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

The complaint is against USD #430 (South Brown County Public Schools) who provides general and special education and related services to students in their district. In the remainder of the report, “school” or the “district” shall refer to the responsible agency.

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 23, 2023 and the 30-day timeline ends on April 21, 2023.

Investigation of Complaint

Donna Wickham, Complaint Investigator initially interviewed the mother by telephone on March 24, 2023. Additionally, the Complaint Investigator exchanged emails, texts, and phone calls and messages with the mother between March 24 - April 13, 2023.

USD #430 made the following school staff available for a conference call interview with the Complaint Investigators on April 3, 2023: Ms. Becky Shamburg, director of special education, David Losey, 5th/6th special education teacher, Ronda Torkleson, 5th grade math teacher, Kyli Brenner, 5th grade social studies and science teacher. The complaint investigator later spoke with Linda Barnhill, Language Arts teacher on April 11, 2023 and the superintendent, Jason Cline on April 11, 2023.
The Complaint Investigator exchanged emails with Ms. Shamburg between March 24, 2023 through April 5, 2023 to gather additional information and to clarify documentation provided by the district.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials submitted were carefully read and used in consideration of the issue. They include:

- Evaluation/Reevaluation Eligibility Report dated December 4, 2020
- Individualized Education Plan dated December 3, 2021
- Email chain between parent and Mr. David Losey, special education teacher dated August 23, 2022 between 9:56 p.m. and 10:46 p.m.
- Email exchange between parent and Mr. Losey dated September 12, 2022 at 12:46 p.m. and 12:56 p.m.
- Individualized Education Plan and Team Meeting Record, IEP-At-A-Glance, dated December 2, 2022
- Prior Written Notice for Identification, special education and related services, educational placement, change in services, change in placement, and/or request for consent, dated December 2, 2022
- Email exchange between parent and Mrs. Smith dated December 12, 2022 between 8:52 p.m. and 9:29 p.m.
- Email from parent to Ms. Shamburg Mr. Losey, Mr. Jason Cline, Superintendent, and families together dated February 7, 2023 at 8:52 p.m.
- Email from Ms. Becky Shamburg, Director of Special Education to parent dated February 10, 2023 at 4:11 p.m.
- Email from parent to Ms. Shamburg dated February 10, 2023 at 9:19 p.m.
- Email from parent to Ms. Shamburg dated February 13, 2023 at 12:59 p.m.
- Email from Ms. Shamburg to parent dated February 14, 2023 at 4:27 p.m.
- Email from parent to Mrs. Smith, Mr. Losey and Ms. Shamburg dated February 22, 2023 at 2:49 p.m.
- Email from Mrs. Smith to parent dated February 22, 2023 at 3:45 p.m.
- IEP Amendment form for changes not requiring a full IEP team meeting, dated March 21, 2023
- Text from parent to Mrs. Smith, Mr. Losey and Ms. Shamburg dated March 21, 2023
- Email from Ms. Shamburg to parent dated March 27, 2023 at 7:57 a.m.
- Grade 5 excel table displaying accommodations for the student, special education teacher record, undated
Background Information

This investigation involves an 11-year-old middle schooler in fifth grade. He was diagnosed with dyslexia in July 2020 and receives special education services as a child with a specific learning disability. He was referred for an initial special education evaluation in 2020 due to difficulty with reading and a recent diagnosis of Dyslexia. He sometimes reverses letters and has trouble with reading and spelling.

His special education services consist of 1) general education supports, 2) accommodations/ modifications/supplementary aids and support, 3) supports for school personnel, 4) assistive technology, and 5) positive behavioral supports. He does not qualify for ESY and takes the general assessment with access to the same accommodations he has listed on his IEP. He has two goals in English Language Arts and one goal in Mathematics. He receives 70 minutes of inclusionary support daily in each mathematics and Language arts. Additionally, he receives 30 minutes daily pull out services for study skills. He has 8 accommodations written into his current IEP 1) quiet, separate setting for assignments and assessments; 2) extra time, up to 1 school day to finish written assignments and assessments; 3) read aloud/ text to speech for assignments and assessments; 4) extended time for written responses with reduced emphasis on spelling, with graphic organizers as needed for writing; 5) reduced and modified assignments, up to 25% as needed, including homework assignments based on the increased amount of time to complete due to dyslexia. This was amended on March 23, 2023 to 25% reduction on assignments and assessments in mathematics; 6) written notes to fill gaps class notes; 7) word bank for fill in the blank questions; and 8) answer questions orally.

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 parent raised one issue that was investigated.
**ISSUE ONE:** The USD #430, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), denied the student FAPE by failing to implement the student's IEP during the 2022-2023 school year, specifically by not using the accommodations outlined in the IEP.

**Positions of the Parties**

The mother alleged that her son has an accommodation in his IEP to reduce his assignments and assessments by 25% and that it was not honored in his math class this school year. She states that the teacher is aware he has an IEP but thinks a student should let her know if he needs an accommodation rather than reducing the homework. The complainant says that her child was spending over an hour a night on math homework, and it was really frustrating for him. His parents were stepping in to help when they saw how much he was struggling to complete the assignments. This led them to contact the math and special education teachers to learn why the reductions were not being made. Determining when and how to reduce the homework all resulted in the parents having to make the decision to reduce the homework or placing the responsibility on the student to obtain permission prior to leaving school at the end of the day to reduce the homework. To date, the family has contacted the math teacher, special education teacher, principal, special education director and members of the school board about the student's struggles and that his accommodation was not being provided as written on his IEP in math. The logistics of coordinating the accommodation some of the time and making the student and parents responsible for deciding when to implement it were onerous and left sometimes when the accommodation was not satisfactorily used. The complainant stated the student was entitled to his accommodation and the student and parent should not be responsible for implementing it. They further express concern that when they point out to the district that the accommodation is not being implemented things get better for awhile but after a week, things start to revert back to the parents having to take on the role of requesting.

USD #430 agrees with the complainant that the student has an accommodation to reduce assessments and assignments 25% in all subjects and believe the accommodation is being implemented across all subjects including math but the logistics of coordinating it left the student and family frustrated. In fact, as recently as March 21, 2023 they provided a PWN clarifying the 25% reduction to all math assignments and assessments so no one person had to make the decision to use the accommodation. They state that all staff have talked with the special education teacher
and made decisions as to how to use the accommodation so that the content teacher ensures the student’s access to content is not reduced. The staff stated that in middle school students take greater responsibility for ensuring their accommodations and learning needs are met and therefore give that responsibility to the student.

**Findings of the Investigation**

The investigation focused on the implementation of the two IEPs in place during the 2022-2023 school year, as well as a March 21, 2023 IEP amendment related to the accommodation of a reduction of 25% of the assignment and assessment in the student’s mathematics class. The following findings are based upon a review of documentation and interviews with the parent and the district.

1. The December 3, 2021 Individualized Education Plan (IEP) included three accommodations related to reduction of assignments and assessment, “Reduce and modify assignments as needed, including homework assignments based on the increased amount of time to complete due to dyslexia;” “Math Accommodations: Reduce assignments by 25%, provide graph paper, and multiplication tables.” Testing accommodation: “questions read aloud in small groups and/or individually.”

2. An email exchange at the beginning of the school year showed that there was confusion in how to implement his accommodations in the student’s core classes to ensure a balance was achieved to reduce assignments when necessary but not to allow dyslexia to be an excuse to not complete work he can complete it. Further, the parent was reassured that the core teachers had a copy of the student’s IEP and knew of the accommodations.

3. An email exchange in September among the parent, math teacher and special education teacher showed that the parent was assured the student would have his testing accommodations during a math test and how they would be explained to the student.

4. The December 2, 2022 Individualized Education Plan included an accommodation, “Reduce and modify assignments, up to 25% as needed, including homework assignments based on the increased amount of time to complete due to dyslexia” This accommodation was to be provided during assessments and assignments in the IRC room, classroom, or other setting for the duration of 12/02/2022 through 12/01/2023. The meeting minutes stated, “Math assignments can be cut by 25%.”
5. An email exchange on December 12, 2022 again showed the parent, special education teacher and math teacher working out grading homework during absences and homework exceeding 2 hours without completion.

6. An email from the parent in February to Ms. Shamburg, Mr. Losey, Mr. Cline, and families together expressed concerns that homework in math was becoming excessive again. The email and parent reported that if the student did not stop by the special education teacher’s office before leaving school at the end of the day his math assignments could not be reduced. She further stated there were times that the remaining 25% of homework that was not completed was completed the next day during independent practice rather than working on that day's new content.

7. An email on February 10, 2023 from the Special Education Director to the parent and student's teachers clarified a proposal resulting from a phone conversation of how the 25% reduction accommodation would be implemented in regard to amount of time for homework. An offer to consider changing the student's math services/teacher was also included.

8. An email on February 13, 2023 reports that the parents would like the 25% off homework assignments in math at this time and that they will plan not to change math teachers for student at this time.

9. An email on February 22, 2023 reports that the 25% off of the assignment was provided.

10. An email on March 20 from the Special Education Director to the parent reassured the parent that the IRC and math teachers were made aware of the decision about the 25% accommodation change.

11. The IEP Amendment form for changes not requiring a full IEP team meeting dated March 21, 2023 stated, “Beginning or 3/21/2023 and lasting for the duration of the IEP, the student will have the following accommodation added to his IEP: 25% reduction on all math assignments including assessments. The frequency of this accommodation is daily. Location is in the special education and regular education classroom and the duration is for the length of the IEP.”

12. A text exchange on March 21, 2023 shows that the 25% reduction was not used for an in-class math quiz. The math teacher stated she forgot this one time. She stated the special education teacher had started making the accommodation and she forgot this one time during an in class quiz.

13. An email from the Special Education Director on March 27 stated, “The IRC teacher will have all of the student's math assignments marked off 25% before the student gets
them. Quizzes and tests will be taken in the IRC teacher’s classroom so he will also be sure to get the 25% marked off. If an assignment ever does get sent home where you see that there hasn’t been a reduction in problems, I trust you to choose the ones you think should be marked off. I hope that doesn't happen, but I also recognize that mistakes still have the potential to happen, and this will help us to be sure that the student gets the accommodation that is on his IEP.”

14. The math teacher and special education teacher stated during the interview that the logistics to ensure the accommodation occurs are in place. A copy of the math book is available to the special education teacher and the reductions are made and provided to the student automatically. The math teacher reported that the review parts of the assignments are routinely considered first for removal, so the student does not miss homework practice on the current content.

15. The district stated during the interview that moving to the middle school all students are expected to take greater responsibility to ask for accommodations and needs for their learning, regardless of whether they have an IEP or not. The staff state that they regularly talk with families about this at the fall parent/teacher conferences.

16. All content teachers shared how they work with the special education teacher to reduce content to ensure curriculum is not missed and agreed each content area is different.

17. The student’s IEP showed he is working on grade level content with the IEP services and accommodations. His teachers report his grades are A's and B's.

18. The parent agreed that the IEP amendment made on March 21, 2023 to automatically reduce assignments by 25% is working.

Applicable Regulations and Conclusions

Federal law at 34 C.F.R. 300.17(d) and K.A.R. 91-40-19(a) stipulates that Free Appropriate Public Education (FAPE) means that special education and related services are provided in conformity with an individualized education program (IEP). Further, each teacher shall provide special education services to the child in accordance with the child’s IEP. In this case the following is found:

Interviews with the Mathematics, Language Arts, and Science/Social Studies teachers revealed that the student’s teachers were aware of the student’s dyslexia and the 25% reduction accommodation and agreed the student needed the 25% reduction. Further, they described adjustments made in how they presented or had students practice content within class to use the accommodation class-wide or individually. Emails show
interactions between the parents and school staff discussing how the accommodation was implemented and breakdowns where parents and the student had to take the initiative to ensure it was implemented.

The accommodation was written in the two annual IEPs in a way that made implementation difficult to manage. The content of mathematics made it particularly onerous to implement because it required a level of communication between school staff, parents and child that led to breakdowns. The other content areas are more language-based and assignments can be more easily reduced without narrowing the curriculum. It is found that the accommodation was implemented however its use was implemented differently in the content areas and required ongoing negotiation to be implemented. The accommodation continued to be revised and refined to reduce the staff, family, and student effort to implement it. It appears that the March 21, 2023 amendment has achieved that. That does not diminish the effort the family took to arrive at a successful and sustainable implementation of the accommodation. The procedures for how to collaborate between core teachers and the special education teacher should be standardized and shared readily with the parents so less effort is spent learning how to resolve the implementation.

Based on the foregoing, it is not substantiated that USD #430 failed to implement the IEP by not implementing the 25% reduction in assignments and assessments in mathematics.

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.

Donna Wickham

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)