KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON MARCH 17, 2023

DATE OF REPORT APRIL 17, 2023

This report is in response to a complaint filed with our office on behalf of the student by his education advocate, the advocate. In the remainder of the report, the student will be referred to as “the student.” The education advocate will be referred to as “the education advocate” or “the complainant.” The child lives with a foster family and in this report foster father will be referred to as the “foster father,” “foster parent” or “custodial parent.” Foster father’s former wife is referred to as “foster parent.”

The complaint is against USD #259, Wichita Public Schools. In the remainder of the report, the “school,” the “district,” and the “local education agency” (LEA) shall refer to USD #259.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on March 17, 2023, and the 30-day timeline ended on April 17, 2023.

Investigation of Complaint

Gwen Beegle, Complaint Investigator, spoke to the education advocate by telephone on March 17, 2023, to clarify the issues in the complaint. In addition, Gwen Beegle interviewed the education advocate on March 31, 2023.

Gwen Beegle and Donna Wickham interviewed Dr. Erica Shores, USD #259 Executive Director of Student Support Services and the principal of Clark Elementary, Ms. Lichelle Alford on March 31, 2023. Gwen Beegle interviewed Robin Atkins, the foster father, by phone on April 1, 2023 and Denise Hunter-Mitchell, USD # 259 School Social Worker, by phone on April 4, 2023. Charmetra Bell, USD #259 School Psychologist, responded to investigator questions via email on April 3, 2023.
The Complaint Investigators also received emails from the education advocate and USD #259 between March 17, 2023, and April 11, 2023.

In completing this investigation, the Complaint Investigators reviewed documentation provided by the complainant and district. Although additional documentation was provided and reviewed, the following materials were carefully read and used as the basis of the findings and conclusions of the investigation:

**Documents and Reports:**

- Clark Elementary Student Contact Log, Entries September 13, 2020 - January 24, 2023
- Assessment and Research Newsletter, August 2020
- USD# 259 Board of Education Policies 1464 and 5113.
- KSDE Dyslexia Screening and EOYA, September 21, 2021
- USD #259 Assessment Schedule 2022-2023
- Student Daily Attendance Profile for the student, 2022-23 School Year
- Wichita USD #259 School Year Calendar, 2022-23
- Student Discipline Profile for the student, 2022-23 School Year
- Daily Attendance Profile for the student, 2022-23, with entries from August 17, 2022 to February 3, 2023.
- Attendance Report for the student (August 15, 2022 - February 3, 2023)
- Daily Attendance Calendar for the student, 2022-23 School Year
- Elementary Progress Report for the student, 2022-23 School Year, Quarters 1-2
- Suicide Protocol Parent Notification Statement for the student, dated October 6, 2022
- School sign out sheet, with entries for October 6, 2022 and January 10, 2023
- Letter from Denise Hunter-Mitchell (Clark Elementary Social Worker) and Nancy Stout (Truancy Coordinator) to Mr. and Mrs. Robin Atkins dated October 19, 2022
- Prior Written Notice for Evaluation and Request for Consent dated October 31, 2022 and signed by education advocate on October 31, 2022
- Parent Consent for Electronic Communication, dated November 1, 2022 and signed by education advocate on January 12, 2023
- Disciplinary Action Report for the student dated November 2, 2022
- Disciplinary Action Report for the student dated November 3, 2022
- Disciplinary Action Report for the student dated November 4, 2022
- FastBridge Assessments A.S. included with email dated November 8, 2022
- Disciplinary Action Report for student dated January 19, 2023
- Disciplinary Action Report for student dated January 24, 2023
• Notice of Meeting to review evaluation, determine eligibility and develop the IEP dated January 25, 2023 for a meeting on February 14, 2023.
• Functional Behavior Assessment for the student dated February 13, 2023
• Multidisciplinary Team Report for the student dated February 14, 2023
• Proposed IEP for the student dated February 14, 2023
• IEP Signature Page for the student dated February 14, 2023
• IEP and 504 Meeting notes for the student dated February 14, 2023
• Prior Written Notice for Identification Initial Services, Placement, Request for Consent dated February 14, 2023 and signed by the educational advocate on February 22, 2023
• Prior Written Notice for Other IEP Change in Services dated March 7, 2023 not signed

Emails:

• Email from Heather Baum to Rochelle Renollett (Administrative Assistant, Clark Elementary) dated August 29, 2022 at 12:06 p.m.
• Email from Heather Baum to Ms. Renollett dated September 2, 2022 at 3:00 p.m.
• Email from the education advocate to Charmetra Bell (School Psychologist) dated September 13, 2022 at 12:56 p.m.
• Email from the education advocate to Ms. Bell dated September 13, 2022 at 1:13 p.m.
• Email from Ms. Bell to the education advocate, Martine Bolton (School Nurse), Denise Hunter-Mitchell (Clark School Social Worker and Latchkey Director), and Lichelle Alford (Clark Elementary Principal) dated September 13, 2022 at 3:25 p.m.
• Email from the education advocate to Ms. Bell dated September 14, 2022 at 5:57 a.m.
• Email from Miss Bell to the education advocate dated September 14, 2022 at 12:05 p.m.
• Email from the education advocate to Ms. Bell dated September 14 at 12:55 p.m.
• Email from Ms. Bell to the education advocate, Ms. Bolton, Ms. Hunter-Mitchell, and Ms. Alford dated September 14, 2022 at 1:23 p.m.
• Email from Ms. Bell to the education advocate dated September 30, 2022 at 2:36 p.m.
• Email from the education advocate to Ms. Bell, Ms. Alford, Ms. Hunter-Mitchell, Ms. Bolton, Mitzi Jones (Behavior Intervention-Elementary), Michelle McKnight (Clark Elementary Counselor) dated October 2, 2022 at 6:42 p.m.
• Email from the education advocate to Ms. Alford dated October 13, 2022 at 12:00 p.m.
• Email from the education advocate to Michelle Stewart (Third Grade Teacher) dated October 13, 2022 at 8:28 p.m.
• Email from Darla Nelson-Metzger (Families Together) to the parent advocate, Lydia Newrath (Case Manager, St. Frances) and Jerry Cress (Educational Coordinator, St. Francis) dated October 17, 2022 at 10:19 a.m.
• Email from the education advocate to Ms. Nelson-Metzger, Ms. Newrath and Mr. Cress dated October 17, 2022 at 10:56 a.m.
• Email from Ms. Alford to the education advocate, Ms. Nelson-Metzger, and Ms. Bell dated October 17, 2022 at 12:57 p.m.
• Email from Ms. Nelson-Metzger to the education advocate, Ms. Alford, and Ms. Bell dated October 17, 2022 at 4:13 p.m.
• Email from the education advocate to Ms. Bell, and Ms. Alford dated October 19, 2022 at 4:47 p.m.
• Email from the education advocate to Gil Alvarez (Deputy Superintendent, USD 259) dated October 25, 2022 at 7:57 p.m.
• Email from Mr. Alvarez to the education advocate and Michele Ingenthron (Assistant Superintendent for Elementary Education USD 259) dated October 26, 2022 at 7:15 a.m.
• Email from the education advocate to Mr. Alvarez and Ms. Ingenthron dated October 26, 2022 at 7:48 a.m.
• Email from Ms. Hunter-Mitchell to the education advocate dated October 27, 2022 at 1:59 p.m.
• Email from the education advocate to Ms. Hunter-Mitchell dated October 27, 2022 at 2:03 p.m.
• Email from Ms. Hunter-Mitchell to the education advocate dated October 31, 2022 at 10:50 p.m.
• Email from Ms. Hunter-Mitchell to the education advocate dated October 31, 2022 at 1:59 p.m.
• Email from Mr. Proctor to Ms. Bell and Ms. Strecker dated November 3, 2022 at 8:59 a.m.
• Email from Ms. Bell to Mr. Proctor and Ms. Strecker dated November 3, 2022 at 1:18 p.m.
• Email from Mr. Proctor to Ms. Bell and Ms. Strecker dated November 3, 2022 at 1:36 p.m.
• Email from Ms. Hunter-Mitchell to the education advocate dated November 4, 2022 at 4:03 p.m.
• Email from the education advocate to Ms. Bell, Ms. Alford, and Ms. Hunter-Mitchell dated November 7, 2022 at 12:53 p.m.
• Email from Ms. Bell to the education advocate dated November 7, 2022 at 12:54 p.m.
• Email from the education advocate to Ms. Bell dated November 7, 2022 at 1:22 p.m.
• Email from the education advocate to Ms. Bell, Ms. Alford, and Ms. Hunter-Mitchell dated November 8, 2022 at 11:04 a.m.
• Email from Ms. Bell to the education advocate, Ms. Alford, and Ms. Hunter-Mitchell dated November 8, 2022 at 11:35 a.m. with attachment FastBridge Assessments [the student initials].
- Email from Ms. Bell to the education advocate, Ms. Alford, and Ms. Hunter-Mitchell dated November 8, 2022 at 12:00 p.m.
- Email from Ms. Hunter-Mitchell to the education advocate, Ms. Alford and Ms. Bell dated December 7, 2022 at 10:00 a.m.
- Email from the education advocate to Rita Strecker (Licensed Permanency Specialist, St. Francis), Mr. Cress, and Matt Proctor (St. Francis Team) dated December 7, 2022 at 10:50 a.m.
- Email from Ms. Strecker to the education advocate dated December 8, 2022 at 5:01 p.m.
- Email from the education advocate to Ms. Bell, Ms. Bell, Ms. Alford, and Ms. Hunter-Mitchell dated December 8, 2022 at 5:21 p.m.
- Email from the education advocate to Ms. Bell, Ms. Bell, Ms. Alford, and Ms. Hunter-Mitchell dated December 8, 2022 at 5:22 p.m.
- Email from Ms. Bell to Mr. Proctor, Ms. Bolton, Ms. Alford, Ms. Hunter-Mitchell and Ms. Strecker dated December 12, 2022 at 10:36 a.m.
- Email from Ms. Strecker to the education advocate dated January 12, 2023 at 8:24 a.m.
- Email from the education advocate to Ms. Strecker dated January 12, 2023 at 8:34 a.m.
- Email from Ms. Strecker to the education advocate dated January 12, 2023 at 8:38 a.m.
- Email from Ms. Hunter-Mitchell to the education advocate dated January 12, 2023 at 9:54 a.m.
- Email from the education advocate to Ms. Bell, Ms. Hunter-Mitchell and Ms. Alford dated January 12, 2023 at 6:24 p.m.
- Email from Ms. Hunter-Mitchell to the education advocate, Ms. Bell and Ms. Alford dated January 13, 2023 at 8:43 a.m.
- Email from Ms. Hunter-Mitchell to the education advocate, Ms. Bell, Ms. Alford and Mitzi Jones Clark (Behavior Intervention Elem-LIC USD 259) dated January 18, 2023 at 3:55 p.m.
- Email from Ms. Bell to the education advocate and numerous others dated January 18, 2023 at 3:16 p.m.
- Email from Ms. Bell to the education advocate and numerous others dated January 19, 2023 at 8:05 a.m.
- Email from the education advocate to Ms. Bell dated January 19, 2023 at 8:36 a.m.
- Email from the education advocate to Ms. Hunter-Mitchell, Ms. Bell and Ms. Alford dated January 23, 2023 at 2:38 p.m.
- Email from Ms. Hunter-Mitchell to the education advocate dated January 23, 2023 at 3:29 p.m.
- Email from the education advocate to Ms. Hunter-Mitchell, Ms. Bell and Ms. Alford dated January 23, 2023 at 4:10 p.m.
- Email from Ms. Bell to the education advocate dated January 24, 2023 at 9:22 a.m.
- Email from the education advocate to Ms. Hunter-Mitchell, Ms. Bell, and Ms. Alford dated January 24, 2023 at 10:00 a.m.
- Email from Ms. Bell to the education advocate on January 24, 2023 at 10:26 a.m.
- Email from Ms. Jones to the education advocate, Ms. Bell, Ms. Hunter-Mitchell and Ms. Alford dated January 24, 2023 at 2:45 p.m.
- Email from Ms. Hunter-Mitchell to the education advocate dated January 25, 2023 at 10:20 a.m.
- Notice of Meeting dated January 25, 2023 for Evaluation, Determine Eligibility and IEP Meeting on February 14, 2023
- Email from the education advocate to Ms. Bell, Ms. Hunter-Mitchell, Ms. Alford dated January 25, 2023 at 6:36 p.m.
- Email from the education advocate to Ms. Hunter-Mitchell, Ms. Bell and Ms. Alford dated January 26, 2023 at 6:25 a.m.
- Email from Ms. Hunter-Mitchell to the education advocate dated January 26, 2023 at 6:34 a.m.
- Email from the education advocate to Ms. Hunter-Mitchell, Ms. Bell and Ms. Alford dated January 27, 2023 at 6:48 a.m.
- Email from the education advocate to Ms. Bell, Ms. Hunter-Mitchell, Ms. Alford, Mr. Proctor, Ms. Strecker, and Mr. Cress dated February 12, 2023 at 12:48 p.m.
- Email from Ms. Renollett to the education advocate dated February 13, 2023 at 10:45 a.m.
- Email from Ms. Alford to the education advocate, Ms. Bell, Ms. Hunter-Mitchell Mr. Proctor, Ms. Strecker, and Mr. Cress dated February 13, 2023 at 11:36 a.m.
- Email from Ms. Strecker to the education advocate, Ms. Alford, Ms. Bell, Ms. Hunter-Mitchell, Mr. Proctor, and Mr. Cress dated February 13, 2023 at 11:50 a.m.
- Email from Ms. Bell to the education advocate, Ms. Alford, Ms. Hunter-Mitchell, Mr. Proctor, Ms. Strecker, and Mr. Cress dated February 13, 2023 at 12:02 p.m.
- Email from Ms. Strecker to the education advocate, Ms. Alford, Ms. Bell, Ms. Hunter-Mitchell, Mr. Proctor, and Mr. Cress dated February 13, 2023 at 12:16 p.m.
- Email from Ms. Alford to the education advocate, Ms. Bell, Ms. Hunter-Mitchell Mr. Proctor, Ms. Strecker, Mr. Cress and Carisa Mallet (St. Francis Team) dated February 13, 2023 at 12:30 p.m.
- Email from the education advocate to Ms. Bell, Ms. Hunter-Mitchell, Ms. Alford, Ms. Strecker, Mr. Proctor and Mr. Cress dated February 13, 2023 at 12:41 p.m.
- Email from Ms. Hunter-Mitchell to the educational advocate, Ms. Bell, Ms. Alford and Wendy Dozier (Campus Support, USD 259) dated February 14, 2023 at 1:22 p.m.
- Email from the education advocate to Mr. Cress, Ms. Bell, Ms. Hunter-Mitchell, Ms. Alford, Mr. Proctor and Ms. Strecker, dated February 14, 2023 at 1:53 p.m.
Email from Ms. Hunter-Mitchell to the educational advocate, Ms. Bell, Ms. Alford, Ms. Nelson-Metzger and Ms. Dozier dated February 14, 2023 at 4:39 p.m.

Email from Ms. Hunter-Mitchell to the educational advocate, Ms. Bell, Ms. Alford, Ms. Nelson-Metzger and Ms. Dozier dated February 21, 2023 at 12:44 p.m.

Email from the education advocate to Ms. Alford, Ms. Bell, Ms. Hunter-Jackson, Dr. Vince Evans (Assistant Superintendent, Student Support Services, USD 259) dated March 6, 2023 at 7:39 p.m.

Email from Ms. Bell to the education advocate, Ms. Alford, Dr. Evans, Ms. Hunter-Mitchell, Ms. Jones, Ms. Dozier and numerous others dated March 7, 2023 at 3:19 p.m.

**Background Information**

This investigation involves a nine-year-old student who is enrolled in third grade at Clark Elementary in USD #259. He receives special education and related services as a child with emotional disturbance and other health impairment per the Individuals with Disabilities Education Act (IDEA). The student was first placed in foster care at age 3. Parental rights have been severed. He has been in his current foster placement since 2021, with an additional placement in Pathways Psychiatric Residential Treatment Facility for 8 months. According to his Child and Family Profile (June 11, 2021), the student has been diagnosed with the following mental health diagnoses: Attention Deficit Hyperactivity Disorder (ADHD) Combined Type, Post Traumatic Stress Disorder (PTSD), Adjustment Disorder with Mixed Anxiety and Depressed Mood, Borderline Intellectual Functioning, Specific Learning Disorder with Impairment in Math, and Oppositional Defiant Disorder. According to his recent evaluation for initial eligibility, additional recent psychological testing was reviewed by the district and list the following mental health diagnoses: Disruptive Mood Dysregulation Disorder, Personal History of Physical Abuse in Childhood, Personal History of Sexual Abuse in Childhood, Personal History of Neglect in Childhood, (provisional) Auditory Processing Disorder, ADHD, and PTSD.

The child was assigned an education advocate by Families Together in August, 2022, and his first educational evaluation took place during the 2022-23 school year. Because of his problematic behavior at school, a behavior intervention plan was included in his initial placement IEP dated February 14, 2023. Educationally, the student struggles to attend to academic instruction and fails to follow directions and routines at school. He is behind in the third grade curriculum, experiencing significant delays in reading, writing and math. His educational evaluation states that he is extremely below or well below average in crystallized intelligence, fluid reasoning, short term memory, and long term retrieval.
Issue One: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to complete a comprehensive special education evaluation for a child with a suspected disability within timelines.

Positions of the Parties

The complainant alleged that the district failed to meet its obligation to evaluate the child expeditiously, given his evident need due to repeated suspensions at the beginning of the school year. The complainant stated that on or before September 14, 2022, she alerted the district that as his education advocate she intended to request a special education evaluation. She questioned whether the district unduly delayed the student’s evaluation during an MTSS process. She further stated that she formally requested an evaluation on October 2, 2022, that she received the Prior Written Notice for Evaluation and request for consent on October 31, 2022, and the review of the evaluation, eligibility, and initial IEP meeting was held on February 14, 2023.

The district refuted this allegation, stating: “It is the position of USD #259 that the comprehensive initial special education evaluation was completed in less than 60 school days, which meets the required timelines of the state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA). . . The 60-school-day timeline for when the evaluation must be completed begins when the agency receives written parent consent to conduct the initial evaluation (K.A.R. 91-40-8(f)). The Educational Advocate asked for an initial evaluation twice, rescinding her first, 9-13-22 request the day after that request, on 9-14-22. The Educational Advocate submitted a new request for an initial evaluation on 10-2-22, and the district responded via email to the Educational Advocate on 10-24-22 (the 15th school day from the request date) that the school intended on proceeding with the evaluation, which was followed by a PWNE to obtain her consent. The student was in the MTSS process concurrently with the evaluation, which included an FBA, which was communicated to the Educational Advocate, and the MTSS process did not delay the evaluation. The Educational Advocate signed consent for the second evaluation request on 10-31-22, and the evaluation was completed on 2-14-23, which amounted to 59 school days. Emails show communication throughout the evaluation process between the school and the Educational Advocate, and between the timeframes during which the Educational Advocate states she received no communication from the school.”
Additionally, in their response to Issue 6, the district states that an expedited evaluation was precluded due a number of reasons, including: (a) attempts to acquire outside evaluation reports from the educational advocate (b) conducting the FBA requested by the education advocate, (c) the student’s frequent “heightened emotional state” that precluded formal testing for the evaluation (d) the student forgetting his glasses, and (e) the number of student absences, truancies, and suspensions.

**Findings of the Investigation**

The following findings are based upon a review of documentation and interviews with the educational advocate (EA), foster parent and staff in USD #259.

The complainant and the district agreed that the complainant initiated a request for a special education evaluation on September 13, 2022 and rescinded that request on September 14, 2023.

The complainant and the district agreed that the formal request to the district for the evaluation occurred on October 2, 2022; that the district generated a Prior Written Notice - Evaluation and the education advocate (EA) signed it on October 31, 2022, and that the meeting to establish the student’s eligibility and develop the initial IEP occurred on February 14, 2023.

The complainant and the district agreed that the district generated a Prior Written Notice to initiate the IEP services on February 14, 2023 and that the education advocate signed it on February 23, 2023.

Neither the complainant nor the district reported that an extension to this timeline was requested. The complainant did not allege that the evaluation was not comprehensive.

**Applicable Regulations and Conclusions**

The Kansas Special Education Process Handbook states: “Kansas has established a 60 school-day timeline consistent with federal regulations (K.A.R. 91-40-8(f); 34 C.F.R. 300.301(c)). The timeline for conducting the initial evaluation starts upon receipt of written parental consent to conduct the evaluation, and ends with the implementation of an IEP if the child is found eligible for special education services” (p.41). K.A.R.91-40-8(f) states that within 60 days of the date the agency receives written parental consent for the evaluation, the district must (1) conduct the evaluation, (2) determine eligibility and conduct an IEP meeting if the child is eligible, and (3) implement the child’s IEP.
Because this student also had many short term suspensions, as discussed in Issue 6, guidance on suspensions and expulsions of children not yet eligible is useful with regard to an expedited timeline. The Kansas Special Education Process Handbook states, “If the child’s parents request an evaluation of the child during the period of suspension or expulsion or other disciplinary action, the evaluation must be conducted in an expedited manner. No timeline is specified with regard to an expedited evaluation. However, in this context, the term ‘expedited’ suggests the evaluation should be concluded in a shorter time frame than a normal evaluation” (p. 203).

In this case, the formal request was made on October 2, 2022 and the consent for evaluation was signed on October 31, 2022 beginning the 60 day timeline. It is noted that the elapsed time between the education advocate’s formal request for a special education evaluation and the district’s request for her consent through Prior Written Notices is 20 school days. The IEP meeting was held on February 14, 2023 on day 59 of the timeline. The district provided a PWN to initiate services on February 14, 2023, which was signed by the education advocate giving consent on February 23, 2023. The 60 days was therefore exceeded by the additional time required to obtain the permission to initiate services ending the timeline on day 64. In addition, the district did not conduct an expedited evaluation.

It is therefore found that USD # 259, in violation of K.A.R.91-40-8, failed to complete a comprehensive special education evaluation for a child with a suspected disability within timelines.

**ISSUE TWO:** The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a Notice of Meeting that met state and federal requirements, specifically by naming persons from outside agencies who were invited by the district

**Positions of the Parties**

The complainant alleged that the January 25, 2023 Notice of Meeting that she received for a meeting on February 14, 2023 did not include a representative from ComCare, a community mental health service provider, and that this person was in attendance at the student’s eligibility and IEP development meeting on February 14, 2023.

The district responded: “It is the position of USD #259 that a Notice of Meeting was provided to the Educational Advocate on 1-25-23 that met all state and federal
requirements, except that it did not include the student’s ComCare caseworker on the Notice. The District acknowledges that consent from the Educational Advocate was not obtained prior to the ComCare caseworker attending the meeting, but that this procedural error did not deny the student of his FAPE. . .”

**Findings of the Investigation**

The following findings are based upon a review of documentation and interviews with the education advocate and staff in USD #259.

The findings of Issue One are incorporated herein by reference.

The district and education advocate agree that a Notice of Meeting dated January 25, 2023 for a meeting on February 14, 2023 was emailed to the education advocate.

The district and education advocate agree that a copy of the parent rights was included with this Notice of Meeting.

The district and the parent agree that the representative from ComCare was not listed on the Notice of Meeting.

The district and the education advocate agree that a representative from ComCare attended the student’s eligibility and IEP development meeting on February 14, 2023.

The district acknowledges the error that the representative from ComCare should have been listed on the Notice of Meeting.

**Applicable Regulations and Conclusions**

According to K.A.R. 91-40-17(a)(2), a Notice of Meeting must be provided in writing at least 10 days prior to the meeting and inform the parents that their child is invited to attend the meeting. The written notice must indicate the following: (a) the purpose, (b) date, (c) time; (d) location of the meeting, (e) the titles or positions of the persons who will attend on behalf of the school and (f) the parents have a right to invite to the IEP meeting individuals whom the parents believe to have knowledge or special expertise about their child.

In this case, the district provided adequate notice for the eligibility and initial IEP meeting, which met the conditions required except (f) to include all the individuals who would attend the meeting on behalf of the school. It is noted that the school personnel
acted with good intent when extemporaneously inviting a person from an outside mental health agency who was in the school who was working with the student at the time the IEP meeting was being held. It is also noted that the district acknowledged this error and offered to provide additional instruction of their staff on this topic.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the district failed to provide a Notice of Meeting that meets state requirements, specifically by naming persons from outside agencies who were invited by the district.

**ISSUE THREE:** The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the education advocate or parent an opportunity to participate in eligibility and IEP planning meetings.

**Positions of the Parties**

The complainant alleges that she provided her letter of appointment as the student’s educational advocate to the school on August 29, 2022, and that she had repeated difficulty obtaining contact information for school staff directly involved in the student’s educational program. The complainant alleged that her participation in the IEP meeting was discouraged due to the district first failing to provide a working link to the virtual Microsoft Teams platform for the meeting and secondly by stating that she was to hold her questions to the end of the meeting. This precluded her from actively participating in the evaluation, eligibility and IEP development meeting on February 14, 2023. She further alleges that her statement of “parent concerns” concerns was not placed within the IEP document but was reportedly included in the student’s file.

The district replied: “It is the position of USD #259 that, pursuant to state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), the Educational Advocate did have the opportunity to participate, and participated, in the eligibility and IEP meetings.” The district further claims that (a) on September 30, 2022, the district invited the EA to participate in a meeting to discuss the child’s needs in concert with regularly scheduled parent teacher conferences (b) the district invited and the EA participated in a meeting to discuss classroom interventions on October 31, 2022, (c) the EA received Notice of Meeting for the February 14, 2023, eligibility and IEP meeting, (d) that there were email interactions between the district and the EA to obtain information for the evaluation, and (d) the EA was sent a Microsoft Teams link to
participate in the February 14, 2023 meeting which was unable to be delivered to the EA’s email address, and (e) that the EA was connected by phone to the meeting when introductions began. The district claims that records “show that the Educational Advocate meaningfully participated, was listened and responded to, as is evidenced by her input being included in the student’s IEP folder as well as staff training she requested being added.”

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the educational advocate, foster parent, and staff in USD #259.

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

During the 2022-23 school year, the school used five ways to communicate with the education advocate: electronic platform postings (ParentVUE), email, class DOJO, Microsoft TEAMS, and phone participation in meetings. The district reports that attendance and grade reports are included in ParentVUE.

The education advocate claimed and email documentation supported that she presented the letter of appointment as education advocate to the school on August 29, 2022. The email and attached letter were received by the school clerk who added her to the students enrollment record.

The district reported, and emails showed that the district initiated a meeting with the education advocate and foster agency staff to discuss the student’s behavior and needs on September 30, 2022.

The education advocate and district agreed that the education advocate participated by Microsoft TEAMS in a meeting to discuss possible interventions for the student on October 31, 2022.

The education advocate and district agreed that the education advocate requested classroom performance data on November 7, 2022, and she received FastBridge scores in response to her request.

The education advocate and the district agreed that an “impromptu” meeting was held on January 18, 2023 between school and foster care staff, due to a behavioral incident at the school. The district claimed that it occurred the day of the meeting and involved the
foster agency staff who were at the school; those persons then connected their supervisors to the conference using their phones. The district reported that they attempted to call the education advocate at the time of the meeting and received no answer. The education advocate reported that she received a call but could not answer the phone at that time. The education advocate and the district agreed that conference notes were sent by the district to the education advocate, the foster parent, and all the attendees at the meeting on the same day as the meeting, January 18, 2023.

The education advocate and the district agreed, and emails showed that the eligibility and initial IEP meeting was scheduled on February 14, 2022 to allow the education advocate to attend the meeting and that she would participate by phone or TEAMS. Foster care agency staff also attended this meeting.

The education advocate and the district agreed that a communication breakdown led to the education advocate’s participation by telephone in the February 14, 2022 eligibility and IEP meeting. This breakdown included a Microsoft TEAMS link sent by the district but not received by the education advocate due to server rejection, the last minute request by the education advocate for the link that at the time of the meeting did not work, and the phone call that resulted in her connection into the meeting.

The education advocate and the district agreed that the education advocate was connected by telephone to the evaluation, eligibility and initial IEP development meeting on February 14, 2023, and the signature page on the IEP documents her participation by phone.

The education advocate reported she was not able to ask questions during the evaluation, eligibility and initial IEP development meeting on February 14, 2023, being asked to hold her questions to the end of the meeting. The school psychologist reported that the education advocate was allowed to ask questions and comment on the evaluation, student eligibility, and IEP content. The IEP Meeting notes stated that the education advocate disagreed with one element of the definition during the eligibility discussion, asked a question of Ms. Bell during the evaluation report, and initiated a discussion of working on a computer during the development of the IEP. The education advocate also stated her concerns at this time, which included the time taken to complete the evaluation, requesting trauma training for the foster parent and for staff working with the student, dyslexia screening for the student, and Cognitive Behavioral Therapy (CBT) for the student, as recorded in the IEP Meeting Notes. It is therefore found that the education advocate participated in the evaluation and eligibility.
discussion and in the development of the student's IEP during the meeting on February 14, 2022.

The education advocate and the district agreed that there was an email exchange in which the educational advocate's concerns were enumerated. The district received these requests and provided Prior Written Notice on March 7, 2023 to accept (training for staff and foster parent) and refuse (CBT) the education advocate's requests. The district reported that the education advocate's concerns were attached to the student's file. The February 14, 2022 IEP, in the space provided for parent concerns says, “Parent/Guardian concerns regarding the students academic/behavioral performance is attached to students file.”

**Applicable Regulations and Conclusions**

According to the Kansas Special Education Process Handbook (p.2), “To address the requirement to strengthen the role of parents in the special education process, Congress mandated that schools afford parents the opportunity to be members of any decision making team for their child, including eligibility, initial evaluation and reevaluation, and development of an individualized education program (IEP) for the provision of a free appropriate public education (FAPE). Schools are to ensure that parents have the opportunity to be members of the IEP team that makes decisions on the educational placement of their child. . . (K.A.R. 91-40-25(a); K.A.R. 91-40-17(a); 34 C.F.R. 300.501(b),(c))” (p.1).

Parents also have the opportunity to examine records and to participate in meetings with respect to their children's identification, evaluation, educational placement, and the provision of FAPE to their child (K.A.R.91-40-25). Meetings should be scheduled at mutually agreeable times and use methods such as video or phone conferencing if parents cannot attend in person (K.A.R. 91-40-17 (a), (c)). Parents are to be provided Notice of Meetings at least 10 calendar days prior to the initial IEP meeting and any subsequent IEP meetings (K.A.R. 91-40-17(a)(2)). In addition, parents receive Prior Written Notice when a school proposes to initiate or change the identification, evaluation, educational placement of their child, or provision of special education and related services (FAPE) to their child, and when a school district refuses a parental request on the same (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.503(a)(2)).

In this case, the district scheduled a meeting to discuss the student's school performance on October 28 with the education advocate, teacher, foster parent, and foster care agency staff to discuss the student's classroom performance assessment.
scores and MTSS interventions and to solicit input from the participants on solutions for the student’s extensive behavior problems.

Also, the district scheduled the IEP meeting at a time agreed upon by the education advocate, foster parent, and others involved with the child through the foster care agency. The district provided adequate Notice of Meeting as required. During that February 14, 2022 meeting, when the evaluation, eligibility and IEP development were discussed, the education advocate and others were given the opportunity to ask questions, make requests, and to add points of discussion for the IEP team. The education advocate expressed concerns, later provided in writing, that she wished the district to include on the IEP and which were referenced in that document as an attachment to the student’s file. Within the concerns statement, the education advocate made specific requests for services and training, to which the district responded with Prior Written Notice, as required.

In addition, extensive email conversations between district staff and the educational advocate, at times involving the foster care agency staff, indicate that the education advocate and the district were in frequent conversation about the child’s assessments, records, classroom performance, behavior problems, and their meetings to discuss the student’s needs. It is noted that the multiple formats and various people involved in this communication resulted in a complex communication scenario that was at times unsatisfying to the parties involved. Yet, it resulted in the district’s provision of educational records to the education advocate, the district’s completion of the student’s special education evaluation, educational advocate participation in the eligibility and initial IEP meeting, and an initial IEP that included changes in the student’s academic program and schedule to address the child’s behavioral needs and academic delays.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to afford the education advocate or parent an opportunity to participate in eligibility and IEP planning meetings.

**ISSUE FOUR**: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the education advocate access to classroom performance information and teacher communication during the 2022-2023 school year.
Positions of the Parties

The complainant alleged that the district did not provide her access to interactions with the student’s classroom teacher so that she could be an informed member of the student's educational team. The complainant stated that she contacted the teacher in September for a parent teacher conference and that the teacher did not call her on the appointed date and time on October 12, 2022. She reported that she contacted the principal, who said the teacher would reach out to her, and the school psychologist, who said on October 24, 2022 that the teacher was not required to call the education advocate as she was going to be present at the upcoming meeting on October 31, 2022.

The district responds that communication with the classroom teacher occurred through DOJO (a teacher communication app) with regard to setting up a parent teacher conference with the education advocate and with the foster parent. The following are claims in the district response: (a) The teacher acknowledged that she misunderstood that the two parties were not going to be present during the same parent teacher conference time, as they were scheduled at the same time (the EA expecting to participate by phone or TEAMS). (b) The teacher initiated communication about the missed meeting through class DOJO. (c) The Education Advocate was in communication with the school psychologist at this point. (d) The principal attempted to connect the teacher and the education advocate through email and she offered to set up another time for a parent teacher conference. (e) The teacher apologized and offered to set up another time to meet using class DOJO.

The district stated: “The Education Advocate’s supervisor sent her an email, asking her to meet with the school team about the student and eventually a meeting was scheduled for 10-31-2022. The Educational Advocate was told that the Teacher would be at that meeting and should discuss her concerns with the Teacher at that time. The Educational Advocate attended the 10-31-22 meeting, and the school provided the Educational Advocate with the student’s FastBridge scores, information regarding his behaviors in the classroom setting as well as his MTSS information regarding his Tier 3 intervention group and SAEBRS information for the 2022-2023 school year that was discussed during the meeting; this information was repeated and included in his MTR report and discussed during his eligibility meeting.” The district also listed the following dates of communication initiated by the teacher through class DOJO: November 5, 2022, November 8, 2022, and February 2, 2022, and summarized: “These examples document that the school provided the Educational Advocate access to the student’s classroom
performance information and Teacher communication during the 2022-2023 school year.”

**Findings**

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

The education advocate and the district agreed that she did not participate in the parent teacher conference that she had scheduled on October 12, 2022 because the teacher did not telephone her at the scheduled time.

The district reported that the teacher assumed that the education advocate would be present (in person) at the same conference as the foster father and did not call or answer the education advocate's DOJO message on that date.

The district reported, and emails and DOJO messages from October 17-October 26, 2022 showed that district staff attempted to repair the communication and to reschedule the parent teacher conference with the education advocate. A meeting to discuss the student’s academic performance, behavior problems, consent for evaluation, and effects of his disability in the classroom was held on October 31, 2022. The education advocate and the teacher attended this meeting, along with the school psychologist and foster care agency staff. Following the meeting in an attachment (entitled *FastBridge Assessments [the student initials]*) to an email dated November 8, 2022, the district provided details of the student’s classroom performance including the MTSS interventions being provided at that time.

The district and the foster father agreed that frequent communication on the student's daily classroom behavior and performance occurred between the foster father and the school staff, often at latchkey before and after school or by telephone during the day, as needed. The foster father and the education advocate agreed that they are not in regular communication with each other but instead each communicates with the foster care agency staff.

**Applicable Regulations and Conclusions**

According to the Kansas Special Education Process Handbook, “An education advocate (referred to as "surrogate parents" in Federal law) is appointed to act on behalf of the child when parents are unknown, unavailable, or parental rights have been severed. The state special education statutes and regulations give the Kansas State Board of
Education (KSBE) the authority to appoint education advocates to act on behalf of the child, if parents are unknown, unavailable, or parental rights have been severed or relinquished.”

The education advocate acts as the parent, exercising parental rights with regard to educational decision making, to include those identified in K.S.A. 72-3430 and 34 C.F.R. 300.504(c) and published in a document entitled: Kansas State Department of Education Parent Rights in Special Education (Procedural Safeguards). These include the opportunity to participate in meetings and examine records, appropriate notice of meetings, prior written notice of special education actions by the district, right to give consent as identified in K.A.R. 91-40-27, information on the procedural safeguards and dispute procedures. In general, the education advocate has the right to inspect and review documents and participate in meetings concerning the issues at the heart of special education: identification, evaluation, placement and provision of FAPE to the child (K.A.R. 91-40-25).

In this case, the education advocate's concern is that she did not have regular contact with the student's classroom teacher. When the October 12, 2022 parent teacher conference was missed due to misunderstanding, intervention by the principal to reschedule it was unsuccessful. During the same period of time, beginning September 30, 2022, the school psychologist was attempting to schedule a meeting to discuss the student's needs that were becoming evident through the MTSS process and disciplinary actions. On October 17 by email, the principal advised the education advocate to reply to initiations by the school psychologist and that she would check on the parent teacher conference mishap. A meeting to review classroom data and MTSS Tier 3 classroom support was scheduled and held on October 31, 2022, the same day as the consent for evaluation was obtained from the education advocate. Meanwhile, the custodial foster parent was in regular contact with the district and situated to receive routine updates on the student's class experience each day. The education advocate was reliant upon ParentVUE, class DOJO messages, emails, and virtual or phone participation in meetings to communicate with the district about the student's needs. The education advocate asked for and received classroom assessment data and information on Tier 3 support in the classroom. ParentVUE provided grade and absence reports.

Based on the foregoing, according to IDEA and Kansas special education regulations, it is not substantiated that the USD #259 failed to provide the education advocate access to classroom performance information and teacher communication during the 2022-2023 school year.
**ISSUE FIVE:** The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct a dyslexia screening in accordance with KSDE guidance.

**Positions of the Parties**

The complainant alleged that the district verbally denied her request on February 14, 2023 for a dyslexia screening or for a copy of that screening if it had already been done. The complainant alleged that the district provided a later Prior Written Notice that included “FastBridge screens for dyslexia.”

The district replied: “It is the position of USD #259 that the district was not in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) with regard to conducting a dyslexia screening in accordance with KSDE guidance. The district is required to determine special education eligibility through a comprehensive evaluation per IDEA Sec. 300.309 and K.A.R. 91-40-11. Dyslexia falls under the exceptionality category of Specific Learning Disability. . . A Dyslexia screening is not a general requirement for every evaluation. However, the district did do a screening by means of FastBridge, an approved Dyslexia Screener per the Kansas State Department of Education, as part of the entire process toward determining special education eligibility. As part of the comprehensive initial evaluation, psychoeducational testing completed by the school Psychologist included assessments to assist the team in determining whether or not the student had a specific learning disability, whether or not that be due to dyslexia. An 11-8-22 email shows that the school provided the student’s FastBridge scores to the Educational Advocate after a team meeting she attended on 10-31-22 regarding the student’s behaviors in the classroom. The Educational Advocate was also provided with his MTSS information regarding his Tier 3 intervention groups and SAEBRS information. The FastBridge information also was repeated and included in his current MTR report and discussed during his eligibility meeting, where the Educational Advocate requested dyslexia screening for the student.”

**Findings**

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

The education advocate and the district agreed that dyslexia screening or the results of the dyslexia screening were requested by the education advocate on February 14, 2023.
KSDE policy on dyslexia lists assessments that meet the policy’s requirements, including the FastBridge Reading Screening. The district’s Assessment Schedule (2022-2023) showed that the FastBridge Reading Screening is used for dyslexia screening and MTTS accreditation requirements as per KSDE policy.

On November 8, 2022 the district provided the FastBridge scores to the education advocate in an email attachment called *FastBridge Assessments for [the student initials]*. These scores were also included as part of the special education evaluation report discussed at the evaluation, eligibility and initial IEP meeting for the student on February 14, 2022. The district and the education advocate agreed that, at the February 14, 2022 meeting, the education advocate requested a dyslexia screening or the scores if one had been completed. The district did not explain that the FastBridge served as the dyslexia screening at that time. The district provided a Prior Written Notice dated March 7, 2022 that noted that the FastBridge served as the dyslexia screening and that the scores had been provided.

The Multidisciplinary Team Report on the student’s evaluation for special education stated that he was assessed for the disability Specific Learning Disability and he did not meet the criteria for services under that eligibility indicator.

**Applicable Regulations and Conclusions**

The Dyslexia Handbook (KSDE, 2022) states: “All accredited schools in Kansas are required to administer screening for dyslexia to all students in grades kindergarten through 12th grade. The screener should be administered at least three times per year and aligned with national normed benchmark outcomes” (p. 16). It is important to note that the screening is intended for universal prevention of reading difficulties; a screening flowchart on page 14 of the manual shows how the dyslexia screening should lead to a student centered problems solving process that leads to additionally intensive preventive or remedial educational interventions. Dyslexia is also mentioned in IDEA’s definition of Specific Learning Disabilities as a condition included within the category (Sec. 300.8 (c) (10). When a student is evaluated for special education eligibility, the evaluation should result in information that allows the evaluation and IEP teams to determine the IDEA disability under which they are eligible as well as how to develop an initial IEP that meets their educational and developmental needs.

In this case, the student was screened in accordance with USD # 259 policy with a screening tool that met KSDE requirements on dyslexia. Those results were shared with the educational advocate, with some lack of clarity upon the part of the school district.
about the dyslexia policy. It is noted that the district staff could have better informed the education advocate about how the dyslexia screening requirement was specifically met in their district during the student’s evaluation or at the February 14, 2022 eligibility and initial IEP meeting when the education advocate made her request. Nonetheless, the student did receive appropriate screening under this policy and the results were shared with the education advocate, included in his multidisciplinary evaluation, and provided to the evaluation team to discuss during the student’s eligibility determination.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to conduct a dyslexia screening in accordance with KSDE guidance.

**ISSUE SIX:** The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide FAPE during suspensions and removal from school for a child having or suspected of having a disability.

**Positions of the Parties**

The complainant alleged that the district allowed the student to be repeatedly suspended before and during the period during which the student was being evaluated as a child suspected of having a disability. The complainant further alleged that the child was removed from instruction during additional in-school suspensions and that the foster parent was frequently called to school for conferencing, after which the child was sent home early from school. The complainant alleged that the district failed to properly account for the number of days the child was suspended or otherwise removed from school due to the disciplinary actions of the school.

The district responded: “It is the position of USD #259 that the school did not fail to provide the student his FAPE during suspensions and removal from school. The district believes we could be deemed to have been under the basis of knowledge for this student not-yet-eligible for special education on 9-13-22.”

The district stated that the number of absences, truancies, and suspensions hindered their ability to carry out an expedited evaluation. The district claimed that FAPE was provided to the student because (a) the student was suspended out of school for a total of nine days from the beginning of school to the February 14, 2023 eligibility meeting, (b) the school used a variety of discipline dispositions, not only suspensions, (c) “the school
actively engaged in behavioral interventions to enable the student to remain in school at his current building, where staff knew the student and could continue the evaluation process in a timely manner”, (d) “[d]uring in-school-suspensions, the student received assistance with the work provided by his classroom Teacher (e.g., reading, language arts, and math),” worked at his own pace, was given breaks, and assisted by a licensed teacher and behavior support staff.

Further, the district claimed: “As part of the FBA process, staff tried different behavioral interventions to test their hypotheses. Some days the foster parent took the student home before the end of the day of his own accord (and the student was provided with homework to complete at home to ensure that his learning could continue); the school only asked the foster parent to take the student home during the school day when the student was being given out-of-school suspension. . . . During all of this time, the evaluation continued, as did the FBA component of the evaluation, and the student continued to receive different interventions along the way, such as the first-then intervention, preferred activities, etc. to meet his presenting needs. . . . The Principal has assured that even before they completed the student’s initial evaluation, they made sure that they met the student’s presenting needs at the time prior to 2-14-23 -- they did not leave the student floundering without behavioral support, but supported his presenting needs.”

Findings

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

Foster care records and interviews document that the student was placed in his current foster home from September 20, 2021 - October 8, 2021 and attended second grade at Clark Elementary during that period before being hospitalized due to his history of mental health needs prior to that placement.

During the current 2022-23 school year, the school and the foster parent agree and discipline records supported that the foster parent as custodial parent received discipline (conference, in or out of school suspension) paperwork as required by district BOE policies 1464 and 5113 when he picked up the student from school or during conferences with school personnel.

The district reported that it is the policy to provide disciplinary action forms to an education advocate if one is appointed. It is the school’s practice to email them to the
education advocate in this case. Attendance records but not disciplinary action forms are available through the electronic platform ParentVUE.

The education advocate claimed and the emails supported that she received the following disciplinary paperwork for the student: Disciplinary Action Forms dated November 2, November 3 and November 4, 2022; January 19 and January 24, 2023; Daily Attendance Profile for the period August 17, 2022-February 3, 2023, with entries for in or out of school suspensions on September 22, September 26, September 27, October 27, October 28, November 10, December 7, December 14, and December 15, 2022.

The district claimed and school discipline documents supported that the student was suspended for a total of nine days, occurring on the following dates: September 22, September 26, September 27, October 25, October 27, October 28, November 10 and December 7, 2022; and January 19, 2023.

The district claimed an input error showed a suspension at 3:30 pm on October 6, 2022, when the student left school early.

The student received in school suspension on 14 days on the following dates in the 2022-2023 school year: September 9 (½ day), September 30 (½ day), October 12 (½ day), October 13 (½ day), November 3 (1 day), November 14 (½ day), November 18 (½ day), December 5 (½ day), December 14 (1 day), December 15 (1 day), January 11 (½ day), January 12 (1 day), January 24 (½ day), February 23 (½ day).

The district reported that ISS expectations are that the student will complete classwork provided by the teacher and that ISS is conducted in the Behavior Support Classroom which is staffed by a licensed teacher and assisted by the elementary behavior specialist. The district reported that the student’s classwork was provided by his teacher and he was supervised by a licensed teacher during ISS periods.

School discipline records showed that the foster parent was contacted by phone 18 times or participated in 12 conferences with the school for a total of 30 contacts between September 14, 2022 and March 2, 2023. An interview with the foster parent confirmed that there were many contacts from the school that at times drew him away from work, but he could not confirm the dates or number of times when this occurred.

On three dates, records indicated that the student left school early. On September 23, 2022, according to interviews and discipline records, the student was engaging in self
harm, could not be calmed by school staff, and was sent home with the foster parent. On October 6, 2022 according to interviews with school staff, sign out sheets, and discipline records, the student’s self harm and suicidal statements led to a suicide protocol and the student was transported from school for medical care. On January 18, 2023 according to emails, sign out sheet, conference notes, and interviews, the student engaged in self harm and was transported from school for medical care.

The district reported that the school’s MTSS was in use to provide student support from the beginning of the school year. The district reported that the student was first considered by the Child Study Team on August 29, 2022; behavior monitoring in the classroom was initiated. The district reported that the student was receiving Tier 3 support by October 31, 2022 at which time this was reported to the education advocate and discussed at a meeting. A follow up mail from the education advocate to the district on November 9, 2022 requested clarification on the students Tier 3 supports and academic data shared at the October 28, 2022 meeting. The student’s IEP reviewed Tier 3 interventions as part of the existing data.

The district reported and documents supported that an FBA for the student was conducted during the evaluation. Documents showed that baseline observations for the BIP occurred between October 31 and November 14, 2022 during which behavior intervention strategies were tested with the student.

Applicable Regulations and Conclusions

K.S.A. 72-3436(b) states: “A school district shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred: (1) The parent of the child has expressed concern, in writing, to supervisory or administrative personnel of the appropriate educational agency or to a teacher of the child, that the child is in need of special education and related services; (2) the parent of the child previously has requested an evaluation of the child; or (3) the teacher of the child, or other personnel of the school district, previously has expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of such school district or to other supervisory personnel of the district.”

The Kansas Special Education Process Handbook (KSDE) also advises that, because IDEA’s discipline provisions extend to a child undergoing an evaluation, “it is very important that screening records be maintained . . . in the student’s cumulative folder. Such data will provide documentation that if there was a suspected disability at some
time in the past, the school made the determination whether or not the child should be referred for an initial evaluation to determine eligibility. Therefore, it is important for schools to maintain records on children as such data could be important should a disciplinary proceeding occur later” (p.206).

In this case, the district was alerted to the student's potential for being a child with a disability prior to the initiation of the special education evaluation on October 31, 2022 and its conclusion on February 14, 2023. The district had very brief contact with the student during his second grade year, as he did not stay in the foster care placement long. During the 2022-2023 school year, the district first learned that an education advocate was appointed when the education advocate provided her appointment letter on August 29, 2022. The education advocate requested an evaluation on September 13, 2022 but rescinded this request on September 14, 2022, indicating her intention to make the request at a later date and her need to get paperwork required for the school "to get a picture of [the student].” Therefore, it is found that the requirement for district's knowledge that the child is a child with a disability as required by K.S.A.72-3436 (b) was met on or before September 13, 2022.

In keeping with this understanding, the district has the right to use its regular disciplinary policies, including short term suspension for up to 10 days. In this case, the district suspended the student for a total of nine days and the district used in school suspension on 14 occasions, for half or whole days, when the student was supervised in doing his school work by a teacher with behavior support staff as needed. Additional student and parent conferencing were also used to address the student's behavior problems.

Many conferences and calls to the foster parent were found, and the allegation that the foster parent was being required to pick up the child early without proper disciplinary documentation was unable to be substantiated in the complaint investigation. The student's behavior problems include the co-occurrence of self harming actions and statements with other behaviors more regularly conceptualized as disciplinary in nature (e.g., hitting others, stealing, disruptiveness). The school’s notes and interviews state that, at times, the foster parent was called to calm or talk with the student during the day. At least three times, the student was removed by the foster parent, foster care or mental health agency staff due to events characterized as self harming or suicidal. These are not suspensions or school removals due to disciplinary actions on the part of the school and are therefore not included in the number of suspensions accrued after September 13, 2022 during the 2022-23 school year.
Based on the foregoing, according to IDEA and Kansas special education regulations it is 

not substained that the USD #259 failed to provide FAPE during suspensions and removal from school for a child having or suspected of having a disability.

Corrective Actions

1. Within 15 calendar days of the date of this report, USD #259 shall submit a written statement of assurance to Special Education and Title Services (SETS) that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f).

2. By May 30, 2023, USD #259 will submit a plan showing how school psychologists, school building administrators and relevant staff will be provided training on responding to a request for evaluation in 15 days, reviewing student discipline records to determine if an expedited evaluation is required, and completing the evaluation in 60 days with the initiation of special education services for students found eligible. Within 30 days following the training, USD #259 will submit the training agenda and list of attendees to SETS.

3. Within 15 calendar days of the date of this report, USD #259 shall submit a written statement of assurance to Special Education and Title Services (SETS) that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at K.A.R. 91-40-17(a)(2)

4. By May 30, 2023, USD #259 shall review Notice of Meeting requirements with district staff responsible and provide guidance on procedures to assure parent rights and student confidentiality if an error on the Notice of Meeting occurs.

5. Within 15 calendar days of the date of this report, USD #259 shall submit a written statement of assurance to Special Education and Title Services (SETS) that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act at K.A.R.91-40-25 and K.S.A. 72-3436(b)

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.

Gwen P. Beegle, Ph.D.

Gwen P. Beegle, Complaint Investigator

Donna Wickham, Ph.D.

Donna Wickham, 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)