REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON APRIL 18, 2023

DATE OF REPORT MAY 18, 2023

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

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

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on April 18, 2023. A one week extension was granted at the request of the complaint investigator, and the 30-day timeline plus the extension ended on May 25, 2023.

Investigation of Complaint

Gwen Beegle, Complaint Investigator, spoke to the parent by telephone on April 19, 2023, to clarify the issues in the complaint and on April 28, 2023 to clarify the collection of evidence. In addition, Gwen Beegle interviewed the parent on May 8, 2023 and the grandmother on May 3, 2023.

Gwen Beegle and Donna Wickham (Complaint Investigator) interviewed Dr. Erica Shores, USD #259 Executive Director of Student Support Services, Patricia JuAire, 504 Team Leader, Brooks Magnet Middle School and Abigail Dedéaux, Social Worker, Brooks Magnet Middle School on May 9, 2023. Jennifer Erickson, Terneilus Shanklin and Dr. Shores were interviewed on May 11, 2023.
The Complaint Investigators also received emails and supporting documents from the parent and USD #259 between April 23, 2023, and May 18, 2023.

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

Documents and Reports

- 2021-22 Q4 [student initial] Report Card
- Wichita USD #259 School Year Calendar, 2022-23
- Student Discipline Profile for the student for the 2022-23 school year
- Student Attendance History Report for the student for the 2022-23 school year
- General Ed Student Contact Log for the student for the 2022-23 school year
- SNAP Health Record Conditions Alerts for the student for the 2022-23 school year
- SNAP Health Record Daily Visit Log for the student for the 2022-23 school year
- Special Ed Student Contact Log for the student for the 2022-23 school year
- Period Student Attendance Profile for the student with entries dated August 15, 2022 - November 17, 2022 showing ISS
- 2022-23 Q1 [student initial] Report Card October 14, 2022
- Disciplinary Action Form # 10754 dated October 6, 2022
- Disciplinary Action Form #12880 dated October 18, 2022
- Children’s Mercy Letter regarding the student November 2, 2022
- Notice and Consent for Initial Evaluation for Section 504 signed by parent giving consent on November 7, 2022
- Section 504 Eligibility Guide for the student dated December 7, 2022
- Disciplinary Action Form#26223 dated December 12, 2022
- Children’s Mercy Weight Management Program memo to school dated December 13, 2022
- Disciplinary Action Form #26233 for the student dated December 14, 2022
- 504 Team Meeting Notes for the student dated December 14, 2022
- 504 Accommodation Plan for the student dated December 15, 2022
- Manifestation Determination Review Notice of Meeting dated January 9, 2022
- Children’s Mercy Weight Management Program memo to school dated January 10, 2023
- Parent formal request for special education evaluation, by email from the parent to the school social worker and administrator dated January 17, 2023 at 8:19 a.m.
- Period Attendance Profile for the student 2022-23 with entries dated January 30, 2023 - April 14, 2023 showing ISS
• 504 Meeting Notes for the student dated January 27, 2023
• 504 Accommodation Plan for the student dated January 30, 2023
• Disciplinary Action Form #33305 for the student dated February 8, 2023
• 504 Meeting Notes for the student dated February 8, 2023
• 504 Accommodation Plan for the student dated February 9, 2023
• Prior Written Notice for Evaluation and Request for Consent dated February 9, 2023 and signed by the parent on February 9, 2023
• Disciplinary Action Form #34129 for the student dated February 10, 2023
• Educational Occupational Therapy Referral for Observation and Screening dated February 23, 2023
• FERPA Parts 1-5 Released to parent by District General Counsel on February 23, 2023
• Disciplinary Action Form #37452 for the student dated February 28, 2023
• Disciplinary Action Form #39714 for the student dated March 8, 2023
• Disciplinary Action Form #40155 for the student dated March 9, 2023
• 2022-23 Q3 [student initial] Report Card March 10, 2023
• Disciplinary Action Form #40849 for the student dated March 22, 2023
• Disciplinary Action Form #46025 for the student dated March 23, 2023
• Disciplinary Action Form #41744 for the student dated March 27, 2023
• Disciplinary Action Form #41828 for the student dated March 27, 2023
• Disciplinary Action Form #43944 for the student dated April 3, 2023
• Disciplinary Action Form #43974 for the student dated April 4, 2023
• Disciplinary Action Form #45708 for the student dated April 14, 2023
• Disciplinary Action Form #47212 for the student dated April 20, 2023
• Disciplinary Action Form #48794 for the student dated April 26, 2023
• Disciplinary Action Form #48820 for the student dated April 26, 2023
• Disciplinary Action Form #48863 for the student dated April 26, 2023
• Disciplinary Action Form #48987 for the student dated April 26, 2023
• Notice of Meeting to review the evaluation, determine eligibility and develop initial IEP if eligible dated May 1, 2023 for a meeting on May 12, 2023.
• The District's Response to 23FC259-010 dated May 3, 2023
• Timeline for the student, dated May 3, 2023
• 2022-23 CST Agendas re [student initial]
• 2022-23 CST Minutes re [student initial]
• 2023 Support Staff Visit Log for the student
• Cross referenced ISS/Attendance for the student
• ISS Check In Logs, dated October, 2022; November, 2022; February 2023; March, 2023; March 27, 2023; March 29, 2023; April 18, 2023; April 20, 2023; May 3, 2023.
• Compiled dates (updated May 11) for [student initials] dated May 11, 2023
• [Student Initials] ISS in office dates
• [Student Initials] Social Studies Communication of Assignments
• [Student Initials] ISS Math Assistance
• [Student Initials] Science Assistance
• Period Attendance Profile for the student 2022-23 through May 10, 2023 not showing ISS
• Multidisciplinary Team Report (MTR) Draft, dated May 12, 2023

Emails

• Email from Jerusha Willenberg (Assistant Principal, Brooks Middle School) to the parent, copied to Walter Givens (Principal, Brooks Middle School) and Donna Simpson (Assistant Principal, Brooks Middle School) dated October 6, 2022 at 8:53 p.m.
• Email from the parent to Ms. Willenborg, Mr. Givens and Ms. Simpson dated October 6, 2022 at 9:25 p.m.
• Email from the parent to Ms. Willenborg, Mr. Givens and Ms. Simpson dated October 6, 2022 at 9:49 p.m.
• Email from the parent to Ms. Willenborg dated October 10, 2022 at 8:08 a.m.
• Email from Ms. Willenborg to the parent dated October 10, 2022 at 3:48 p.m.
• Email from Sarah Kincaid (Math Teacher) to the parent dated October 18, 2022 at 7:35 a.m.
• Email from Ms. Willenborg to the parent dated October 19, 2022 at 10:35 a.m.
• Email from Donna Simpson (Assistant Principal, Brooks Middle School) to the parent, Mr. Givens and Sharon Rye (Employee Relations and Title IX) dated October 19, 2022 at 12:27 p.m.
• Email from Ms. Simpson to the parent, Mr. Givens and Ms. Rye dated October 19, 2022 at 2:53 p.m.
• Email from Ms. Kincaid to the parent dated October 25, 2022 at 7:13 a.m.
• Email from Ms. Kincaid to the parent dated October 26, 2022 at 7:18 a.m.
• Email from Shantell Nichols (Language Arts Teacher) to the parent dated October 26, 2022 at 1:21 p.m.
• Email from the parent to Ms. Kincaid dated November 1, 2022 at 6:05 a.m.
• Email from Ms. Kincaid to the parent dated November 1, 2022 at 6:41 a.m.
• Email from the parent to Ms. Kincaid dated November 1, 2022 at 8:35 a.m.
• Email from Ms. JuAire to the parent on November 3, 2022 at 8:12 a.m.
• Email from Ms. Kincaid to the parent dated November 7, 2022 at 12:08 p.m.
• Email from the parent to Ms. Kincaid dated November 7, 2022 at 12:31 p.m.
• Email from Patricia JuAire (School Counselor, Brooks Middle School) to the parent, copied to the 504 team, dated November 3, 2022 at 8:12 a.m.
• Email from the parent to Ms. Simpson dated November 9, 2022 at 7:34 a.m.
• Email from Ms. Simpson to the parent dated November 9, 2022 at 9:59 a.m.
• Email from the parent to Ms. Simpson dated November 9, 2022 at 10:21 a.m.
• Email from Ms. Nichols to Mr. Givens, Ms. Simpson, Ms. Willenborg, Ms. JuAire, Jennifer Perry (School Nurse), Megan Story (Counselor), and Abigail Dedeaux (School Social Worker) dated November 22, 2022 at 1:08 p.m.
• Email from Ms. Simpson to the parent, copied to Ms. Nichols, Ms. Willenborg, and Mr. Givens dated November 22, 2022 at 5:18 p.m.
• Email from Haylie Patton (Homeroom and Science Teacher) to the parent dated November 28, 2022 at 6:51 a.m.
• Email from the parent to Ms. Nichols and Ms. Simpson dated November 28, 2022 at 2:06 and 2:24 p.m.
• Email from Ms. Simpson to the parent dated November 28, 2022 at 7:06 p.m.
• Email from the parent to Ms. Simpson, copied to Jacinta Unruh (Instructional Coach), Ms. Nichols, Ms. Willenborg and Mr. Givens dated November 28, 2022 at 7:12 p.m.
• Email from Ms. Simpson to the parent and the student, copied to Ms. Willenborg and Mr. Givens dated November 29, 2022 at 6:50 p.m.
• Email from the parent to Ms. Simpson and the student, copied to Ms. Willenborg and Mr. Givens dated November 30, 2022 at 5:39 p.m.
• Email from the parent to Ms. Simpson and Ms. Willenborg dated January 6, 2023 at 7:22 p.m.
• Email from Ms. JuAire to the parent dated January 9, 2023 at 8:32 a.m.
• Email from the parent to Ms. JuAire dated January 9, 2023 at 5:12 p.m
• Email from Ms. JuAire to the parent dated January 10, 2023 at 7:19 a.m.
• Email from the parent to Ms. JuAire copied to Amanda Chance (Section 504 Coordinator) dated January 10, 2023 at 7:50 a.m.
• Email from the parent to Ms. Willenborg and Ms. Simpson, copied to Ms. Chance, Ms. Dedeaux and Ms. JuAire dated January 10, 2023 at 8:26 p.m.
• Email from Ms. Chance to Kimber Kasitz (Director of Health, Homebound and 504 Services) dated January 11, 2023 at 8:18 a.m.
• Email from Mr. Givens to the parent dated January 11, 2023 at 10:34 a.m.
• Email from the parent to Mr. Givens, Ms. Willenborg, Ms. Simpson, Ms. Dedeaux, Ms. Chance dated January 11, 2023 at 2:05 p.m
• Email from the parent to Mr. Givens, Ms. Willenborg, Ms. Simpson, Ms. Dedeaux, Ms. Chance dated January 11, 2023 at 3:21 p.m
• Email from Mr. Givens to the parent, Ms. Willenborg, Ms. Simpson, Ms. Dedeaux, Ms. Chance dated January 11, 2023 at 3:47 p.m.
• Email and letter from Daniel Lawrence (General Counsel, Wichita Public Schools) to the parent dated January 11, 2023 at 7:22 a.m.
• Email from the parent to Ms. JuAire copied to Ms. Chance dated January 12, 2023 at 7:42 a.m.
• Email from the parent to Ms. JuAire copied to Ms. Chance and Mr. Givens dated January 12, 2023 at 8:11 a.m.
• Email from Ms. Simpson to the parent copied to Mr. Givens and Ms. Willenborg dated January 12, 2023 at 11:22 a.m.
• Email from the parent to Mr. Lawrence dated January 12, 2023 at 9:42 p.m.
• Email from Ms. Simpson to the parent dated January 13, 2023 at 9:54 a.m.
• Email from the parent to Ms. JuAire, copied to Ms. Chance and Iris McIntosh (Brooks Clerk) dated January 18, 2023 at 5:56 a.m.
• Email from the parent to Ms. JuAire, Mr. Givens, Ms. Simpson, Ms. Dedeaux, Ms. Chance dated January 18, 2023 at 6:01 a.m.
• Email from Ms. JuAire to the parent dated January 18, 2023 at 8:29 a.m.
• Email from the parent to Ms. JuAire, Mr. Givens, Ms. Simpson, Ms. Dedeaux, Ms. Chance copied to the 504 Team dated January 18, 2023 at 5:23 p.m.
• Email from Ms. JuAire to Noah Holloway (Science Teacher), Margaret Dunn (Drama Teacher), James Edwards (Social Studies Teacher), Ms. Patton, Ms. Kincaid, Ramiah Richard (Physical Education Teacher), Ms. Nichols, 504 Team, Ms. Dedeaux, Ms. Willenborg, and Mr. Givens on January 27, 2023 at 10:47 am.
• Email from the parent to Ms. Simpson dated January 31, 2023 at 4:47 p.m.
• Email from Ms. Simpson to the parent dated January 31, 2023 at 5:00 p.m.
• Email from the parent to Ms. Simpson dated February 1, 2023 at 7:12 a.m.
• Email from the parent to Ms. Simpson copied to Mr. Givens and Vince Evans (Assistant Superintendent of Student Support Services) dated February 6, 2023 at 5:49 a.m.
• Email from Mr. Givens to the parent, copied to Ms. Simpson and Mr. Evans dated February 6, 2023 at 5:58 a.m.
• Email from Ms. Simpson to the parent and Mr. Givens copied to Mr Evans dated February 6, 2023 at 8:29 a.m.
• Email from Ms. DeDeaux to Channon Hankins (Social Worker, Coleman) and Jennifer Erickson (School Psychologist, Coleman) dated February 6, 2023 at 8:56 a.m.
• Email from the parent to Ms. JuAire, Mr. Evans, Mr. Givens, Ms. Simpson, Ms. Dedeaux, Ms. Chance, Ms. Kincaid, Ms. Dunn, Mr. Lawrence and 504 Support dated February 7, 2023 at 8:38 a.m.
• Email from Ms. JuAire to the parent, Mr. Evans, Mr. Givens, Ms. Simpson, Ms. Dedeaux, Ms. Chance, Ms. Kincaid, Ms. Dunn, Mr. Lawrence and 504 Support dated February 8, 2023 at 7:06 a.m.
• Email from Ms. JuAire to the parent, Ms. Kincaid, Ms. Dunn, Ms. Nichols, Ms. Patton, Mr. Edwards, Mr. Richard, Mr. Holloway, Ms. McIntosh, Leslie Nolen Garner (Administrative Assistant), Mary Hall (Administrative Assistant), Ms. Willenborg, Mr. Givens, and Ms. Simpson dated February 8, 2023 at 10:16 a.m
• Email from the parent to Ms. Chance, Mr. Evans, and Ms. Kasitz copied to Mr. Lawrence dated February 16, 2023 at 7:07 a.m.
• Email from Ms. Kasitz to the parent, Mr. Evans, Mr. Lawrence and Ms. Chance dated February 16, 2023 at 11:23 a.m.
• Email from the parent to Ms. Simpson dated March 23, 2023 at 6:00 a.m.
• Email from Ms. Simpson to Mr. Baca copied to Ms. DeDeaux, Ms. Willenborg and Mr. Givens dated March 23, 2023 at 8:12 a.m.
• Email from the parent to Ms. Simpson dated March 27, 2023 at 2:49 p.m.
• Email from Ms. Simpson to the parent dated March 31, 2023 at 8:24 a.m.
• Email from the parent to Ms. Simpson dated April 3, 2023 at 12:19 p.m.
• Email from Ms. Simpson to the parent dated April 3, 2023 at 7:38 p.m.
• Email from the parent to Ms. Simpson dated April 4, 2029 at 5:49 a.m.
• Email from Ms. Simpson to the parent dated April 5, 2023 at 9:40 a.m.
• Email from Ms. Simpson to the parent dated April 6, 2023 at 8:12 a.m.
• Email from Ms. Simpson to the parent dated April 6, 2023 at 8:47 a.m.
• Email from the parent to Ms. Simson copied to Ms. Kasitz, Ms. Chance and Mr. Evans dated April 6, 2023 at 9:18 a.m.
• Email from Ms. Simpson to the parent dated April 6, 2023 at 9:43 a.m.
• Email from the parent to Ms. Simpson copied to Ms. Kasitz, Ms. Chance and Mr. Evans dated April 14, 2023 at 12:07 p.m.
• Email from Ms. Simpson to the parent dated April 17, 2023 at 8:23 a.m.
• Email from the parent to Ms. Simpson copied to Mr. Givens, Ms. Kasitz, Ms. Chance and Mr. Evans dated April 17, 2023 at 10:12 a.m.
• Email from the parent to Ms. Simpson copied to Mr. Givens, Ms. Kasitz, Ms. Chance and Mr. Evans dated April 17, 2023 at 3:29 p.m.
• Email from Mr. Givens to the parent dated April 17, 2023 at 5:15 p.m.
• Email from the parent to Ms. Simpson and Mr. Givens copied to Ms. Kasitz, Ms. Chance, Amanda Kingrey (Assistant Superintendent), and Mr. Evans dated April 17, 2023 at 7:14 p.m.
• Email from Ms. Simpson copied to Mr. Givens dated April 17, 2023 at 8:39 p.m.
• Email from Ms. DeDeaux to Ms. Erickson dated April 18, 2023 at 12:32 p.m.
• Email from Ms. Hankins to the parent dated April 24, 2023 at 1:03 p.m.
• Email from the parent to Ms. Simpson copied to Ms. Kasitz, Ms. Chance and Mr. Evans dated April 27, 2023 at 7:40 a.m.
• Email from Ms. Simpson to the parent copied to Ms. Kasitz, Ms. Chance and Mr. Evans dated April 27, 2023 at 11:06 a.m.
• Email from the parent to Ms. Simpson copied to Ms. Kasitz, Ms.Chance, Mr. Evans, and Ms. Kingrey dated April 27, 2023 at 2:11 p.m.
• Email from Ms. Simpson to the parent dated April 27, 2023 at 12:51 p.m.
• Email from the parent to Ms. Hankins dated May 3, 2023 at 6:12 a.m.
• Email from Deanna Carter (LMSW Open Doors) to parent dated May 4, 2023 at 10:24 a.m.
• Email from Ms. Hankins to the parent dated May 4, 2023 at 12:31 p.m.
• Email from parent to Ms. Erickson and copied to Karen Waterman Overgaard (Principal, Coleman Middle School), Ms. DeDeaux, Dr. Erica Shores (Executive Director Student Support Services) Ms. Hankins and Dr. Beegle dated May 10, 2023 at 12:56 p.m.
• Email from the parent to the complaint investigators dated May 18, 2023 at 1:22 p.m.
Background Information

This investigation involves a 12-year-old student who is enrolled in sixth grade at Brooks Middle School in USD #259. She was determined to be eligible for accommodations under Section 504 during the current school year on December 7, 2022 when she was 11 years old. Her eligibility was determined based on her medical diagnoses of anxiety, depression, and obesity and on school observations that her disability affected her in major life activities of neurological function, learning, thinking, working and peer relationships. Her working diagnosis from a community mental health center where she attends therapy is adjustment disorder with mixed anxiety and depressed mood. The student receives medical care and weight management at Children's Mercy Hospital and she has received the following diagnoses: anxiety, child victim of psychological bullying, class 2 and other obesity, headache in pediatric patient, and post traumatic stress disorder. At school, she has multiple 504 accommodations that include permission to see the social worker, nurse, and to go to the bathroom at her request. Among other accommodations are calm interactions with adults when disciplining, special seating, and scheduling to avoid negative peer interactions. At the end of her final year of elementary (2021-2022), her standards based grades varied between 2.5 and 3.0. During the current school year, her end of quarter grade point averages were: Q1 (1.24), Q2 (1.25) and Q3 (.89). Her mother requested a special education evaluation on January 17, 2023 and the district provided prior written notice of its intent to evaluate the student on February 7, 2023, which was signed by the parent on February 9, 2023.

ISSUE ONE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to afford the parent procedural safeguards, specifically to provide copies of the parent rights and to notify the parent when removing the child from her placement.

Positions of the Parties

The complainant alleged that the district failed to meet its obligation to provide a copy of the procedural safeguards at the time of the request for a special education evaluation. In addition, the complainant stated that the student has been removed from her placement without parental participation in decision making or knowledge of the removal.

The district refuted this allegation, stating: they gave the parent procedural safeguards at the required times: upon the parent's referral for an initial evaluation for special
education and when providing notice of the evaluation and eligibility meeting (at least once annually). The district contended that it was not required to provide them for the disciplinary removals from school because the short-term removals for this student did not constitute a change in placement, and therefore, the school was not required to provide the procedural safeguards to the parent (34 C. F. R. 300.530(h) Notification, and K.A.R. 91-40-33).

The district further responded: “To ensure the parent had knowledge about their special education rights (used interchangeable herein with parental rights; parent rights) as required: (1) The school Social Worker (SW) hand-delivered the parental rights along with the Prior Written Notice for Evaluation and Request for Consent (PWNE) to the parent on 2-9-23 as well as with the 5-1-23 Notice of Meeting for the 5-12-23 meeting as shown in the Special Ed Student Contact Log. The parent did not request a copy of the procedural safeguards; and, this also meets the requirement of providing the Parent the procedural safeguards at least one time per school year. The school also sent the procedural safeguards with the 1-9-23 Notice of Meeting (NOM) for the Manifestation Determination Review (MDR) meeting, originally scheduled for 1-10-23. The school followed regular notice procedures that they do with all students when suspending a student, including the provisions of the Kansas Pupil Suspension and Expulsion Act, K.S.A. 72-6114.”

**Findings of the Investigation**

The following findings are based upon a review of documentation and interviews with the parent, grandparent, and staff in the district. Because the district provided its evidence with regard to change of placement in Issue Four, this report will likewise provide its findings on whether a change of placement occurred in Issue Four and Issue One will only investigate whether parent rights were provided in accordance with IDEA.

The district reported that parent rights were included with a January 9, 2023 notice of meeting to attend a manifestation determination review (MDR) on January 11, 2023. The January 9, 2023 email to the parent showed that the parent rights for Section 504 were included as an attachment.

The parent requested a special education evaluation by email to the school on January 17, 2023. According to the district staff interview, the school did not provide a copy of the parent rights in reply to her emailed request. The district did not provide an emailed reply that showed that they provided a copy of the parental rights at the time of the parental request.
The district reported and a contact log by the social worker documented that a paper copy of the parent rights was provided to the parent on February 9, 2023 in person. The parent denied she was handed a paper copy of the parent rights when she came to the school and signed consent for the special education evaluation on February 9, 2023. She reported that her rights under IDEA were not discussed at that time. The signed consent does not indicate if parent rights were provided to the parent.

The February 9, 2023 PWN signed by the parent included the statement (below); however there is no check off box to indicate that the rights were provided to the parent.

“PROCEDURAL SAFEGUARDS TO PROTECT PARENT’S RIGHTS

Both state and federal laws concerning the education of children with exceptionalities include many parental rights. Receiving notices of action the school wants to take in regard to your child and being a part of your child’s educational planning team are examples of your rights. These laws also require that the school follow certain procedures to make sure you know your rights and have an opportunity to exercise those rights. The school is required to give you a copy of the rights of a parent at least one time each school year. You received a copy of your rights when the initial referral for evaluation was made. 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 staff in your school.”

Email correspondence summarizing the conference between the sending school’s social worker and the parent on February 9, 2023 included the parent’s signed consent to evaluate. The email exchange discussed the logistics for completion of the evaluation but did not reference in the handoff whether parent rights had been provided. The document received by the evaluation team did not indicate that the parent received a copy of her rights. No indication that the team conducting the evaluation provided parent rights.

The district and parent reported and documents showed that a copy of the parent rights for special education were provided to the parent with the May 1, 2023 Notice of Meeting for the May 12, 2023 meeting on evaluation and eligibility.
Applicable Regulations and Conclusions

According to K.S.A. 72-3430(e), schools are required to provide a copy of the Parent Rights in Special Education Notice to the parents at least one time in a school year and for the following specific actions: (a) upon a referral or parent request for initial evaluation, (b) upon the first formal complaint or due process complaint filed in a school year, (c) upon a disciplinary removal from school that constitutes a change in placement; and (d) upon parent request. According to 34 C.F.R. 300.504 (a) A copy of the procedural safeguards must be given to the parents only one time a school year, except that a copy also must be given to the parents— (1) Upon initial referral or parent request for evaluation; (2) Upon receipt of the first State complaint under §§ 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year; (3) In accordance with the discipline procedures in § 300.530(h); and (4) Upon request by a parent.

In this case, the district had the obligation to provide Parent Rights in Special Education at least one time in the school year and for several specific actions.

First, the district had an obligation to provide the parent with Parent Rights in response to the parent's request for a special education evaluation on January 17, 2023. It is the district's practice to include the Parent Rights electronically with the Prior Written Notice responding to the request, however, this email was not provided. The district responded that they provided the Parent Rights in person when the parent came to the school to sign consent for the evaluation, however the parent disputed this.

It is found that the parental rights were provided electronically to the parent with the NOM for the evaluation and eligibility meeting scheduled for May 12, 2023 (later rescheduled for May 16, 2023) meeting the one time annual obligation.

It is noted that the Kansas State Department of Education provided parent rights in response to the parent filing a child complaint on April 18, 2023 so this obligation was met.

Although not a special education action, the district provided parent rights to the parent with the NOM dated January 9, 2023 for the Manifestation Determination Review to discuss whether the disciplinary removals from school constitutes a change in placement. This meeting was scheduled prior to the parent requesting a special education evaluation so the district did not provide IDEA parent rights, but documentation showed the district provided Section 504 Parent rights electronically.
This action is noted here because Issue Four will investigate whether the district’s discipline practices met the criteria of a change of placement.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the district failed to provide copies of the parent rights to the parent in response to her request for a special education evaluation on January 17, 2023. Although the district reported and produced a log documenting that the parent rights were handed to the parent, the parent disputes this. In all other situations with this parent the district provided parent rights electronically. Further, when handing off the signed consent to the evaluation team there was no documentation that that team was informed that the parent had received parent rights. Although it is certainly possible the district did provide the parent rights in person in this case the complaint investigator is holding the district to the higher standard of ensuring that the parent receives her rights for this initial special education action.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to afford the parent procedural safeguards, specifically to provide copies of the parent rights and to notify the parent when removing the child from her placement.

**ISSUE TWO:** The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to complete a comprehensive special education evaluation for a child with a suspected disability that involved the parent, addressed all areas of suspected disability including an FBA, and was conducted within 60 days.

**Positions of the Parties**

The complainant alleged that the district failed to involve the parent in the special education evaluation since she had signed the consent to evaluate the student. The parent alleged that at the time of the complaint, she had only one email from an occupational therapist but no further information or inquiries regarding the evaluation. The parent alleged that she had not been requested to provide parental rating scales, discuss the student’s behavior at home, or to provide health records for the special education evaluation. The complainant also stated that she requested a copy of the report to review 5 days in advance of the evaluation and eligibility meeting.
The district responded that it is in the process of completing a comprehensive evaluation for a student with a suspected disability (and has a disability under Section 504), is involving the parent, and addressing all areas of suspected disability, and it is expected to be completed in under 60 school days as required (an FBA was not requested as part of this evaluation nor is it required at this time). A 1-17-23 email from Parent to the school Social Worker (SW) and school Administrator shows that Parent requested a comprehensive special education evaluation. 2022-2023 Child Study Team (CST) agendas and notes show when the school CST met and discussed matters related to this Student, including discussions about the ongoing conducting of her comprehensive special education evaluation. Because of previous interactions between the parent and the current school staff who would have been involved in conducting the special education evaluation, Email exchanges between the two schools show their communication about procedural matters as well as access to student records and meetings between them.

On February 9, 2023 per the Special Ed Student Contact Log, the social worker provided the parent with a Prior Written Notice for Evaluation and Parent’s Rights, and the parent signed consent. Once consent was signed the two schools coordinated dates to complete the necessary evaluations and collaborate and collect information from the parent. The Evaluation Team will consider whether the Student’s absences and instruction while in ISS have affected her educational performance and grades. During the period of the special education evaluation, the school has continued to carry out the Student’s 504 Plan. A NOM for the evaluation was emailed to the Parent on May 1, 2023 along with her Parent Rights for a meeting to be held on May 12, 2023 to review the Comprehensive Special Education Evaluation results and, if determined eligible, to develop an IEP for the Student; the date scheduled for the evaluation meeting is several school days before the 60 school-day timeline. On May 3, 2023 the parent contacted a member of the evaluation team, stating she was not available for the proposed date already scheduled, and provided several dates when she and her advocate could make the meeting. The district worked with the family and team members to determine and set a new date that is within the 60 day evaluation window.

Findings of the Investigation

The findings of Issue One are incorporated herein by reference.

This issue addressed three components of the IDEA evaluation regulations, 1) meeting the timeline for conducting the evaluation, 2) including the parent in the evaluation and 3) conducting a comprehensive evaluation. Each of these components will be addressed
in the findings. The following findings are based upon a review of documentation and interviews with the parent and staff in USD #259.

**Timeline**

Documentation showed that the parent requested a special education evaluation on January 17, 2023 by email.

Documentation showed that the parent signed consent for a special education evaluation on February 9, 2023 as part of a Prior Written Notice for Evaluation or Reevaluation and Request for Consent. Both the parent and district verify this by report.

The School Year Calendar for 2022-2023 showed that 60 school days beginning February 9, 2023 ended on May 17, 2023. This date was verified by the district.

The district reported they considered an expeditious evaluation timeline but because the student was not in the middle of a disciplinary action at the time of the parent request it was not required. Although it was not required the district reported they planned to complete the evaluation on an accelerated timeline, however truancy, suspensions and team member availability precluded it occurring more rapidly.

Documentation showed that the Notice of Meeting for discussion of the findings from the evaluation report and Parent's Rights document dated May 1, 2023 with a scheduled date of the meeting to discuss the Evaluation Report set on May 12, 2023 was sent May 1, 2023. On May 3, 2023 the parent requested the meeting be moved to an alternate date in an email. Emails and reports showed that the district and parent worked together to set a new date within the evaluation timeline and accommodating schedules.

The parent and district reported that the Evaluation and Eligibility meeting is scheduled for May 16, 2023.

The parent reported she received a draft Multidisciplinary Team Report (MTR) dated May 12, 2023 one week in advance on or about May 5, 2023. The district reported that it included the scores of the evaluation collected and reviewed to date, but additional interpretations will be provided at the meeting as the team was still completing the evaluation materials.
Parent Involvement

The January 17, 2023 parent request for a special education evaluation stated, "I would like a full psycho-educational evaluation together with appropriate testing for learning disabilities. I request my child be tested in all suspected areas of for (sic) disability (34 CFR 300.304), including the areas of social, emotional, executive function, occupational therapy including sensory processing, and speech and language including pragmatic language."

The district reported that the parent came to school on February 9, 2023 and signed consent on February 9, 2023.

According to the Special Ed Student Contact Log the social worker spoke with the parent about using a different evaluation team to conduct the evaluation and the parent agreed. The parent reported this conversation and the agreement.

The parent and district reported that neither party discussed the evaluation plan prior to the parent signing consent for the evaluation on February 9, 2023. The district reported that the PWN was specific in asking for an evaluation to determine if a learning disability was present and that the specific evaluations requested were directed to answering those questions.

The parent reported that the student stated that the evaluation team was working with her but that no one from the evaluation team contacted her until after she filed the KSDE Child Complaint on April 18, 2023.

The school psychologist from the evaluation team said that she did not contact the parent prior to the evaluation since the evaluation request was clear and the evaluation team was contacted to complete the evaluation after discussion occurred between the student's school staff and parent. She stated she and staff contacted the parent during the evaluation to collect information representing the parent perspective and in response to additional testing viewed as relevant based on findings. Both parties and documents showed the parent completed the social history and Behavior Assessment System for Children - Third Edition-Child (BASC-3 Child) for the MTR with the social worker.
Comprehensive Evaluation

The PWN dated February 9, 2023 provided an explanation for the initial evaluation as “parent requested testing in the following areas: a full psycho-educational evaluation together with appropriate testing for learning disabilities, including the areas of social, emotional, executive function, occupational therapy including sensory processing, and speech and language including pragmatic language.”

The table below shows the new data proposed, the existing data that would be reviewed and included in the evaluation and the evaluation conducted and reported in the draft MTR dated May 12, 2023.

<table>
<thead>
<tr>
<th>Proposed evaluation plan from February 2023 PWN</th>
<th>Existing data</th>
<th>New data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health/Motor Ability</td>
<td>Children’s Mercy Report</td>
<td>Social History Health History</td>
</tr>
<tr>
<td>Vision</td>
<td>wears glasses, history of astigmatism</td>
<td>March 8, 2023 R, L and Both pass with glasses</td>
</tr>
<tr>
<td>Hearing</td>
<td>Review indicated, but no indication of documentation provided</td>
<td>March 8, 2023 R and L Pass</td>
</tr>
<tr>
<td>Social/Emotional status/behavioral status</td>
<td>Discipline referrals Children’s Mercy Report</td>
<td>BASC-3-Child, Scale of Assessment Emotional Disturbance -3 autism rating scale Social history Diagnoses of anxiety, PTSD, adjustment disorder</td>
</tr>
<tr>
<td>General Intelligence</td>
<td>Review indicated, but no indication of documentation provided</td>
<td>WISC</td>
</tr>
<tr>
<td>Academic Performance</td>
<td>Use of 504 accommodations Teacher report (Science, ELA, Choir, Math) Tier 2 Literacy and Math Interventions FastBridge</td>
<td>Woodcock Johnson IV-Test of Achievement Social history</td>
</tr>
<tr>
<td>Communicative status</td>
<td>Review indicated, but no indication of documentation provided</td>
<td>Oral and Written language Scales II (OWLS II) Pragmatic Language Checklist Whole Word Accuracy rating scale observation</td>
</tr>
<tr>
<td>Occupational Therapy</td>
<td></td>
<td>Wide Range Visual Motor Assessment (WRVMA), Sensational Brain-School Checklist, EASY-OT Sensory Processing Skills - Teacher/Therapist Evaluation, Direct Observation, Functional Skills Assessment</td>
</tr>
</tbody>
</table>
The district reported that the reason an evaluation team from another building in the district was assigned to conduct the evaluation was that the student needed an experienced team and past discord between the school and parent may impact the objectivity of the evaluation.

The school psychologist reported since the student was unfamiliar to her prior to testing she evaluated her level of anxiety and discomfort. She stated she observed her to be calm and relaxed, chatting with peers and the examiner. At one point during testing when the psychologist was stumbling over wording, the student said, “some days are like that”. She related that the student was polite, pleasant, persisted in difficult tasks, used regular courtesy phrases, and verbally processed her problem solving out loud. She was also observed to vocalize processing problems and academic processes when she wrote something. She observed times when the student appeared fatigued by yawning, but declined a break. Her observations were that the student was bright and academically strong and could complete the requested testing efficiently. She further reported that all evaluators found her a pleasure to work with and felt their evaluation was an accurate representation.

The school psychologist reported she was aware of the student’s discipline problems, behaviors, history of anxiety, PTSD, and bullying history. Although behavior was not the impetus for the evaluation she stated that any evaluation for special education eligibility would look at social and emotional issues. The school psychologist reported because of the student’s history of discipline issues, and parent reports from the 504 evaluation, she conducted additional assessments than would be usual in this area. She stated that she additionally be evaluated for autism to ensure that it was not inadvertently overlooked. She stated that she would be following up with the parent to discuss discrepancies between parent and school staff report in some behavioral/social/emotional rating scales to bring to the May 16, 2023 Evaluation and Eligibility meeting. She reported that she did not conduct a functional behavior assessment (FBA) as a part of the initial evaluation because it was premature in her opinion as a professional. She stated at this point she was conducting evaluation to determine if the student met eligibility for special education services. Once that question was answered as part of the evaluation team she and the team members would determine how best to address behavior and if and when an FBA was needed.
Applicable Regulations and Conclusions

The Kansas State Department of Education at K.A.R. 91-40-8(f); has established a 60 school-day timeline for conducting the initial evaluation consistent with federal regulations at 34 C.F.R. 300.301(c). The timeline starts upon receipt of a written parental consent to conduct the evaluation and ends with the implementation of an IEP if the child is found eligible for special education services. Within 60 days of the date the district must (1) conduct the evaluation, (2) determine eligibility and conduct an IEP meeting if the child is eligible, and (3) implement the child's IEP.

In this case it is premature to determine if the district is in compliance. From the evidence it is found that the date marking the start of the evaluation began February 9, 2023 and ends May 17, 2023 (60 school days from the start date). The meeting for the evaluation and eligibility meeting is scheduled for May 16, 2023.

The Kansas Special Education Process Handbook states, “If the child's parents request an evaluation of the child during the period of suspension or expulsion or other disciplinary action, the evaluation must be conducted in an expedited manner. No timeline is specified with regard to an expedited evaluation. However, in this context, the term 'expedited' suggests the evaluation should be concluded in a shorter time frame than a normal evaluation” (p. 203).

In this case the student was not currently under suspension at the time the parent made a request for a special education eligibility evaluation so the district was not under any obligation to expedite the evaluation. It is noted that the district did discuss completing the evaluation more quickly than the allowed 60 school day timeline, but was not able to complete it earlier.

K.S.A. 72-3428. and K.A.R. 91-40-8 describe the role of the parent in the initial evaluation as: 1) providing previous or outside evaluations and information to the initial team review for the purpose of developing an evaluation plan, and 2) contributing input to the team as to additional areas needed to determine whether the child is an exceptional child and the educational needs of the child. In this case, it is found that the parent provided medical information from Children's Mercy hospital previously and provided specific areas for evaluation to determine if the student had a learning disability. The parent did not contribute with the evaluation team to a plan but was contacted several times during the evaluation as results were found to discuss additional areas to evaluate. Again, it is not possible to determine fully the role of the parent in the evaluation process since the timeline is still ongoing.
Federal regulations at 34 C.F.R. 300.304 through 300.306 specify that the evaluation be sufficiently comprehensive to identify all of the child’s special education and related services needs.

In this case the parent requested an evaluation to consider if the student had a learning disability. The evaluation plan was appropriately designed to answer that question. As well, the evidence showed that the evaluation team had broadened the plan to collect other data to determine if any other disability may be present. Further, the team had revised their plan in light of initial evaluation to pursue other areas such as autism. At this point,

As with the timeline, it is premature to determine if the evaluation is comprehensive since an interview with the district staff revealed that the draft MTR report is not complete.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to complete a comprehensive special education evaluation for a child with a suspected disability that involved the parent, addressed all areas of suspected disability including an FBA, within 60 days.

**ISSUE THREE:** The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the protections of IDEA during suspensions (in and out of school) for a child having or suspected of having a disability, specifically secluding the child, and failure to provide access to appropriate instruction, participation and progress in the general curriculum.

**Positions of the Parties**

The complainant alleged that the district isolated the student for an unknown number of days of in-school suspension (ISS) and that the student was not provided appropriate instruction or her current educational (504) accommodations in these conditions, despite her many pleas for instructional time, accommodation, and proper documentation of discipline events for her child.

The district replied that it did provide the protections of IDEA during suspensions (in and out of school) for a child having or suspected of having a disability, did not seclude the student, and provided access to appropriate instruction, participation and progress in
the general curriculum. The district responded that the student had received 7 days of out of school suspension (OSS) during the 2022-2023 school year and the rest of the suspensions were in-school (ISS). During that time the student had access to the general curriculum and was allowed to progress in the general curriculum. A Safety Plan was in effect since the first semester and was applied as appropriate. Further, the student was afforded her 504 accommodations once that plan was developed and implemented. A full-time paraeducator staffed the ISS room and implemented the Student’s 504 Plan as well as the Safety Plan, as evidenced on the Support Staff Visitor Log. To reassure the parent that the student’s 504 plan was in effect in ISS the school administrator delivered a hard copy of the plan to the ISS Para and explained it to him. As well, the school administrator provided follow-up emails with the 504 accommodations and reminders to the student’s teacher to share classroom work with ISS to ensure the student could continue to make progress in the general curriculum. The Assistant Principals (A.P.s), both licensed teachers, were given the charge to serve as the supervising teachers of the ISS room, but students assigned to ISS, including this Student, were allowed to return to their classrooms for initial instruction by the content teacher (as well as for assessments), and then return to the ISS room to complete assignments with the assistance of the Paraeducator (who is a classified employee funded through special education funds, which means that he is required to participate in a certain amount of mandatory training hours to support students each year) under the supervision of the A.P.s.

Further, the district responded that the student was not secluded; in fact, the ISS room is a general education setting in that it serves both students without disabilities as well as students with disabilities whose educational placements include being served with peers without disabilities, so it is the least restrictive environment in the school with regard to access to peers. The only times the Student was not with other students in ISS is if there were no other students assigned to ISS when she was and/or when the student was exercising her right to utilize her 504 accommodations that allowed her to go to an alternate location.

Findings of the Investigation

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

The findings of Issues One and Two are incorporated herein by reference.
The Children's Mercy report shared with the district on November 2, 2022 showed the student had diagnoses of post traumatic stress disorder, headaches in a pediatric patient, victim of childhood bullying, anxiety and obesity.

The district reported and documentation showed that the child had a documented disability, specifically anxiety, depression, and obesity on December 7, 2022 when the school team and parent met to develop a 504 plan for the student.

The district reported that they first considered the student as having a suspected disability upon receipt of the parent request for a special education evaluation on January 17, 2023 and they subsequently agreed to evaluate the student by providing prior written notice of intent to evaluate and request for consent, signed by the parent on February 9, 2023.

The district reported and student attendance documents showed that the student had many absences from school reported as illness, unknown reasons, unexcused-truancy, medical, and removal designated by the principal.

**Number of days the student was assigned Out of School Suspension (OSS)**

Three days of OSS were assigned after the parental request to evaluate on January 17, 2023. The 2022-2023 school year attendance report (ending on May 5, 2023) provided by the district showed that the student was suspended out of school for seven days (October 7, 2022; October 18, 2022; October 19, 2022; October 20, 2022; April 27, 2023; April 28, 2023; May 1, 2023).

**Number of days the student served in school suspension (ISS)**

According to the 2022-23 student attendance history report, the student served 11 days of in school suspension (ISS) following the January 17, 2023 request for a special education evaluation (February 10, 2023; March 23, 2023; March 28, 2023; March 31, 2023; April 3, 2023; April 6, 2023; April 18, 2023; April 20, 2023; May 3, 2023; May 4, 2023; and May 5, 2023) and 5 additional days prior to the January 17, 2023 request for a special education evaluation (October 27, 2022; November 4, 2022; November 8, 2022; November 9, 2022; November 14, 2022).

Additional information later reported by the district added the following ISS dates previously not reported on the attendance report: December 12, 2022; December 14, 2022, and April 21, 2023. Therefore, seven days of ISS were confirmed before the
request to evaluate on January 17, 2023 and 12 confirmed dates of ISS followed the request for a total of 19 days of ISS served by the student.

The parent reported and documents showed that a third type of disposition for discipline incidents was used by the school: “RR” (Restorative Practices) and “RRR.” The district staff acknowledged that RRR is equivalent to ISS and RR by period assigned by the assistant principal is served in the ISS room and documents showed that the office areas were also used as locations for RRR/ISS.

A review of emails, Disciplinary Action Forms and the Student Discipline Profile, the Assistant Principal assigned RR by class period on these dates: February 3, 2023; February 6, 2023; two unspecified dates following incident #39714 on March 8, 2023; and two unspecified dates following incident #45708 on April 14, 2023. In additional documentation, the district also reported that the student served two periods of "ISS" on February 3 and February 6, 2023 in the Assistant Principal’s Center (office and conference room). These six dates follow the request to evaluate on January 17, 2023, and only two of them can be documented as served.

The district reported that due to the student’s many absences from class, ISS by period was used in addition to ISS by day. It cannot be fully determined from the period attendance documents how many of the student’s reported unexcused absences (by period) were due to being late to class or due to the student being assigned by period to ISS or RR. The ParentVUE screenshot provided by the parent showed that on April 20, 2023 (an ISS day) the student was listed as unexcused-truant for the first 4 periods, in ISS for the middle 2 periods and unexcused-truant for the last 2 periods in the same day. On April 19, 2023, in ParentVUE she was listed as having ISS for one period, on a day when she was not listed as in ISS on the student attendance report. However, the Support Staff log showed that she “left ISS” for a break in the SCC on that day. On April 3, 2023 (an ISS day on the attendance history report), she was listed as in ISS for one period of the day and emails showed that she was in the Assistant Principal’s office 7th through 9th period, when her attendance was coded Principal Approved in Parent View and PRN on the attendance report.

From the attendance reports and information about various discipline options, after the request to evaluate on January 17, 2023 the student was suspended an additional 3 days, served ISS by day on 12 days for a total of 15 days of suspension. The student had ISS by period on at least two additional days for a total of 17 days of removal from class.
Access to Instruction

The district reported and the parent agreed that the student did not qualify nor receive special education services during the student's assignment to ISS.

The district reported and the parent agreed that the student had a 504 plan in place beginning December 7, 2022. The district and parent agreed that the student's 504 plan was reviewed and updated on January 30, 2023 and February 9, 2023.

The district response reported that ISS is not a removal from instruction as students are provided access to their classroom instruction, via teacher handouts or Google Classroom and that students are afforded their 504 accommodations and special education services. The district reported that “work was collected from all teachers, and support staff helped with motivation and work completion.” The student had access to assignments via an electronic classroom teaching platform and received emails from teachers.

A review of emails and assignment documents from 4 of the student’s teachers (found in the parent’s FERPA requested documentation) dated November 17, 2022 to March 3, 2023 found two of the 20 entries co-occurred on or the day before a day spent by the student in ISS. Emails to the student provided by the district showed: (a) 16 emails from the science/advocacy teacher, one of which occurred on an ISS day, and (b) 18 academic emails from the math teacher (2 on an ISS day, 1 copied to ISS teacher on an ISS day, 2 copied to the ISS paraeducator on days when the student was not in ISS).

The district reported that the student’s 504 plan was provided to the special education paraeducator who assisted in the ISS room and administration instructed the paraeducator to follow the student's 504 plan accommodations during ISS. No documentation or student assignments were provided demonstrating 504 accommodations were provided by the ISS paraeducator nor that student work was completed during ISS periods.

Student sign in sheets showed the student signed into the ISS room on seven days: October 27, 2022; February 10, 2023; March 23, 2023; March 28, 2023; March 31, 2023, April 18, 2023, April 20, 2023, May 3, 2023. Attendance according to the sign in sheets on those days showed 6 to 10 students in the 6th to the 8th grades were in ISS those same times.
Documents showed that the student was remanded to the Assistant Principal’s office, front office or conference room to serve days of ISS. An email showed the student was in the office on November 14, 2022 for at least one period of the day. According to the district, the student served the following days of ISS in an administrator’s office or conference room: December 12, 2022; December 14, 2022; April 21, 2023. On December 14, 2022, a significant behavioral incident occurred in this location, leading to the student’s assignment of 5 days of ISS in January, 2023.

On November 22, 2023 in an email to the school administrators, the student's teachers and parent, a teacher expressed concern for the student's failure to follow hall pass procedures and her excessive absences, adding: “with that being said, she seems engaged but lost. All the assignments have been posted on Google Classroom and she has access to the curriculum online but missing directed instruction prohibits her from doing well on assignments.” This email followed four out of school and five in school suspensions. At the end of the second quarter grading period (December 16, 2022), the student's grade point average was reported as 1.25.

The parent reported and documents show that she actively notified the district of her concerns related to instructional time being lost, whether accommodations were provided, and whether they were effective. An email to building administrators on January 10, 2023 and an emailed letter to the District’s General Counsel on January 12, 2023, are examples of this communication that occurred both before and after the request to evaluate.

**Access to accommodations**

The district reported and documents showed that on one occasion (November 8, 2022) the student worked with the social worker in the Student Care Center (SCC) during ISS. Further document review showed that the student visited the SCC to see the social worker on 25 days and 27 occasions, four of which overlapped with ISS days in the attendance log (one before and three following the request to evaluate). The student also visited the nurse on one of the same ISS days she visited the social worker.

The district reported and documents showed that a 504 Team meeting occurred on February 8, 2023 and after discussion of accommodations at that meeting, a shared google doc was created to document the student’s visits to the SCC and communicate them to the parent.
Applicable Regulations and Conclusions

There are provisions in IDEA that pertain to whether a child who has not yet been determined to be eligible for special education can assert the protections under IDEA. First, K.S.A. 72-3436(b) states that “A school district shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred: (1) The parent of the child has expressed concern, in writing, to supervisory or administrative personnel of the appropriate educational agency or to a teacher of the child, that the child is in need of special education and related services; (2) the parent of the child previously has requested an evaluation of the child; or (3) the teacher of the child, or other personnel of the school district, previously has expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of such school district or to other supervisory personnel of the district.”

In this case, the parent requested a comprehensive evaluation for special education for the student on January 17, 2023, and at this time, the district was required to follow the provisions of IDEA with regard to discipline of this child. Although the district was provided information prior to the January 17, 2023 evaluation request that the student had a disability, it was determined by the student’s family and school-based team in December 2022 that the student had a disability that could be met with through a Section 504 plan. Therefore, the date of January 17, 2023 is accepted as the date on which the district was required to follow the provisions of IDEA with regard to discipline of this child.

Second, in-school suspension may be used for a child in this circumstance. The question is whether the use of ISS constitutes a disciplinary removal of the child. Three factors are required in order for ISS to be excluded from the 10 day limit on disciplinary removals from school. These are: (1) the child has the opportunity to appropriately participate in the general curriculum; (2) the student continues to receive the services specified on their IEP; and (3) the student participates with nondisabled children to a similar extent as they would in their usual school placement. From Questions and Answers: Addressing the needs of children with disabilities and IDEA’s discipline provisions (OSEP, July 19, 2022) : “In the Analysis of Comments and Changes accompanying the Part B regulations, the Department explained: ‘It has been the Department’s long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in 34 C.F.R. § 300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the
services specified on the child’s IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. This continues to be our policy.’ The explanation concludes by indicating that whether an in-school suspension would constitute a day of suspension would depend on the unique facts and circumstances of each case. 71 Fed. Reg. 46715 (Aug. 14, 2006)” (p.11).

The Kansas Special Education Process Handbook further explains these factors stating that “a school day of in-school suspension should not count as a school day of suspension for services or change of placement purposes if, during the in-school suspension, the child is afforded an opportunity to: (a) continue to appropriately progress [italics added] in the general curriculum; (b) continue to receive the services specified on his or her IEP; and (c) continue to participate with children without disabilities to the extent they would have in their current placement. The assumption is that school districts may use in-school suspension for children with disabilities just as they would for children without disabilities. . . On the other hand, if in-school suspension is a place where children are held without opportunities to progress in the general curriculum, receive IEP services, and participate with children without disabilities to the same extent they would have in the current placement, the days do count as school days of suspension for change of placement and provision of services purposes” (p. 205).

In this case, as part of the general education program at this middle school, electronic instructional platforms were used to track assignments and to provide some activities online. Direct instruction was provided in classrooms by teachers. It is found that the student had access to her own email account and the electronic platform materials. It is found that teachers expressed concern about the student’s absences and missed class work. Although her teachers sent many emails to her informing her of her missing school work and urging her to complete it, there is no evidence that they provided direct instruction to her during periods of ISS, nor is there evidence that any more than a few assignments were provided to the ISS paraeducator so that he could directly supervise her participation on the assignments. Finally, there were no supervisory notes that showed the ISS paraeducator regularly provided instructional support or accommodations to this student.

It is found that on or before January 10, 2023, the parent sent emails to district administrators expressing her concern about missed instruction during the student’s disciplinary removals, reiterating this concern in a letter to the District General Counsel on January 12, 2023. The age of the student (11 years old at the time) must be taken into account when determining if an electronic classroom platform is adequate for her to
appropriately participate or progress in the general curriculum as required in Kansas. Further, her grades indicated that she continued to fail to progress in the general curriculum across the first three quarters of middle school, unlike her elementary school performance. In this case, opportunity to participate and progress in the general curriculum was not met for the days the child spent in ISS in any of the three possible locations provided by the district.

Because eligibility for this student has not been determined the student does not have an IEP or a special education placement. The student does have accommodations for a disability under Section 504 in her current general education placement to address the second and third factors. It is clear that the district made efforts to ensure that the student’s 504 accommodations were followed during her regular school placement. Documentation provided to the investigators showed one accommodation (nurse visit) occurred on two occasions during ISS and another (social worker visit) occurred on four occasions. Other accommodations cannot be determined to have taken place.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the district failed to provide the protections of IDEA during suspensions (in and out of school) for a child having or suspected of having a disability, specifically failure to provide access to appropriate instruction, participation and progress in the general curriculum.

Issue Four

**ISSUE FOUR:** The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow IDEA disciplinary procedures and provide the protections of IDEA during suspensions (in and out of school) for a child having or suspected of having a disability, specifically administrator statements that the child’s behavior was not related to her disability without proper review, failure to hold a manifestation determination hearing; and failure to conduct an FBA leading to a BIP.

**Positions of the Parties**

The complainant alleged that the school has not followed the IDEA discipline procedures and that her child was denied the protections of IDEA during the time when she was being evaluated for special education. The parent alleged that the student was removed from instruction more than 10 days through out of school suspension (OSS), in school suspension (ISS), informal removals, and administrative leave without a manifestation
determination, and the parent asserted that these removals constituted a change of placement.

The complainant alleged that at least one administrator stated an opinion that the student’s discipline problems were not related to her disability. The complainant alleged that upon two occasions, manifestation determination reviews were scheduled and canceled by the district.

The complainant alleged that the district did not follow the IDEA discipline provisions to afford her parental rights or to allow her child to remain in her general education classroom until a change of placement could occur at the time of evaluation.

The district responds that it “followed IDEA disciplinary procedures and provided the protections of IDEA during suspensions (in and out of school) for a child having or suspected of having a disability, no administrator made statements that the student’s behavior was not related to her disability without proper review, the school did not fail to hold a required manifestation determination hearing or to conduct a Functional Behavioral Assessment (FBA) leading to a BIP...”

The district also responded that the school applied regular discipline procedures including ISS and OSS and that it does not supply additional services to students without disabilities who are similarly removed to an interim alternative educational placement. The district responded, “The school did address the Student’s behaviors in several different ways, including but not limited to a School Safety Plan, 504 accommodations, restorative practice, weekly sessions with the school SW (social worker), and the CST (child study team) continued to discuss the Student’s behavior, applied Tiered interventions, and is conducting a comprehensive special education evaluation.” The district also responded that ISS is considered a general education setting and that the use of ISS did not count toward school removal because the student was afforded 504 accommodations, she returned to the classroom for initial instruction and assessment by teachers during ISS, and ISS is supervised by a special education paraeducator. The district responded that the students’ assignments were provided to her.

The district also responded: “The Student had two incidents in October totaling 4 days of OSS, and one incident in April for 3 OSS days, for a total of 7 days of OSS removals from school per the 2022-2023 Student Discipline Profile, and as previously explained, these removals from school did not constitute a change in placement for the student as per K.S.A. 91-40-33. For this reason, no IDEA protections were necessary with regard to
services being provided for this (504) Student not-yet-eligible for special education during removals from school.”

And, the district continued: “The school did not fail to conduct an FBA, leading to a BIP. The Student’s 504 Team never determined that the Student required a Behavior Intervention Plan (BIP). The General Ed Student Contact Log shows that school administrators spoke the Parent after winter break on 1/4/23 regarding a 12/14/22 incident where the Student received ISS for 5 Days for Threat-Intimidation, and was to serve these ISS days on (1/9/23 –1/13/23) Pending outcome of MDR (Manifestation Determination Review) they told her they would be scheduling to determine if the Student’s disabilities under 504 caused her to engage in the behavior subjected to disciplinary action... Administration requested an MDR for this student after a teacher was hit during a physical altercation in class. Parent sent an email on 1/10/23 containing a records request as well as asking about the Student not being allowed to attend classes until the MDR was held per her 1/6/23 phone conversation with administration...

The district response continued, “In a letter from the district’s General Counsel to Parent dated 1/12/23, he stated that the MDR, scheduled for 1/13/23, was canceled. The letter left the door open for possible disciplinary consequences, and an MDR for subsequent offenses in the future. The school Administrator emailed Parent on 1/13/23, stating that now that the MDR was canceled that the Student would resume her regular schedule when she returned to school. The next school day, 1/17/23, the Parent emailed her request for a comprehensive special education evaluation for the Student. The district has a practice is that, once a Parent requests that their student be evaluated for special education, the district may still impose disciplinary consequences, but does apply them in ways to protect the rights of the student as not-yet-eligible in the event that a possible, yet-to-be-determined disability may be the cause of a behavior that is subjected to disciplinary action. And, although a school is not required to put disciplinary proceedings on hold until an evaluation is completed, it may, and the district has a practice of waiting to conduct MDRs when there is an open special education evaluation until the decision of eligibility is determined in order to then determine in an MDR if the behavior that was subjected to disciplinary action was caused by their disability.”

Finally, the district responded that “An MDR has not been required for this Student. The student has not been removed from school for more than 10 consecutive days, or received removals that have accumulated to more than 10 school days, and has shown no pattern of removal constituting a change of placement, and therefore, the school did not fail to hold an MDR because an MDR was not required (34 C.F.R. 300.536(a)(1)(2) and
300.530(c)). Because no MDR was required, the school also was not required to conduct an FBA and was not required to develop a BIP; instead, the school had the Student resume their previous schedule in general ed classes. The Principal denies that administration made statements that the student’s behavior was not related to her disability without proper review.”

Findings

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

The parent reported that an administrator stated that the student’s discipline problems were not related to her disability. The district reported the school administrator did not make this statement, but that there was a discussion at the initial 504 eligibility meeting (December 7, 2022) that the student’s anxiety should have been alleviated and no longer require accommodation of the school safety plan that separated the student from the known bullying opportunity.

The parent and district agreed that the district scheduled and subsequently canceled two Manifestation Determination Reviews on January 13, 2023 and March 28, 2023. The district reported that it has an informal policy of not holding MDRs for students undergoing evaluation for special education eligibility until after the evaluation is complete and eligibility determined, which accounts for the March 28, 2023 MDR being canceled.

The parent stated in an email to the district on April 28, 2023: “From March 27th to date you have assigned [the student] 23 suspension days, 20 days in school suspension and 3 days out of school suspension days.” Document types provided by the parent and the district used to determine the number of suspension days assigned to the student are: Disciplinary Action Reports (DARs), Student Discipline Profile (SDP), Period Student Profile, the District Responses, and [Student Name] Attendance History Report. These documents show 35 unduplicated days of ISS assigned in the current school year as of May 5, 2023 with 7 days of suspension out of school, for a total of 42 days suspension.

Before January 17, 2023:  
ISS: 11 days assigned  
OSS: 4 days assigned

After January 17, 2023:  
ISS: 24 days assigned  
OSS: 3 days assigned
Number of Days the Student was Removed from Class

Of the days assigned after January 17, 2023, 17 days can be documented as being served as in or out of school suspensions: February 3, 2023; February 6, 2023; February 10, 2023; March 23, 2023; March 28, 2023; March 31, 2023; April 3, 2023; April 6, 2023; April 18, 2023; April 20, 2023; April 21, 2023; April 27, 2023; April 28, 2023; May 1, 2023; May 3, 2023; May 4, 2023; and May 5, 2023.

The chart below showed the dates, dispositions assigned and documented removals subsequent to the January 17, 2023 request to evaluate. Student Discipline Profile is abbreviated as SDP.

<table>
<thead>
<tr>
<th>Date</th>
<th>Incident</th>
<th>Disposition</th>
<th>Served</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/30/2023</td>
<td>#30669 Disruptive Beh.</td>
<td>2 days Restorative Room 2nd Period</td>
<td>ISS 2/3/23, 2/6/23</td>
</tr>
<tr>
<td>2/8/2023</td>
<td>#33305 Disruptive Beh.</td>
<td>Detention (turned to ISS 2/9/23)</td>
<td></td>
</tr>
<tr>
<td>2/10/2023</td>
<td>#34129 Insubordination</td>
<td>no disposition listed in SDP</td>
<td>ISS 2/10/23</td>
</tr>
<tr>
<td>2/28/2023</td>
<td>#37452 Obscene Beh.</td>
<td>Detention 3/1/23</td>
<td></td>
</tr>
<tr>
<td>3/8/2023</td>
<td>#39714 Obscene Beh.</td>
<td>2 days “Restorative Room” from class</td>
<td></td>
</tr>
<tr>
<td>3/22/2023</td>
<td>#40849 Insubordination</td>
<td>ISS 3/23/23* duplicate</td>
<td>ISS 4/18/23</td>
</tr>
<tr>
<td>3/24/2023</td>
<td>#46025 Threat Harassment</td>
<td>ISS 2 days 4/17/23, 4/18/23</td>
<td></td>
</tr>
<tr>
<td>4/4/2023</td>
<td>#43974 Obscene Beh.</td>
<td>ISS 2 days 4/19/23 and 4/20/23</td>
<td>ISS 4/20/23</td>
</tr>
<tr>
<td>4/14/2023</td>
<td>#45708 Disruptive Beh.</td>
<td>“Restorative Room” from class 2 days 4/21/23* duplicate, 4/24/23</td>
<td>ISS 4/21/23</td>
</tr>
<tr>
<td>4/20/2023</td>
<td>#47212 Not Following Directions</td>
<td>ISS one day 4/21/23* duplicate</td>
<td>ISS 4/21/23</td>
</tr>
<tr>
<td>4/26/2023</td>
<td>48820 Disruptive Behavior</td>
<td>ISS 1 day, 5/5/23</td>
<td>ISS 5/5/23</td>
</tr>
<tr>
<td>4/26/2023</td>
<td>48863 Disruptive Behavior</td>
<td>ISS 1 day, 5/8/23</td>
<td></td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td></td>
<td></td>
<td><strong>3 OSS 14 ISS</strong></td>
</tr>
</tbody>
</table>
The district reported that it found no pattern in suspensions that could be considered a change of placement. When asked, the district representatives interviewed from the student's middle school did not identify when a meeting to determine a pattern was held, saying it was deferred to the evaluation team. The evaluation team reported they did not have this discussion.

**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 January 17, 2023 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 for a total of 17 days over a period of 69 possible school days or 25% of the time. Looking through the semester, the
percentage of suspended days increased. From March 28, 2023 till May 5, 2023, the student was suspended 13 of 28 school days, or 46% of the time. From April 18, 2023 to May 5, 2023, the student was suspended 9 of 14 school days or 64% of the time.

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.

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.

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 April 21, 2023.
ISSUE FIVE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to maintain, provide accurate and/or correct records of discipline actions of a child having or suspected of having a disability.

Positions of the Parties

The complainant alleged that the district failed to provide disciplinary records in a timely manner and that records received were contradictory and erroneous. As a result of the record keeping the student's needs were not met by the school. The parent alleged that she repeatedly asked the district for information and documentation about discipline events and investigations.

The district replied that it did maintain accurate records of discipline actions for the child and provided those to the parent during the past twelve months. During the past twelve months, records of discipline for this student were collected and provided from three schools. The district contended that staff in each of these schools knew the importance of maintaining not only for disciplinary purposes, but also to use as part of Child Find and in meeting the needs of this student whether or not she is found to be eligible for special education.

Findings

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

The district reported that during the past twelve months three schools had responsibility for collecting and maintaining behavior and discipline records for the student, her elementary school, her current middle school and the middle school that conducted the special education evaluation.

The district acknowledged that the student was found eligible for 504 accommodations on December 7, 2022.

The district reported in their response to this complaint that at her elementary school there were no instances of ISS or OSS. “There is only one record in the Student's general student contact log in the time period of April 18, 2022, to the end of the school year, which lists a face-to-face meeting for Restorative Practice on April 27 for a threat-intimidation violation on April 26. The parent and the district agreed that the student
had a positive educational experience at the Elementary school, where she was supported through self-esteem enhancing activities and restorative practices when student conflicts occurred.

The district response reported that the student’s current middle school has six different ways they addressed student behavior: (a) Conference with the Student, (b) Conference with Student and Parent, (c) Restorative Practice, (d)Detention, (e) Suspension In-School (ISS) and (f) Suspension from School (OSS).

To collect and maintain accurate records the school reported that they used a Student Discipline Profile to show incidents that resulted in one of the six school discipline practices being applied. For each incident, the school reported they kept separate records, called Disciplinary Action Forms. The school reported they also kept a General Ed Student Contact Log, which contained records of different types of communication with the parent regarding the student, including discipline incidents. An additional record included the CST Agendas and Meeting Notes, which records information about students who were brought to the school’s Child Student Team (CST) for problem-solving learning or behavior challenges. Finally, the district reported another log, named the Support Staff Visit Log, was built for this student following the February 8, 2023 Section 504 team meeting. It was a spreadsheet for support staff access created and shared with the parent, to document when the student accessed the Student Service Center (SCC) to see the social worker or nurse as her accommodations specified.

The district response reported that records for behavior and discipline from the second middle school by staff who conducted the student’s evaluation were in the CST agendas and notes and/or were written into the evaluation report, as appropriate.

The district reported that the parent had continuous access to student behavior and discipline via the Support Staff Visit Log continuously following the February 8, 2023 504 meeting. The Support Staff visit Log recorded events dated between February 8, 2023 and May 5, 2023. Although the log recorded interactions related to the student requesting her 504 accommodations, it does not provide disciplinary records like the Student Discipline Profile or the individual Disciplinary Action Reports. One record, dated March 31, 2023 indicated the student not wanting to report to ISS.

The district stated and documentation showed that the student was discussed at Child Study Team meetings at the evaluation team school on the following dates: January 17, 2023; January 24, 2023; February 3, 2023; February 7, 2023; March 21, 2023; March 28, 2023; April 4, 2023; April 11, 2023; and April 18, 2023. Content of discussion related to
(a) coordinating the evaluation efforts between the two middle schools, and (b) the student’s disciplinary events.

The building staff reported that one individual was the conduit of information from the school of residence with the evaluation team, and that she was not made aware of discipline dispositions for the student unless they were shared with her by the student during a visit to the SSC.

**Accuracy of Disciplinary and Absence Reporting**

The district reported and documentation showed that Disciplinary Action Reports (DAP) and a Student Discipline Profile (SDP) were two ways that the school kept documentation of their discipline of the student. The district provided two versions of the period attendance report (one that shows ISS by day or period which does not include the entire school year, and one that does not show ISS as a code for the entire school year). The district provided an attendance history report for the student that showed some but not all days of ISS served by the student. The district also supplemented their initial response by asking building staff about the specific locations where the student served ISS.

A reconciliation of these discipline records with the attendance records and with the district’s response pointed out numerous discrepancies. This list of discrepancies illustrated the range of discrepancies rather than providing an exhaustive listing of discrepancies found.

- Additional days of ISS were reported as served in the front office according to the building administrative staff. On December 12, 2022, the student served ISS in the front office and there was no record of the student being assigned to ISS in the Student Discipline Profile or attendance reports. On December 14, 2022, ISS was served in the front office area but it was not a day of ISS according to attendance reports. It should be noted that on December 14, 2022, incidents #25613 and #26223 occurred, for which 5 subsequent days of ISS were assigned to be completed in January. December 12 and December 14, 2022 preceded the request to evaluate.

- On April 20, 2023, the student reported to the ISS room, according to the sign in log provided. According to her SDP, she was assigned to ISS on this day. On the attendance report, her absence was coded as truant, unexcused for 6 of the 8 periods of the day.
• On April 21, 2023, school staff reported that the student served ISS in an office area. The SDP showed this as a date when RR and ISS were assigned. However, in the attendance documents the student was reported as truant/inexcusable.

ISS by Period Reporting

A reconciliation of the discipline records with attendance records for ISS by period reporting again pointed out numerous discrepancies. This list of discrepancies below illustrated the range of discrepancies rather than providing an exhaustive listing of discrepancies found.

• The parent and district documentation agreed that the student was assigned to period-based ISS on February 3, 2023 and February 6, 2023 for the second period, which she served in the Assistant Principal Center. The student was marked truant-unexcused on the period attendance profile for the second period on these dates.

• The district reported that according to front office staff, “since the start of 2nd semester, [the student] has served her RR in one of the office areas (APC, SSC, or front office).” The district reported that the practice is that one period of RR generally followed a classroom incident on the next day and the student returned to the class on the subsequent day.

• From district documentation there were two days of RR assigned after an incident (#39714) on March 8, 2023 and two days after an incident (#45708) on April 14, 2023. It is unclear from the school’s attendance documentation if these dates were served by the student, as the attendance record by period interchangeably used unexcused absences with the previous RR and ISS by period assignments. No other documentation was provided to the complaint investigator to account for these period RR or ISS assignments.

• On April 3, 2023, the student period attendance report shows that the student served ISS for the 6th period. An email from the administrator said that the student was in the AP office for the 7th - 9th periods, and the period attendance report shows those periods as PRN. A district reply to the investigator’s inquiry reported that the student’s grandmother picked her up from school on that day. The parent reported “4/3/22- [the student] was not picked up by my mother. Per [the student]’s support staff log [the student] was in the S.S. Office Ms. [Social Worker] office needing a break from ISS. Please see attached [the student] Support Staff Log that the staff document in regarding [the student]. Also that day in ISS she received write ups that resulted in additional 2 ISS days, please see attached write up. This incident happened at 10:30am per disciplinary action form.”
The parent reported that the student was refused entry to the ISS room on three occasions and that this caused anxiety for the student.

- On April 26, 2023, third hour, the student was refused entry to the ISS room and redirected to the Assistant Principal's office for ISS according to the parent. This was not listed as an ISS day in the attendance reports. The student had four incidents recorded in Disciplinary Action Forms on April 26, with the first one at 8:44 a.m., which by the bell schedule was within the third period. It is acknowledged that the investigator was not aware if an alternate order of classes was used on that day.
- On April 27, 2023 the parent reported the student was refused entry to the ISS room and was redirected to the AP office, where she served an hour of ISS. April 27, 2023 was not listed as an ISS day on the attendance reports. The student was suspended according to the period attendance report, beginning mid-morning on April 27, 2023 for the discipline incidents that occurred the day before.
- On May 3, 2023, when refused entry to the ISS room, the front office administrative assistant directed the ISS paraeducator to admit the student to the ISS room. ISS sign in sheets showed her attendance on that day, and the SDP showed that she was assigned ISS on that day.

In emails sent to the district administrators on April 28, 2023 and May 4, 2023, the parent reported these occasions of being refused entry to ISS and asked for a structured environment for the student's ISS rather than the Assistant Principal's office, the front office or the conference room.

When asked how the student and parent were to know where the student was to report for ISS each day, the district reported that the school staff had an overall list of students assigned to ISS and that the student received an email.

The parent reported and emails showed that she requested details on discipline incidents and documentation beginning in October, 2022 and throughout the school year. Examples of such parental requests were found in emails to the school administrator on April 14, 2023 and April 27, 2023. In Issue 3, examples of these requests were found on January 10, 2023 and January 12, 2023.

**Applicable Regulations and Conclusions**

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

The Kansas Special Education Process Handbook (KSDE) also advises that, because
IDEA’s discipline provisions extend to a child undergoing an evaluation, it is important to
keep screening records to provide documentation if there was a disability suspected at
some time in the past. In addition, “school officials should carefully monitor the
cumulative number of school days of suspension and make decisions about the effect of
imposing additional short-term suspensions. Note that partial days count as full school
days. Suspensions should be carefully monitored so that school personnel will be aware
of whether another removal will constitute a change of placement. School officials
should be addressing the issues of the suspensions prior to reaching the 11th day” (p.
194).

To do so, the school needs to maintain accurate records and straightforwardly
document the number of disciplinary removals for a student undergoing evaluation. If
the records are inconsistently coded, found in multiple source documents, or
erroneously maintained, the school cannot track and count the number of disciplinary
removals issued to such a student. This failure to track in and out of school suspensions
can have the appearance of an informal removal of the child from their placement
without invoking IDEA’s disciplinary procedures. Guidance and definition of informal
removals has been issued by OSEP in Questions and Answers: Addressing the Needs of

Further, the conditions of ISS must meet the requirements of 34 CFR 300.530 (d) and
KAR 91.40.35 (b)(1) and (c) if the school wishes to use it as an alternative to disciplinary
removal (suspension). Administrators must have the tools to ensure school safety and
that students with disabilities or who are undergoing special education evaluation are
afforded the full protections of IDEA during the evaluation period. Maintenance and use
of proper records is necessary to fulfill these functions.

It is found that while the school employed different ways of recording behavior and
discipline many errors were discovered when reconciling with attendance records.
These discrepancies made it impossible to accurately determine the number of student
disciplinary removals. Further, while school administrators regularly reached out to the parent to report an instance of a behavior the parent was not automatically and routinely provided with the assigned disciplinary action. Further, it is found that the parent repeatedly had to request detailed information on disciplinary actions and then request clarifications for mismatches between the behavior as was originally reported to her from staff administration and the behavior described with the resultant disciplinary action report.

Based on the foregoing, it is substantiated that the USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to maintain, provide accurate and/or correct records of discipline actions of a child having or suspected of having a disability, which it is required to do in order to comply with the “11th day rule” in 34 C.F.R. 300.530(d).

**Corrective Actions**

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

A. Federal law at 34 C.F.R. 300.504 (a) and K.S.A. 72-3430(e) require that schools provide a copy of the Parent Rights in Special Education Notice to the parents at least one time in a school year and for the following specific actions: (a) upon a referral or parent request for initial evaluation, (b) upon the first formal complaint or due process complaint filed in a school year, (c) upon a disciplinary removal from school that constitutes a change in placement; and (d) upon parent request.

In this case, the evidence supports the finding that USD #259 more likely than not did not provide the parent her rights in Special Education upon her request for initial evaluation for her child. It is acknowledged that the parent has since received a copy of her rights.

B. Federal law at 34 C.F.R. 300.530, the U.S. Department of Education Discipline Guidance document dated July 2022 and K.S.A. 72-3436(b) require schools to provide access to appropriate instruction, participation and progress in the general curriculum during suspensions (in and out of school) for a child having or suspected of having a disability.

In this case, the evidence supports the finding that USD #259 did not provide the
student participation in general education instruction to progress in the general curriculum during in-school suspensions during a special education evaluation.

C. Federal law at IDEA at 34 C.F.R. 300.536 requires 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.

In this case, the evidence supports that the district did not hold a meeting to determine if a pattern existed.

D. Federal law at 34 CFR 300.530(d), the U.S. Department of Education Discipline Guidance document dated July 2022, and K.A.R. 91.40.35 (b)(1) and (c), require that schools be able to count the number of days of suspension applied to students with or suspected of having disabilities. If the records are inconsistently coded, found in multiple source documents, or erroneously maintained, the school cannot track the number of disciplinary removals issued to such a student. This failure to track and accurately count in and out of school suspensions as well as principal designated absences can have the appearance of an informal removal of the child from their placement without invoking IDEA’s disciplinary procedures.

In this case, the evidence supports the finding that USD 259 failed to maintain, provide accurate and/or correct records of discipline actions for the student at her current middle school resulting in her missing substantial general education instruction during her special education evaluation and being denied a manifestation determination hearing due to change of placement.

Based on the foregoing, 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:
   a. Comply with federal regulations at C.F.R.300.504(a) which require school districts to provide parents with parent rights when requesting an initial evaluation for special education services.
   b. Comply with federal regulations at C.F.R.300.530 which require schools to ensure students participate and progress in the general education curriculum during periods of in-school suspension during evaluation for special education services.
   c. Comply with federal regulations at C.F.R.300.536 which require the district to determine if a pattern of removal exists at the 11th day of removal.
d. Comply with federal regulations at C.F.R.300.530(d) which require that school districts are able to collect and maintain accurate discipline records for students who are suspected of having a disability.

2. By June 30, USD #259 will submit a plan showing how school psychologists, school building administrators and relevant staff will be provided updated guidance on responding to a request for evaluation by providing parental rights to the parent, reviewing those rights with them and documenting their receipt. Within 30 days following the training, USD #259 will submit the guidance and its dissemination to staff to SETS within 30 days of its provision.

3. By June 30, 2023, USD #259 shall submit a plan showing how school psychologists, school building administrators and relevant staff will be provided guidance and training when the district is deemed to have knowledge that the student is a student with disabilities and the discipline protections of IDEA for these students. Within 30 days following the training, USD #259 will submit the guidance, training materials, agenda and list of attendees to SETS.

4. By June 30, 2023, USD #259 shall submit a plan showing (a) its review of communication practices to ensure that parents receive educational records, including timely disciplinary action reports, disciplinary dispositions, and discipline processes relevant to ensuring the IDEA protections for students who have or are suspected of having disabilities; (b) If the district finds a need to improve its practices, district wide training will be provided to relevant staff prior to the beginning of the 2023-24 school year and evidence of training submitted to SETS within 30 days of the training; (c) For the student's school, training will be provided to all administrative and relevant special education staff at the student's school prior to the beginning of the 2023-24 school year, to include the timely provision of disciplinary action reports and IDEA discipline processes to parents of children who have or are suspected of having disabilities, (d) USD#259 shall submit the school's training materials, agendas, and list of attendees to SETS within 30 days of the training.

5. By June 30, 2023, USD #259 shall review the conditions of ISS in the student's school for students who have or are suspected of having disabilities to ensure that adequate supervision for safety, instruction and instructional support are provided, supervised and documented in order for students to participate and progress in the general education curriculum during periods of in-school suspension.

6. Further, the district will monitor the conditions of the building's ISS on a monthly basis for 60 days during the upcoming 2023-24 school year to ensure that it meets the requirements of the above regulations in order for it to be used as a non-disciplinary removal for students who have or are suspected of having disabilities. The district will provide the results of that monitoring to SETS by October 15, 2023.
7. By June 30, 2023, USD #259 shall submit a plan showing (a) how it will review its disciplinary record system to ensure its adequacy to provide building administrators with alerts and summaries of the numbers of in and out of school suspensions being used for students who have or who are suspected of having a disability, (b) if the district finds a need to improve the system, district wide training will be provided (c) if no improvements in the system are found to be needed, training on the proper use of the system will be provided to the student’s school and (d) submit the training agendas, materials, and list of attendees to SETS.

8. By June 30, USD #259 shall submit a plan showing how it will provide training to the student's school on IDEA's discipline provisions and their implementation, including the definition of and avoidance of informal removals, the provision of procedural safeguards for parents of children who have or are suspected of having disabilities, the appropriate use of in and out of school suspension, the provision of services to children at the 11th day of removal, and the use of general education or behavioral interventions for students at risk of being identified as having a disability.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org. The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Gwen P. Beegle, Ph.D.
Gwen P. Beegle, Complaint Investigator

Donna Wickham, Ph.D.
Donna Wickham, Complaint Investigator
K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;
(B) the withholding of state or federal funds otherwise available to the agency;
(C) the award of monetary reimbursement to the complainant; or
(D) any combination of the actions specified in paragraph (f)(2)