This report is in response to a complaint filed with our office on behalf of the student by his parents, The parents. In the remainder of the report, The student will be referred to as “the student” and The parents will be referred to as “the parents”, or “the complainants”.

The complaint is against USD #512 (Shawnee Mission Public Schools). In the remainder of the report, “USD #512,” “the “school,” the “district”, and the “local education agency (LEA)” shall refer to this 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 date a complaint is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on February 24, 2023 and the timeline was extended until March 31, 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 parent by telephone on March 1, 2023 to clarify the issues of the complaint. The complainant was interviewed again by telephone on March 17, 2023.

Sherry Dumolien, Director of Special Education, proposed a resolution to the allegations in the complaint to the KSDE on March 6, 2023; however, this resolution was not accepted because it was determined that the proposed resolutions did not sufficiently address these allegations in the complaint. Ms. Dumolien was interviewed on the telephone on March 8, 2023 regarding the allegations. She also provided written responses to questions on March 24, 2023 and March 28, 2023.
In completing this investigation, the Complaint Investigator relied on the following documentation provided by the complainants and the district in making findings and conclusion:

- Individualized Education Program (IEP) dated January 28, 2022
- IEP Goal Progress Reports dated between March 30, 2022 and January 3, 2023
- PowerPoint slides for special education teacher in-service held on August 8, 2022
- *SPECIAL EDITION* newsletters for all USD #512 special education staff dated August 2022 through January 2023
- First Semester grades for the 2022-23 school year
- Notice of Meeting (NOM) dated January 10, 2023 scheduling an IEP team meeting for January 25, 2023
- Draft version of an IEP dated January 25, 2023 with parent notes and comments
- NOM dated January 10, 2023 scheduling an IEP team meeting for January 27, 2023
- NOM dated February 2, 2023 scheduling an IEP team meeting for February 3, 2023
- IEP dated February 3, 2023
- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated February 3, 2023 and signed by the parent on that same date
- Proposed Resolution to 23FC512-001 dated March 6, 2023
- Email written by Mark Ward, Attorney for KSDE’s Special Education and Title Services (SETS), to Sherry Dumolien, Director of Special Education at USD #512, on March 8, 2023 at 10:42 a.m.
- Email written by Jeffery Hargrove, Special Education Teacher, to the complainants on March 21, 2023 at 3:44 p.m. regarding third quarter IEP goal progress reports
- Email written by the parents to Mr. Hargrove on March 22, 2023 at 1:45 p.m.
- Email written by Emily Demo, Assistant Principal, to the parents on March 23, 2023 at 11:30 a.m.
- Accommodation Implementation and Documentation Chart created by the student’s classroom teachers
- Response to the Allegation written by Ms. Dumolien dated March 24, 2023
- Email written by Russell Debey, Environmental Education Teacher, to the parents on March 24, 2023 at 4:02 p.m.
- Email written by the parents to Mr. Debey on March 25, 2023 at 11:33 a.m.
- Email written by the parents to Mr. Debey on March 26, 2023 at 12:36 p.m.
- 2022-23 School Year Calendar for USD #512
- Second Semester Grade Reports for all seven of the student’s classes
- Response to Additional Questions written by Ms. Dumolien dated March 28, 2023
Background Information

This investigation involves a seventeen year old student currently enrolled at Shawnee Mission East High School in the eleventh grade in USD #512. He participates in a modified block schedule where he attends all seven of his classes for shorter periods of time on Mondays. He then attends three classes on Tuesday/Thursdays and four classes on Wednesday/Fridays for longer periods of time.

He was originally evaluated and found eligible for special education under the exceptionality of Emotional Disturbance in the seventh grade. Previously, he received support in the general education setting through an individual accommodations plan under Section 504 of the Rehabilitation Act. The student has medical and mental health diagnoses and takes medication for Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), and Depression. He is followed by both medical and mental health professionals in the community as well as receives special education services in the school setting.

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 two issues that were investigated.

Issue One

ISSUE ONE: The USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student’s IEP during the 2022-23 school year, specifically the accommodations/modifications listed in the January 28, 2022 IEP.

Positions of the Parties

The complainants alleged USD #512 regularly failed to provide all of the classroom accommodations/modifications required by the student’s IEP. They were particularly concerned in regards to the accommodations/modifications not being provided in the
U.S. History class because of a long-term substitute teacher providing special education support in that class during the end of the first semester. The parents reported that Brenda Fishman, the U.S. History Teacher, confirmed this information at the February 3, 2023 IEP team meeting.

They are also concerned about the student not having paper copies of materials and resources necessary to complete assignments that were required to be completed via computer, specifically in the Auto Essentials class, which resulted in the student failing that class at the end of the first semester. The parents are concerned that this continues to be an issue during the second semester and believe that the student is being penalized for not having computer access to the required and necessary materials to successfully complete his assignments.

The district noted that an investigation was initiated into concerns related to the job performance of the student’s case manager during the 2022 – 23 school year. USD #512 stated, “The case manager’s Kansas National Education Association (KNEA) legal counsel negotiated a separation agreement with the district whereby the case manager voluntarily resigned from employment”.

The LEA indicated the resignation occurred at the end of January 2023 just prior to the student’s annual IEP team meeting. The LEA reported that the job performance concerns which resulted in the case manager’s resignation are directly related to the allegations made by the parents in this complaint. USD #512 report this was an isolated situation involving one employee and believe the change in personnel should have alleviated the problems.

**Findings of the Investigation**

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #512.

There have been two IEPs in effect during the 2022-23 school year. The first IEP was developed on January 28, 2022 and the second IEP was developed on February 3, 2023.

The January 28, 2022 IEP included the following accommodations/modifications:

1. In classroom breaks during classroom instructional activities, tests or quizzes taking over 15 minutes as the student will stay in the classroom utilizing a mental break (20 seconds or less). For example (head down, pencil down, sharpening pencil) and
prompting back to class activity unless the student request an alternate location for focus with supervision.

2. Frequent checks for understanding of instructional learning objectives, assignment expectations, and his application of the information during class time. Example-check-in at the beginning of class for assignment completion, following instruction, and at the end of class during guided practice or application of the learning objective given.

3. Prompt the student to review/remind him of his classwork and homework with the general education teachers/ and or support staff before class ends. The student’s work completion/assignments will be reviewed during study skills class between teacher and the student. Noted in planner left in study skills class.

4. Seating next to positive peer models both in work completion and on task behavior and away from possible distractions. Sitting furthest away from the door.

5. Provide structured time for The student to organize his materials, prioritize his tasks, specific task analysis on how to break down a task with ordered steps for completion during study skills and supported classes/and general education classes.

6. Assist the student in study skills to develop and support his executive functioning skills. In study skills, the student will need support with a check-in planner which the student implements for example, writing in his missing assignments, reviewing updated grades, time management, current assignments, and organization. The student can construct his own organizers/planner or use the schools planner format. This will be kept in his study skills class. Perhaps the visual will provide him a task analysis with time sequential order of steps and pace he must maintain to complete the specific task/ assignment at due date that is written. Study Skills teacher input to assist the student in setting attainable goals. The student will work on self-advocacy in study skills and implement in his general education classes.

7. Reduce or shorten the length of an assignment to an amount that the student will demonstrate his knowledge. -when working on academic tasks, when possible, provide material to the student in smaller chunks and ask him to complete during a certain amount of time. For example, "Complete __ # of questions in the next 20 minutes, and you can take 5 minutes to do "(preferred activity)"

8. Allow the student to self-advocate for extended time per teacher per assignment. Alternate setting testing or long assignments. Break up large assignments into sections

9. Communicate with parent once a week. Periodic behavior contracting with case manager and admin regarding attendance and expected classwork completion. Technology plan as planned and agreed upon between parent/admin.
10. Planned time with preferred staff member when assignments are completed.
11. Access to paper copies of assignments when possible to alleviate need for MacBook/computer access

After an internal investigation of this complaint, the LEA concluded that the noncompliance was the result of the student having a long-term substitute teacher for special education support in his U.S. History class during the end of first semester. USD #512 stated in the March 6, 2023 proposed resolution letter:

USD 512 acknowledges that the district does not have records reflecting that each of the accommodations outlined in the student’s IEP dated January 28, 2022 were implemented during the 2022-23 school year. Therefore, USD 512 acknowledges that staff may have failed to implement the IEP accommodations outlined for the U.S. History class.

Based on its internal investigation, the LEA proposed to update procedures related to long-term substitute teachers as follows:

When a long term sub is established, the district will put in place an onboarding protocol to share with the individual covering the vacancy on day 1. This protocol will be documented and will include a review of the accommodations/services the substitute is responsible for implementing. This may be done by one of the following individuals: Special Education Coordinator, School Psychologist, Department Chair, Certified Special Education Staff or Related Services providers.

USD #512 reported that a paperwork error was made on the January 28, 2022 IEP which showed that all of the accommodations/modifications were to only be provided in the special education setting rather than the general education setting. Ms. Dumolien indicated this was incorrect and that the error was corrected on the February 3, 2023 IEP. The district provided a chart completed by each of the general education teachers describing how each accommodation/modification was provided during the 2022-23 school year in the general education classrooms and included examples of the accommodations/modifications provided to the student.

However, the chart also showed that all of the accommodations/modifications were not provided on a consistent basis in all settings and that the general education teachers did not understand all of the accommodations/modifications that were to be provided to the student. For example, for the accommodations/modifications for “planned time with
preferred staff member when assignments are complete”, two teachers indicated that
did not understand this accommodation/modification and another teacher stated, “I was
available before and after school every day for the student to come in and ask questions
or discuss class work”.

The IEP dated February 3, 2023 includes the following accommodations/modifications in
the general education setting on a daily basis:

- During classroom instructional activities, tests, or quizzes taking over 15 minutes, the
  student will be allowed to take a mental break (20 seconds or less).
- Frequent checks for understanding of instructional learning objectives.
- Seating next to positive peer models away from possible distractions. Sitting furthest
  away from the door.
- Access to alternate setting for testing or long assignments

The following accommodations/modifications were required on a daily basis in the
special education setting:

- The student's work completion/assignments will be reviewed during study skills class.
- Provide structured time for Daniel to organize his materials, prioritize his tasks, review
  items in his planner, goal-setting, self-advocacy strategies, specific task analysis on how
  to break down a task with ordered steps for completion during study skills and
  supported classes and general education classes.
- Chunking of material into smaller sections.
- Behavior contracting with case manager and admin regarding attendance and
  expected classwork completion.
- Planned time with preferred staff member when assignments are completed.
- Access to paper copies of assignments when possible to alleviate need for
  MACBOOK/computer access

During the first semester of the 2022-23 school year, the student earned a grade of “A”
in his Study Skills class; a grade of “C” in English/Language Arts class; grades of “D” in his
classes; and a grade of “F” in his Auto Essentials class.

His second semester grades as of March 28, 2023 show the student is currently earning
a grade of “B” in his English/Language Arts class; grades of “C” in his Study Skills, U.S.
History, Foods, and Integrated Algebra/Geometry 2 classes; and grades of “D” in his
Digital Design and Environmental Education classes.
Russell Debey, the Environmental Education Teacher, emailed the parents on March 24, 2023 at 4:02 p.m. reminding the student of several missing assignments and their due dates. The parents responded on March 25, 2023 at 11:33 a.m. stating:

The student does not have the resources to do the nuclear assignment (website, addresses, links, books???) as there is nothing for him to reference to find the answers. I have had to give the student access to the internet on a different device in order to access websites to do the other assignments, as they are blocked on his MacBook. He has completed all of the other assignments in the 24 hours at home. These assignments are non-compliant with his IEP accommodations and he requires modified assignments. The student has shared that on at least one occasion, you’ve said “No, I'm not doing that” when he has asked about a modified assignment . . . He often sits unable to do assignments because content is blocked on his computer and he is not receiving modified assignments.

The parents emailed Mr. Debey again on March 26, 2023 at 12:36 p.m. to express their frustration with the access to assignments and resources on the computer. The parents indicated that the student reported that when he asks about not being able to access the links on his computer during class, Mr. Debey responds with “That shouldn't be the case”. The parents explained:

The student has clarified for me that most of the links provided in Environment Ed assignments are blocked on his MacBook. I've looked at the assignments personally and see that he is correct. He has attempted to use his phone on occasion during class by literally copying and emailing links to his phone – as parents we monitor his phone and have records of this being the case. This is so very non-compliant with his IEP accommodations and he needs modified assignments immediately.

**Applicable Regulations and Conclusions**

Federal regulations implementing the IDEA at 34 C.F.R. 300.320(a)(4) require the IEP to include a statement of the modifications that will be provided to enable the student to be involved in and make progress in the general education curriculum and to be educated and participate with other children with disabilities and nondisabled children. Federal regulations implementing the IDEA at 34 C.F.R. 300.320(a)(6) require the IEP to include a statement of the accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments.
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.

In this case, documentation found there were two IEPs in effect during the 2022-23 school year and both included a listing of accommodations/modifications to be provided to the student.

While the January 28, 2022 IEP showed that all of the accommodations/modifications were only to be implemented in the special education setting, USD #512 reported that this was an error and provided documentation showing how each of the accommodations/modifications was implemented in the general education settings during the first semester. However, a review of that documentation also found that all of the accommodations/modifications were not provided on a consistent basis in all classes and that the general education teachers did not understand what was required by some of the accommodations/modifications.

It is noted that during an internal investigation, USD #512 found that there was no documentation to support that the accommodations/modifications in the student’s IEP were provided in the student’s U.S. History class during the first semester. The LEA acknowledged “that staff may have failed to implement the IEP accommodations outlined for the U.S. History class”.

It is also noted that previous to the filing of this complaint, USD #512 became aware of job performance issues with the student’s IEP case manager. This district reported this situation was resolved in late January 2023 when the employee resigned from her position. This district indicated that the issues involved in this complaint were directly related to and caused by the job performance of that employee. However, interviews and documentation found this was not solely the cause as the general education teachers were not consistently and accurately providing the accommodations/modifications required by the student’s IEPs.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to implement the accommodations/modifications in the student’s IEPs during the 2022-23 school year.
Issue Two

ISSUE TWO: The USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the IEP as required during the 2022-23 school year.

Positions of the Parties

The complainants alleged USD #512 failed to conduct an annual IEP team meeting to review and revise the student's IEP within the annual timeframe as required. The previous IEP was developed on January 28, 2022 and the annual IEP team meeting was not held until February 3, 2023.

The parents reported there was confusion related to the annual IEP team meeting which was originally scheduled for January 25, 2023. On January 24, 2023, the case manager sent home a draft version of the IEP which included the same accommodations/modifications included in the January 28, 2022 IEP. That IEP meeting was cancelled due to a snow day on January 25, 2023.

On January 26, 2023, the case manager contacted the parents, rescheduled the IEP team meeting for the following day, and sent a meeting notification via email at 1:10 p.m. Later that same afternoon, Emily Demo, Assistant Principal, called the parents and cancelled the meeting scheduled for January 27, 2023 because “not everyone needed for the IEP meeting was available”.

The following week, school staff contacted the parents and rescheduled the IEP team meeting for February 3, 2023.

The parents reported that the accommodations/modifications in that IEP are now different from those presented in the draft IEP dated January 25, 2023 and that neither the IEP goal progress reports nor the accommodations/modifications were discussed at the February 3, 2023 IEP team meeting in order to review and revise the student’s IEP.

The parents are also concerned that the IEP team was never reconvened to discuss the student’s lack of progress towards his IEP goals, his poor grades, and the lack of the required IEP accommodations/modifications being provided for the student. The parent indicated they shared concerns with multiple school staff about these types of concerns during the 2022-23 school year; however, an IEP meeting was never scheduled to discuss their concerns.
The district acknowledged that the annual IEP meeting was not held within the required 365-day timeframe. The district acknowledged that lack of planning and an inopportune snow day caused this situation to occur. The LEA noted that they did obtain parent consent to extend the IEP meeting timeline but acknowledged this consent was obtained following the annual IEP due date.

The district believes this noncompliance was the result of the staffing concern noted previously and not a systemic issue. USD #512 reported and provided the date and PowerPoint presentations from the beginning of the school year trainings held during the 2022-23 school year for special education staff in regards to IEP meeting timelines.

**Findings of the Investigation**

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #512.

The findings in Issue One are incorporated herein by reference.

Interviews and documentation found that the annual IEP was previously developed on January 28, 2022. A Notice of Meeting (NOM) dated January 10, 2023 was sent to the parents scheduling an IEP team meeting for January 25, 2023. The January 25, 2023 IEP meeting was cancelled due to a snow day.

A second NOM, also dated January 10, 2023, was sent to the parent re-scheduling the IEP team meeting for January 27, 2023. That meeting was not held.

A third NOM dated February 2, 2023 was provided to the parents to schedule an IEP team meeting for February 3, 2023. Interviews and documentation reflect that at least one of the student's parents attended this IEP team meeting.

Following the IEP team meeting, USD #512 provided the parent with a Prior Written Notice (PWN) proposing to update the student's math and classroom performance goals as well as to extend the student's IEP meeting date and noted the original IEP due date was January 27, 2023 which was being extended to February 3, 2023. The explanation for why the action was proposed stated, "Updating goals is proposed due to progress and demonstrated need. Extending the student's IEP date is proposed due to the school needing more time to collect data for the student's IEP."
Jeffery Hargrove, Special Education Teacher, emailed a copy of the third quarter IEP goal progress reports to the parents on March 21, 2023 at 3:44 p.m. The parents responded the next day and stated:

I would like to note that this is the first time in 4.75 years that we've received an unsolicited progress report. What corrective action are recommended since he isn't meeting his goals? We have been throwing up red flags for YEARS, as he has yet to show progress in meeting his annual goals because SMSD [Shawnee Mission School District] is not providing the IEP accommodations as described in his IEP plan in all classes . . . We have yet to review any progress reports as part of his annual IEP meeting. We can't move forward as it is if the current IEP is showing insufficient progress, which are facts showing the IEP is not being implemented in all cases and ineffective in others. Can you please start with daily check-ins regarding executive functioning skills habit building, which is super challenging as it is with the current block-scheduling for someone who has ADHD . . . We also need credit recovery for the last semester Auto-Essentials due to lack of IEP support and computer removal . . . We also need make-up services for the student when he was without a computer (Jan 27th) in Digital Design and without IEP support in U.S. History . . .

The parents and the district both report than an IEP team meeting is scheduled for March 31, 2023 to discuss these concerns.

**Applicable Regulations and Conclusions**

Federal regulations implementing the IDEA at 34 C.F.R. 300.322(a) and (b) require that school districts ensure parents are provided the opportunity to participate in IEP team meetings by providing notification of the meeting early enough to allow the parent to attend the meeting as well as including the purpose of the meeting to allow the parents the opportunity to prepare for the meeting.

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 this case, USD #512 provided the parents with IEP goal progress reports on March 21, 2023. The parents responded requesting changes be made to the student's IEP to address his lack of progress towards meeting his IEP goals. Both the parents and the district report an IEP meeting is currently scheduled for March 31, 2023 to discuss these concerns.

Interviews and documentation found that at least one of the parents of the student attended the February 3, 2023 IEP team meeting. The parents acknowledged the purpose of the meeting was to conduct the annual review; however, the parents reported that there was no discussions related to IEP goal progress nor the appropriate accommodations/modifications needed by the student to access the general education curriculum at that meeting. It is not clear if these discussions took place at the February 3, 2023 IEP team meeting; however, there is evidence that the district responded appropriately by scheduling an IEP team meeting following the third quarter IEP goal progress reports to discuss the ongoing parent concerns and the lack of student progress towards meeting his IEP goals.

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.

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. “Material change in services” is defined at K.A.R. 91-40-1(mm) as an increase or decrease of 25% or more of the frequency or duration of a special education service, related service, or supplementary aid or service specified in the child’s IEP. “Substantial change in placement” is defined at K.A.R. 91-40-1(sss) as the movement of an exceptional child for more than 25% of the child’s school day from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment.

The August 15, 2008 Letter to Heidi Atkins-Lieberman from the Office of Special Education Programs (OSEP) provides guidance for when PWN must be provided. The letter clarifies whether the provision of a free appropriate public education (FAPE) refers to only the provision of the type/amount/location of the special education and related services or if a change in an IEP goal is also considered to be a “provision of FAPE.” OSEP’s response states:
Under 34 C.F.R. 300.17(d), FAPE means, among other things, special education and related services that are provided in conformity with an IEP that meets the requirements of federal regulation at 34 C.F.R. 300.320 through 300.324. Therefore, a proposal to revise a child's IEP, which typically involves a change to the type, amount, or location of the special education and related services being provided to a child, would trigger notice under 34 C.F.R. 300.503.

In this case, the IDEA requires the IEP to be reviewed and revised, if necessary, at least annually. There is no procedure in the law to extend the annual due date beyond the 12-months or the 365-days. Interviews and documentation show the current IEP was developed on February 3, 2023 which is beyond the 365-days allowed from the previous IEP developed on January 28, 2022. Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to review the student's IEP at least annually.

Following the February 3, 2023 IEP team meeting, the district obtained “consent” from the parent to go beyond the annual due date which indicates a fundamental misunderstanding of both the annual review process and the purpose of providing the parents with appropriate PWN. In this case, the PWN dated February 3, 2023 was not necessary in order to update the student’s IEP goals. In addition, the action of extending the annual IEP team meeting date is not an appropriate action for which to seek consent as it does not relate to the identification, evaluation, or educational placement or the provision of FAPE (free appropriate public education) to the student.

Providing PWN when it is not required causes confusion for parents regarding when their consent is actually needed for an action to occur. It gives parents the impression that their procedural safeguards protections for due process are available in all instances when they might disagree with the IEP offered by the school district following an IEP team meeting.

Based on the foregoing, a violation of special education statutes and regulations is also substantiated for failing to provide the parents with appropriate prior written notice (PWN) during the 2022-23 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) 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 district failed to implement all of the accommodations/modifications required in the January 28, 2022 IEP consistently in all settings. USD #512 acknowledged a lack of training for a long-term substitute teacher providing special education support in the U.S. History class contributed to this noncompliance.

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 this case, interviews and documentation found USD #512 failed to review and revise the January 28, 2022 IEP until February 3, 2023, which is beyond the 12-months and 365-days allowed under the annual review requirements in the IDEA. The district acknowledged poor planning on the part of staff and an inopportune snow day caused the situation to occur.

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 #512 provide the parent with PWN on February 3, 2023 for actions that did not require consent. The proposed changes in IEP goals do not constitute a change to the type, amount, or location of the special education and related services being provided to the student. In addition, the IDEA does not allow for a procedure for parents to provide consent in order to extend the requirement for a review of the student's IEP at least annually.

Based on the foregoing, USD #512 is directed to take the following actions:

1) Within 30 calendar days of the date of this report, USD #512 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.

c) Comply with federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) which require school districts to provide parents with appropriate 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) No later than May 1, 2023, USD #512 will reconvene the IEP team to address the parent’s concerns and requests related to a) the student’s lack of progress towards his IEP goals, b) the parent’s request for daily check-ins regarding executive functioning skills, and c) what accommodations/modifications should be provided, specifically a plan for how to address lack of computer access and the need for modified assignments and exams. USD #512 will provide the parent and SETS with a copy of the resulting IEP or IEP amendment and any appropriate prior written notice provided to the parent within 10 business days following the IEP team meeting.

3) No later than April 15, 2023, USD #512 shall hold an IEP team meeting to develop a plan to provide the student with compensatory services and the necessary accommodations/modifications in order to have the opportunity to recover the Auto Essentials class credit. USD #512 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 May 1, 2023, USD #512 will update its written procedures related to long-term substitutes as originally proposed in the March 6, 2023 response to the allegations written by Ms. Demolien. No later than May 15, 2023, USD #512 shall.
disseminate this plan and provide documentation that all special education staff and administrators in the district have received a copy.

5) No later than August 15, 2023, USD #512 shall provide training for all general education teachers who work at Shawnee Mission East High School regarding accommodations/modifications and their responsibility for implementing them in the general education classroom setting. No later than five days after completion of the training, USD #512 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as any handouts and/or a copy of the presentation.

6) Prior to the beginning of the 2023-24 school year, USD #512 shall ensure that all of the student’s general education teachers have received copies of the IEP accommodations/modifications, been trained on the implementation of these accommodations/modifications, and know who to contact if questions arise. USD #512 shall provide SETS with signature sheet signed by all of the student’s general education teachers documenting that they have received this information prior to the first day of classes for the student during the 2023-24 school year.

7) No later than May 15, 2023, USD #512 shall will contact TASN to request that TASN conduct a training for all licensed and certificated special education staff, including IEP case managers, school psychologists, and administrators working at or with Shawnee Mission East High School regarding the IDEA requirements related to the requirements and procedures for providing parents with appropriate prior written notice. No later than five days after completion of the TASN training, USD #512 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 #512 will provide SETS with any handouts and/or a copy of the presentation.

8) Further, USD #512 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)