This report is in response to a complaint filed with our office on behalf of the child by her mother, The mother. In the remainder of the report, the child will be referred to as “student 1” and The mother will be referred to as “the mother”, “the parent”, or “the complainant”.

The complainant also made allegations regarding all of the other students in Student 1’s special education classroom as well. The chart below includes the names of these students and how they will be referred to in the remainder of the report:

<table>
<thead>
<tr>
<th>Name</th>
<th>Referred to as . . .</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Student 2</td>
</tr>
<tr>
<td></td>
<td>Student 3</td>
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<tr>
<td></td>
<td>Student 4</td>
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<tr>
<td></td>
<td>Student 5</td>
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<td>Student 6</td>
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<td>Student 7</td>
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<td></td>
<td>Student 8</td>
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<td></td>
<td>Student 9</td>
</tr>
<tr>
<td></td>
<td>Student 10</td>
</tr>
<tr>
<td></td>
<td>Student 11</td>
</tr>
</tbody>
</table>

The complaint is against USD #413 (Chanute Public Schools) who contracts with USD #603 (ANW Special Education Interlocal) to provide special education services to students in the district. In the remainder of the report, “USD #413,” “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 approximately 30-days to complete the investigation of a child complaint and issue a report from the data a complaint is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on February 15, 2023 and the timeline was extended until March 23, 2023 because the district was on spring break for a week during the investigation and was unable to respond to additional questions and requests for documentation in a timely manner.
Investigation of Complaint

Nancy Thomas, Complaint Investigator, contacted the mother by telephone on February 17, 2023 to clarify the issues of the complaint. The mother was interviewed again by telephone on March 10, 2023.

The mother requested and provided written consent for Paige Boydston, PhD, BCBA-D, to be interviewed during the investigation. Ms. Boydston is the student's autism consultant from Integrated Behavioral Technologies and has worked with the student since 2014. She was interviewed on March 7, 2023.

USD #413 made the following administrative staff available for a telephone interview on March 9, 2023:

- Korenne Wolken, Director of ANW Special Education Interlocal
- Don Epps, Principal of Royster Middle School
- Kathy Blair, Special Education Teacher
- Kayla Chancey, Paraprofessional
- Jerika Hare, Paraprofessional
- Jordan Hevel, Coordinator for ANW Special Education Interlocal
- Matt Koester, Assistant Superintendent

In completing this investigation, the Complaint Investigator relied on the following documentation provided by the complainants and the district in making findings and conclusion:

- Functional Behavioral Assessment (FBA) completed by Integrated Behavioral Technologies, Inc. dated October 2021
- TASN observation of Student 1 dated October 14, 2022
- TASN Technical Assistance Action Plan for Student 1 dated October 17, 2022
- Classroom Zoning Resource provided by TASN
- Classroom Zoning Schedule
- Function based Intervention Chart provided by TASN
- Daily Schedule for all of the students in the special education classroom (2022-23)
- Individualized Education Plan (IEP) for student 1 dated November 2, 2022 and amended on December 8, 2022
- IEP for student 2 dated December 12, 2022
- IEP for student 3 dated October 27, 2022
- IEP for student 4 dated January 12, 2023
- IEP for student 5 dated March 28, 2022 and amended on December 2, 2022
- IEP for student 6 dated November 14, 2022
- IEP for student 7 dated March 23, 2022
- IEP for student 8 dated April 20, 2022
Background Information

This investigation involves eleven students who are currently enrolled at Royster Middle School in sixth through eighth grades in USD #413. Each student has an Individualized Education Plan and spends some part of their school day in Kathy Blair's self-contained special education classroom. This classroom focuses on a functional curriculum for students with exceptionalities including intellectual and multiple disabilities.

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 one issue that was investigated.

ISSUE ONE: The USD #413, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide paraprofessional support to the students in Ms. Blair's special education classroom as required by each student's IEP during the 2022-23 school year.
Positions of the Parties

The complainant alleged USD #413 failed to provide the paraprofessional support required by student 1’s IEP resulting in a decrease in access to the general education curriculum and integration opportunities with her same-age peers. The complainant believes this lack of services was the result of a staffing shortage and that the other ten students in Ms. Blair’s special education classroom were also impacted negatively by this lack of appropriate staffing.

The district acknowledged that there were multiple days during the 2022-23 school year when the assigned paraprofessional was gone and Ms. Blair did not request a substitute paraprofessional. This impacted student 1 because she was then unable to attend her assigned general education classes with paraprofessional support. USD #413 reported that since this concern was brought to the attention of school administrators, a new procedure has been instituted to ensure that the paraprofessional position is covered on days when a paraprofessional will be away from the school building.

Based upon an internal investigation into this complaint, USD #413 reported that the staffing shortage on these particular days did not impact the provision of special education services and support for the other ten students in Ms. Blair’s classroom. However, that internal investigation revealed several other issues related to IEP implementation procedures for the students in Ms. Blair’s classroom at Royster Middle School that the district is now addressing and correcting.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #413.

The following chart describes the IEPs in place during the 2022-23 school year specifically in regards to paraprofessional support for the 11 students in Ms. Blair’s special education classroom at Royster Middle School:

<table>
<thead>
<tr>
<th>Student</th>
<th>IEP in effect on 8/17/22</th>
<th>Amount of paraprofessional support</th>
<th>Date of IEP review or amendment</th>
<th>Amount of paraprofessional support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Student 1</td>
<td>11/9/21</td>
<td>Para support in general education Math, Social Studies and electives</td>
<td>11/2/22 Amended Annual IEP 12/8/22</td>
<td>Para support in general education Math, Social Studies and electives; Access to Attendant Care</td>
</tr>
<tr>
<td>Student</td>
<td>IEP in effect on 8/17/22</td>
<td>Amount of paraprofessional support</td>
<td>Date of IEP review or amendment</td>
<td>Amount of paraprofessional support</td>
</tr>
<tr>
<td>---------</td>
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<td>----------------------------------</td>
</tr>
<tr>
<td>Student 2</td>
<td>12/13/21</td>
<td>Para support in electives and PE</td>
<td>12/2/22</td>
<td>Para support in electives and PE</td>
</tr>
<tr>
<td>Student 3</td>
<td>11/4/21</td>
<td>Attendant Care during lunch Para support in specials classes</td>
<td>10/27/22</td>
<td>Para support in specials classes</td>
</tr>
<tr>
<td>Student 4</td>
<td>1/25/22</td>
<td>Para support in electives</td>
<td>1/12/23</td>
<td>Para support in electives</td>
</tr>
<tr>
<td>Student 5</td>
<td>3/28/22</td>
<td>None</td>
<td>Amended 12/2/22</td>
<td>None</td>
</tr>
<tr>
<td>Student 6</td>
<td>11/23/21</td>
<td>Para support in electives Access to Attendant Care</td>
<td>11/14/22</td>
<td>Access to Attendant Care</td>
</tr>
<tr>
<td>Student 7</td>
<td>3/23/22</td>
<td>Para support in specials classes; Access to Attendant Care</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Student 8</td>
<td>Transferred with IEP dated 4/20/22</td>
<td>None</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Student 9</td>
<td>10/27/21</td>
<td>Para support in electives</td>
<td>10/26/22</td>
<td>Para support in electives</td>
</tr>
<tr>
<td>Student 10</td>
<td>10/11/21 Amended 8/16/22</td>
<td>Access to Attendant Care</td>
<td>10/5/22</td>
<td>Para support in electives</td>
</tr>
<tr>
<td>Student 11</td>
<td>Transferred with IEP dated 9/1/22</td>
<td>Access to Attendant Care</td>
<td>12/14/22</td>
<td>Access to Attendant Care</td>
</tr>
</tbody>
</table>

Beginning on November 2, 2022, student 1’s IEP required para support for 260 minutes for 1-day per week, 300 minutes for 2-days per week and 330 minutes for 2-day per week. The district acknowledged, and the documentation and interviews found, that a paraprofessional was unavailable to provide the required paraprofessional support to student 1 in the general education setting as required by the IEP in effect on the specific dates noted below. On these dates, the student remained in Ms. Blair’s special education classroom due to staff absences:

- November 7, 14, 15, 16, and 22, 2022
- December 8, 2022
- January 5, 19, 20, 23, and 26, 2023
USD #413 reported and documentation confirmed that three additional students were not provided the paraprofessional support required by the current IEP during the 2022-23 school year as noted below:

- Student 2’s IEP required para support for all electives but this student is now able to attend the Family/Consumer Science class without support. USD #413 acknowledged the student’s IEP was not implemented as written and that an IEP team meeting needs to be reconvened to consider changing his IEP services.

- Student 4’s IEP required para support in all electives; however, the student is attending the Art class independently. USD #413 acknowledged the student’s IEP was not implemented as written and that an IEP team meeting needs to be reconvened to consider changing his IEP services.

- Student 9’s IEP para support in all electives; however, the student is attending the Art class independently. USD #413 acknowledged the student’s IEP was not implemented as written and that an IEP team meeting required needs to be reconvened to consider changing his IEP services.

Through an internal audit, USD #413 found and self-reported that the IEPs of several additional students were not being implemented as written as noted below:

- Student 5 is currently provided with access to attendant care; however, his IEP does not reflect this support.
- Student 7’s IEP is written for him to be enrolled in a general education elective class; however, the student’s current schedule does not include a general education electives class.
- Student 8’s IEP is written to reflect a 4-day school week from the previous school district while USD #413 operates on a 5-day school week.

An email written by Ms. Wolken on February 20, 2023 was sent to the staff and administrators at Royster Middle School and ANW Special Education Interlocal to update the substitute procedure in order to ensure students had access to their general education inclusion opportunities. The email stated:

I know we have had some recent staffing changes that hopefully will allow for some additional help in Mrs. Blair’s program, but I also wanted to make sure we were doing what we needed to in order to ensure adequate service are being provided to students in the event of an absence.

If a para is absent from Mrs. Blair’s program, we will request a substitute through Frontline. Mrs. Blair will fill in for the para who is absent and the substitute will fill in for Mrs. Blair. When this occurs, I will need an email from Mrs. Blair so I can verify with our payroll dept. when there will not be an absence report from Mrs.
Blair to reconcile with . . . We need to ensure that the most trained staff are serving the most involved students . . . If we need to get a sub for a day or two so current staff can shadow some of their colleagues to better familiarize themselves with a student’s program, please let me know what day you can get a sub and I will make sure it is approved.

The USD #413 staff reported that another special education teacher and a “floating” para were added as staff in Ms. Blair’s classroom starting on February 22, 2023 to provide additional special education services and support for the eleven students.

Ms. Wolken reported that the IEP amendments for students 2, 4, 5, 7, 8, and 9 were discussed with Ms. Blair on March 10, 2023. The district was on spring break beginning on March 13 through March 17, 2023. Ms. Blair will be in contact with these parents to discuss amendments to these IEPs beginning March 20, 2023 with the expectation that all of these IEPs are updated with parent input no later than March 31, 2023.

**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. 300.324(b)(1) require school districts to review a student's IEP periodically, but at least annually to determine whether the annual goals for the student are being achieved and revise the IEP, if appropriate, in order to address any lack of expected progress toward those annual goals, the results of any reevaluation, any information about the child provided to, or by the parents, the child’s anticipated needs, or other matters. In addition, federal regulations at 34 C.F.R. 300.324(a)(4), states that in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child’s current IEP.

In addition, federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability. In Kansas, 15 school days is considered a “reasonable amount of time” by the Department of Education.
In this case, USD #413 acknowledged, and interviews and documentation found, that student 1 was not provided with an average of 61 minutes per day of paraprofessional support for a total of eleven days during the 2022-23 school year.

Students 2, 4, and 9 are now attending an elective class independently; however, these students’ IEPs have not been reviewed and revised to reflect this progress nor have parents been provided with appropriate prior written notice for the change in services.

USD #413 self-reported that students 5, 7, and 8 have IEPs that are not being implemented as written and that all of these IEPs have not been reviewed and revised to reflect the changes nor have parents been provided with appropriate prior written notice for the change in services.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to implement the seven students’ Individualized Education Plans (IEPs) as written during the 2022-23 school year. In addition, USD #413 failed to follow the appropriate procedures to review and revise, if necessary, the IEPs of six students and to provide the parents of these student’s with appropriate prior written notice proposing a change in services.

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) and state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) 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 this case, interviews and documentation found the USD #413 failed to provide the paraprofessional support for student 1 for an average of 61 minutes per day for 11-days during the 2022-23 school year resulting in student 1 not receiving approximately 11-hours of specialized instruction required by the November 2, 2022 IEP amendment and the December 8, 2022 annual IEP. In addition, students 2, 4, and 9 are now attending an elective class independently and the required paraprofessional support has not been provided. Finally students 5, 7, and 8 have IEPs that are not being implemented as written and thus, are not receiving the required special education services and supports required by the current IEPs.

B. Federal regulations at 34 C.F.R. 300.324(b)(1) require school districts to review a student’s IEP periodically, but at least annually to determine whether the annual goals for the student are being achieved and revise the IEP, if appropriate, in order to
address any lack of expected progress toward those annual goals, the results of any reevaluation, any information about the child provided to, or by the parents, the child's anticipated needs, or other matters. In addition, federal regulations at 34 C.F.R. 300.324(a)(4), states that in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

In this case, students 2, 4, and 9 are now attending an elective class independently but their IEPs have not been reviewed and revised to reflect this progress. Finally, students 5, 7, and 8 have IEPs that are not being implemented as written and that all of these IEPs have not been reviewed and revised to reflect the changes already made.

C. 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.

In this case, interviews and documentation found USD #413 made changes to the IEPs of students 2, 4, 5, 7, 8, and 9 during the 2022-23 school year without providing the parents of these students with appropriate prior written notice.

Based on the foregoing, USD #413 is directed to take the following actions:

1) Within 30 calendar days of the date of this report, USD #413 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) and state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) 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 federal regulations implementing the IDEA Federal regulations at 34 C.F.R. 300.324(b)(1) which require school districts to review a student's IEP periodically, but at least annually to determine whether the annual goals for the student are being achieved and revise the IEP, if appropriate, in order to address any lack of expected progress toward those annual goals, the results of any reevaluation, any information about the child provided to, or by the parents, the child's anticipated needs, or other matters as well as federal regulations at 34 C.F.R. 300.324(a)(4), which states that in making
changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current 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.

2) USD #413 shall reconvene student 1’s IEP team no later than April 14, 2023 and will offer a minimum of 11 hours of compensatory special education staff services in the general education setting as described in the December 8, 2022 IEP to the parents in order to provide a free appropriate public education (FAPE) to the student. USD #413 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 #413 shall review and revise, if appropriate, the IEPs of students 2, 4, 5, 7, 8, and 9 and provide the parents with appropriate PWN of any agreed upon changes no later than April 14, 2023. USD #413 shall provide SETS with copies of each of these students' IEP team meeting notes and any IEP amendments or PWN resulting from each of these meetings no later than April 30, 2023.

4) It is noted that no additional systemic correction is ordered because USD #413 has already added additional staff to provide special education and support services for the students in Ms. Blair's classroom as well as revised the substitute procedures for staff absences from this program in response to their self-monitoring of the parent’s complaint.

5) Further, USD #413 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. 91-40-51(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)