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

The complaint is against USD #418 (McPherson Public Schools). In the remainder of the report, “USD #418,” the “school,” the “district” or the “local education agency (LEA)” shall refer to this responsible public agency.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE and USD #418 received the complaint on May 15, 2023 and the timeline to investigate the allegations ended on June 14, 2023.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on May 16, 2023 as part of the investigative process.

The following school district staff responded to interview questions in writing via email during the investigation:

- Alyssa Wistuba, General Education Teacher
- Kaedy Page, High School Counselor
- Lois Little-Winter, Audiologist
- Linda Herring, Speech/Language Pathologist
- Katherine Cooper, School Psychologist
- Brandt Busse, Special Education Teacher
In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. While all of these documents were used to provide background and context, the following materials were used as the basis of the findings and conclusions of the investigation:

- Section 504 Student Accommodation Plan dated April 7, 2022
- Psychological Evaluation completed by James Vincent, Ph.D., Licensed Psychologist at the Therapy Center in Wichita, Kansas dated June 2, 2022
- Email dated July 19, 2022 at 4:34 p.m. written by the mother to Audrey Herbst, High School Principal
- Email dated July 20, 2022 at 8:18 a.m. by Dr. Herbst to the mother
- Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated August 2, 2022
- Electronic Signature Report showing both the mother and father provided electronic consent for the proposed evaluation on August 4, 2022
- Notice of Special Education Meeting dated September 23, 2023 scheduling an eligibility determination meeting for October 7, 2022
- Multidisciplinary Evaluation Planning Form completed at the October 7, 2022 eligibility determination meeting
- PWN for Identification, Special Education and Related Services, Educational Placement, Change of Services Change in Placement, and/or Request for Consent dated October 7, 2022
- Section 504 Student Accommodation Plan dated November 7, 2022
- PowerSchool attendance and grade report for the 2022-23 school year
- 2022-23 FastBridge Benchmark Reporting for math and reading
- 2022-23 school calendar for USD #418
- Response to the Allegations dated May 23, 2023 written by Melissa Strathman, Director of Special Education for USD #418

**Background Information**

This investigation involves a seventeen-year-old male student who was enrolled in the eleventh grade at McPherson High School in USD #418 during the 2022-23 school year. He previously received special education services due to a congenital hearing loss and speech/language delays but was dismissed from special education services during the 2015-16 school year when he was in fourth grade.

The student was evaluated in February 2017 by Teri Smith, Ph.D. at the Kansas University Hospital and diagnosed with Attention Deficit Hyperactivity Disorder (ADHD)
Combined Type and Disruptive Mood Dysregulation Disorder (DMDD). A previous diagnosis of Autism Spectrum Disorder was also documented at this time.

At the end of the tenth grade, USD #418 developed a Section 504 Student Accommodation Plan for the student to address his hearing loss and concentration issues. At that time, the following accommodations were put into place: 1) Seating in the front of the room; 2) Speak to his right ear . . . seat him on the left side of the room; 3) Organization techniques including use of a folder system; and 4) Motivational techniques including screen time reward at home for completing assignments.

The student was evaluated on June 2, 2022 by James Vaughn, Ph.D. at the Therapy Center and was diagnosed with Autism Spectrum Disorder with deficits in pragmatic language and without intellectual impairment.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)). This investigation will only address concerns that occurred after May 15, 2022.

Based upon the written complaint, the parent raised one issue that was investigated.

**ISSUE ONE:** The USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures to conduct a special education evaluation of the student during the 2022-23 school year.

It is noted that the parent also made allegations that district staff are not following the Section 504 Student Accommodation Plan on a consistent basis. However, this allegation will not be investigated because it does not fall under the IDEA regulations and this investigator has no jurisdiction to investigate such complaints. The parent was provided contact information regarding filing a complaint with the Office for Civil Rights, which does have the authority and jurisdiction to investigate complaints related to Section 504 of the Rehabilitation Act.
Positions of the Parties

The parent stated that requests for a special education evaluation were initiated during the fall of the 2021-22 school year but these were denied multiple times. In April 2022, USD #418 acknowledged the student had a disability and developed a Section 504 Student Accommodation Plan to address concerns with his hearing loss and concentration.

During the summer of 2022, the parent obtained an outside evaluation at his own expense. At that time, the student was diagnosed with Autism Spectrum Disorder and the parent believed the student needed to receive special education services to address adaptive behavior, communication, and socialization skills. The parent shared the results of that evaluation with USD #418 on July 19, 2022 and requested a special education evaluation at that time. The parent provided written consent for a special education evaluation on August 3, 2022.

On October 7, 2022, the parent shared that USD #418 determined that “his IQ was too high for them to implement an IEP.” The parent stated,

   I would like the school to acknowledge he does have an intellectual disability and needs further assistance with special education classes due to his Adaptive skills being in the 1st percentile.

USD #418 acknowledged that the mother shared the results of the Therapy Center evaluation with district staff on July 20, 2022 and requested a special education evaluation at that time. The parent provided written consent for a special education evaluation on August 4, 2022 and the eligibility determination meeting was held on October 7, 2022. At that time, the multidisciplinary team determined the student did have a disability but was not in need of specialized instruction. USD #418 continues to address the student’s disability-related needs through a Section 504 Student Accommodation Plan.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #418.

An email dated July 19, 2022 at 4:34 p.m. written by the mother to the high school principal documents that a copy of the Therapy Center Evaluation Report was provided to the LEA and that the parent was requesting a special education evaluation. The high
school principal replied on July 20, 2022 at 8:18 a.m. indicating that the special education evaluation would begin when staff returned from the summer break in August.

The school psychologist reported that she contacted the mother when she returned to work on August 2, 2022 to discuss the request for an evaluation. She stated:

I spoke with the mother on the phone regarding the concerns. I also reviewed his current 504 and noticed the hearing concern. I then reached out to the McCSEC [McPherson County Special Education Cooperative] Audiologist & Teacher of the Deaf/HH [Hard of Hearing] to make them aware. An outside evaluation was also provided by the parent and used to support the school evaluation.

A PWN dated August 2, 2022 requesting consent for a special education evaluation was provided electronically to the parents on that same date. The PWN proposed additional assessment in the areas of social/emotional, general intelligence, and academic performance. All other areas reflected that current information and existing data were available and there was no need for any additional assessment in those areas. Records show the mother signed consent on August 3, 2022 at 11:40 a.m. and that the father signed consent on August 4, 2022 at 2:35 a.m.

The 2022-23 USD #418 Public Schools Calendar for the 2022-23 school year shows the first day school was August 16, 2022. Documentation shows the eligibility determination meeting was held on October 7, 2022, which is a total of 38 school days.

The Multidisciplinary Evaluation Planning Form created on October 7, 2022 reflects information collected during the review of existing data including parent report and results of the Therapy Center Evaluation Report completed on June 2, 2022 by Dr. Vaughn including the Childhood Autism Rating Scale, the Autism Spectrum Rating Scale for Parents, the Autism Diagnostic Observation Schedule, the Vineland Adaptive Behavior Scales, the Integrated Visual and Auditory Continuous Performance Test, and the Wechsler Intelligence Scale for Children (WISC-V). Results of assessments completed with written consent by the district included Adaptive Behavior Assessment System, the Behavior Assessment Scale for Children, the Kaufmann Tests of Educational Achievement, FastBridge screening data as well as classroom observations conducted on August 17, 2022 and September 26, 2022.

The report also included a summary of his current classroom performance showing he had two missing assignments in math, two assignments in English, and three assignments in science. His grades as of October 7, 2022 were as follows:
Art I: A (97%)
Spanish I: A+ (99%)
Geometry: C- (72%)
US History: A (96%)
Industrial Activities: A- (90%)
English III: C+ (79%)
Environmental Science: B (83%)

The Multidisciplinary Evaluation Planning Form shows the multidisciplinary team considered the eligibility criteria for the following categories of exceptionality: Specific Learning Disability, Hearing Impairment, Autism, and Other Health Impaired. The report reflects discussion and decisions related both prongs of the eligibility determination: 1) whether a disability exits and 2) whether the student required special education instruction as a result of that disability.

Through the written interview questions, all six school employees of USD #418 who attended the October 7, 2022 eligibility determination meeting reported discussions regarding each category of exceptionality. While the student met Prong 1 of the Autism, Hearing Impairment, and Other Health Impairment categories due to his medical diagnoses, the team determined the student did not meet Prong 2 of the criteria because no specialized instruction was required for the student due to any of the disabilities.

The special education teacher stated:

"The student's lower scores in social skills, functional communication, and adaptive behavior do not affect his ability to be successful in the classroom. It was observed that despite having low scores in social skills Kayden was able to communicate with teachers and peers when needed to understand the material or complete assignments. Kayden has shown great progress in the general education classroom by maintaining a high-grade point average."

The school psychologist stated,

"At the time of the evaluation, the student was making adequate progress within the general education curriculum and setting. This was evidenced by teacher report, his current grades, and standardized assessment results as well as through district FastBridge benchmarking. Teacher BASC [Behavior Assessment Scale for Children] results indicated no concerns present in the school setting. Two observations indicated that the student was interacting appropriately with"
peers and adults. Observations indicated that the student was able to remain on task and complete assignments within the general education settings. Teachers reported that once the student was familiar with adults and peers he would open up and interact appropriately. He did keep to himself but when asked to participate in small groups or with peers, he would. He was reported to have friendships by teachers and in a student interview with the student.

The speech/language pathologist stated,

Although his social language scores were below average, they were not impacting his performance in the general education curriculum. This was evidenced through the teacher reports that Kayden was having difficulty communicating and would be agitated when the mask mandate was in effect, but since masks are no longer required he is able to communicate with teachers and has had more positive interactions with his teachers. They feel that he relies on lip reading which was hindered during the mask mandate.

The report includes the following recommendations resulting from the evaluation:

1. Continuation of the 504 [student accommodation plan]
2. Due to medical diagnosis, the student could benefit from a hearing break throughout the day
3. Due to medical diagnosis, the student could benefit from shorter assignments where large amounts of auditory processing is needed
4. Due to social concerns, the student could benefit from targeted sessions with the school counselor
5. Due to attention concerns, the student could benefit from continuation of limited technology access at school
6. Accommodations should be made in all classrooms in regards to preferential seating, background noise minimized, good lighting, keywords and concepts emphasized good lighting, keywords and concepts emphasized, repeated and/or rephrased directions, and the use of closed captioning.

USD #418 provided the parent with PWN refusing to identify the student as a student with a disability in need of special education instruction on October 7, 2022.
Federal regulations implementing the IDEA at 34 C.F.R. 300.301(b) allow the parent of the child to make a referral for a special education evaluation. Federal regulations at 34 C.F.R. 300.502(c)(1) require school districts to consider the results of an independent education evaluation obtained by the parent and shared with the district.

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

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

Federal regulations at 34 C.F.R. 300.321(a) require that an IEP team, at a minimum, must consist of the parent, an LEA representative, a general education teacher, a special education teacher, and a person who can interpret the instructional implications of evaluation results.

Following the review of existing data, federal regulations at 34 C.F.R. 300.503(a)(1) require school districts to provide parents with prior written notice a reasonable time before they propose to initiate an evaluation of a child who has or is suspected of having a disability under the IDEA.

Once written consent for the proposed initial evaluation is received by the school district, the agency has 60 school days to complete the evaluation and determine eligibility as required by state regulations at K.A.R. 91-040-8(f). Following the eligibility determination, the parent must once again be provided with prior written notice a reasonable time before the district refuses to change the identification of a child per federal regulations implementing the IDEA at 34 C.F.R. 300.503(a)(2).
In this case, documentation and interviews show the parents obtained an independent educational evaluation at the Therapy Center on June 2, 2022 at their own expense. This evaluation was shared with the district on July 19, 2022 and the mother made the initial request for a special education evaluation on that same date via email. The district initially responded to the request on July 20, 2022 explaining that staff would not be in the district until August due to the summer break.

On August 2, 2022, the school psychologist contacted the mother to discuss the outside evaluation and to obtain her input. The school psychologist provided the parents with an electronic version of a PWN on this same date proposing to conduct a special education evaluation and requesting consent based upon this conversation, a review of the outside evaluation, and records review. There is no documentation to support that the IEP team, which at a minimum must include the parent, LEA representative, general education teacher, special education teacher, and person to interpret the results of any assessments, ever met or conferred regarding the review of existing data prior to the parent being provided with the PWN created by the school psychologist proposing a special education evaluation and requesting consent.

Written consent for the evaluation was provided by the parents on August 3 and 4, 2022 and the eligibility determination meeting was held on October 7, 2022 which is well within 60 school days from the date of parental consent.

The IEP team determined that the student had multiple medical diagnoses that could identify him as having a disability under the IDEA; however, the student did not need specialized instruction as a result of any disability resulting from a medical diagnosis. The IEP team also determined the student did not meet the eligibility criteria for having a specific learning disability because his ability and achievement were commensurate as measured by standardized assessment.

It is noted that the parent specifically wanted the school to acknowledge that the student has an intellectual disability because of the significant delays in pragmatic language, adaptive behavior, and social skills. State regulations at K.A.R. 91-040-1(oo) define “intellectual disability” as follows:

> Significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

Documentation shows the WISC-V score from the Therapy Center evaluation was used as existing data to obtain a standardized measure of the student's cognitive abilities.
Standard scores are based on a mean of 100 and a standard deviation of +/-15 which means that average scores would fall between 85 and 115. Summarized testing showed the student’s full scale IQ score was 96 which falls within the average range and would not be considered “sub-average general intellectual functioning”.

Based upon interviews, it appears that the IEP team did briefly discuss this category of exceptionality as a possibility for the student because the parent stated, “his IQ was too high for them to implement an IEP”. Documentation shows that because the student’s IQ score of 96 did not fall within the sub-average range, this category could not be considered as an area of suspected disability under the Prong 1 criteria. While including this category in the Multidisciplinary Evaluation Planning Form would have made it clearer to the parents, the district was not required to consider and document every possible IDEA disability category during a special education evaluation in the evaluation report.

Interviews and documentation show the evaluation was comprehensive enough to address all areas of suspected disability in regards to both prong one and prong two of the eligibility criteria for Specific Learning Disability, Hearing Impairment, Other Health Impairment, and Autism. The information considered during the evaluation came from a variety of sources including the results of the independent educational evaluation paid for by the parent and shared with the district.

USD #418 provided the parents with a PWN refusing to identify the student as eligible for special education and related services under the IDEA. Parent consent is not needed for this action and there is no indication that the parent filed for due process within ten calendar days demonstrating disagreement with this proposed action.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to follow the appropriate procedure to conduct a review of existing evaluation data on the child as part of the special education evaluation process. Specifically, USD #418 failed to have the IEP team, which includes the parent, an LEA representative, a general education teacher, a special education teacher, and a person who can interpret the instructional implications of evaluation results, to determine what additional data, if any, were needed to determine whether the child is a child with a disability when only the school psychologist and parent conferred on August 2, 2022 to make this determination. However, it is noted that this procedural error did not negatively impact the district’s ability to conduct a sufficiently comprehensive evaluation to identify all of the child’s special education and related service needs as described in the Multidisciplinary Evaluation Planning Form.
Corrective Action

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

a. Federal regulations at 34 C.F.R. 300.305 (a)(1-2) which require that an IEP team must conduct a review of existing evaluation data on the child in order to identify what additional data, if any, are needed to determine whether the child is a child with a disability.

In this case, USD #418 failed to have the IEP team, which includes the parent, an LEA representative, a general education teacher, a special education teacher, and a person who can interpret the instructional implications of evaluation results, to determine what additional data, if any, were needed to determine whether the child is a child with a disability when only the school psychologist and parent conferred on August 2, 2022 to make this determination.

Based on the foregoing identified violations, USD #418 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #418 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. 300.305 (a)(1-2) which require that an IEP team must conduct a review of existing evaluation data on the child in order to identify what additional data, if any, are needed to determine whether the child is a child with a disability.

2. No later than August 1, 2023, USD #418 shall review its procedures and practices related to including and documenting that the IEP team participated in the review of existing data to determine what additional assessments, if any, are needed to determine whether the child is a child with a disability and in need of special education and related services. USD #418 will update or create a written procedure / checklist for school psychologists to follow during the 2023-24 school year to ensure that appropriate procedures are followed and documented when conducting a review of existing data as part of a special education evaluation process. USD #418 will share this written procedure / checklist with the school psychologists within the district no later than August 1, 2023. USD #418 shall provide SETS with a copy of the written procedure / checklist and proof of dissemination no later than August 15, 2023.
3. No later than August 30, 2023, USD #418 shall conduct a training for school psychologists employed by the district for the 2023-24 school year regarding the IDEA initial evaluation process, specifically conducting the review of existing data by meeting or conferring with the IEP team, as well as the new written procedure / checklist. USD #418 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #418 will provide SETS with any handouts and/or a copy of the presentation.

4. It is noted that no individual corrective action is ordered at this time as the documentation and interviews found USD #418 did conduct an evaluation of the student which was sufficiently comprehensive to identify all areas of suspected disability and the need for special education and related services on October 7, 2022.

5. Further, USD #418 shall, within 10 calendar days of the date of this report, submit to Special Education and Title Services one of the following:
   b) a statement verifying acceptance of the corrective action or actions specified in this report;
   c) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
   d) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f). Due to COVID-19 restrictions, appeals may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

   **Right to Appeal**

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

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

**Nancy Thomas**

Nancy Thomas, Complaint Investigator
K.A.R. 91-40-51(f) Appeals.

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

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

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

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