This report is in response to a complaint filed with our office by the parent, parent of son, the student. Macio will be referred to as “the student” in the remainder of this report. The parent will be referred to as “the parent.”

Investigation of Complaint

The investigators reviewed the complaint submitted on behalf of the student and reviewed the written response of the district. The district’s response was sent by e-mail on February 10, 2023, by Anita Breen, Director of Special Education at Twin Lakes Educational Cooperative.

Background Information

The relevant facts in this case are as follows:

1. The student is enrolled in Clay County Public Schools USD # 379 for the current school year. (2022/2023 school year)
2. February 2019, student was found eligible for special education as a 3-year-old.
3. The student’s primary exceptionality is categorized as a Developmental Delay in Social and Emotional Development.
4. August 8, 2022, the student transferred into Clay County Public Schools #379 from Geary County USD #475.
5. During the first week of school, the Clay County IEP team met, including the parent, and at that meeting it was determined attendant care and special education transportation should be removed from the student's IEP. No reason for removal of attendant care was noted on the PWN.
   a.) In an e-mail response for clarification on the decision, the district stated that the “student did not exhibit behaviors that indicated a need for that” (attendant care), during “the first week of school”.


6. September 20, 2022, the IEP team again met and determined an increase in pull-out special education services and a Behavior Intervention Plan should be implemented.

7. No official Notice of Meeting was sent for this meeting, but records indicate e-mail exchanges occurred prior to the meeting between the district and the parent regarding the upcoming meeting, its time/date, and concerns to be addressed. (September 9th and 16th).

8. The results of that meeting include the following:
   a.) 430 minutes in the Special Education Room
   b.) 20 minutes 1x week with psychological services
   c.) 30 minutes 5x week for social skills instruction
   d.) Behavior Plan with leveled structure to earn time back in the general education classroom.
   e.) Social work services increase was considered but denied due to provider availability.
   f.) was considered but denied due to safety concerns.
   g.) More Restrictive Environment considered but rejected due to legal/ethical standards.

8. October 17, 2022, the district proposed a special education reevaluation to acquire new data after the parent requested an FBA. A PWN was sent to the parent which included:
   a.) The district’s request for consent for Project Stay to observe and contribute to student’s behavior intervention plan.
   b.) A statement that not assessing the student was considered but rejected because that would not comply with state and federal guidelines.
   c.) The district’s request for consent for the assessment and resulting collection of behavioral and/or social-emotional data to determine the student’s current needs.

9. October 19, 2022, the parent signed the PWN, consenting to the reevaluation.

10. November 8, 2022, following a suspension which began on November 7, 2022, the district completed a manifestation determination review (MDR) and determined that the student’s behaviors were NOT a manifestation of the student’s disability.
     Included in the MDR were the following:
     a.) The November 7, 2022, incident, which led to the suspension, was behavior that the district found “represents a pattern of behavior”.
     b.) The student’s behavior, which resulted in the suspension, included “aggressive behaviors in the general education and special education
classroom including but not limited to: hitting, kicking, throwing rocks, eloping, yelling, cussing, verbal threats, destruction of property”.

c.) The student had a “history of disruptive/aggressive behaviors for attention-seeking and in desire to control play”.

d.) The student was making slow progress toward goals.

e.) The student had a record of numerous behaviors that subjected the student to disciplinary action within the school year, consisting of 9 entries which resulted in no less than 16 days of in-school suspension (ISS) and out-of-school suspension (OSS), beginning on 9/1/2022 until the incident on 11/07/2022.

11. In an e-mail response for clarification as to the decision not to hold additional MDR’s after subsequent suspensions, the district stated that, “the student’s later incidents followed that pattern” [pattern of behavior the district found in the MDR conducted on 11/7/2022], and therefore the district was under the “good-faith impression” that further MDRs were not needed because they found a pattern.

12. November 28, 2022, the IEP team met to review the data collected from the Functional Behavior Assessment and the following information was discussed:

a.) The student was performing academically at an age-appropriate level but did continue to exhibit a need in social-emotional supports.

b.) Possibly adding time to the end of the day instead of the beginning so that the student could stay in class rather than come and go.

c.) Team discussed the student being able to “stay” at his current level (per the BIP) even if he struggles the previous day. The team agreed unless the student “is unsafe to his classmates during this time”.

d.) The team discussed allowing the student to attend the last 15 minutes of the day “as long as his body is calm”. What this looks like to be reviewed with Mrs. Laffery.

e.) An adult will come with the student during the general education classroom time.

13. January 9, 2023, IEP meeting was held and a BIP was altered and updated.

14. E-mails, following the 1/9/2023 IEP meeting, between the district and the parent indicating that the parent would like to remove the current IEP and BIP and start over.

15. January 24, 2023, PWN issued refusing to create a new BIP with the reasoning that the current document can be “changed as needed.”
a.) Emails between school and parent discussing the recent changes to the BIP and that time is needed to determine if the interventions are successful or not.

16. E-mails exchanged between the district and the parent indicating when and how the district would provide special education services to the student when the student was in ISS or OSS, including providing the student with technology if the parent was agreeable.

**Issues**

In the complaint, the parent raises the following issues:

**Issue One:** The parent reports that the Behavior Intervention plan is not appropriately written to meet the social and emotional needs of the student.

**Issue Two:** The parent reports that the student is being denied access to his same aged peers, non-academic activities, and field trips due to the student's disability.

**Issue Three:** The parent reports that the student is not being educated in the Least Restrictive Environment.

**Issue Four:** The parent reports that special education services were not provided after the Manifestation Determination Review.

**Analysis**

**Issue One:** The parent reports that the Behavior Intervention plan is not appropriately written to meet the social and emotional needs of the student.

This first issue is essentially whether the student was provided with a Free Appropriate Public Education (FAPE) based on the student's Behavior Intervention Plan and IEP.

The term “free appropriate public education” (FAPE) includes special education and related services that are provided at no cost to the parent and in conformity with an individual education program. (K.A.R. 91-40-1(z)). A two-part analysis was established in Rowley, 458 U.S. 176 (1982), to determine whether FAPE has been provided to a student. Endrew F. v. Douglas County School District, 117 LRP 9767 (S.C. 2017), further
refined the legal standard to mean that a school "must offer an IEP reasonably calculated to enable a child to make progress appropriate in the light of the child's circumstances", and a subsequent amendment to the statute clarified the process used by hearing officers when determining whether a procedural violation denies a student FAPE.

The first part of the Rowley analysis asks whether all procedural requirements of IDEA have been met, and if not, did those procedural violations result in a denial of FAPE, which occurs only if the violation “a) impeded the child’s right to FAPE, b) significantly impeded the parents’ opportunity to participate in the decision-making process, or c) caused a deprivation of education benefits”. (20 U.S.C. 1415(f)(3)(E)).

a) Were there any procedural violations regarding the IEP/BIP, and if so, did those violations fail to provide the student with FAPE?

In this situation, we find two procedural violations regarding the implementation of the IEP and BIP. We also find that these procedural violations did not fail to provide the student with FAPE for the following reasons.

Procedural Violation #1 – Failure to provide a Notice of Meeting for the meeting conducted on September 20, 2022.

Under, K.A.R. 91-40-17(a)(2), a school is required to provide parents with a written notice of any IEP meeting. This notice has specific content requirements and must be provided in writing at least 10 calendar days prior to the meeting. By its own admission, the district failed to provide this notice of meeting to the parent prior to the September 20, 2022, IEP meeting. This is a violation under state law.

In this case, the evidence presented shows that although the district did fail to provide a notice of meeting, the district and the parent were in regular contact regarding the upcoming meeting. Part of the point of a notice of meeting is to ensure that all concerns will be addressed and a mutually agreed upon meeting time is set. E-mails exchanged on September 9th and 16th do address what proposed changes to the student’s IEP would be considered and a mutually convenient time for the meeting explored. Due to this e-mail communication, the parent was not significantly impeded of the opportunity to participate in decision-making, the student was not impeded the student’s right to FAPE, and the student was not deprived of educational benefits. While we stress that this communication is not an appropriate replacement of a notice of meeting that meets
the requirements of K.A.R. 91-40-17(a)(2), and the failure to provide a proper notice of meeting is a violation, we do not find that the violation created a denial of FAPE.

**Procedural Violation #2** - Failure to provide a sufficient reason as to why the student would not receive additional social work time in the IEP amendment dated September 20, 2022.

State and federal laws and regulations require that educational placement decisions be made by the IEP team, based on the child’s individual needs in accordance with LRE provisions. (34 C.F.R. 300.116; 34 C.F.R. 300.320; K.A.R. 91-40-21). When the IEP team considers a related service option, the team may decide that the related service is, or is not, needed. If the option is rejected, the education agency is required to provide a description of “other options the agency considered and the reasons why those options were rejected”. (K.S.A. §72-3432(c); K.A.R. §91-40-26(a)(1); 34 C.F.R §300.503(b)(6)). OSEP has stated that “in all cases placement decisions must be individually determined, based on the child’s IEP, and not solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience”. Federal Registrar, 46588.

During the September 20, 2022, amendment meeting, the team considered increasing the student’s social work minutes from two times a week for 20 minutes each, to three times a week for 20 minutes each. However, in the IEP, the district noted that, “adding additional social work time was also considered, but was unable to be added due to provider availability”. Lack of availability of staff and services is not an acceptable reason for not providing the services under the law, therefore, this is a violation of the requirement to adequately state why a service option has been rejected.

However, in lieu of social work services, the IEP team agreed to provide 20 minutes, once per week of school psychological services. While it is true that social work and school psychological services can be vastly different, in this situation, and based on this student’s goals, which center on learning how to emotionally regulate, as well as clarifying e-mails from the district as to the skills each provider is teaching, we find that the services provided by the school psychological services will support the student toward achieving the student’s IEP goals. Additionally, the parent was part of the IEP team meeting and did provide consent for school psychological services. Therefore, because 1) the parent was able to participate in the decision-making process, 2) the failure to explain, in a PWN, why the student would not receive additional social work services, did not impede the provision of FAPE for the student, nor 3) was there any
deprivation of education benefits, we find that this violation did not result in a failure to provide FAPE to the student.

b) Was the BIP appropriately written to provide the student FAPE?

The second part of the Rowley analysis asks whether the IEP is reasonably calculated to provide some educational benefit to the student. In considering the second part of Rowley, we note that in Endrew F. v. Douglas County School District, 137 S.Ct. 988 (2017), the United States Supreme Court revised this part of the Rowley decision to ask whether the IEP is reasonably calculated to enable a student to make appropriate progress in light of the student’s unique circumstances. We find that the IEP/BIP was appropriately written to provide the student with FAPE for the following reasons.

Kansas regulations define FAPE, in relevant part, as “special education and related services that are provided in conformity with an individualized education program”. (K.A.R. 91-40-1(z)(4)). Kansas further defines an IEP as “a written statement for each exceptional child that meets the requirements of K.S.A. 72-987, and amendments thereto, and the following criteria: (1) Describes the unique educational needs of the child and the manner in which those needs are to be met; and (2) is developed, reviewed, and revised in accordance with applicable laws and regulations”. (K.A.R. 91-40-1(gg)). When developing a student’s IEP, the team shall consider, inter alia, that a student’s IEP be based on the strengths of the child, the concerns of the parents, the academic, behavioral, and functional needs of the child, and, in the case of a student whose behavior impedes their learning or the learning of others, “the use of positive behavioral interventions and supports and other strategies to address that behavior”. (K.S.A. 72-987(d)(1)-(4)).

In this case, the parent alleges that the student’s current IEP/BIP are not appropriately written and that the team should start over and create an entirely new IEP/BIP for the student. In review of the documents, we found that the IEP team, including the parent, met several times over the course of the academic year. Together the team, with consent and participation of the parent, adjusted and aligned the IEP and BIP based on the student’s individual needs and implemented a behavioral intervention plan consisting of supports and other strategies to address the student’s behavior. The student’s IEP, and subsequent amendments, show that appropriate data was collected and considered, specifically parent reports, previous IEP data, progress monitoring, behavioral and incident disciplinary data, and that the student was making, as noted by the district, some, albeit small, advancements toward IEP goals.
Therefore, at this time, we find that the IEP and BIP were written considering the unique educational needs of the child and in the manner in which those needs should be met. Further we find no indication that the current IEP and BIP are not providing appropriate educational benefit to this student, in light of this student’s individual circumstances. Therefore, we do not find a violation of FAPE based on the current IEP/BIP.

Regarding the parent request to start over with a new IEP/BIP, we find that there is no violation. On January 9, 2023, the IEP team, including the parent, held the annual review of the student’s IEP. On January 12, 2023, the parent requested that the team “start from scratch” and develop a new IEP and BIP. In an e-mail dated January 18, 2023, the district responded to the parent’s requests for a new IEP/BIP and let the parent know that they would consider this. However, the district also noted that between the last changes to the IEP/BIP and the IEP team meeting, held on January 9th, that only 19.5 school days had elapsed, of which the student was present for 17 days. The district noted that this was a limited time to gather data. Following this correspondence, the district appropriately provided the parent with a PWN explaining that the BIP, which is part of the IEP, can and is being amended as the IEP team feels necessary and was therefore denying the parent’s request.

In light of our finding of no violation of FAPE based on the current IEP/BIP, and given that at the time of the parent’s request for a new IEP/BIP, the current amendment was only in place for approximately one month, and also because the district appropriately provided a PWN explaining the rejection of the parent’s request, we do not find that the school violated any provision of IDEA by refusing to “start from scratch” with an entirely new IEP and BIP.

**Issue Two**: The parent reports that the student is being denied access to same-aged peers, non-academic activities, and field trips due to the student’s disability.

The next issue alleged by the parent is that the student was not permitted to access same-aged peers in non-academic activities and field trips resulting in a violation of law under IDEA. We find no violations for the following reasons.

According to K.A.R. 91-40-3(b)(1), an agency shall provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities, including the provision of supplementary aids and services as determined to be necessary by the child’s IEP team. Under K.S.A. 72-3429(c)(5), an IEP shall include an
explanation of the extent, if any, to which a child will not participate with nonexceptional children in the regular class and in activities.

In this case, the IEP team, including the parent, determined that the student would participate in activities so long as the child was regulated in a manner noted in the student’s IEP and BIP. The IEP states, the [student] “will not be educated or participate with [the student’s] general education peers through the duration of the school day unless otherwise specified and in accordance with his behavior plan.” The BIP permits the student to earn time in the general education setting based on the student’s ability to regulate [the student’s] emotions and provides for a certain amount of time in the general education setting at the end of each day.

Documentation shows that attempts to include the student in activities were made on various occasions when the student was regulated. E-mails, incident reports and data also show that when the student was regulated, the student did participate in activities such as music and gym. However, the manner in which the student was able to participate was altered based on the student’s IEP and the student’s unique needs. For example, the student participated in music, with general education peers during a drumming session, but was not able to utilize the drum sticks due to the student using them for destructive purposes. As a side note, the district also stated that on one occasion the student was permitted to participate with preschoolers during gym, we stress that this is NOT an activity with same aged peers and does not count as inclusion with same-aged peers. However, because the student also did participate in nonacademic activities, to the extent described in the student’s IEP, with same-aged peers, and in the manner in which the student was able, we find no violation.

**Issue Three**: The parent reports that the student is not being educated in the Least Restrictive Environment.

The third issue is whether the student was educated in the least restrictive environment in light of the student’s circumstances. We find no violation of LRE for the following reasons.

Educational placement is a team decision. As such, and under K.A.R. 91-40-21(c)(1)(A), when determining the placement of a child with a disability, each agency shall ensure that placement decisions meet certain criteria, which requires that the decisions are made by a group of persons, including the parent and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement
options. Furthermore, schools must educate children in the “least restrictive environment” referring to the educational placement in which, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. (K.A.R. 91-40-1(II)). A child should only be removed from the general education environment if the severity of the disability is such that education in the general education environment, with the use of supplementary aids and services or modifications, cannot be achieved satisfactorily. (K.S.A. 72-3420(a)). An IEP must contain an explanation of the extent, if any, to which a student will not participate with students without disabilities in the general education classroom and in extracurricular and nonacademic activities. (K.S.A. 72-3429(c)(5)).

In this case, the IEP team met, including the parent, on several occasions, to discuss the appropriate educational environment for the student based on continued behavior concerns occurring inside and outside the general education classroom. On September 20, 2022, the team decided, with consent from the parent, to increase pullout time and implement a BIP based on the behaviors that the student was exhibiting. As stated above, the student's IEP/BIP was subsequently adjusted, with consent and input from the parent, including the student's participation with general education peers. Furthermore, documents indicate that between September 20, 2022, and January 9, 2023, the student's behaviors continued to be a concern, and included, destruction of property, eloping, injury to staff and other student, verbal assaults, and significant disruption of instruction in the general education classroom. Documents also show that, in this situation, the student's behaviors were impeding the learning of self and others in the general education setting. As noted above, the student's IEP and BIP provided an explanation as to what extent the student would participate with general education peers and in what setting. Therefore, because placement decisions were made by the team, with consent from the parent, and because documentation shows that the student was being educated based on the individual needs of the student, and in consideration of the impediment the student's behaviors had on the learning of self and others, we find no LRE violation.

**Issue Four:** The parent reports that special education services were not provided after the Manifestation Determination Review.

Finally, we considered whether, following the manifestation determination review conducted on November 8, 2022, the student received the appropriate special
education services. We find that the student did receive appropriate services and therefore do not find a violation for the following reasons.

A manifestation determination (MDR) is a review done to determine whether the student's behavior, resulting in discipline, is a manifestation of the student's disability. An MDR may be done, but is not required, after discipline resulting in a removal, if the short-term removals do not cumulate in more than 10 consecutive days, or the short-term removals do cumulate in more than 10 days, but do not constitute a change in placement and there is NOT a pattern of removals constituting a change in placement. (34 C.F.R 300.530(b)). In such a case, the school will determine services for the student. (34 C.F.R. 300.530(d)(4); K.A.R. 91-40-33(b); K.A.R. 91-40-36(a)).

However, when a student, with an exceptionality, is removed for more than 10 consecutive days, or shorter removals cumulate to more than 10 days AND a pattern of removal constituting a change in placement occurs, an MDR must be done. (34 C.F.R. 300.536(a)(1)(2); 34 C.F.R 300.530(c)). In such a case, when the behavior subject to disciplinary action is not a manifestation of the student's disability, the IEP team shall determine services and the place where the services will be provided. (34 C.F.R. 300.530(d)(5); 34 C.F.R 300.531). Parental consent is not required for this change in placement in this situation. (K.A.R. 91-40-27(a)(3)).

In either situation, when a student has reached the 11th cumulative day of suspension in a school-year, services must be provided that enable the child to 1) participate in the general education curriculum, and 2) progress toward meeting the goals set in the IEP. (34 C.F.R. 300.530(d)(4)).

Regarding whether the student appropriately received services following the MDR, we find that the student did. Documents show that after the MDR, the student was receiving general education instruction via zoom during in-school suspension (ISS) and during out-of-school suspension (OSS). E-mail communication dated November 7th indicates that the district sent homework for the student to complete while in OSS and continued to provide special education services through zoom. Further the district offered the student an iPad for at-home use to facilitate the student's progress toward IEP goals. Findings also show that the district made up minutes the student lost on two separate occasions due to ISS or OSS. Interviews and documents further show that, in some cases, while services were provided the student chose not to participate. For example, the student would sometimes not present for scheduled zoom time while in OSS or would sometimes refuse to actively participate with teachers. In additional email communications, occurring post-MDR, it was revealed that the district provided the
student with services, offered schedules for services, and provided lessons for the days in which the student would be in OSS. Therefore, given that documentation shows that the district determined what services the student would receive, when, and how the student would receive services, and provided general education lessons, following the MDR, in which the student’s behavior was not considered a manifestation of his disability, we find that the student did not lack special education services and there is no violation.

We would note however, that while we find no violation as to services provided after the MDR, the district did conduct its first, and only, (up to this point), MDR on November 8, 2022. According to a list of incidents and resulting discipline, included in the MDR, the manifestation review was completed after the student’s 16th cumulative day of ISS and OSS. During this review the district found that the student’s behavior was not a manifestation of the student’s disability.

While it is true that a district does have discretion as to when removals become a pattern (even those removals that have accumulated in more than 10 cumulative days suspension), and a district is not obligated to complete an MDR just because a student has accumulated more than 10 days of suspension, unless a pattern has been found, it is prudent for any district to consider the factors under K.A.R. 91-40-33(a)(1). These factors give guidance as to when short-term suspensions constitute a change in placement.

In this case, we note that the district documented, on the MDR, that the student had a “history of disruptive/aggressive behaviors” and marked that the behavior (occurring Nov. 7th), which resulted in the discipline, was represented by a “Pattern of Behavior”, yet the district found that the student’s behavior was not a manifestation of the student’s disability. At this time, we reserve judgment on whether the MDR should have been conducted sooner, based on a possible “pattern of behavior”, or whether the MDR should have found that the student’s behavior was a manifestation of the student’s disability, as these questions are outside the scope of this investigation and this particular issue.

In summary, there is no violation as to services provided after the MDR was done.

**Conclusion**

1. The allegation of a violation of federal and/or Kansas special education laws or regulations that the Behavior Intervention plan is not appropriately written to meet
the social and emotional needs of the student, thus failing to provide FAPE, is not substantiated.

a) Procedural violations of federal and/or Kansas special education laws or regulations regarding failure to provide a Notice of Meeting is substantiated.

b) Procedural violations of federal and/or Kansas special education laws or regulations regarding failure to provide an appropriate reason for not providing a special education service or supportive service the IEP team deemed necessary is substantiated.

2. The allegation of a violation of federal and/or Kansas special education laws or regulations that the student was denied access to the same aged peers, non-academic activities, and field trips due to the student’s disability is not substantiated.

3. The allegation of a violation of federal and/or Kansas special education laws or regulations that the student is not being educated in the Least Restrictive Environment is not substantiated.

4. The allegation of a violation of federal and/or Kansas special education laws or regulations that special education services were not provided after the Manifestation Determination Review is not substantiated.

**Corrective Action**

Information gathered during this investigation has substantiated procedural noncompliance with special educational statutes and regulations. Violation(s) have occurred in the following areas:

**Procedural Violation #1** – Failure to provide a Notice of Meeting for the meeting conducted on September 20, 2022.

Under, K.A.R. 91-40-17(a)(2), a school is required to provide parents with a written notice of any IEP meeting. This notice has specific content requirements and must be provided in writing at least 10 calendar days prior to the meeting. By its own admission, the district failed to provide Notice of Meeting for the meeting conducted September 20, 2022. This is a violation under IDEA and state law.

**Procedural Violation #2** - Failure to provide a sufficient reason as to why the student would not receive additional social work time in the IEP amendment dated September 20, 2022.
State and federal laws and regulations require that educational placement decisions be made by the IEP team, based on the child’s individual needs in accordance with LRE provisions. (34 C.F.R. 300.116; 34 C.F.R. 300.320; K.A.R. 91-40-21). When the IEP team considers a related service option, the team may decide that the related service is, or is not, needed. If the option is rejected, the education agency is required to provide a description of “other options the agency considered and the reasons why those options were rejected”. (K.S.A. §72-3432(c); K.A.R. §91-40-26(a)(1); 34 C.F.R §300.503(b)(6)). OSEP has stated that “in all cases placement decisions must be individually determined, based on the child’s IEP, and not solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience”. Federal Registrar, 46588.

Based on the foregoing, USD #379 is directed to take the following actions:

1. **Within 30 Calendar days of the date of this report, USD #379 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:**
   a. **Comply with federal and state regulations in accordance with, K.A.R. 91-40-17(a)(2), which requires a school to provide parents with a written notice of any IEP meeting. This notice has specific content requirements and must be provided in writing at least 10 calendar days prior to the meeting.**
   b. **Comply with state and federal laws and regulations in accordance with, 34 C.F.R. 300.116; 34 C.F.R. 300.320; K.A.R. 91-40-21; K.S.A. §72-3432(c); K.A.R. §91-40-26(a)(1); and 34 C.F.R §300.503(b)(6)): which require that educational placement decisions be made by the IEP team, based on the child’s individual needs in accordance with LRE provisions. (34 C.F.R. 300.116; 34 C.F.R. 300.320; K.A.R. 91-40-21). When the IEP team considers a related service option, the team may decide that the related service is, or is not, needed. If the option is rejected, the education agency is required to provide a description of “other options the agency considered and the reasons why those options were rejected”. (K.S.A. §72-3432(c); K.A.R. §91-40-26(a)(1); 34 C.F.R §300.503(b)(6)).**

2. **No later than March 10, 2023, USD #379 shall contact TASN to request that TASN conduct a training for all special education staff, school psychologists, social workers, and administrators at Lincoln Elementary School regarding:**
   a. **The IDEA requirements related to procedures and processes as it pertains to required IEP documents (Notice of Meetings, Prior Written Notice, etc.)**
b. Training regarding best practices in writing and implementing a Behavior Intervention Plan in the IEP.

c. No later than five days after the completion of the TASN training, USD #379 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.

d. In addition, USD #379 will provide SETS with any handouts and/or a copy of the presentation.

3. No additional corrective action is ordered regarding the following:

   a. The allegation of a violation of federal and/or Kansas special education laws or regulations that the student was denied access to the same aged peers, non-academic activities, and field trips due to the student’s disability is not substantiated.

   b. The allegation of a violation of federal and/or Kansas special education laws or regulations that the student is not being educated in the Least Restrictive Environment is not substantiated.

   c. The allegation of a violation of federal and/or Kansas special education laws or regulations that special education services were not provided after the Manifestation Determination Review is not substantiated.

4. Further, #379 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 within this report;

   b. A written request for an extension of time within which to complete on 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.

Investigation conducted by:
Ashley Niedzwiecki
Attorney
Dr. Crista Grimwood
Education Program Consultant
Right to Appeal

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

Ashley Niedzwiecki
Attorney

Dr. Crista Grimwood
Education Program Consultant

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

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;
(B) the withholding of state or federal funds otherwise available to the agency;
(C) the award of monetary reimbursement to the complainant; or
(D) any combination of the actions specified in paragraph (f)(2)