KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #340
ON APRIL 18, 2023

DATE OF REPORT JUNE 7, 2023

This report is in response to a complaint filed with our office on behalf of the student by his parent, The parent. In the remainder of the report, the student will be referred to as “the student.” The student’s mother is the parent and in the remainder of this report she will be referred to as “the mother”, “the parent”, or “the complainant.” The student’s father is the parent and in the remainder of this report he will be referred to as “the father.” Together, Joline and the parent will be referred to as “the parents.”

The complaint is against USD #340 Jefferson West Unified School District. It is noted that Keystone Learning Services provides special education services for the USD #340 under an interlocal agreement. In the remainder of the report, “the school,” the “district”, and the “local education agency (LEA)” shall refer only to USD #340 and is recognized as the responsible agency.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on April 28, 2023 and the 30-day timeline ended on May 30, 2023. An extension was granted and the date of the report is June 7, 2023.

Investigation of Complaint

Gwen Beegle, Complaint Investigator, interviewed the parent by telephone on May 1, 2023 to clarify the issues of the complaint and again on June 1, 2023. A follow up phone call was made June 6, 2023. Gwen Beegle interviewed Doug Anderson (Executive Director, Keystone Learning Services) and Belinda O’Dell (Assistant Special Education Director, Keystone Learning Services) on May 15, 2023.

The Complaint Investigator also received emails from the parent and the district between May 1, 2023 and June 6, 2023.
In completing this investigation, the Complaint Investigator reviewed documentation provided by the complainant and the district. Although additional documentation was provided and reviewed the following materials were used as the basis of the findings and conclusions of the investigation:

Evidence (documents)

- Formal Complaint Response 23FC340-001
- FBA [Student Initials] 3-28-22
- [Student Initials] IEP 5-16-22
- [Student Initials] Staffing notes
- [Student Initials] Attendance Records 8-22-22 to 5-4-23
- [Student Initials] Communication
- [Student Initials] Progress Reports Washburn Tech
- [Student Initials] Staffing notes 10-16-22
- [Student Initials] Q2 Progress Report
- [Student Initials] Q3 Progress Report
- [Student Initials] parent agreement 3-3-23
- Contact Sheet for SPED Services
- JE Continuance
- [Student Initials] Timeline
- IEP meeting contact record
- [Student Initials] Transcript
- Sample weekly Progress [Student Initials]
- MAP RIT scores for [Student Name]
- NOM [Student Initials] 4-28-23
- [Student Initials] 05-09-23 IEP
- IEP Meeting Contact Record Chart

Evidence: Emails

- Email from Rhonda Frakes (Principal, Jefferson West High School) to the parents dated October 10, 2022 at 5:27 p.m.
- Email from Ms. Frakes to the father and copied to Doug Anderson (Executive Director, Keystone Learning Services) dated December 9, 2022 at 3:03 p.m.
- Email from Ms. Frakes to the parents dated December 12, 2022 at 4:38 p.m.
- Email from parent to Lindsey Scherschligt (School Counselor, Jefferson West High School) dated February 8, 2023 at 6:16 p.m.
• Email from David Smedley (Academic Advisor, Greenbush Virtual Academy) to Ms. Frakes dated May 4, 2023 at 9:23 a.m.
• Email from Ms. Frakes to Dr. Anderson dated May 4, 2023 at 9:26 a.m.
• Email from Dr. Anderson to the parents dated May 10, 2023 at 10:50 a.m.
• Email from Dr. Anderson to the parents and copied to Belinda O’Dell (Assistant Special Education Director, Keystone Learning Services) and the complaint investigator on May 15, 2023 at 2:23 p.m.

**Background Information**

This investigation involves a 17-year-old student enrolled in the district in the 11th grade. The student began receiving speech/language services in kindergarten to address articulation skills, and was later evaluated and found eligible for services in the category of Learning Disability. The student continued to receive services focused on reading instruction through elementary and middle school years, in both the general education classroom and resource room settings. In the 8th grade, math intervention and self-control goals were added, reading goals continued and speech-language services were discontinued. In the 10th grade, discipline problems precipitated a Manifestation Determination Review, which was followed by an FBA in March, 2022. At an IEP meeting held on May 15, 2022, the student’s eligibility category was changed to Emotional Disturbance. In September, 2022, the student was arrested for an out of school assault and spent 10 days in a juvenile facility. The student’s release agreement specified house arrest, monitoring, no contact with particular individuals, and not to be within 1000 feet of the district’s properties. In December, 2022, the conditional release terms were modified to allow the student to attend school or other events with pre-approval from Youth Services.

**ISSUE ONE:** The district, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide FAPE for the student by not implementing the student’s IEP during the 2022-23 school year.

**Positions of the Parties**

The complainant alleged that the student had not received the services in the student’s IEP during the 2022-23 school year, beginning September 16, 2022. The complainant alleged that after the parent agreed to the online program offered to by the district upon their return from the juvenile corrections facility, the school did not provide the
services in the student's IEP. The complainant alleged that the student's IEP specified resource room placement for the student's English course but the student had not received any special education since the student got into trouble.

The district responded that the student's IEP and team meeting notes showed their commitment to adjusting to the needs of the student. A functional behavioral assessment was completed in March 2022 and the new information was included in the IEP meeting in May 2022 in an effort to support the student in the comprehensive high school. The IEP team including the parents considered a more restrictive environment, updated the IEP, and changed the area of exceptionality. The building administrator recommended private counseling services for anger management over the summer, to which the parent agreed. The district reported that the IEP team met again on September 16, 2022 to review the behavior plan and the support being provided. The IEP was amended at that time to change the location of services from the English general education classroom to the resource room, without change to the service minutes.

The district reported that in October the placement changed due to a court order and that evidence of access to the curriculum was shown in communication between the school counselor, the student and the parent. The district reported that the student attended online courses for 3 hours and Washburn Tech for one-half day and that he made acceptable academic progress.

The district responded that the IEP was reasonably calculated to provide benefit and implemented as written and that meetings were scheduled when the student was not responding to the IEP in place. A meeting was scheduled and held on May 9, 2023 in order to write a new annual IEP to address the student's needs.

In an update to its response to the complaint, the district provided a proposed resolution to the parents on May 10, 2023, based on its offer of increased IEP services in the annual IEP dated May 9, 2023. After the annual IEP meeting, the district sent an email that proposes to resolve the complaint going forward. That response stated that the student's academic progress was satisfactory and that the student's accrued credits in the virtual model put the student on pace to graduate with one additional English credit and Washburn Tech classes. The student's plan of study was written into the new annual IEP dated May 9, 2023. The district states: “To Resolve: We agree to provide 120 minutes/week of academic support for [the student’s] English class, with the daily time and days/week of delivery of those services negotiable once the level of support needed in the new virtual program is determined. In addition, 15-minutes of social work services
will be provided per week to assess [the student's] capacity to deal with the frustration of non-preferred tasks (English class) and to coach [the student] on perseverance to complete any assignments or negotiate personal interactions that [the student] finds frustrating.”

Findings of the Investigation

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

The district and the parent agreed that an FBA dated March 28, 2022 was conducted for the student.

The district and the parent agreed that the student's IEP dated May 15, 2022 was reasonably calculated to provide benefit to the student.

The student's IEP dated May 15, 2022 showed goals in: (a) stress reduction and conflict resolution skills, (b) interpersonal communication to avoid conflict and (c) organization of school work. The IEP showed the following services: (a) social work for 15 minutes two days every week; (b) general education inclusion special education support in core classes for 270 minutes two days every week and 135 minutes one day every week; (c) special education resource pull out for 90 minutes two days every week and 45 minutes one day every week. Five accommodations were included: a quiet separate setting, assignments read aloud, hot pass to leave a room when needed, repeated directions, and remaining in the special education resource room instead of attending a class with a substitute.

The district and the parent agreed that the student attended private counseling over the summer of 2022 at the parent's expense and at the recommendation of district staff.

The district reported and staffing meeting notes showed that the IEP team met on September 15, 2022 to address the student's discipline referrals, review the IEP placement and supports, and to support teachers with behavior support strategies.

The district reported that the student's placement was changed from general education inclusion support for the student's English class to special education pull out support with the same number of minutes of service. The district reported and documents showed that it provided prior written notice of this change, with consent signed by the parents on September 16, 2022.
The parent reported and documents showed that the student was released from a juvenile facility to home arrest with the condition of not being within 1000 feet of the school on September 26, 2022.

The district reported and documentation showed that in an email dated October 10, 2022 at 5:27 p.m., the principal communicated to the parent that the student would attend half day at Washburn Tech and 3 hours of online classes through Greenbush Virtual Academy (GVA). The email further stated that online tutoring would be available through GVA and “As per [the student’s] IEP [the school social worker] will arrange times to visit with [the student] via a phone call or a zoom meeting. One of the special education teachers will do a weekly check-in with [the student]. This teacher will reach out and set up a regular time for them to visit by phone or zoom meeting.” The district confirmed that this was an accurate understanding of the plan for the student, due to the September 26, 2022 conditions of the student’s home arrest.

The parent reported and documents showed that the student’s online instruction with GVA began on October 12, 2022.

The district reported and provided unsigned staffing notes of a meeting to amend the IEP held on October 16, 2022, which showed the IEP services were changed to 10 minutes Social Work Services one time every week and 20 minutes Special Education Services every week.

The parent reported that she was not notified of this meeting. The district did not provide a PWN for the change of services to online and homebound services concurrent with the IEP amendment. No IEP amendment form was provided to the investigation, nor did the district provide documentation of the phone call in which the parent agreed to the October 17, 2022 IEP amendment without a meeting or the IEP changes made by the district at that time.

The district reported and communication logs with multiple entries dated from October 7, 2022 to May 3, 2023 showed that the school counselor communicated with the student and at times the parent about the student’s course of study, including the student’s Washburn Tech courses, access to online courses, online course choices, enrollment, and some course grades and assignments.

The district and parent agreed that until December 7, 2022, the student’s court conditions made them unavailable for in person attendance at school, and that the student attended online school rather than attending high school classes.
The parent reported and the district acknowledged that the parent communicated to the district that the parent was providing extensive academic support (“acting as [the student’s] para”) to the student for the student’s online courses in an email to the school counselor dated February 8, 2023 at 6:16 p.m. The district reported that the parent requested that the student be enrolled in a different online course rather than English, and the district complied.

The Contact Sheet for SPED Services showed that two voicemail messages were left by the school social worker to set up services on October 16, 2022 and November 1, 2022 but it does not show social work services were provided. The Contact Sheet for SPED Services showed that academic check-ins were completed with the student on December 12, 2022, December 19, 2022, and January 18, 2023. The district reported that the employee assigned to do the academic check-ins left the district as of February 28, 2023 and reported that the employee “called most weeks after the 1/18/23 phone call and was able to make contact with [the student] the majority of the time.” Four more phone calls were made to do academic check-ins on March 30, 2023; April 4, 2023; April 11, 2023; and April 27, 2023, without contact with the student.

**Applicable Regulations and Conclusions**

In Kansas, a free appropriate public education (FAPE) is provided for children with disabilities and defined as special education and related service, provided at the public expense and under public supervision that meet the standards of the state board, include appropriate preschool, elementary or secondary school education and provided in conformity with an individualized education program (KAR 91-40-1). According to 34 C.F.R. 300.101, FAPE must be available to all children between the ages of 3 and 21, including children with disabilities who have been suspended or expelled from school as provided for in 300.530(d). However, a district is not required to provide FAPE to any student who graduates with a regular high school diploma (K.A.R. 91-40- 2(g) (1)).

The vehicle for providing Free Appropriate Public Education (FAPE) is the Individualized Education Plan developed for each eligible child with a disability. The IEP is “a written statement for each student with an exceptionality, which describes that child’s educational program and is developed, reviewed, and revised in accordance with special education laws and regulations” (Kansas Special Education Process Handbook p. 8). Each State must ensure that an IEP meets the requirements of the IDEA and “is developed, reviewed, and revised for each child with a disability in accordance with §§300.320 through 300.324, except as provided in §§300.330 (b)(3)(i).” The student’s IEP must include, inter alia, a child’s measurable goals, a statement of special education and
related services, and a statement of any individually appropriate accommodations for each child on an individual basis (34 C.F.R. §300.320(a)(2)-(6)). According to 34 C.F.R. §300.323(a) and K.S.A. 72-3429 (a)(2), an IEP must be in effect at the beginning of each school year for each eligible student.

In this case, it is found that the student's IEP, which was in place at the beginning of the year and amended at an IEP meeting on September 15, 2022, required the student to have (a) social work for 15 minutes two days every week; (b) general education inclusion special education support in core classes (excluding English) for 185 minutes two days every week and 90 minutes one day every week; (c) special education resource pull out English for 85 minutes 2 times each week and one time for 45 minutes each week, and (d) special education resource room pull out for 90 minutes two days every week and 45 minutes one day every week.

It is found that these services were not provided after September 16, 2022. It is found that the student was not available for education services from September 18, 2022 through September 26, 2022 at the time of their release to home arrest. Further, it is found that the student was not available due to court ordered conditions to attend high school classes on school grounds until after December 7, 2022.

After the district met to amend the IEP on October 16, 2022, the student's IEP according to staffing notes specified only two services, social work (10 minutes one time each week) and special education (20 minutes one time each week). Furthermore, the district's contact logs failed to show that the social work services were provided at any time after the October amendment. Contact logs showed that special education check ins occurred one time weekly for 3 weeks of the 22 weeks of school from October 16, 2022 to April 28, 2023.

Although the district amended the IEP documented in the October 16, 2022 meeting (staffing notes dated October 27, 2022), the district did not provide Prior Written Notice or request consent as will be described in Issue 2. No interview or records provided indicated that the district provided Prior Written Notice or request consent for the parent to make these amendments. The district, when asked, could not provide evidence that the parent gave consent to an IEP amendment without a meeting in October, and the parent denied any knowledge of the meeting.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the district failed to provide FAPE for the student by not implementing the student's IEP during the 2022-23 school year.
**Issue Two:** The district, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), changed the IEP through administrative directive without notice of a meeting, an IEP meeting, and without prior written notice of the changes.

**Positions of the Parties**

The complainant alleged that the principal of the school changed the IEP by requiring the student to continue on home based and online school past the time when the student was allowed by the student’s court agreement to return to school property on December 7, 2022. The complainant alleged that there was no special education team meeting or prior written notice of changes to the student’s program. The complainant alleged that the principal notified them on or before December 12, 2022 that the student would not be allowed to attend school or school events due to a code of conduct violation.

The district responded that the original change in location of service was based on a court order for a house arrest and the student was not permitted to be within 1000 ft of a Jeff West property and other students who attend Jeff West High School. On October 17, 2022 the team met to amend the IEP to accommodate the student who was restricted to home-based services due to court ordered house arrest with pending federal charges. Based on the needs specified in the student's IEP and provided in the school setting, the change of location resulted in a temporary change in service delivery.

The district responded that when the requirement to maintain a 1000-foot distance from a district property was lifted, the building administrator met with the parents to discuss remaining in the virtual courses to ensure full credit for the work already done. Then, in March the building administrator offered a formal service delivery option in lieu of a long-term suspension or expulsion hearing based on the pending federal charges that were of a violent nature.

The district acknowledged that the Prior Written Notice for the IEP changes associated with the October 16, 2022 staffing are missing “due to technical error with the new IEP system, or staff oversight.” The district proposed to reconvene the IEP team at the time of the annual IEP to discuss strategies for providing “more reliable, consistent access” to services, to review the prior errors and determine if special education support was needed based on performance data, and provide prior written notice following the IEP meeting.
Following the May 9, 2022 annual IEP meeting for the student, the district reported that the new IEP, additional in-person services, and Prior Written Notice following the IEP meeting “will eliminate any ambiguity regarding the services to be provided.” Further, the district offered that it “added an IEP reader in January 2023 to provide another checkpoint for missing paperwork. Paperwork requirements will be reviewed with new staff and veteran teachers at the in-service in August 2023 before school starts to ensure that staff understand that prior written notices must be sent upon completion of an IEP or an IEP amendment, regardless of the circumstances of that meeting.”

Findings of the Investigation

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

The findings of Issue One are incorporated herein by reference.

The district reported that no Prior Written Notice can be provided to the investigator that would show the October 16, 2022 change in IEP services required by the student's court ordered house arrest from attendance in person at the high school to online classes that occurred due to the student's detention in a juvenile facility and subsequent court ordered conditions.

The district reported that the parent agreed to an IEP amendment without a meeting dated October 16, 2022 that changed the IEP services due to the change of schooling to an online format in response to the court ordered restrictions. Although the district provided unsigned staffing notes of the IEP amendment discussion which are dated October 27, 2022, the district cannot provide any documentation that the parent agreed to amend the student's IEP without a meeting. The parent reported that they did not know about this meeting nor the changes to the IEP enacted by the district at that time.

The district and the parent agreed, and documents showed, that the student's court conditions permitted him to attend school after December 7, 2022. The district and the parent agreed and documents showed that on or before December 12, 2022, the principal notified the parents that the student was “not in good standing” and would not be permitted to attend school events due to pending charges. The district and the parent agreed that there was no IEP meeting at this time.

The district reported that the principal proposed an alternative graduation plan for the student to the parent on March 3, 2023 as an alternative to proceeding with an
expulsion or suspension hearing. The principal's notes stated: “It was explained to the [parents] that the school is looking to move toward a hearing to ask for suspension or expulsion based on 72-8901 item (d) conduct which, if the pupil is an adult, constitutes the commission of a felony, or if the pupil is a juvenile, would constitute the commission of a felony if committed by an adult. It was shared that while this is an option we would like to propose a compromise instead of moving to a hearing.”

The complainant alleged that they were told that an expulsion hearing would go forward the following week, by March 10, 2023 unless they signed the agreement. The parents and the student signed the agreement on March 6, 2023.

The district reported that the March 3, 2023, alternative to expulsion graduation plan was not an IEP team decision and the special education team did not meet at that time. The parents agreed that there was no special education team meeting on March 3, 2023. The district reported that the terms of this agreement did not change the students' course of study nor the location of Washburn Tech in person courses or online course enrollment.

The district reported that since home based services began in October, 2022, the student has made acceptable academic progress by passing the student’s courses. Quarterly progress monitoring on two goals related to self-control showed 0% proficiency.

Applicable Regulations and Conclusions

According to the prior written notice requirements in 34 C.F.R. § 300.503, K.S.A. 72-3432 and K.A.R 91-40-26, Prior Written Notice must be provided when any action is proposed or refused by an agency and it must include a description of other options considered, reasons why other options were rejected, and the factors relevant to the district's decision.

According to 34 C.F.R. § 300.116 (a)(1) placements are made by the IEP team, including parents and other persons knowledgeable about the child. Also, each agency must ensure that placement is based on the child's IEP ((34 C.F.R. §300.116(b)(2)). Further, KAR 91-40-27 requires parental consent for making a "material change in services to, or a substantial change in the placement of an exceptional child unless the change is made under the provisions of KAR 91-40-33 through 91-40-38 or is based on the child's graduation from high school. . ." However, informed parental consent is not required to make a substantial change in placement if the school can document that: (a) it made
reasonable efforts to obtain such consent as described in K.A.R. 91-40-17(e)(2); and (b) the child's parent has failed to respond (K.A.R. 91-40-27(g). A "substantial change in placement" means the movement of an exceptional child for more than 25% of the child's school day, either from a more restrictive to less restrictive environment or less restrictive to more restrictive environment (K.A.R. 91-40-1(sss)). A "material change in service" means an increase or decrease of 25% or more of the duration or frequency of a special education service, related service, or supplementary aid or service specified on the IEP of an exceptional child"(K.A.R. 91-40-1(mm)). Further, parental consent is not required or (c) if the change is made under the discipline provisions in K.A.R. 91-40-33 to -38 (K.A.R. 91-40-27(a)(3); K.A.R 91-40-27(g)).

In this case, the district asserts that the homebound services began at the October 16, 2022 staffing when the IEP services were changed and that these changes were not being made under the discipline provisions of IDEA but were made to accommodate the student’s circumstances. However, the parent claimed that they did not consent to the changes made during an IEP amendment without a meeting held by the district on October 16, 2022 and the district cannot provide evidence that the parent’s agreed to amend the IEP at that time.

It is found that both a material change of services (more than 25%) and a substantial change in placement (more than 25%) occurred at the time the student enrolled in online school (October 12, 2022), and that the district was required to provide prior written notice and to obtain parental consent for the changes. Therefore, it is found that the district failed to hold a meeting, gain parental consent to make an IEP amendment without a meeting, provide Prior Written Notice, or request parental consent for the changes in placement and IEP services.

Further, the district did not permit the student to return to school in December after the student’s court conditions permitted him to do so, instead requiring him to continue to attend online classes through the remainder of the school year. The district did not hold an IEP meeting at this time to change the student’s IEP to reflect these changes.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the district changed the IEP through administrative directive without notice of a meeting, an IEP meeting, or without prior written notice of the changes.
ISSUE THREE: The district, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to provide an appropriate IEP for the upcoming school year through the student's graduation in May of 2024.

Positions of the Parties

The complainant alleged that the alternative graduation plan provided by the principal operated outside the special education process and failed to provide an appropriate IEP for the remainder of the student's school tenure. The parent claimed that the alternative graduation plan they were required to sign to avoid expulsion did not address the student's special education program.

The district replied that this point is moot, because the last agreed-upon IEP remained in effect until May 15, 2023 and the IEP amendment documents and related email communication clearly outlined the requirements and timeline to finish and graduate. The district responded they have scheduled an annual IEP meeting and sent a Notice of Meeting dated April 28, 2023 to the parents. The meeting was scheduled to be completed prior to the expiration of the current IEP and “will consider all requests by the parents to provide support and deliver content in a manner that improves the student's performance.” The district also responded that student performance data reflects that the current delivery model has been effective.

Following the annual IEP meeting on May 9, 2023, the district updated its response, saying that meeting “acts to resolve any inappropriate component of previous agreements in that the updated IEP again specified the class schedule to achieve graduation. It also amended services to increase the likelihood that [the student] will have access to special education support, in-person, for [the student's] final English class.” The district stated that whether the student could participate in a graduation ceremony “was not subject to the IEP team review” and that this was discussed with the parents.

Findings of the Investigation

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

The district provided a Notice of Meeting dated April 28, 2023 for an IEP meeting on May 9, 2023 to discuss changes and develop an annual IEP that would include transition
planning. The district reported that the meeting was attended by the parents and a new IEP was proposed at that time.

The district reported and documents showed that two IEPs for the student were in place during the 2022-23 school year: the IEP dated May 15, 2022 which was amended with a meeting on September 16, 2022 and amended by the district (as found in Issue One) on October 16, 2022 and the proposed IEP dated May 9, 2023.

At the point of the report, the parent reported that they have not signed the May 9, 2023 IEP or any prior written notice associated with it.

The district reported that the student has made satisfactory progress during the past year in the student’s Washburn Tech classes and the student’s online high school classes.

**Applicable Regulations and Conclusions**

According to 34 C.F.R. 300.323 (a) and K.S.A. 72-3429(a)(2), an IEP must be in effect at the beginning of each school year for eligible students.

It is found that the district did have an IEP of record for the student during the 2022-23 school year and that the IEP proposed on May 9, 2023 provides services through May 8, 2024. It is noted that the district has met with the IEP team and provided a new IEP that specifies the special education services in place for the upcoming year to address the parent’s concerns about adequate in-person support for the student’s senior English class. However, at the time of the report, the May 9, 2023 IEP remains unsigned by the parents and the May 15, 2022 IEP has elapsed.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the district failed to provide an appropriate IEP for the upcoming school year through the student’s graduation in May, 2024.
ISSUE FOUR: The district, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to follow the discipline procedures as outlined in IDEA when removing the student from school.

Positions of the Parties

The complainant alleged that the principal did not discuss IDEA's discipline procedures nor offer them any alternative to the “alternative to expulsion” plan dated March 3, 2023. The parent alleged that the principal required them to agree within 3 days of the meeting in order to avoid the student’s expulsion. The complainant alleged that the principal used the student’s legal status as a violation of the code of conduct to specify that the student was not in good standing and therefore could not attend school or school events, including graduation. The complainant alleged that the district informed them in December, 2022 that the student was a student not in good standing and required to continue in online classes.

The district responded that the parent’s agreed to the alternative placement in lieu of a disciplinary removal based on pending federal charges. The district acknowledged that the IEP team should have reconvened to evaluate progress and amend the IEP after the parent’s agreement to the terms of the agreement, given that the October amendment was made to accommodate the student’s house arrest. The district responded that the disciplinary diversion agreement was done outside of an IEP Meeting and constituted a unilateral decision made by the parents, without the IEP team’s involvement. The district stated that if the parent’s revoked their agreement to the alternative to expulsion agreement, then the IDEA discipline procedures would be enacted when the district initiated a long-term suspension hearing. The district also responded that the district would answer parent questions and address parent concerns about graduation and student performance at the student’s annual IEP meeting on May 9, 2023.

In an update to its response to the complaint, the district provided a proposed resolution to the parents in an email dated May 10, 2023 following a May 9, 2023 IEP meeting. That response stated: “Parents were informed that disciplinary procedures would be activated if they withdrew the parent agreement entered into on March 6, 2023; that was, to receive services in an alternate location in lieu of a disciplinary hearing. Under the new IEP [the student] will continue to participate in-person at Washburn Tech but now for a full day rather than 1/2 day of classes. [The student] will also receive in-person tutoring for [the student’s] English class as indicated in the IEP.
dated May 9, 2023. To Resolve: Parents were provided parent's rights and assured that [the student] would be eligible for services, although in an alternative setting, if they decided to withdraw the parent agreement to activate the disciplinary procedures, regardless of the outcome of a subsequent hearing.”

Findings

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

The parents and the district agree that the last IEP meeting for the student was held on September 15, 2022 and the parents signed a prior written notice giving their consent on September 16, 2022. The parents and the district agree that the student began online school on October 12, 2022.

The parents and district agree and documents show that the student was permitted by the court to attend school and school related events with approval from Youth Services after December 7, 2022. The parties agree that the restriction from being present on school property was removed by the court. The parent and the district agree that the district notified the parents in writing that the student was “not in good standing” on December 12, 2022.

The parent and district agreed that a meeting between the parents and school principal occurred on March 3, 2023 during which the alternative proposal to expulsion was provided to the parents. The parent and district agreed that the principal created the proposal and the parents were permitted to offer two amendments to it. The parents reported and the district's documentation affirmed that the parents were informed that the district had decided to move toward a hearing to suspend or expel the student unless they did not sign the alternative proposal to expulsion by the following school day. The parents claimed that they were informed that a hearing was to be held on or by March 10, 2023 for the student’s expulsion. The parents and the student signed the proposal on March 6, 2023.

The parent and district agreed, and the document showed, that the alternative to expulsion proposal lists the following conditions: (1) the student continues to receive the student’s education through Washburn Tech and the online courses offered by the district; (2) the student remains “not in good standing” and remains off campus for the remainder of the student's school career; (3) the student will be allowed to graduate by meeting the required state of Kansas requirements or a reduced number of credits; (4)
the district would allow the student to acquire the student’s credits early and finish the student’s senior year at a skills program at Washburn Tech; (5) if permitted by conditions set by the court, the student could drive to the program (added by parents); (6) a small private graduation ceremony could be provided by the district; and (7) the issue of graduation ceremony participation can be revisited at a later time (added by parents).

The parents reported that no discussion of IDEA discipline provisions was provided to them at the March 3, 2023 meeting. The principal’s notes of the March 3, 2023 meeting provided no documentation that the IDEA discipline provisions were discussed.

The parent and district agreed that no special education staff were present at the March 3, 2023 meeting, nor was there an IEP meeting held at that time.

**Applicable Regulations and Conclusions**

According to K.S.A. 72-3433(a)(3), school personnel may order a change of placement to an appropriate interim alternative educational placement for not more than 186 school days if it is determined that the student’s violation of the code of conduct was not a manifestation of their disability, if the disciplinary procedures are applied in the same manner as would be applied to children without disabilities, except that services must be provided.

When considering a long term removal, as would be the case if the district proceeded to a hearing under K.S.A. 72-8901(d) (the statute mentioned by principal) and the student was expelled or suspended long term, the district must: (1) notify the parents and provide them with a copy of the Parent’s Rights notice no later than on the day the decision is made to make a removal that constitutes a change of placement (K.S.A. 72-3433(d)(1)); (2) on the 11th day of removal, the school must begin providing services, and the IEP team rather than school officials decides on the service and their provision; (3) the school, parent and IEP team members determine if the student’s violation of the school’s code of conduct was a manifestation of their disability; (4) provide the parent with prior written notice of the meeting and the services to be provided during a disciplinary removal (K.A.R. 91-40-25); and (5) the IEP team, including the parent, determines the special education and related services to be provided during the removal, although parental consent for the disciplinary change in placement is not required. (K.A.R. 91-40-27(a)(3)).

The Office of Special Education Programs states, in Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions (July 19, 2022),
that when a parent of a child with a disability agree with school personnel about a change of placement after a code of conduct violation has occurred, the change of placement is not considered a removal under the discipline provisions. So, when school personnel and parents agree that a different educational placement better allows the IEP to be implemented and FAPE provided, a new placement would not be considered a change of placement in the context of the discipline provisions. OSEP continues: “Such changes in placement remain subject to the placement requirements in 34 C.F.R. § 300.116 and the prior written notice requirements in 34 C.F.R. § 300.503” (p. 14).

In this case, although the district met to alter the student’s IEP in October 2022 to accommodate the conditions required by the student’s court conditions, the district failed to change the student’s placement by holding an IEP team meeting including the parents, providing prior written notice of changes in the IEP, and gaining parental consent for material changes in services. Therefore, it is found that the parents and school did not agree that a different educational placement would better allow the IEP to be implemented and FAPE to be provided.

Subsequently, when the student’s court ordered conditions were changed in December, 2022 to allow the student to return to school property, the district determined that the student was “not in good standing” and it did not permit the student to return to the school. At this point, the student was available to return to school property and to the placement determined by the September 15, 2022 IEP meeting if the school had permitted them to do so. Again, the district failed to hold an IEP meeting to change the student’s placement, instead requiring the student to continue in online classes with little to no services being provided by the school.

Furthermore, the district chose not to apply IDEA’s discipline provisions when offering the alternative to expulsion plan for the student’s school completion. Instead, they offered the parents and the student a plan that continued the student’s current plan of study (online courses and Washburn Tech enrollment), continued the student’s “not in good standing” according to the code of conduct, and set out the conditions for the student’s school completion mainly focused on restricting presence on school grounds, along with extracurricular and graduation ceremony participation. Although the parents were permitted to make small alterations in the plan authored by the principal, they reported that they were informed that failure to sign ensured that the district would move toward a hearing to expel the student during the following week.

However, IDEA’s discipline provisions apply to students with disabilities who have code of conduct violations that warrant the consideration of long-term suspension or
expulsion at the point the district determines they will hold a hearing. At the time of the
decision to move to a hearing, the district is required to enact the discipline provisions
of IDEA: to notify the parents of their rights, to ensure that the student’s services are in
place after the 11th day as determined by the IEP team, and to meet with the IEP team
to fulfill the duties noted above. In this case, although the principal’s notes used
suggestive language (“looking to move toward a hearing”), the parents reported a clear
impression that the hearing on the student’s expulsion would be held within the next
week of school, noting specific dates. School officials are well aware of their
responsibilities to both balance the need to ensure school safety and protect against
violating the protections of IDEA for students with disabilities. School officials must
provide full information on the IDEA discipline provisions when offering an alternative to
expulsion plan. If they do not, parents cannot give informed consent based on full
knowledge of the situation and potential courses of action.

Based on the foregoing, according to IDEA and Kansas special education regulations it is
substantiated that the district failed to follow the discipline procedures as outlined in
IDEA when removing the student from school.

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. 300.101 requires that FAPE must be available to all children
between the ages of 3 and 21, including children who have been suspended or
expelled from school as provided for in 300.530(d).

In this case, evidence supports the finding that the district did not provide the services
specified in the student’s IEP dated May 15, 2022 and amended in a meeting and with
Prior Written Consent on September 16, 2022.

(B) Federal law at 34 C.F.R. 300.503, K.S.A 72-3421 and K.A.R. 91-40-26 require that Prior
Written Notice must be provided when any action is proposed or refused by an agency.
Federal law at 34 C.F.R. § 300.116(a)(1) requires an IEP team to make placement
decisions based on the IEP, and KAR 91-40-27(g) requires parental consent for making
a material change in services to, or a substantial change in the placement of an
exceptional child.

In this case, evidence supports that, at the time of the October 16, 2023 amendment
without a meeting to change the IEP, a substantial change of placement and material change of services occurred. At that point, the district was required to provide Prior Written Notice and request parental consent for the material change in services and substantial change in placement. No evidence suggests that Prior Written Notice or an IEP amendment was offered to the parents for their consent to these changes.

Federal law at 34 C.F.R. 300.323 (a) and K.S.A. 72-3429(a)(2) require an IEP must be in effect at the beginning of each school year for eligible students.

In this case, evidence substantiates that a gap in the student's IEP occurred when the district and parent failed to agree and to put into place the student's IEP dated May 9, 2023.

Federal law at 34 C.F.R. 300.530 and 34 C.F.R. 300.536 set out the discipline provisions of IDEA, including change of placement for disciplinary reasons.

In this case, evidence supports that the district failed to follow IDEA provisions to change the student's placement when it determined that a hearing to expel the student was going to be held and required the parents to sign an alternative to expulsion agreement in order to prevent the hearing and threatened expulsion.

Based on the foregoing, the district is directed to take the following actions:

1. Within 15 calendar days of the date of this report, the district shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:
   a. Comply with federal regulations at 34 C.F.R. 300.101 requires that FAPE must be available to all children between the ages of 3 and 21, including children who have been suspended or expelled from school as provided for in 300.530(d).
   b. Comply with federal regulations at 34 C.F.R. 300.503 that require prior written notice for special education actions.
   c. Comply with federal regulations at 34 C.F.R. 300.323 (a) that require IEPs to be in effect for all eligible students at the beginning of the year.
   d. Comply with federal regulations at 34 C.F.R. 300.530 and 300.536 that require procedures for change of placement for disciplinary reasons.

2. By June 30, 2023, the district will submit an assurance that they will offer to the parent the following services during the 2023-24 school year: (a) 130 minutes each week of direct academic support for the student's upcoming English class; (b) 15 minutes of social work services each week to coach the student on perseverance to complete any assignments and negotiate personal interactions that he finds frustrating and (c) 4,536 minutes of compensatory education and related services (16.8 weeks from December
12, 2022 to May 9, 2023 at 270 resource room minutes) till the time of the student's May, 2024 graduation as described below.

a. The parent can refuse some, none, or all of the compensatory education offered by the district.

b. The content of the compensatory education and related services shall be determined by the parent and the student, directed toward the student’s 2022-23 IEP goals of (a) stress reduction and conflict resolution skills, (b) interpersonal communication to avoid conflict and (c) organization of school work; or toward the student's success in academic courses, technical courses or transition activities.

c. Compensatory education may be completed during the 2023 summer and 2023-24 school year if the parent agrees.

3. By June 30, 2023, the district will submit (a) an assurance that the parents have accepted (or rejected) the services in the proposed IEP dated May 9, 2023, (b) the prior written notice for the IEP and the number of the 4,482 minutes compensatory education accepted by the parent, and (c) a plan to have bi-weekly supervisory monitoring that the direct services in the IEP and the agreed upon compensatory education are being implemented during the 2023-24 school year.

4. By October 15, 2023; December 15, 2023; and March 15, 2023, the district will submit updates on the student's educational services being provided, as shown in the supervisory plan.

5. By July 15, 2023, the district will submit a plan to review prior written notice, placement requirements and the requirement that IEPs be continually in place through the school year with new and veteran staff including the staff at the student's school at the August, 2023 professional development to ensure that staff understand that prior written notices must be sent upon completion of an IEP or an IEP amendment, regardless of the circumstances of that meeting, and that services must be continually in place for eligible students. Professional development material, agendas, and attendance will be submitted to SETS within 30 days of the completion of the training.

6. By July 15, 2023, the district will submit a plan to review IDEA discipline provisions with building administrators and other relevant administrative personnel, including those at the high school. Professional development material, agendas, and attendance will be submitted to SETS within 30 days of the completion of the training.
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

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)