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 father will be referred to as “the father or stepfather” and The mother will be referred to as “the mother” while both of them will be referred to as “the parents”.

The complaint is against USD #259 (Wichita Public Schools). In the remainder of the report, “USD #259,” the “school,” the “district” or the “local education agency (LEA)” shall refer to this responsible public 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 and USD #259 received the complaint on March 28, 2023 and the timeline to investigate the allegations was extended by five days due to the illness of the investigator.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parents by telephone on April 20, 2023 and again on April 24, 2023 as part of the investigative process.

USD #259 made the following school district staff available for a telephone interview on April 13, 2023:

- Dr. Erica Shores, Mediation/Due Process Supervisor for USD #259
- Gregory Croomes, Principal of L'Ouveture Magnet School
- Gabriella Garcia, School Nurse at L'Ouveture Magnet School
- Kimber Kasitz, Director of School Health Services for USD #259
In addition, USD #259 made the following school staff available for a telephone interview on April 14, 2023:

Dr. Erica Shores, Mediation/Due Process Supervisor for USD #259  
Ryan Alliman, Director of Interrelated Programs for USD #259  
Corie Bishop, Campus Support for L'Ouveture Magnet School

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. While all of these documents were used to provide background and context, the following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Program (IEP) amendment dated March 29, 2022 to the IEP dated February 10, 2022
- 2021-22 School Year Calendar for USD #259
- Student’s Health Room Log dated August 16, 2022 through March 31, 2023
- Student’s ERASE (Explain, Reason, Appropriate, Support, Evaluate) Plan dated October 24, 2022 and reviewed in December 2022 and February 2023
- IEP amendment dated October 24, 2022 to the March 29, 2022 IEP amendment
- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated October 24, 2022
- Student’s Health and Safety Plan dated November 1, 2022
- IEP dated February 1, 2023
- PWN dated February 1, 2023
- Notes from the February 1, 2023 IEP team meeting handwritten by the parents
- Audiotape of the February 1, 2023 IEP team meeting made by the parents
- Email dated February 9, 2023 at 10:31 p.m. written by the mother to Gregory Croomes, school principal
- Letter dated February 9, 2023 written by the mother
- Emails dated February 10, 2021 at 11:59 a.m. written by Mr. Croomes to the mother
- Email dated February 24, 2023 at 4:50 p.m. written by the mother to Mr. Croomes
- Email dated February 24, 2023 at 5:51 p.m. written by the mother to Mr. Croomes
- Screenshot of text sent to Emily Allen, the second grade classroom teacher dated October 28, 2022 at 11:51 a.m.
- Screenshot of text between the mother and Ms. Allen dated February 28, 2023 and March 29, 2023
- Student’s Seizure Emergency Action Plan (EAP) dated March 31, 2023
• USD #259 Department of Health Services Seizure Therapeutic Protocol for Absence, Simple Focal, Complex Focal, Tonic-Clonic/Gran Mal, and Convulsive Seizures lasting more than three minutes
• Student's ABC Behavior Chart dated between September 30, 2022 and April 5, 2023
• Parent Contact Log written by the student's special education teachers dated between October 5, 2021 and March 29, 2023
• Parent Contact Log written by the student's general education teachers dated between October 19, 2021 and March 28, 2023
• Response to the Allegations dated April 11, 2023 written by Dr. Erica Shores, Mediation/Due Process Supervisor for USD #259

Background Information

This investigation involves an eight-year-old male student who is enrolled in the second grade at the L'Ouveture Magnet School in USD #259. The student transferred with an IEP from another school building in USD #259 at the beginning of the 2022-23 school year. The student currently has an IEP to address academics, social skills, and behavior.

His most recent evaluation was conducted on February 9, 2022 at which time he was found eligible for special education and related service under the exceptionality category of Other Health Impaired. The student has medical diagnoses of asthma, mood disorder, seizure disorder, Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), Post-traumatic stress disorder (PTSD), and anxiety. In addition, the student's medical records reflect diagnoses of Autism, Dyslexia, and a Specific Learning Disability in reading from several different agencies.

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, the parents raised two issues that were investigated.
**ISSUE ONE:** The USD #259 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically related to behaviors resulting from his seizure disorder, during the 2022-23 school year.

**Positions of the Parties**

The parents believe USD #259 has not implemented the student’s IEP in regards to the required services, accommodations, and modifications during the 2022-23 school year at L’Ouvertre Magnet School. The mother stated,

Several times this school year, I along with my husband have contacted the school due to concerns about his IEP not being followed or the district’s seizure protocols being followed to better my son’s education and provide the necessary accommodations and medical protocols in place listed for him on his IEP... Unfortunately, there has been no improvements or resolution.

The parents were specifically concerned that the school staff were not identifying the behaviors associated with the student’s seizures and thus failing to offer a break or other appropriate response to address the behavior occurring as a result of his seizure disorder prior to escalating the student’s behavior to the point that he would have a meltdown in class.

USD #259 reported school staff were aware that the student had a seizure disorder when school started on August 15, 2022 and that the school nurse had provided copies of all necessary health forms to the parents during parent/teacher open house at the beginning of the school year. The parent provided information about the medication and the plan to not keep any seizure medication at school on September 7, 2022. The parent also wanted to be called when the student had a seizure at school. The district reported ongoing communication and conferences between the teachers, school nurse and parents as well as two IEP team meetings regarding his seizures, medication, and behavioral concerns at school.

USD #259 indicated that the student’s IEPs did not include any services, accommodations, or modifications related to his seizure disorder until following the February 1, 2023 IEP team meeting. At that meeting, several accommodations were added related to the student’s seizures and those accommodations have been implemented to date.
Findings of the Investigation

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

The student had three IEPs in effect during the 2022-23 school year. The first IEP in effect was the March 10, 2022 IEP amendment to the February 9, 2022 IEP. The health section of the IEP notes the student has medical diagnoses of Asthma, mood disorder, seizure disorder, ADHD (Attention Deficit Hyperactivity Disorder), ODD (Oppositional Defiant Disorder), PTSD (post-traumatic stress disorder), seasonal allergies, anxiety, gender identity, and vision impairment (astigmatism) for which the student wears glasses. This IEP also notes the student does not require a Health Care Plan. There are no services, accommodations, or modifications that are noted to be related to the student's seizure disorder or the district's seizure protocol written in this IEP.

However, the IEP does state that the student’s behavior does impact his learning and the learning of others and significantly affects his ability to focus on academics in the general education setting. The IEP describes the impeding behaviors as “hitting, kicking, yelling, eloping the room, refusal to work, tearing up papers, and destruction of property”.

The IEP includes both social and behavioral goals as well as accommodations including "frequent breaks that are earned, walks when he becomes frustrated, preferred seating, extra time to complete tasks, first-then wordage used, visual schedule, warnings before transitions, and three break cards he can utilize throughout the school day”. In addition, the IEP describes a positive behavior support plan utilizing happy faces and earning rewards to address the behavioral concerns.

The second IEP in effect was the October 24, 2022 IEP amendment of the March 10, 2022 IEP amendment. This IEP includes the same description of the student’s seizure disorder in the Health/Physical and in the Relevant Medical Findings sections. The amended IEP updates the student's medications noting “He is currently only taking his seizure medication which also acts as a mood stabilizer” and references the addition of an ERASE (Explain, Reason, Appropriate, Support, Evaluate) Plan to address the continuing behavioral concerns. Again, there are no services, accommodations, or modifications that are noted to be related to the student’s seizure disorder or the district’s seizure protocol written in this IEP.
A safety plan was developed for the student on November 1, 2022 following an incident where the student climbed on a heater, opened a window, and said he was going to jump out.

The third IEP in effect was developed on February 1, 2023 through the annual IEP review/revision process at an IEP team meeting that included the parents. The parents were concerned that the school nurse did not attend this IEP team meeting; however, USD #259 noted that the school nurse is not a required member of the IEP team as defined by the IDEA and information about the student's seizure disorder was included and updated with parent input during the IEP team meeting.

This IEP includes the same information as the previous two IEPs in regards to the student's seizure disorder. However, at parent request, this IEP includes two specific accommodations related to the student's seizure disorder as noted below:

- Ask the student to retrace his steps or repeat directions when he is not following them because, when having an absence seizure, the student might act like he understands what going on but he's just moving through the motions.
- Send the student to the nurse if he randomly starts crying because the student “gets cluster seizures and often cries before or after having one.”

The February 1, 2023 IEP states that the student will receive 170 minutes of pull out time for decoding and math. He will receive 90 minutes of class within a class services for specials, social studies, and science time. He will receive 20 minutes of counseling twice a week. This IEP does not reference the district's seizure protocol.

The parents were provided with and provided consent to a prior written notice proposing changes in the IEP as noted below on February 1, 2023:

The IEP Team updated the Impact of Exceptionality statement and present levels of academic achievement and functioning. The accommodations and measurable annual goals were reviewed and revised based on the updates to the student's present levels. A measurable annual goal to address the student's social/emotional needs was also developed . . . the student has had difficulty with peer relationships and self-regulating emotional responses to adult requests. To help him progress socially and emotionally, he will continue to receive support in a resource class setting for math and decoding.
The ABC Behavior Chart entries dated after February 1, 2023 included twenty instances where school staff responded the student's inappropriate behavior in the school setting and each time the student was offered breaks, reminded of his positive behavior intervention plan and rewards, cued to use a coping strategy, redirected, and/or the adult discussed and explained the situation and his choices in a 1-1 setting as required by his ERASE plan and IEP. On seven of these instances, the nurse was asked to assess the situation for a possible seizure based on his behavior during the incident.

On February 9, 2023, the mother emailed the building principal regarding a concern with the paraprofessional working with the student not being observant of any seizure activity and then contacting the parents. Mr. Croomes replied via email the next day and explained that the paraprofessional is responsible for reporting concerns to the appropriate school staff and that those school staff are responsible for contacting parents. Mr. Croomes stated,

If he has emergent needs, she is aware that she needs to contact the school nurse. An example of this is when the para brought the student to the nurse because he was not feeling well during a PE activity that involved a strobe light.

The student’s Health Room Log shows the school nurse reviewed the district's seizure protocol with the school staff working with the student on February 10, 2023. On February 13, 2023, the school nurse and the mother discussed the district’s seizure protocol and the need for a seizure emergency action plan (EAP). Because the student did not have any seizure medication at the school, the nurse suggested that the parents contact the student’s physician for information and guidance.

The school nurse was involved with seizure assessments of the student due to behavioral incidents on February 1, and 23, 2023. The logs show that the school nurse made contact with the father following the assessment on February 15. On February 23, the log shows the nurse reported “No seizure like activity was observed” so the parents were not contacted.

The following incident was reported in the student’s Health Room Log on February 24, 2023:

Nurse called to RM 18 by Principal Croomes. When this nurse entered classroom student was sitting in a partitioned off corner of the room. This nurse asked the student how he was feeling and he states he was mad, he explained that he was asked to do his math work; however, he wanted to draw a penguin
instead. This nurse validated his feelings, but explained there are expectations that need to be met before free time. The nurse then asked the student to take a walk, rest in the health room, or do a preferred job. He declined. The nurse than asked the student if he would like a fidget. He stated that he threw all of them already. When asked what he needed or what the nurse could do for him, he responded “Nothing”. He appeared to become more frustrated. He then started repeatedly hitting and attempting to knock over the partition/fake wall and bookshelf. Principal Croomes and this nurse held onto these furniture items preventing them from falling over. This nurse removed / reorganized items/furniture in near proximity to where the student currently was that could cause harm. He then threw every item that was still within his reach. He then moved on to the rest of the classroom and did the following: hit a book off of a shelf, ripped phone cords from the wall, flipped over a desk more than one time, screamed, threw the classroom phone to the floor, threw a cup of pencils in the direction of this nurse, ripped down wall décor, swung open cabinet doors, etc. Mrs. Reimer-Ho [student’s special education teacher] reentered the classroom during this time. When the student heard his stepfather would be coming to the school, the student became emotional and started to deescalate. This nurse asked if he would like to rest in a dark/quiet area as he appeared worn out. He then sat on the floor and this nurse brought him a cup of water which he accepted. After a few minutes the student was asked if he was ready to start picking up the classroom and he calmly said no. Stepfather arrived shortly after. Mood changed throughout the incident.

The mother sent an email to Mr. Croomes on February 24, 2023 at 4:50 p.m. to express her concerns that the student’s IEP was not being followed in regards to responding to behavior related to his seizures. The mother stated,

The nurse is looking for eye fluttering are you serious!? Says “no seizure activity”, excuse me but that is BECAUSE HE ALREADY HAD ONE! He’s in the post seizure phase! And that is CLEARLY what we discussed and what to do during his IEP.

The mother emailed Mr. Croomes again that same day at 5:51 p.m. and stated,

I have a recorded conversation from today's events that state he clearly had seizures related activity and post seizure symptoms that are very clearly written in his IEP. And he's being suspended when the staff did not follow the IEP instructions or the district seizure protocols. I was called and received a voicemail saying he needs to be picked up. All of the prior events and symptoms
were exactly what we discussed in his IEP meeting. Also, the nurse is not following that as well because we discussed her needing to call us immediately if he is having any of the emotional signs we reported during the IEP meeting. She is looking for an active seizure when we have repeatedly said that’s not how his are. They are abcent (sic) and simple focal seizures. And the signs and symptoms that come with them are prior and post seizure and what to look for. Your staff reported much later seeing signs and symptoms and exactly what we discussed to look for and because it was not handled how we discussed and implemented in his IEP, he is now suspended for staff’s errors? He will not escalate if the IEP is followed and the district protocol are being followed as well.

On February 27, 2023, the student’s Health Room Log documents a meeting between the parents and the school nurse as follows:

Mother and stepfather came to the office requesting to speak with this nurse. This nurse went over the seizure protocol with mother and explained nursing assessment/judgement for incident that occurred on 2/24/23. The nurse expressed the need for medical collaboration with the student’s doctors. Stepfather expressed frustration for request as he stated that his doctors work for them as parents and that their parent input/instructions should be sufficient. Parents expressed continued frustrations in regards to student’s IEP. They stated there is a whole page/portion dedicated to outline his seizure that was written by Corie Bishop [Campus Support] at his last annual IEP team meeting. This nurse let parents know I was not aware of that. The only change his IEP manager informed me of was that the student was now on Adderall. This nurse let the parents know she would follow-up on this information.

Later that same day, the student’s Health Room Log documents that the school nurse visited with the special education teacher to follow-up on any updates in the student’s IEP regarding seizures. The special education teacher provided her with a copy of the February 1, 2023 IEP with the two new accommodations related to seizures highlighted.

On February 28, 2023, the mother informed the student’s general education teacher that he was staying home that day because he had two seizures on Sunday and another one on Monday. The mother expressed concern and frustration that the student is now seeing school as a “punishment” and that school is taking a physical and mental toll on the student because he is now afraid of having “another bad day at school” on a daily basis. The mother also stated,
He had a seizure yesterday while I was present and the nurse and other staff didn’t even recognize it. So all behaviors listed in the protocol [the district seizure protocol] need to be documented as seizure related since there is no training with any of the staff being able to recognize them . . . I have provided in writing to the school before that refusal and sudden change in mood are pre and post seizure symptoms. This has been discussed many times. So the fact that that isn’t being done is neglectful and abusive to deny him his needed that we have discussed many many times.

On that same date, the student’s Health Room Log documented that the school nurse contacted Dr. El-Nabbouts’ nurse at Kansas Pediatric Neurology regarding the conflicting opinions between school staff and parents and requesting the physician clarify and differentiate between seizure activity and behaviors. The school nurse made contact with the physician’s office again on March 3 and 6, 2023. The log documents the school nurse was able to speak to Tomas Hernandez, Nurse Practitioner on March 8, 2023. The log states,

He explained the diagnosis was made based on parent report (no video evidence, no activity seen in office, negative EEG). He would not say without certainty the behaviors were not a possible effect from his seizure disorder. He stated that it all comes down to the assessment at the time of the event. He was informed that the issue is that parents do not believe the medical assessments to be valid.

The Nurse Practitioner suggested that the school video the student’s behavior with parent permission in order to obtain their medical assessment of the situation.

The school nurse was involved with seizure assessments of the student due to behavioral incidents on March 2, 3, 20 and 28, 2023. The logs show the school nurse made contact with the mother following the assessment on March 2 and it was recommended the student be told he would take a break rather than asking if he needed one. The nurse made contact with the father on March 3 and the log reflects the student responded well to being told to take a break rather than to be given a choice. On March 20, the father was called after the student refused to take a break. He attempted to intervene with the student over the phone; however this was unsuccessful. The log notes the father described the behavior exhibited during the incident as “attention-seeking” and the nurse reported “no seizure activity noted”. On March 28, the log shows the nurse reported the student was oriented to time and place
throughout the behavioral incident and responded within three minutes of being told to take a break. He calmed using these interventions so the parents were not contacted.

Documentation shows a seizure EAP from Kansas Pediatric Neurology for the student was received by USD #259 on March 31, 2023. The student’s Health Room Log shows the school nurse contacted the mother about obtaining the Diastat medication that was prescribed to implement the EAP on that same day.

**Applicable Regulations and Conclusions**

Federal regulations at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child’s IEP.

Federal regulations at 34 C.F.R. 300.323(d)(2)(ii) require that each teacher and provider who is responsible for the implementation of the IEP must be informed of the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

In this case, all three IEPs document that the student has a seizure disorder; however, the only IEP in effect during the 2022-23 school year that specifically addresses behavior related to the student's seizure disorder was developed on February 1, 2023.

That IEP included two accommodations which require:

- Ask the student to retrace his steps or repeat directions when he is not following them because, when having an absence seizure, the student might act like he understands what going on but he’s just moving through the motions.
- Send the student to the nurse if he randomly starts crying because the student “gets cluster seizures and often cries before or after having one.”

It is noted that the parents provided consent to implement the February 1, 2023 IEP on that same date. However, documentation found the school nurse was unaware of the addition of the two accommodations related to seizure behavior and her responsibility to implement these accommodations as of February 27, 2023. Subsequently, the school
nurse was provided with an IEP-at-a-glance which included the two new accommodations.

The interviews and documentation also found there is still much confusion among the IEP team members in regards to when the student is experiencing a seizure and what behavior is associated with each type of seizure. It is noted that the IEP includes not only these two accommodations specifically related to behavior that reportedly indicate that an absence or cluster seizure has occurred but also includes goals, accommodations, and a positive behavior support plan to address the behaviors that impede his learning and the learning of others including hitting, kicking, yelling, eloping the room, refusal to work, tearing up papers, and destruction of property which appear to be more closely related to his diagnoses of mood disorder, ADHD, ODD, PSTD, and anxiety.

At this time, based upon the plain language of the February 1, 2023 IEP, the interviews and documentation support a finding that USD #259 did implement the IEP as written during the 2022-23 school year in regards to behaviors associated not only with the seizure disorder but also behaviors associated with the student’s diagnoses of mood disorder, ADHD, ODD, PSTD, and anxiety.

The interviews and documentation show that USD #259 has made ongoing attempts to communicate with the student’s pediatric neurologist to clarify and differentiate between these behaviors. Both the LEA and the parents are encouraged to continue to obtain this clarification and to collaborate through the IEP process to develop an IEP that addresses both the behaviors associated with the student’s seizure disorder as well as the behaviors associated with the student’s diagnoses of mood disorder, ADHD, ODD, PSTD, and anxiety.

Based on the foregoing, a violation of special education statutes and regulations is only substantiated for failing to comply with federal regulations at 34 C.F.R. 300.323(d)(2)(ii) which require that each teacher and provider who is responsible for the implementation of the IEP to be informed of the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

In this case, documentation found the student’s IEP was reviewed and revised on February 1, 2023 to include two classroom accommodation related to the student’s seizure activity; however, documentation found the school nurse was not made aware of the addition of the two classroom accommodations related to seizure behavior until she was informed by the parent on February 27, 2023. It is noted that the school nurse
immediately contacted the student's IEP case manager and was provided with an updated copy of the student's IEP-at-a-Glance.

**ISSUE TWO:** The USD #259 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond appropriately to parent requests for staff training and information about the student's seizures to be included in the IEP at the February 1, 2023 IEP team meeting.

**Positions of the Parties**

The parents reported the IEP team met on February 1, 2023 to review and revise the student's annual IEP. The parents indicated the meeting lasted well over 90 minutes and they shared very specific information about the student's seizure disorder, his medication management, and strategies for how to react/support the student before, during, and after having a seizure but this information was not included in the student's IEP. The parents believe the behavioral concerns that are occurring in the school setting are the direct result of his seizure disorder and that if the school staff would just respond appropriately, the student would not have the meltdowns.

The parents stated that the school staff are not adequately trained to identify and respond to the student's seizure disorder and they requested staff be trained. However, this has not yet occurred nor been included in the student’s IEP.

USD #259 denied the parent’s allegation that training for school staff was discussed at the February 1, 2023 IEP team meeting. They acknowledged that the IEP team spent much time discussing the student’s behaviors and gathering input from the parents on how to respond and support the student.

However, USD #259 maintains that the behaviors occurring in the school setting are not solely related to the student's seizure disorder but also his medical diagnoses of mood disorder, ADHD, ODD, PSTD, and anxiety. District staff reported the student began showing improvement in some behaviors with the ERASE plan in effect. USD #259 reported they are currently working with the student's neurologist to clarify and differentiate between the behaviors and underlying causes and plan to continue to review/revise the student's IEP as more information becomes available.
Findings of the Investigation

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

The findings of Issue One are incorporated herein by reference.

The audiotape and handwritten parent notes from the February 1, 2023 IEP team meeting document the parents sharing information regarding the student's seizure disorder, medication management, and strategies for how to react / support the student before, during, and after having a seizure. The handwritten notes state,

... ask for it to be implemented prior to escalation and what symptoms to look for that are related to autism and seizures and when to contact the nurse and parents. I really wish the nurse was here today for this meeting. Mrs. Bishop [Campus Support] said the nurse would get everything from today and contact me prior to IEP being rewritten. I described his stemming and pre-during-post seizure symptoms and asked that those be added to his IEP ... went over how prompting works at home and what his seizures look like and how he functions during them and how to support him during and after. Gave many examples ... random actions, wandering, confusion. R-Ho [abbreviation for the last name of the special education teacher] said she would write in an accommodation for seizure recognition and re-direction.

The parents reported and the handwritten notes document that the LEA discussed reducing the amount of pull out special education services; however, the parents were not in agreement with this proposal. The IEP team considered the parent's input and the February 1, 2023 IEP continues to require the 170 minutes of pull out special education services for decoding and math as was required in the previous IEP.

The February 1, 2023 IEP does not require any additional training for school staff.

The parents reported discussing training for school staff on multiple occasions and with a variety a USD #259 staff during the 2022-23 school year. However, they acknowledged that training for staff was not discussed at the February 1, 2023 IEP team meeting.
Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability.

In this case, documentation and interviews show the IEP team meeting lasted well over 90 minutes and the IEP team, including the parents, discussed information about the student’s seizure disorder, his medication management, and strategies for how to react / support the student before, during, and after having a seizure. In addition, the IEP team updated the present level of academic achievement and functional performance based upon data from the ERASE plan, the ABC Behavior Charts, and the Health and Safety Plan.

The resulting IEP document includes information provided by the parents regarding the student’s seizure disorder and how to respond in the form of two accommodations. In addition, the IEP includes goals, services, and a positive behavior support plan to address the behaviors that are impeding his learning and the learning of others. The team discussed reducing the amount of pull out special education services but parents were not in agreement with this proposal and the resulting IEP continues the same level of services as the previous IEP.

The parents were provided with PWN describing the updates made to the IEP document and provided written consent for these changes on February 1, 2023. The PWN stated,

The IEP Team updated the Impact of Exceptionality statement and present levels of academic achievement and functioning. The accommodations and measurable annual goals were reviewed and revised based on the updates to the student's present levels. A measurable annual goal to address the student’s social/emotional needs was also developed...the student has had difficulty with peer relationships and self-regulating emotional responses to adult requests. To help him progress socially and emotionally, he will continue to receive support in a resource class setting for math and decoding.

It is noted that the parents acknowledged staff training was not requested nor discussed at the February 1, 2023 IEP team meeting.
Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing 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, the parents requested information about the student’s seizure disorder and how to respond appropriately be added to the IEP and USD #259 did add this information in the form of two accommodations.

**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 area:

A. Federal regulations at 34 C.F.R. 300.323(d)(2)(ii) which require that each teacher and provider who is responsible for the implementation of the IEP to be informed of the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

In this case, documentation showed the student’s IEP was reviewed and revised to include two classroom accommodation related to the student’s seizure activity on February 1, 2023. However, documentation also showed the school nurse was unaware of these changes related to seizure behavior until she was informed by the parents on February 27, 2023. It is noted that the school nurse immediately contacted the student’s IEP case manager and was provided with an updated copy of the student’s IEP-at-a-Glance.

Based on the foregoing identified violations, USD #259 is directed to take the following 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) stating that it will:
2. USD #259 shall review its procedures and practices related to special education case managers informing each teacher and provider who is responsible for the implementation of a student’s IEP of the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP. USD #259 will update or create a written procedure / checklist for special education case
managers to follow after each IEP team meeting to ensure this communication takes place. USD #259 will develop a plan to share this written procedure / checklist with the special education staff within the district no later than June 1, 2023. USD #259 shall provide SETS with a copy of the written procedure / checklist and documentation that the plan for distribution was implemented no later than August 15, 2023.

3. Further, USD #259 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). Due to COVID-19 restrictions, appeals may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

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

Nancy Thomas, 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)