Diepenbrock stated that MCSEC regularly assigns paraprofessionals to provide support in both the general and special education classrooms to students with IEPs in order to provide the necessary special education services in the least restrictive setting (LRE). Dr. Diepenbrock also indicated that paraprofessionals work under the direct supervision of appropriately certificated staff.

Ms. Goodwin stated that Student A receives reading instruction in the special education setting on a daily basis in small groups of between two and five additional students while Student B receives writing instruction with only one other student.

Ms. Goodwin explained that students are seated around a work table and spend time during each lesson receiving direct instruction from the special education teacher or paraprofessional as well as having opportunities for guided practice and independent practice for all skills monitored by the special education teacher or paraprofessional.

Ms. Goodwin acknowledged special education services have been provided in multiple locations throughout the school building but these services are provided in individual or small group settings away from their first grade general education classmates.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #408.

The findings from Issue One are incorporated herein by reference.

The IEP in effect during the 2022-23 school year for IEP for Student A was developed on April 13, 2022 with the parents in attendance. This IEP requires specialized instruction in the special education setting for reading and writing for 135 minutes per day. In addition, the IEP requires 120 minutes per day of paraprofessional support for math and social sciences in the general education classroom. Finally, the IEP requires speech/language therapy for 20 minutes on two days per week.

The K-1 Resource Schedule shows Ms. Goodwin provides special education services to Student A in the special education setting for reading between 9:55 a.m. until 11:55 a.m. and for writing between 1:00 p.m. until 1:15 p.m. for a total of 135 minutes of specialized instruction on a daily basis.

The schedule shows Robin Arocha is assigned to support Student A in Mrs. Hoefler's first grade classroom for math between 1:20 p.m. until 2:10 p.m. and for social sciences between 2:30 p.m. and 3:15 p.m. for a total of 95 minutes per day of special education support in the general education setting.

Student A's IEP includes five academic goals and two speech/language goals. The IEP goal progress reports show he made progress on all but one goal in October 2022. The benchmark for this goal was to read 19 of the 40 Dolch sight words; however, the student was only able to read 18 of these words.

During the most recent reporting period in December 2022 according to the IEP Progress Report, the student continued to make progress on all but one goal. The benchmark for this goal was to spell 32/52 spelling sound correspondences. The classroom teacher assessed this goal finding 30/52 spelling sounds correct while the special education teacher reported finding 32/52 correct.

The IEP in effect during the 2022-23 school year for Student B was also developed on April 13, 2022 with the parents in attendance. However, this IEP was amended on August 24, 2022 through an agreement between the parents and the LEA representative.

Beginning on August 15, 2022, the services required by the amended IEP included 15 minutes per day of specialized instruction in writing in the special education setting and 240 minutes per day of special education staff support in the general education setting as follows: 60 minutes for Reading/Language Arts, 60 minutes for math, 60 minutes for social sciences (Discovery Time), 30 minutes of MTSS [Multi-tiered Systems of Support], and 30 minutes for Small Group Pathways.

The parents were provided with a PWN for a material change of services and a substantial change of placement on August 24, 2022 and written parent consent for these changes was obtained on August 30, 2022. However, according to the amended IEP, the material change in services and the substantial change of placement occurred beginning on August 18, 2022, which was the first day of the 2022-23 school year.

The K-1 Resource Schedule shows Student B received specialized instruction in writing from Ms. Goodwin between 1:00 p.m. until 1:15 p.m. in the special education setting. The schedule shows that Lena Hall is assigned to support Student B in the general education setting between 9:55 a.m. until 10:50 a.m. for a total of 55 minutes per day of specialized instruction and in reading; between 1:20 p.m. and 2:10 p.m. for a

total of 50 minutes per day of specialized instruction in Math; and between 2:30 p.m. and 3:15 p.m. for 45 minutes per day of specialized instruction in social sciences. The schedule does not show Student B receives special education staff support for MTSS or Small Group Pathways.

Student B's IEP includes five academic goals. The IEP goal progress reports show she made progress on all but one goal in October 2022. The benchmark for this goal was to read 21 of the 40 Dolch sight words; however, the student was only able to read 15 of these words.

During the most recent reporting period in December 2022, the IEP Progress Report showed that Student B did not meet the benchmarks on three of her five goals. For Goal 2, she was to count, read, and write numbers to 90 with 60% accuracy; however the progress report noted that she can count but cannot write to this level. For Goal 3, the benchmark for Student B was to spell 38/52 sound correspondences but progress report showed she could only spell 35/52. For Goal 5, Student B can read 22/41 grade level sight words, while her benchmark is 28/40.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA 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.

Federal regulations at 34 C.F.R. 300.39(a)(1) define "special education" as specially designed instruction, provided at no cost to the parents, to meet the unique needs of a child with a disability in a continuum of educational placements, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. Federal regulations at 34 C.F.R. 300.39(b)(3) states that "specially designed

instruction” means adapting the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability; and to ensure access of the child to the general curriculum.

It is noted that the IDEA generally allows special education teachers the flexibility to determine the appropriate teaching methodology and the appropriate location to teach each individual student so long as that student is making adequate progress towards meeting their IEP goals. However, if the IEP team has determined that a specific teaching methodology or setting such as applied behavioral analysis (ABA) therapy in a 1-1 setting or Orton-Gillingham based reading instruction in a group of no more than 5 additional students is required for the student to receive a free appropriate public education (FAPE), and this is documented in the IEP, the IDEA requires this identified methodology be implemented.

Federal regulations at 34 C.F.R. § 300.156(b)(2)(iii) allows paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation or written policy, to be used to assist in the provision of special education and related services under this part to children with disabilities. Further 34 C.F.R. § 300.156(a) requires each state to establish and maintain qualifications to ensure paraprofessionals are appropriately and adequately trained.

In this case, interviews and documentation found both Student A and Student B were provided with the specialized instruction in the special education setting as required by the IEPs. USD #408 assigned appropriately credentialed paraprofessionals who were supervised by appropriately certificated teachers to assist in the provision of special education services to both Student A and Student B. Neither of the students’ IEPs required a specific methodology or setting be implemented in order to provide FAPE to the student.

However, documentation showed Student A was not provided with a total of 25 minutes per day of special education staff support in the general education setting and Student B was not provided with a total of 90 minutes per day of special education staff support in the general education setting during the first semester of the 2022-23 school year.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to implement the student's Individualized Education Plan (IEP), specifically special education staff support in the general education setting for both Student A and Student B during the 2021-22 school year.

In addition, federal regulations 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 and 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.

In this case, Student B's amended IEP shows a material change in services and a substantial change of placement were effective as of August 15, 2022 with the first day of the 2022-23 school year being August 18, 2022. The IEP Amendment Form for Changes Not Requiring a Full IEP Team Meeting for Student B shows that USD #408 and the parent agreed to amend Student B's IEP by making these changes on August 24, 2022 and the parents were provided with a PWN requesting consent for these changes on that same date. However, the parents did not provide consent until August 30, 2022, which is after the date the proposed changes were first implemented.

Based on the foregoing, a violation of IDEA and Kansas special education regulations it is substantiated for failing to obtain parent consent prior to making a material change in services and a substantial change of placement for Student B during the 2022-23 school year.

ISSUE THREE: The USD #408, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures to amend the IEP goal progress report for Student A at parent request following the October 24, 2022 parent/teacher conferences.

Positions of the Parties

The complainants alleged that the special education teacher refused their request to amend the October IEP Goal Progress report to clarify the math goal and the method of data collection during the October 24, 2022 parent/teacher conference. The parents were concerned that the special education teacher reported a high level of attainment that was not seen by either the parents or the classroom teacher.

During this discussion, the parents reported that the data from the special education teacher was inconsistent and did not match the data provided from the general education math class. When questioned, the parents stated, "The special education teacher stated she did not understand the goal and she interpreted it and assessed it based on her own understanding."

The parents also reported that the special education teacher indicated that she did not understand the general education state standard addressed by the math goal. The parents stated, "We requested that she change the wording on the IEP progress report by adding the word 'rote' to [the] counting [goal on the IEP goal progress report] so that future progress monitoring on the math goal would not be contradictory as well avoid contradiction with the state standard. The special education teacher stated that could not be done."

Subsequently, the parents met with the administrators at both USD #408 and MCSEC to share their concerns and requests. To date, the parents are unaware if the IEP goal progress report has been amended.

USD #408 staff acknowledged that the parents requested that the IEP goal progress report for math be amended to clarify the goal and data collection method at the October 24, 2022 parent/teacher meeting between the parents, the general education teacher, the special education teacher, and the building principal. The district responded by clarifying that the general education teacher who teaches Student A math in the general education setting with special education staff support would be responsible for providing the IEP goal progress reporting data in the future instead of the special education teacher who does not provide any math instruction to the student. In addition, the district provided additional training and support to the special

education teacher who was new to the district and teaching special education under a waiver.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #408.

The findings of Issue Two are incorporated herein by reference.

Student A's math goal states "By the end of annual IEP year, Student A will be able to count, read, and write numerals by 1's up to 120 with 70% accuracy." The state standard associated with this IEP goal is for a student to "count to 120, starting at any number less than 120. Read and write numerals and represent a number of objects with a written numeral."

The short-term benchmark/objective for this goal was to be able to read, count, and write numbers to 60 with 70% accuracy by October 2022. The special education teacher wrote, "On average, Student A is able to read to number 44 consistently and count without a model to 27. At the beginning of the year, Student A was able to write consistently up to 20 without a model. As of 10-10-22, Student A is able to write up to 101 without a model."

The Educational Software for Guiding Instruction (ESGI) for Math Report from progress monitoring in the general education classroom dated October 24, 2022 showed the Student A scored below expectations in the areas of number recognition 0-100 and counts to 100 by 1's.

The building principal, Mr. Wasmuth reported that he attended this parent/teacher conference for Student A and he believed the parents were making a request to amend the IEP to clarify that the student would rote count, read and write number to 120. He believed the situation was resolved by his directive that future IEP goal progress on the math goal would be reported by the general education teacher who taught Student A math in the general education classroom with paraprofessional support rather than the special education teacher who did not work with the student on math.

The special education director at MCSEC, Dr. Diepenbrock reported that he met with the parents on at least two occasions following the October 24, 2022 parent/teacher meeting to discuss the parents' concerns. He indicated that MCEC provided additional support for Ms. Goodwin from the reading consultant, the behavior consultant, the IEP specialist and her special education mentor teacher.

In addition, Ms. Goodwin was formally evaluated through classroom observations and given a plan of improvement. Beginning in January 2023, Ms. Goodwin has been transferred to a different special education teaching assignment within the elementary school building and will no longer be working with Student A.

On January 5, 2023, the parents reported that the IEP goal progress report for December 2022 had not yet been updated despite their initial request back in October 2022. Again, they also shared concerns that the data collected by the general education teacher and the special education teacher did not reflect the same level of attainment in both settings.

Applicable Regulations and Conclusions

The IDEA contains two methods for amending student records. First, federal regulations, at 34 C.F.R. 300.618 allows for a process for parents to request an amendment to a student's educational records when they believe that information in the education records collected, maintained, or used is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing.

Second, federal regulations at 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, it was unclear whether the parent was wanting to amend only IEP goal progress report or the IEP goal contained in the April 13, 2022 IEP or if a request for amending both was being made. The parents believed the IEP goal progress report for Student A's math goal was inaccurate and requested that it be amended at the parent/teacher conference on October 24, 2022. The special education teacher unilaterally refused this request and the parents subsequently shared their request with both administrators from USD #408 and the MCEC.

It is clear that, neither the teacher nor the administrators clarified what the parents were wanting to amend. And neither the teacher nor the administrators shared information about the amendment procedure to submit a request for a hearing when the parent's initial request was denied for a request to amend the IEP goal progress report was initially made. .

Based on the foregoing, a violation of IDEA and Kansas special education regulations is substantiated for failing to follow the appropriate procedures when the parents requested that the IEP goal progress report for math be amended during the 2022-23 school year.

ISSUE FOUR: The USD #408, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures to share personally identifiable information, specifically when the K-1 special education teacher discussed the Student A's behavior with another person in the hallway on September 15, 2022 without obtaining written consent.

Positions of the Parties

The complainants alleged that the special education teacher discussed Student A's behavior with a person without their permission. The mother is employed as a general education teacher at the Marion County Elementary School and she reported intervening and providing regulation techniques to her son on September 15, 2022

when he was crying in the hallway. At that time, the mother observed the special education teacher speaking to another person in the hallway about “behavior.”

The mother stated, “Two hours later on the same day, another staff member in the building approached me to ask ‘Why was the K-1 special education teacher talking to that other lady about your son’s behavior while he was crying and upset in the hallway?’ I inquired about the timing and situation. The other adult proceeded to inform me that she had witnessed the entire situation in which she heard the two ladies discussing my son’s behavior in the hallway while he was crying. I asked if that adult knew who the other lady was and it was stated that they believed it was the Early Childhood SPED teacher from the Marion County Cooperative. The father met with the MCSEC interim director/administrator and MES [Marion Elementary School] building principal immediately following the event. However, no communication was received after the initial concerns were presented from the MCSEC administrator.”

The district staff acknowledged the incident with Student A, the special education teacher, and the early childhood special education (ECSE) teacher on September 15, 2022 as well as the subsequent meeting with the father to discuss concerns with confidentiality and instruction. MCSEC staff reported investigating the situation and meeting with Ms. Goodwin about the parent concerns. Classroom observations, increased mentor visits, and weekly grade level meetings between the building principal, the special education teacher, and the general education teacher were provided as support for the special education teacher. The building principal reported the situation was improving slowly with these supports.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #408.

The findings of Issue One, Two and Three are incorporated herein by reference. Documentation was provided showing that Ms. Goodwin signed the MCSEC Confidentiality Agreement on July 1, 2022 acknowledging that students have the right to expect that information about them will be kept confidential by ALL employees, volunteers, student interns, student teachers, mentors, substitutes, and employees of

independent contractors as required by the Family Educational Rights and Privacy Act (FERPA).

Dr. Diepenbrock indicated he and Mr. Wasmuth met with Ms. Goodwin to discuss the parent concerns. Dr. Diepenbrock stated, "With the principal present, I addressed each of the issues the father brought up at his meeting with me. The teacher, Ms. Goodwin, denied calling their student any names regarding the child's behavior. To my knowledge, there were no other witnesses to that exchange.

The teacher, Ms. Goodwin, denied calling their student any names regarding the child's behavior. . . The Special Needs teacher denied inappropriate conversations about her student in violation of the FERPA instead referencing any conversations that took place were with other special education teachers and her mentor to get assistance in helping meet the needs of her special needs students."

The parents reported that Ms. May was the general education teacher who witnessed the incident. Ms. May confirmed that she saw the special education teacher and another adult talking and watching while the student was upset and crying in the hallway; however neither person attempted to intervene or provide any of the calming techniques that the parents shared at the beginning of the school year. Ms. May indicated that she thought the other adult was the ECSE teacher for the district.

Ms. Goodwin reported that Student A becomes frustrated, upset, and cries but does not exhibit any physical aggression towards persons or property. During the September 15, 2022 incident, the special education teacher reported that she gave the student "choice sticks" with a variety of calming activities from which the student chose to take a walk. The student left the classroom and was followed by Ms. Goodwin into the hallway where he continued to be upset and cry. Ms. Goodwin allowed the student space to calm, observing him from the other end of the hallway.

In her notes, entry dated September 21, 2002, Ms. Goodwin reports her discussion with Dr. Diepenbrock detailing this incident: "He went on to ask me what I talked about with the Pre-K Sped teacher and I told him the same thing I told Justin Wasmuth. I wanted to get together with her to go over the IEP's to make sure the time limits are set correctly for upcoming students. The parent of [Student A] went to Diepenbrock

and complained that I was talking to her about her student. I don't remember doing anything of the sort and stated that to the director and Justin. The director stated that he was giving me a verbal warning about confidentiality and that he would be putting it in my file."

In an email dated December 6, 2022 at 10:50 pm to Dr. Diepenbrock, Ms. Goodwin reported this description of the incident on September 15, 2022: "During this interaction, [Student A] had visibly gotten upset. I pulled out the items that his classroom teacher and mother gave me and specifically instructed me to use. They were Popsicle sticks with 4 choices on them. One of those choices was to take a walk. Since he drew that Popsicle stick, I allowed him to take a walk in the hallway. He walked ahead of me and then stopped in the hallway in front of his mom's classroom. I decided to step away and give him some space since anything I had previously said just made him visibly more agitated and upset. While I was waiting on the other end of the hallway, the Pre-K Sped teacher came out. I stopped her and proceeded to ask her to see if we could find some time to look at schedules I have of the sped students that graduate from Pre-K into Kindergarten would have the correct minutes. To my memory she did ask me about [Student A] and if he was ok. I told her that he is fine, I am just giving him some space. I didn't ever reveal any special details about his IEP or anything."

Dr. Diepenbrock stated that Kristy Butler was ECSE teacher involved in the conversation in the hallway back in September 2022. On January 6, 2022, Ms. Butler, provided a written description of what happened that day. She stated, "I only stepped into her room once toward the beginning of the year to say hi and ask her how things were going. She replied good and then said she would like to meet with me sometime about how the IEP coming from early childhood is being written. I told her that would be fine but as of now I don't have any students that will be going to kindergarten at this time. Then, I walked out of her room. I do not recall ever talking to her at any other time."

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.622(a)(1) require school districts to obtain parent consent prior to releasing personally identifiable information about a student to an unauthorized person.

It is noted that this regulation has an exception that permits disclosure of personally identifiable information to school personnel who have a legitimate educational interest in the information. That means disclosure of personally identifiable information may be made to teachers and other school personnel if that information is needed in order for those personnel to do their jobs. However, this exception does not appear to apply in this situation.

Federal regulations implementing FERPA at 34 C.F.R. 99.3 state that the term “personally identifiable information” (PII) includes, but is not limited to the student’s name; the name of the student’s parent or other family members; the address of the student or student’s family; a personal identifier such as the student’s social security number, student number, or biometric record; other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the school district reasonably believes knows the identity of the student to whom the education record relates. A student’s disability status and any information about a student’s IEP services would fall under the definition of PII.

In this case, it is unclear whether the special education teacher verbally shared personally identifiable information about Student A with the ECSE teacher on September 15, 2022 based upon the conflicting reports from the parents, the special education teacher, Ms. May, and Ms. Butler.

Based on the foregoing, a violation of IDEA and Kansas special education regulations is not substantiated for failing to obtain parent consent prior to releasing personally identifiable information about a student to an unauthorized person.

ISSUE FIVE: The USD #408, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an appropriate IEP for Student A, specifically by failing to address concerns with behavior in the special education classroom setting during the 2022-23 school year.

Positions of the Parties

The complainant reports that Student A has behavioral issues related to trauma and his community psychologist provided techniques for behavioral regulation and de-escalation, which the parents have shared with the school. Beginning in September and continuing through the time of the complaint, Student A experienced behavioral escalations in the special education setting, which were resolved by the mother who teaches in the school the student attends or the general education teacher. The parents believe USD #408 has not provided Student A with a free appropriate public education because Ms. Goodwin failed to incorporate recommended tools and strategies from Student A's neuropsychologist into the special education classroom to address his behavioral needs.

The parents stated, "Prior to the school year beginning, a meeting was held between the parent(s), the general education teacher, and the special education teacher. Information was given regarding the Neuropsychologist's evaluation and recommendations, along with tools and strategies from all of the children's therapists. Materials were bought and provided by the parents with a description of how they were intended to be used. With communication, the therapists continue to provide additional tools, strategies, and materials based on the children's PTSD needs and progression of working through trauma based on early childhood years.

Daily escalations were being reported along with reports of our son's having to be removed from the resource room to a safer environment. It has been communicated to the mother from the K-1 special education teacher that the child is the most horrible child she has ever seen or dealt with. As the child has progressed from co-regulation to self-regulation in the home setting, therapy setting, and majority of other classroom settings, this environment places additional concern.

Our son has expressed that he does not like going to work with the special education teacher, and he has also expressed this multiple times with his therapist(s) who have documented this as a significant concern for his well-being and continued progress at working through early childhood traumatic experiences.”

The parents report that a list of their concerns was addressed in face-to-face meetings with administrators from both USD #408 and MCSEC. The administrators have been in communication regarding the attempts that have been made to try to improve the situation to address the climate needs. However, the parents believe the district has still not adequately addressed their concerns or resolved the problems.

The district acknowledged that they have had ongoing communication during the 2022-23 school year with the parents of Student A regarding their concerns about his educational program and the special education teacher. School administrators reported seeking assistance from the Kansas Technical Assistance System Network (TASN) consultants regarding how best to address the parents’ concerns. Dr. Diepenbrock stated, “They also suggested holding an IEP meeting with the parents. In my written communication with the parents, I suggested holding an IEP meeting to go over concerns and work to find solutions. They were not immediately open to having an IEP meeting believing it was too soon and felt it would replace the annual meeting.” Dr. Diepenbrock reported that an IEP team meeting for Student A has not been scheduled or held during the 2022-23 school year.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #408.

The findings of Issues One, Two, Three, and Four are incorporated herein by reference. The Present Level of Academic and Functional Performance (PLAAPF) in the April 13, 2022 IEP for Student A documents concerns related to his behavior.

- Under the Staff Concerns section, it states, “Student A struggles to regulate his emotions and is unable to adapt to the situation. He needs assistance from staff to help him process and communicate his emotions.”
- Under the Social Emotional section it states, “Student A experienced severe trauma, abuse, and neglect prior to coming to live with the complainants. They report that Student A can become disregulated [sic] easily and become

aggressive. He can struggle staying focused during class. Student A initially struggles to build a relationship with adults he is unfamiliar with; but once a relationship is established, Student A is willing to work with that adult. Student A was given a neuropsychological examination by Kelli Nelson-Amore, Ph.D. APBB at the KU School of Medicine-Wichita and she diagnosed him with ADHD and Post-Traumatic Stress Disorder in January 2022. He was recently put on ADHD medication, which has improved his ability to focus . . . He currently has psychological therapy every other week in Newton and behavioral, occupational, and neurological therapy every other week in Wichita that is provided by his family. He experiences emotional and behavioral dysregulation.”

- The PLAAFP states that the student’s area of exceptionality (OHI) does impact his ability to make progress in the general education curriculum by “negatively impacting his ability to fully regulate his emotions and stay focused”.
- The PLAAFP states that these concerns will be addressed through accommodations, modifications, assistive technology, supplementary aids and supports, and positive behavioral supports/other.

The Accommodations section of the IEP states that “regulation tools” are to be used after emotional dysregulation in all settings, both general education and special education until he becomes emotionally regulated again. No modifications related to behavior were listed in the Modifications section of the IEP and the IEP states that Student A does not require the use of assistive technology.

The IEP requires Supplementary Aids and Services in the amount of 120 minutes per day of para support in the general education classroom during math (60 minutes) and social sciences (Discovery Time)(60 minutes).

The IEP does not include a Behavior Intervention Plan.

Applicable Regulations and Conclusions

Federal regulations, at 300.324(a)(2)(i), require IEP teams to consider the use of positive behavioral intervention and supports, and other strategies to address the behavior of a student whose behavior impedes the child’s learning or the learning of others. The Kansas Special Education Process Handbook in Chapter 4, Section E.1.e., states that the focus of behavioral interventions and supports in the IEP is prevention of the behavior, not just provision for consequences subsequent to the behavior. The

positive behavioral interventions and supports could be implemented through the IEP annual goals, program modifications, or a behavioral intervention plan (BIP). If a BIP is developed by the IEP team, it becomes part of the IEP.

Federal regulations, at 34 C.F.R. 300.324(b) requires that an IEP team meeting must be held at least annually to review and revise the IEP, if appropriate, to determine whether annual goals are being met, to address any lack of expected progress towards IEP goals, to consider the results of any reevaluation and/or information provided by the parent, or to discuss the child's anticipated needs, or other matters.

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, interviews and documentation support a finding that USD #408 found the student's behavior impeded his learning and his access to the general education curriculum at the April 13, 2022 IEP team meeting with the parents in attendance. Student A's IEP team determined the behavioral concerns would be addressed through an accommodation for the use of regulation tools and techniques when the student became dysregulated and the provision of paraprofessional support services in the general education setting for 120 minutes per day. The IEP team did not choose to include a behavior goal, conduct a functional behavioral analysis, or develop a behavior intervention plan (BIP) for the student at that time.

During the 2022-23 school year, the parents shared ongoing concerns about the special education teacher's implementation of the student's IEP on multiple occasions with school staff and administrators in both USD #408 and MCSEC. The LEA responded to these parent concerns by consulting with TASN and providing additional support and training for the special education teacher. IEP goal progress reports show the student was not making progress towards all of his IEP goals in both October and

again in December 2022. The LEA suggested reconvening the IEP team to discuss and develop a plan to address the parents' concerns; however, the parents were "not open" to this action.

It is noted that the federal regulations, at 34 C.F.R. 300.322, requires parents to be provided with the opportunity to participate in IEP team meetings but also includes a procedure to follow when parents are unavailable or choose not to participate.

In this case, there was ample reason for USD #408 to reconvene the IEP team to discuss the parents' concerns, the student's behavior, and the lack of progress towards the IEP goals. The fact that parents are "not open" to reviewing the IEP does not excuse the district from its duty to at least offer a FAPE through the IEP process. When an IEP team meets and proposes changes to an IEP that requires parent consent, and that request is not granted, the district is precluded from making those proposed changes. In such cases, it is important that the district is able to document the services it offered.

Based on the foregoing, a violation of IDEA and Kansas special education regulations is substantiated for failing to reconvene the IEP team to review and revise the IEP, if appropriate, to address whether annual goals are being met, to address any lack of expected progress towards IEP goals, to consider the results of any reevaluation and/or information provided by the parent, or to discuss the child's anticipated needs, or other matters.

In addition, federal regulations implementing the IDEA 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.

Previous investigation findings documented that the student's IEP was not being implemented as written, specifically the provision of paraprofessional support in the general education setting for 120 minutes per week. The investigation of Issue Five

also found that while the accommodations for the use of regulation tools and strategies was initially implemented on September 15, 2022 during the incident in the hallway, the special education teacher failed to continue the use of other dysregulation strategies until the student became emotionally regulated again.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to implement the student's Individualized Education Plan (IEP), specifically Student A's accommodation to use regulation tools until the student becomes emotionally regulated again during the 2021-22 school year.

Corrective Action

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

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

In this case, interviews and documentation found the USD #408 failed to provide the special education staff support in the general education setting for Student A for 25 minutes per day for 84 days during the first semester of the 2022-23 school year resulting in Student A not receiving a total of 35 hours of specialized instruction required by the April 13, 2022 IEP. In addition, Student B was not provided with 90 minutes per day for 84 days during the first semester of the 2022-23 school year resulting in Student B not receiving a total of 126 hours of specialized instruction required by the August 24, 2022 IEP amendment. In addition, Student A's IEP accommodation for using regulation

tools and strategies until the student has regained emotional control was not implemented during the incident that occurred on September 15, 2022.

B. Federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) which 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 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 or a substantial change in placement.

In this case, USD #408 and the parent agreed to amend Student B's IEP on August 24, 2022 by making a material change in services and a substantial change of placement. The parents were provided with a PWN and request for consent for these changes on that same date. However, the amended IEP shows the changes effective as of August 15, 2022, which is prior to the date the parents agreed to the proposed changes. In addition, the parents did not provide consent for these changes until August 30, 2022 which is after the changes were implemented on August 18, 2022, the first day of school.

C. Federal regulations, at 34 C.F.R. 300.618 allows for a process for parents to request an amendment to a student's educational records. A parent who believes that information in the education records collected, maintained, or used is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing.

In this case, the parents believed the IEP goal progress report for Student A's math goal was inaccurate and requested that it be amended at the parent/teacher

conference on October 24, 2022. The special education teacher unilaterally refused this request and the parents subsequently shared this request with both administrators from USD #408 and the MCEC. However, neither the teacher nor the administrators shared the procedure to submit a request for a hearing when the parent's initial request was denied.

D. Federal regulations, at 34 C.F.R. 300.324(b) which require that an IEP team meeting must be held at least annually to review and revise the IEP, if appropriate, to determine whether annual goals are being met, to address any lack of expected progress towards IEP goals, to consider the results of any reevaluation and/or information provided by the parent, or to discuss the child's anticipated needs, or other matters.

In this case, interviews and documentation found there were ample reasons for USD #408 to reconvene the IEP team to discuss the parents' concerns, the student's behavior, the lack of progress towards the IEP goals as well as clarify Student A's math goal.

Based on the foregoing, USD #408 is directed to take the following actions:

- 1) Within 30 calendar days of the date of this report, USD #408 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:
 - a) Comply with federal regulations implementing the IDEA at 34 C.F.R. 300.323(c)(2) which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.
 - b) Comply with state regulations implementing the IDEA 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.
 - c) Comply with federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) which 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.

- d) Comply with state regulations implementing the IDEA at K.A.R. 91-40-27(a)(3) which require school districts to obtain parent consent before making a material change in services or a substantial change in placement.
- e) Comply with federal regulations, at 34 C.F.R. 300.618 allows for a process for parents to request an amendment to a student's educational records. The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing.

2. USD #408 shall reconvene Student A's IEP team no later than February 10, 2023 to discuss the parents' concerns as well as the lack of progress towards the student's IEP goals and to review and revise the IEP, if appropriate. In addition, USD #408 will offer a minimum of 35 hours of compensatory special education staff services in the general education setting as described in the April 13, 2022 IEP to the parents in order to provide a free appropriate public education (FAPE) to the student. USD #408 shall provide SETS with a copy of the written plan for providing the compensatory services offered and the parents' decision on whether to accept the offer, in whole or in part, no later than 10 days from the date of the IEP team meeting.

3. USD #408 shall reconvene Student B's IEP team no later than February 10, 2023 to discuss the parents' concerns as well as the lack of progress towards the student's IEP goals and to review and revise the IEP, if appropriate. In addition, USD #408 will offer a minimum of 126 hours of compensatory special education staff services in the general education setting as described in the August 24, 2022 IEP amendment to the parents in order to provide a free

appropriate public education (FAPE) to the student. USD #408 shall provide SETS with a copy of the written plan for providing the compensatory services offered and the parents' decision on whether to accept the offer, in whole or in part, no later than 10 days from the date of the IEP team meeting.

4. No later than February 10, 2023, USD #408 shall will contact TASN to request that TASN conduct a training for all licensed and certificated special education staff, including IEP managers, school psychologists, and building administrators working at Marion Elementary School in USD #408 regarding the IDEA requirements related to the procedures for providing parents with appropriate prior written notice and obtaining consent prior to making a material change in services and/or a substantial change of placement; the policy and procedures for reconvening a student's IEP team: as well as the procedures for responding appropriately to a parent request for an amendment to a child's educational record. No later than five days after completion of the TASN training, USD #408 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 #408 will provide SETS with any handouts and/or a copy of the presentation.

4. No individual corrective action is ordered regarding the failure to obtain parent consent prior to making the material change in services and the substantial change of placement for Student B because the parents agreed with these proposed changes on August 24, 2022 and would have certainly provided the written consent if the PWN document had been offered at that time instead of following the discussion between the parties. The changes were made beginning on August 18, 2022 which is only five days prior to the date of the IEP amendment agreement and therefore does not rise to the level of a failure to provide a free appropriate public education (FAPE) to the student.

5. No later than February 15, 2023, USD #408 will respond appropriately to the parents' request for an amendment to the student's IEP goal progress report for math by either granting the request or by denying the request and providing the parent with information about their right to request a hearing. A copy of the written response will be provided to SETS no later than February 17, 2023.

6. Further, USD #230 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) as described below.

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, M.Ed., 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)