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

The complaint is against USD #497 (Lawrence Public Schools). In the remainder of the report, “USD #497,” 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 #497 received the complaint on April 17, 2023 and the timeline to investigate the allegations was extended by seven days due to the illness of the investigator.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on May 11, 2023 as part of the investigative process.

USD #497 made the following school district staff available for a telephone interview on May 10, 2023:

Dr. Andy Taylor, Principal of Billy Mills School
Lori Stithem, Assistant Director of Special Education

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:
• Behavior Logs dated between August 23, 2022 and January 6, 2023
• Email dated November 15, 2022 at 4:19 p.m. written by the parent to Kady Carson, Assistant Principal at Billy Mills Middle School, and Rebecca Byers, Guidance Counselor at Billy Mills Middle School
• Email dated November 16, 2022 at 2:52 p.m. written by Ms. Byers to the parent
• Email dated December 6, 2022 at 7:55 p.m. written by Dallas Winrod, School Psychologist to the parent
• Email dated December 6, 2022 at 9:06 p.m. written by the parent to Mr. Winrod
• Emails dated December 7, 2022 at 8:38 a.m., 9:35 a.m. and 1:13 p.m. between the parent and Mr. Winrod
• Psychological Evaluation dated December 5-16, 2022 completed by Kevin R. Piske, Ph.D, Clinical Psychologist at Spence Counseling in Lawrence, Kansas
• Prior Written Notice (PWN) for Evaluation or Reevaluation dated January 5, 2023
• Email dated January 9, 2023 at 11:22 a.m. written by the parent to Lori Stithem, Assistant Director of Special Education
• Middle School Tier 3 Discipline Matrix for Lawrence Public Schools
• Email dated January 13, 2023 at 10:08 a.m. written by Ms. Carson to the parent
• Notes from the January 17, 2023 Manifestation Determination Meeting created by USD #497
• Letters dated January 17, 2023 written to the parent and the student scheduling an expulsion hearing for January 23, 2023
• Suspension/Expulsion Hearing Packet of Information dated January 23, 2023
• PWN for Evaluation or Reevaluation dated January 24, 2023,
• Email exchange dated February 7, 2023 between the parent, Mr. Winrod, and Ms. Stithem
• Email exchange dated February 8, 2023 between the parent and Ms. Stithem
• Formal Complaint Request Form dated April 17, 2023 written by the parent
• Email dated April 18, 2023 at 8:20 a.m. written by Crista Grimwood, Education Program Consultant and Dispute Resolution Coordinator at the KSDE, to the parent
• Evaluation Team Report dated April 26, 2023
• April 26, 2023 Initial Evaluation Meeting Notes created by USD #497
• 2022-23 School Year Calendar for USD #497
• USD #497 website at https://www.usd497.org/
• Response to the Allegations dated May 1, 2023 written by Lori Stithem, Assistant Director of Special Education for USD #497
Background Information

This investigation involves a twelve-year-old female student who is enrolled in the sixth grade in USD #497. The student attended Billy Mills Middle School at the beginning of the 2022-23 school year. The student was homeschooled for the fifth grade and attended Broken Arrow Elementary school in USD #497 beginning in the first grade. The student has never been referred or identified as needing a Section 504 Accommodation Plan or an Individualized Education Program prior to the current school year.

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 parent raised four issues that were investigated.

**ISSUE ONE**: The USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with a copy of the Procedural Safeguards during the 2022-23 school year.

Positions of the Parties

The parent reported that USD #497 did not provide her with a copy of the IDEA Procedural Safeguards Notice at the appropriate times during the 2022-3 school year. She indicated she did not receive a copy upon her request for an initial evaluation for special education eligibility on November 15, 2022 nor when she specifically requested a copy on January 9, 2023. The parent reported she received a copy of the Parent Rights in Special Education (Procedural Safeguards) from the KSDE on April 18, 2023 when she filed this child complaint. She indicated USD #497 did not provide her with a copy of her parent rights until April 26, 2023 at the evaluation determination meeting.

USD #497 acknowledged that the parent was not provided with a copy of the IDEA Procedural Safeguards in a timely manner during the 2022-23 school year. The district reported,
In our investigation of this matter, we believe this to be an isolated incident related to the late hiring of a second remote school psychologist for Billy Mills Middle School in late September. Our procedure manual clearly states that the psychologist or speech language pathologist (SLP) are to provide a copy of parent rights upon parent request for an evaluation and document this in our special education program. The current remote psychologist has shared that he has not reviewed our district procedural manual. In the future to prevent this procedural error, all onboarding of remote SLPs and Psychologists will include a review of the provision of procedural rights. This will continue to be reviewed at the beginning of the year with all special education staff.

**Findings of the Investigation**

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #497.

It is noted that the IDEA procedural safeguards notice is titled *Parent Rights in Special Education (Procedural Safeguards)* in Kansas.

Pages 3-4 of the USD #497 Procedural Manual states that a copy of the Parent Rights are to be provided to both of the student’s parents or legal education decision-maker and the student if aged 18 or older in their native language or other mode of communication used by the parents/adult student in the following instances:

1. One time each school year
2. Upon initial referral or parent request for evaluation
3. Upon request of the first state complaint/due process in a school year
4. On the date the decision is made to make a disciplinary change of placement
5. Upon request by the parent

The parent sent an email to Kady Carson, Assistant Principal at Billy Mills Middle School, and Rebecca Byers, Guidance Counselor at Billy Mills Middle School, on November 15, 2022 at 4:19 p.m. requesting “an evaluation for an IEP.” Ms. Byers responded via email to the parent on November 16, 2022 at 2:52 p.m. stating that she would “pass the request along to the IEP team.”

A Prior Written Notice requesting consent for an initial evaluation was sent to the parent on January 5, 2023. This notice includes the following statement,
You received a copy of your rights when the initial referral for evaluation was made. A copy of your rights is provided to you upon and request, and at least once a year in the native language of the home. You should carefully read them, and, if you have any questions regarding your rights or if you wish to receive an additional copy of your rights, you may contact the special education director.

The parent sent an email to Lori Stithem, Assistant Director of Special Education, on January 9, 2023 at 11:22 a.m. stating,

At the end it does say I was provided with a copy of my rights when the initial request was made. I do not believe I was given anything like that. Can I get a copy of that?

USD #497 indicated the student had a disciplinary incident on January 6, 2023. The district stated,

The student was given a 10 day out of school suspension beginning on January 9, 2023, for targeting and threatening a peer. An expulsion through the end of the 22-23 school year was being recommended pending a manifestation determination review for the suspected disability and the expulsion hearing. A meeting was held on January 17, 2023, to review the student behavior resulting in suspension to determine if the behavior was a manifestation of the student’s suspected disability. The team determined that the behavior in question was not a manifestation of the student’s suspected disability, therefore the expulsion hearing was held on January 23, 2023. The hearing committee and hearing officer accepted the recommendation from the Billy Mills administrative team, therefore the student was long-term suspended through the end of the 22-23 school year. During the long term suspension, the student attended the district’s suspension alternative program to continue to make progress in her curriculum and to continue the special education evaluation.

An email dated April 18, 2023 written by Crista Grimwood, Education Program Consultant and Dispute Resolution Coordinator at the KSDE, to the parent included the Kansas State Department of Education Parent Rights in Special Education (Procedural Safeguards) as an attachment.

The parent reported that USD #497 provided a hard copy of the Parent Rights in Special Education (Procedural Safeguards) at the Eligibility Determination Meeting held on April 26, 2023.
Both the English and Spanish versions of the *Parent Rights in Special Education (Procedural Safeguards)* can be located on the USD #497 website under the “Parent and Students” tab, under the “Special Education” tab, under the “Resources” tab.

**Applicable Regulations and Conclusions**

Federal regulations at 34 C.F.R. 300. 300.504 (a) require school districts to give a copy of the procedural safeguards available to parents of a child with a disability at least one time per school year. In addition, school districts must also give a copy to the parents in the following situations:

1. Upon initial referral or parent request for evaluation;
2. Upon receipt of the first State complaint and upon the receipt of the first due process complaint in a school year;
3. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct in accordance with the discipline procedures in 300.530(h); and
4. Upon request by a parent.

USD #497 acknowledged that a copy of the procedural safeguards notice was not provided to the parent upon the initial request for a special education evaluation on November 15, 2022. An internal investigation concluded this was an isolated instance related to the late hiring of a remote school psychologist and the district developed the following plan to address the noncompliance:

In the future to prevent this procedural error, all onboarding of remote SLPs and Psychologists will include a review of the provision of procedural rights. This will continue to be reviewed at the beginning of the year with all special education staff.

The parent made the child complaint to the KSDE on April 17, 2023. Interviews and documentation showed the KSDE did provide the parent with an electronic version of the parent rights notice on April 18, 2023.

On January 23, 2023, the district made the decision to expel the student for a disciplinary incident. A manifestation determination hearing was held on January 17, 2023 and it was determined that the behavior resulting in the disciplinary action was not a manifestation of her suspected disability. The student's current placement at the time of the expulsion was in the general education setting 100% of the time. As a result of
the disciplinary action, her building assignment changed from the Billy Mills Middle School to the district’s suspension alternative program. Both of these programs are considered general educational settings.

The parent sent an email to the Assistant Director of Special Education on January 9, 2023 requesting a copy as explained in the January 5, 2023 PWN for Evaluation or Reevaluation; however, a copy of the *Parent Rights in Special Education (Procedural Safeguards)* was not provided to the parent by the district until the eligibility determination meeting held on April 26, 2023.

Federal regulations at 34 C.F.R. 300.300.504 (b) allow a public agency to place a current copy of the procedural safeguards notice on its Internet Web site. It is noted that USD #497 is complying with this regulation by posting a current copy of the procedural safeguards notice on the district’s website.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to comply with federal regulations at 34 C.F.R. 300.300.504 (a) which required that the parent be provided a copy of the procedural safeguards notice upon the following dates/situations:

1. November 15, 2023 (initial referral or parent request for evaluation); and
2. January 9, 2023 (upon request by a parent).

**ISSUE TWO:** The USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond appropriately to the parent’s request for an initial special education evaluation on November 15, 2022.

**Positions of the Parties**

The parent reported that she made an initial request for a special education evaluation in writing to Kady Carson, Assistant Principal at Billy Mills Middle School, and Rebecca Byers, Guidance Counselor at Billy Mills Middle School, on November 15, 2022. The parent understood that the district had 15 days to respond; however, she was not provided with a Prior Written Notice (PWN) for an Evaluation or Reevaluation until January 5, 2023.
The parent reports the district further delayed the special education evaluation of the student by failing to initially include behavior as an area requiring additional assessment and issuing a second PWN and requesting consent on January 24, 2023.

The parent reported she was provided with a third PWN on February 7, 2023 requesting consent to evaluate in all academic areas rather than just math which was the parent’s main academic concern.

The parent believes the delay in the special education evaluation created the circumstances which ultimately resulted in the student being expelled from Billy Mills Middle School on January 23, 2023.

USD #497 acknowledged that the request was provided to the parent 18 school days after the initial request, rather than the 15 school days. The district explained the short delay was necessary to allow the school psychologist to determine whether or not the district’s proposed assessment would duplicate any of the testing being completed as part of the parent’s outside evaluation of the student. The district noted that the short delay did not impact the decision to long-term suspend the student on January 23, 2023 because the district held a manifestation determination meeting on January 17, 2023 and determined that the behavior that resulted in the disciplinary action was not related to the student’s suspected disability. The district noted that the second PWN dated January 24, 2023 was provided to add an area to be evaluated and the February 7, 2023 PWN was to clarify that all areas of academics would be assessed not just the area of math.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #497.

The findings of Issue One are incorporated herein by reference.

The 2022-23 Lawrence Public Schools Calendar shows school was in session for a total of 20 days between November 15, 2022 and January 5, 2023.

The district stated,

There was a discussion between the school psychologist and the parent related to which areas should be assessed, based on the parent’s report of an outside
evaluation being completed. The school psychologist reached out to the parent on December 6, 2022 (11 school days after the initial parent request on November 15, 2022). [This would be Day 10 following the parent referral per the investigator’s calendar review] Because the parent had shared that she was having an outside evaluation completed for her daughter, the school psychologist attempted to get information about this outside evaluation in order to ensure that duplicate testing was not being completed. The parent was sent a consent for an initial evaluation on January 5, 2023 and the parent signed this on January 9, 2023.

An email dated December 6, 2022 at 7:55 p.m. written by Dallas Winrod, School Psychologist, to the parent requested information about the parent’s concerns and their impact on her academically. The mother responded that same date at 9:06 p.m. stating,

I am concerned about her ability in math. Also her behavior is a huge concern that is negatively impacting her academically. She is currently being evaluated for ADHD [Attention Deficit Hyperactivity Disorder], ODD [Oppositional Defiant Disorder] and other disorders.

On December 7, 2022, Mr. Winrod and the parent exchanged several emails regarding the need to coordinate the outside evaluation. Mr. Winrod stated,

Can you provide me with more information about the evaluation she is currently under? I ask because the disorders you mentioned, along with others - are the same ones I would evaluate for. I can use the same tools Dr.’s use but I cannot do it all at the same time because we might impact each other’s results.

The PWN for Evaluation or Reevaluation dated January 5, 2023 proposed to conduct an initial evaluation in the area of academic performance. The notice stated,

May include assessment of academic or preacademic skills and achievement levels in relation to the general curriculum such as oral or written expression, reading skills or comprehension, mathematical calculation or reason.

The parent provided written consent for this proposed evaluation on January 9, 2023.

The parent indicated that she questioned members of the team about the lack of testing in the area of behavior at the disciplinary hearing on January 17, 2023. She was
informed the area of behavior would be added as needing further assessment and another PWN would be sent.

The parent was provided with a PWN for Evaluation or Reevaluation dated January 24, 2023 proposing to conduct an initial evaluation of the student and adding additional assessment in the area of behavior. The parent signed this form on January 25, 2023 granting consent for the additional area to be assessed.

According to an email exchange between the parent, Ms. Stitem, and Mr. Winrod, USD #497 provided a third PWN for Evaluation or Reevaluation dated February 7, 2023 to the parent in an effort to clarify that all areas of academics would be assessed, not just the area of math which was the parent's primary concern.

Interviews and documentation found that an eligibility determination meeting was held on April 26, 2023 which is 66 school days from the original date the parent provided written consent for the evaluation. The multidisciplinary team determined the student was a student with a disability; however, they were unable to determine the educational impact and need for special education and related services at that time because the student was attending the suspension alternative program at East Heights Alternative School throughout the entire evaluation process and not in a typical middle school setting. The LEA and the parent agreed to extend the evaluation and returned the student to West Middle School in USD #497 beginning May 1, 2023.

**Applicable Regulations and Conclusions**

Federal regulations implementing the IDEA at 300.301(b) allow the parent of the child to make a referral for a special education evaluation.

Federal regulations at 34 C.F.R. 300.304(c)(6) require school districts to ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs.

Federal regulations implementing the IDEA at 34 C.F.R. 300.305 (a)(1-2) require that an IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on the child in order to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the
measurable annual goals described in the IEP; and to participate, as appropriate, in the general education curriculum. The review of existing data may be conducted either with or without holding a meeting and ensures that a comprehensive evaluation can be conducted to address all areas of concern.

Following the review of existing data, 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 an evaluation of a child who has or is suspected of having a disability under the IDEA.

According to Chapter 2, Section E of *The Kansas Special Education Process Manual and the Parent Guide to Special Education in Kansas*, the school must respond to the parent request for an initial evaluation within a reasonable period of time, which has been interpreted by the Kansas State Department of Education (KSDE) as being no more than 15 school days, unless there are unusual circumstances.

Once written consent for the proposed initial evaluation is received by the school district, the agency has 60 school days to complete the evaluation and determine eligibility as required by state regulations at K.A.R. 91-040-8(f). Only three specific instances justify an extension to the 60 school-day timeline: 1) the parent of the child repeatedly fails or refuses to produce the child for the evaluation; or 2) the child enrolls in a new district after the evaluation has begun and before the determination of eligibility; or 3) the parent consents in writing to extend the timeline.

In this case, documentation and interviews show the parent made the initial request for a special education evaluation on November 15, 2022 via email. The district initially responded to the request on November 16, 2022 by notifying the student’s IEP team.

On December 6, 2022, the school psychologist contacted the parent to discuss the outside evaluation and to obtain her input. Emails dated December 7, 2023 were exchanged between the parent and the school psychologist regarding the need to coordinate the assessments used in outside evaluation with those being chosen for the district evaluation. Through these emails, the parent conferred with the school psychologist and shared that her concerns were specifically related to academic performance and behavior. The parent also shared the student was currently being evaluated for ADHD, ODD, and other disorders.

Despite sharing these concerns, PWN for an Evaluation or Reevaluation dated January 5, 2023 only proposed to conduct an initial evaluation in the area of academic
performance. It is noted this response is 20 days from the date of the parent request for an evaluation. While the district did initially exceed the 15 school day timeline to respond to the parent’s request, the need to ensure testing was valid and reliable by not duplicating assessments would be considered an “unusual circumstance” and be a reason for the additional 5 days in the timeline.

The parent again shared her concern that behavior was also an area of potential disability and that additional assessment was needed in order to determine eligibility while the student was long term suspended from the district due to a disciplinary incident on January 6, 2023. USD #497 provided a second PWN for initial evaluation to include both academics and behavior to the parent on January 24, 2023. The parent granted written consent to add the additional area of behavior to the special education evaluation on January 25, 2023.

It is noted that the final PWN provided to the parent in February 2023 was not necessary as the parent had already provided written consent to test in the area of academic performance.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to respond appropriately to the parent’s request for an initial special education evaluation on November 15, 2022. Specifically, USD #497 failed to include the parent’s concerns regarding behavior in the PWN for Evaluation or Reevaluation dated January 5, 2023. This resulted in the district not proposing a comprehensive evaluation of the student to determine eligibility. In addition, USD #497 exceeded the original 60 school day timeline to complete the evaluation without experiencing one of the specific instances that allow for an extension of that timeline.

It is noted that USD #497 did follow the appropriate procedure and got obtained written permission from the parent to extend the evaluation timeline in order to gather additional information regarding the need for special education and related services following the April 26, 2023 meeting.
ISSUE THREE: The USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate disciplinary procedures for a student who was suspected of having a disability and in need of special education services during the 2022-23 school year.

Positions of the Parties

The parents reported the student was suspended from school a total of 21 days after her parent referral for a special education evaluation of the student on November 15, 2022. The parent indicated that USD #497 then expelled the student from school on January 23, 2023 for behavior that parent believes is a result of the student's disability.

USD #497 reported that the student displayed behaviors that significantly disrupted the learning environment of other students at Billy Mills Middle School through classroom disruptions and disrespect to staff during the first semester of the 2022-23 school year. The district noted that the student was suspended for 10 days with a recommendation for a long term suspension following a disciplinary incident on January 6, 2023 for classroom disruption, disrespect to staff, and threatening a peer. A manifestation determination hearing was held on January 17, 2023 and it was determined that the behavior resulting in the violation of the code of conduct was not a manifestation of the student's suspected disability. A hearing on January 23, 2023 resulted in the student being long term suspended from USD #497 and being reassigned to attend the suspension alternative program at East Heights Alternative School for the remainder of the 2022-23 school year.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #497.

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

Interviews and documentation show the student was suspended out of school for a total of 21 days after the parent requested a special education evaluation on November 15, 2022. The list below shows the date of the suspension, the infraction to the code of conduct, and the number of days suspended as the disciplinary consequence:

- November 16 and 17, 2022 for class disruption (2 days)
• November 18, 2022 for class disruption and disrespect to staff (1 day)
• November 19 and 20, 2022 for class disruption and disrespect to staff (2 days)
• November 30 and December 1 and 2, 2022 for class disruption and disrespect to staff (3 days)
• December 15, 2022 for class disruption and disrespect to staff (1 day)
• December 19 and 20, 2022 for class disruption and disrespect to staff (2 days)
• January 9 through January 23, 2023 for class disruption, disrespect to staff, and threatening another student (10 days)

The Assistant Principal at Billy Mills Middle School sent an email to the parent on January 13, 2023 at 10:08 a.m. stating,

I sent out an invite for the meeting on Tuesday afternoon at 3:45 p.m. to discuss the student’s suspected disability as it relates to her behavior. Lori Stithem did tell me that we would need as much information about the student's outside evaluation as possible.

The notes from the January 17, 2023 meeting indicate that the purpose of the meeting was to determine if the student’s behaviors on January 6, 2023 of threatening a peer, classroom disruptions, and disrespect to the staff were a manifestation of the student’s suspected disability.

The parent reported and the district acknowledged that the parent shared a portion of a Psychological Evaluation dated December 5-16, 2022 completed by Kevin R. Piske, Ph.D, Clinical Psychologist at Spence Counseling in Lawrence, Kansas, at the January 17, 2023 meeting. The evaluation concluded that the student “meets the criteria for Attention-Deficit / Hyperactivity Disorder, Inattentive type, being right on the border for a diagnosis of Combined Type . . . She also meets the criteria for Oppositional Defiant Disorder. “

The school staff noted that the portion of the report shared with the district did not specifically name the student or include any identifying information.

The school staff stated that the areas of suspected disability considered at the manifestation determination were Other Health Impaired, Emotional Disturbance, and Specific Learning Disability. At the conclusion of the manifestation determination meeting, the school staff concluded that the behavior resulting in the recommendation for a long term suspension was not a manifestation of the student’s suspected disability despite the parent’s dissent.
A recommendation for an expulsion hearing was made and held on January 23, 2023 which resulted in the student being suspended out of school for the remainder of the 2022-23 school year and assigned to the suspension alternative program at East Heights Alternative School in order to access the general education curriculum.

**Applicable Regulations and Conclusions**

Federal regulations implementing the IDEA at 34 C.F.R. 300.534(a) require a public agency to provide the IDEA disciplinary protections to a student not yet eligible for special education and related services who has engaged in behavior that violated a code of student conduct if the district had knowledge that the student may be a student with a disability prior to the behavior that resulted in the disciplinary action.

Federal regulations implementing the IDEA at 34 C.F.R. 300.534(b)(2) state that a public agency is deemed to have knowledge that a student may have a disability if the parent has made a request for a special education evaluation.

Federal regulations implementing the IDEA at 34 C.F.R. 300.536 state that a removal of more than 10 consecutive school days or a removal of more than 10 cumulative school days when a pattern of behavior exists constitutes a disciplinary change of placement. School staff make the determination if a pattern of behavior exists.

Federal regulation implementing the IDEA at 34 C.F.R. 300.530 require the public agency to determine if the behavior that violated a code of student conduct resulting in a disciplinary change of placement is a manifestation of the student's disability. If the determination is that the behavior that resulted in the disciplinary action is not a manifestation of the child's disability, the student may be disciplined in the same manner as any other student without a disability. However, if the determination is that the behavior that resulted in the disciplinary action is a manifestation of the child's disability, specific procedures must be followed and services must be provided to the student.

In this case, the parent made a request for a special education evaluation of the student on November 15, 2022 which put the district on notice that the student may be a child with a disability and eligible for the IDEA disciplinary protections.

Subsequent to that date, the student was suspended out of school for a total of 11 days over a period of 20 possible school days or 55% of the time for classroom disruptions and disrespect to staff. However, there is no documentation that the district considered
whether or not the more than 10 cumulative days of suspension constituted a pattern of behavior resulting in a disciplinary change of placement. It is noted that the student only attended two school days following the holiday break before being suspended for an additional 10 school days with a recommendation for a long term suspension.

When determining whether a disciplinary removal constitutes a change of placement due to a pattern of removals, school officials have broad discretion. Federal regulations, at 34 C.F.R. 300.536(b), state that the district determines on a case-by-case basis whether there is a pattern of removals that constitute a change of placement, and that determination by the district is subject to review only through due process and judicial proceedings. Thus, it is the district that determines whether a disciplinary removal constitutes a pattern of removals that result in a change of placement, and that decision is not reviewable through the complaint process. This complaint report does not disturb that discretion because the conclusion stated below is not that the student's behavior constituted a pattern that resulted in a change of placement. Rather, the conclusion below is based on the finding that the district did not make any determination regarding whether the removal on December 20 (the 11th cumulative day of removal) constituted a pattern that resulted in a change of placement. Had it made such a determination, this complaint investigator would not have authority to review that determination. The finding of a violation results from the district's failure to make the required determination when the 11th cumulative day of removal occurred, after the parent gave consent for an initial evaluation.

It is noted that the district did conduct a manifestation determination meeting as required on January 17, 2023 and determined the threatening behavior towards a peer on January 6, 2023 was not a manifestation of the student's suspected disabilities of Other Health Impaired, Emotional Disturbance, or Specific Learning Disability. As a result of this determination, USD #497 made a decision to long term suspend the student and assign her to attend the suspension alternative program at East Heights Alternative School to receive access to the general education curriculum in the same manner as any other student in the district.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to follow the IDEA disciplinary procedures for a student suspected of having a disability, specifically by not determining if more than 10 cumulative days of suspension constituted a pattern of behavior resulting in a disciplinary change of placement following the student's 11th cumulative day of suspension on December 20, 2022.
ISSUE FOUR: The USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to allow the parent access to the student’s educational records, specifically the evaluation materials used in the special education evaluation during the 2022-23 school year.

Positions of the Parties

The parent reported she requested copies of all evaluation materials used in the special education evaluation on February 8, 2023 but was told they were not available until the evaluation had been completed. School staff informed her that she would get a copy of the evaluation results when eligibility is determined. The parent believes that all of the evaluation materials were part of the student’s educational record and she should be able to get copies of those records.

USD #497 maintains the parent had access to all of the student’s educational records during the 2022-23 school year. The district acknowledged the parent made a request on February 8 2023 to access the results of the initial evaluation assessments and surveys as they were being completed. The LEA noted that a summary of those results was included in the draft copy of the Evaluation Team Report provided to the parent on April 24, 2023 and reviewed with the parent on April 26, 2023.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #497.

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

Both the parent and USD #497 acknowledge that the parent made a request for copies of all of the evaluation materials used in the special education evaluation completed during the 2022-23 school year on February 8, 2023.

USD #497 stated,

Ms. Stithem replied to the parent's email, explaining the results of the surveys and assessments will be included in the evaluation report. Ms. Stithem explained that the school psychologist must have the opportunity to compile, review, and interpret the results to be included in the evaluation report, and the parent would receive a copy of the report before the evaluation meeting. At the time of
the parent request, the evaluation report was still being completed, and therefore not a part of the student’s educational record. The evaluation report was shared with the parents two days prior to the initial evaluation meeting.

Interviews and documentation show a summary and interpretation of the evaluation materials was included in the Evaluation Team Report dated April 26, 2023. Notes from the eligibility determination meeting show the district staff reviewed the results of the assessments conducted during the special education evaluation with the parent during the meeting.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.501 require that parents are provided the opportunity to inspect and review all of the educational records of the student in respect to the identification and evaluation of the student.

Federal regulations implementing the IDEA at 34 C.F.R. 300.613(a) require the public agency comply with the parent request to inspect and review educational records without unnecessary delay and, in no case, more than 45 days after the request has been made. Federal regulations implementing the IDEA at 34 C.F.R. 300.613(b) give parents the right to request copies of the educational records if the failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records as well as to have the participating agency provide an explanation and interpretation of the records.

Federal regulations at 34 C.F.R. 300.611(b) state that education records mean the type of records covered under the definition of ‘education records’ in 34 C.F.R. part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1947 (FERPA)). 34 C.F.R. part 99 states that “education records “ are records that are (1) directly related to a student and (2) maintained by an educational agency or institution or by a party acting for or on behalf of the agency or institution. “Record” means any information recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, and microfiche.”

In this case, the parent made a request for copies of the evaluation materials used as the basis of the special education evaluation of the student on February 8, 2023. The USD #497 informed the parent that the evaluation report was still being completed at the time of the parent request and the records requested were “therefore not a part of the student’s educational record”. It is noted that the LEA did provide a written
summary and interpretation of all the evaluation materials in the form of the Evaluation Team Report.

USD #497 inaccurately determined that the surveys and assessments were not considered “part of the student’s education record.” However, the evaluation materials, including the surveys and assessments used as the basis for the Evaluation Team Report dated April 26, 2023, are directly related to the student and are maintained by the public agency. As such, these records should be considered as separate, independent educational records and the parent has a right to access and review them.

However, the LEA was not required to provide a copy of the evaluation materials for the parent; instead the LEA was responsible for providing the parent with the opportunity to inspect and review those educational records. The parent only has a right to obtain copies of these educational records if there is some reason that not providing copies would prevent the parent from accessing and reviewing those records and there is no indication that this is the case.

Based on the foregoing, there is evidence to support a finding that USD #497 did not make the requested educational records accessible to the parent within the required 45 days timeline between the request on February 9, 2023 and March 25, 2023, and as such, is in violation of federal regulations at 34 C.F.R. 300.613(a).

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following areas:

A. Federal regulations at 34 C.F.R. 300. 300.504 (a) require school districts to give a copy of the procedural safeguards available to parents of a child with a disability at least one time per school year. In addition, school districts must also give a copy to the parents in the following situations: 1) Upon initial referral or parent request for evaluation; 2) Upon receipt of the first State complaint and upon the receipt of the first due process complaint in a school year; 3) On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct in accordance with the discipline procedures in 300.530(h); and 4) Upon request by a parent.

In this case, the district acknowledged the parent was not provided with a copy of the
procedural safeguards notice upon the parent's initial referral for a special education evaluation on November 15, 2022. Interview and documentation also found USD #497 failed to provide the parent with a copy of the procedural safeguards notice upon the written parent request on January 9, 2023.

B. Federal regulations at 34 C.F.R. 300.304(c)(6) require school districts to ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs.

In this case, the school psychologist conferred with the parent on December 6, 2022 and the parent shared that the student was being evaluation for “ADHD, ODD, and other disorders.” In addition, the parent shared concerns about behaviors she believed were impacting the student's academic progress. However, the January 5, 2023 PWN only proposed assessment in the area of academics. This would not have provided the multidisciplinary team with enough current information to make an eligibility determination regarding the suspected exceptionalities of Other Health Impaired or Emotional Disturbance. It is noted that the district did add additional assessment in the area of behavior in the PWN dated January 24, 2023 when the parent brought this concern to light following the disciplinary incident on January 6, 2022.

C. State regulations at K.A.R. 91-040-8(f) require school districts to complete the evaluation within 60 school days of receiving written consent from the parent. This timeline can only be extended for three specific instances: 1) the parent of the child repeatedly fails or refuses to produce the child for the evaluation; or 2) the child enrolls in a new district after the evaluation has begun and before the determination of eligibility; or 3) the parent consents in writing to extend the timeline.

In this case, the parent provided written consent for the evaluation on January 9, 2023; however, the eligibility determination meeting was not held until April 26, 2023. This was a total of 66 school days to complete the initial evaluation and there was no acceptable reason to extend the evaluation timeline.

D. Federal regulations implementing the IDEA at 300.536 require that a public agency must determine if a pattern of behavior exists when a student is removed for more than 10 cumulative school days in a school year.

In this case, the district had knowledge that the student may be a child with a disability in need of special education and related services when the parent made a referral for a special education evaluation on November 15, 2022. During the following 20 school days, the student was suspended out of school for a total of 11 school days. There is no documentation to support that USD #497 made a determination of whether or not
this more than 10 cumulative school days of suspension constituted a pattern of behavior resulting in a disciplinary change of placement following the 11th day of suspension on December 20, 2022.

E. Federal regulations implementing the IDEA at 34 C.F.R. 300.613(a) require the public agency comply with the parent request to inspect and review educational records without unnecessary delay and, in no case, more than 45 days after the request has been made.

In this case, USD #497 inaccurately determined that the surveys and assessments used as the basis of the Evaluation Team Report were not considered “part of the student’s education record” because the Evaluation Report was not yet complete at the time of the parent request. However, the evaluation materials, including the surveys and assessments used as the basis for the Evaluation Team Report dated April 26, 2023, are directly related to the student and are maintained by the public agency. As such, these records should be considered as separate, independent educational records and the parent has a right to access and review them. This investigation found that USD #497 did not make these requested educational records accessible to the parent within the required 45 days timeline between the request on February 9, 2023 and the 45th calendar day on March 25, 2023.

Based on the foregoing identified violations, USD #497 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #497 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:

   a. Comply with federal regulations at 34 C.F.R. 300.300.504 (a) which require school districts to give a copy of the procedural safeguards available to parents of a child with a disability at least one time per school year. In addition, school districts must also give a copy to the parents in the following situations: 1) Upon initial referral or parent request for evaluation; and 2) Upon request by a parent.

   b. Comply with federal regulations at 34 C.F.R. 300.304(c)(6) which require school districts to ensure that the evaluation is sufficiently comprehensive to identify all of the child’s special education and related service needs.
c. Comply with state regulations at K.A.R. 91-040-8(f) which require school districts to complete the evaluation within 60 school days of receiving written consent from the parent.

d. Comply with federal regulations implementing the IDEA at 34 C.F.R. 300.536 which require that a public agency must determine if a pattern of behavior exists when a student is removed for more than 10 cumulative school days in a school year.

e. Comply with federal regulations implementing the IDEA at 34 C.F.R. 300.613(a) which require the public agency comply with the parent request to inspect and review educational records without unnecessary delay and, in no case, more than 45 days after the request has been made.

2. No later than August 30, 2023, USD #497 shall conduct a training for the special education staff, regular education staff, school psychologists, and administrators working at Billy Mills Elementary School regarding the Parent Rights in Special Education (Procedural Safeguards), specifically the rights guaranteed to the parent as well as the IDEA requirements related to the provision of the notice. In addition, this training will highlight the parent’s right to inspect and review education records as well as what constitutes an education record. No later than five days after the completion of the training, USD #497 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #497 will provide SETS with any handouts and/or a copy of the presentation.

3. No later than August 30, 2023, USD #497 shall conduct a training for school psychologists employed by the district for the 2023-24 school year regarding the IDEA initial evaluation process, specifically conducting the review of existing data in order to conduct an evaluation that is sufficiently comprehensive to determine all the student’s special education and related service needs as well as the 60 school day timeline and the actions that must be completed during that timeframe. No later than five days after the completion of the training, USD #497 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #497 will provide SETS with any handouts and/or a copy of the presentation.

4. No later than August 30, 2023, USD #497 shall conduct a training for the special education case managers, school psychologists, and administrators working at Billy Mills Elementary School regarding the IDEA disciplinary procedures for students identified as
having a disability or suspected of having a disability. No later than five days after the completion of the training, USD #497 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #497 will provide SETS with any handouts and/or a copy of the presentation.

5. No later than August 1, 2023, USD #497 shall review its procedures and practices related to tracking disciplinary changes of placement and the process for conducting a manifestation determination. USD #497 will update or create a written procedure / checklist for special education case managers and administrators to follow during the 2023-24 school year to ensure that appropriate procedures are followed when a student with a disability or suspected of having a disability exhibit behavior that results in a breach of the student code of conduct. USD #497 will develop a plan to share this written procedure / checklist with the special education staff within the district no later than August 1, 2023. USD #497 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.

6. No later than June 30, 2023, USD #497 will arrange for the parent to inspect and review the student's education records, specifically the evaluation materials, including the surveys and assessments used as the basis for the Evaluation Team Report dated April 26, 2023. USD #497 shall provide SETS with documentation that the access to these records was offered to the parent at a mutually agreeable date and time no later than July 15, 2023.

7. Further, USD #497 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)