This report is in response to a complaint filed with our office on behalf of the student by the parent, who along with her husband, the father and the mother, serve as the student's family. In the remainder of the report, the student will be referred to as “the student.” The parent is the student steppmother and in the remainder of this report will be referred to as “the complainant” or “the stepparent.” The parent is the student father and in the remainder of this report will be referred to as “the father” and the mother is the student mother in the remainder of this report will be referred to as “the mother.” When referring to the student mother, father, and stepparent in this report they will be referred to as “the family.”

The complaint is against USD #259 (Wichita Public Schools) who provides general and special education to students in their district and are the responsible agency. In the remainder of the report, “school” or the “district” may be named, but in all cases shall refer to 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 May 12, 2023 and the 30-day timeline ends on June 12, 2023. Subsequently a week extension requested by the complaint investigator was granted and the new timeline ended June 19, 2023.

**Investigation of Complaint**

Donna Wickham, Complaint Investigator initially interviewed the parent by telephone on May 15, 2023. Additionally, the Complaint Investigator exchanged emails, texts, and phone calls and messages with the mother between May 13, 2023 – June 5, 2023.
The Complaint Investigator exchanged emails with Dr. Shores between May 13, 2023 through June 1, 2023 to gather additional information and to clarify documentation provided by the district.

This investigation addressed three issues. Two additional issues were identified but were not investigated because they did not fall under the IDEA regulations. The following materials submitted by the family and district were carefully read and used in consideration of the issue. They include:

- Individualized Education Program dated May 18, 2022
- 2022-2023 Special Education Student Contact Log with dates beginning August 16, 2022 through May 10, 2023
- 2022-2023 General Education Student Contact Log with dates beginning October 3, 2022 through May 17, 2023
- 2022-2023 Quarters 1-3 Report Cards
- Email from Mr. Mark Sanders, Special Education Teacher, Brooks Magnet Middle School to family dated November 17, 2022 at 4:06 p.m.
- IEP & 504 Team Meeting Notes dated November 21, 2022
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated November 21, 2022
- Student Progress Report dated December 16, 2022
- Email from Mr. Erich Stephen, Data Leader, Brooks Magnet Middle School to Mr. Sanders dated January 31, 2023 at 12:50 p.m.
- Email exchange between Mr. Stephen, Mr. Sanders and stepparent dated February 1, 2023 between 10:03 a.m. and 3:31 p.m.
- IEP Amendment Between IEP Meetings dated February 3, 2023
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated February 3, 2023
- Email exchange between Mr. Sanders and Ms. Megan Story, school counselor, Brooks Magnet Middle School dated February 3, 2023 at 4:23 p.m. and February 7, 2023 at 10:43 a.m.
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated February 7, 2023
- Email exchange between Ms. Story and family dated between February 21, 2023 at 2:14 p.m. and February 23, 2023 at 8:45 a.m.
Email exchange among stepparent, Ms. Becky Douglas, Social Worker at Partial Day Program, ascension, and Ms. Story dated February 24, 2023 between 12:31 p.m. – 1:51 p.m.

Individualized Education Program and IEP Meeting Notes dated February 28, 2023

Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated February 28, 2023

Email exchange between stepparent and Mr. Sanders and Ms. Story dated between March 1, 2023 at 1:11 p.m. and 1:50 p.m.

Email from Mr. Sanders to IEP team dated March 3, 2023 at 1:19 p.m.

Student Progress Report dated March 6, 2023

IEP & 504 Team Meeting Notes dated March 22, 2023

Email from Ms. Abigail Dedeaux, Social Worker, Brooks Magnet Middle School to family dated March 23, 2023 at 8:29 a.m.

Email from Ms. Amy Godsey, Mediation/Due Process Supervisor to Mr. Walter Givens, Jr. Principal, Brooks Magnet Middle School; Dr. Erica Shores, Mediation and Due Process Supervisor; Ms. Holly Yager, Program Specialist / Psychological Services; Ms. Hilary Trudo, Social Work Services Program Specialist; Ms. Rebecca Werner, Director of Related Services, Audiology, Hi, VI, OT, PT, Speech; Ms. Dedeaux; and Ms. Carina Riley, Special Education Campus Support dated March 29, 2023 at 2:27 p.m.

Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated March 30, 2023 in response to March 1, 2023 request.

Email exchange between parent and Ms. Abby Dedeaux dated March 27, 2023 at 7:52 a.m. and 8:29 a.m.

Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated March 30, 2023 in response to March 28, 2023 request with April 6, 2023 parent consent signed.

Email exchange between parent and Ms. Dedeaux dated March 30, 2023 at 10:54 a.m. and 11:54 a.m.

Email exchange between Ms. Dedeaux and family dated between March 30, 2023 at 3:16 and March 31, 2023 at 9:58 a.m.

Email exchange between family and Ms. Dedeaux dated April 4, 2023 at 2:55 p.m. through April 5, 2023 at 12:20 p.m.

Individualized Education Program dated April 11, 2023
This investigation involves a 13-year-old eighth grade student at a middle school in the district. He met the eligibility criteria as a student with autism and has additional diagnoses of Attention-Deficit/Hyperactivity Disorder (ADHD-combined type), Obsessive
Compulsive Disorder (OCD), and other specified depressive disorder. The student has delays in his emotional response, adaptation to change, and fear or nervousness. He may show signs of anxiety or have outbursts in class. Due to his OCD, he experiences intrusive thoughts which may affect his behavior and emotional state.

The student has a transition plan and members of his IEP team are conducting an FBA. His April 11, 2023 IEP lists four goals in study skills, reading, writing and behavior. For all core classes, he receives services in the class within the class (CWC) setting with non-exceptional peers. Additionally, he receives counseling and speech services.

**Issues**

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

Based upon the written complaint and an interview, the parent raised three issues that were investigated for the 2022-2023 school year.

**ISSUE ONE**: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond appropriately to a parent request for a functional behavioral assessment.

**Positions of the Parties**

The complainant alleged that they requested an FBA assessment in writing in an email and the request was ignored for an extensive amount of time. The approval was only given when an email asking for approval or denial in writing was requested. They stated this took weeks for a response.

USD #259 responded that the family sent an email on March 1, 2023 requesting an FBA for the student. At a March 22, 2023 IEP meeting following spring break the team discussed the FBA and agreed to not conduct an FBA at this time. Before the school had provided a refusal to conduct the FBA following the March 22, 2023 team decision the family reconsidered and again requested the FBA. The IEP team agreed to move forward with an FBA and provided the proper PWN and request for consent.
Findings of the Investigation

The district SPED Student Contact Log and emails documented and district and family confirmed that the family requested an FBA on March 1, 2023 and the school counselor responded that the school social worker will contact the family about the IEP meeting and to discuss the FBA and re-evaluation, “... The FBA and a re-eval do take some time and cannot be completed with just an IEP meeting. At the IEP meeting we can discuss your concerns and requests; how we can support [the student] during the re-eval period, and any other needs.”

The Meeting Notes from the March 22, 2023 IEP Team meeting documented that the IEP team discussed the parent’s March 1, 2023 request for an FBA for behavioral concerns as follows, 1. “Parent requested FBA for behavioral concerns.” 2. “Parents note that [student] has made progress socially/emotionally since hospitalization and using coping skills to decrease potential for escalation behaviorally.” 3. “Parents report that he engages in attention-seeking behaviors to gain positive or negative attention as well as control over his environment.” 4. “[Student] refuses to use behavioral tracking sheet. Staff will transition to electronic behavioral tracking form filled out by teachers to gather data.”

The Meeting Notes from the March 22, 2023 IEP Team meeting documented that the IEP team determined the next steps as: “Currently, there is not sufficient data to support moving forward with an FBA at this time. Over the next 3 weeks of trial period, an Individual Problem Solving Process will be initiated. Staff will collect electronic data and present it to parents at the April 11th meeting to review [student’s] progress within new interventions/accommodations. Parents report they want to wait to sign paperwork for new IEP updates until the April 11th meeting.”

Documentation from the district showed that the parents contacted the district on March 28, 2023 “to state they do in fact want the FBA. Given the circumstances, Mr. Givens has stated that the team will move forward with the FBA.”

The district reported the March 28, 2023 request for the FBA occurred before the school had provided the family with refusal to conduct the FBA they initially requested on March 1, 2023.

The district provided the family with a PWN dated March 30, 2023 that rejected the parent March 1, 2023 request for conducting a reevaluation/FBA providing a reason that the data did not warrant this action.
Documentation from district dated March 30, 2023 showed the parent questioned if the March 30, 2023 PWN rejecting the March 1, 2023 request for an FBA was the final decision from the district about conducting an FBA, stating, “Is this attachment the official rejection letter to my FBA request? I feel if this FBA request is not performed, we will need to seek outside support to help [student] access the same resources his peers are able to.”

Documentation showed that the school social worker sent an email to the family on March 30, 2023 at 3:14 p.m. stating, “Attached is a copy of the Prior Written Notice documenting your parent request for FBA as well as a copy of your parents’ rights. There will be signature requests waiting for you in ParentVue to sign, consenting to the FBA.” The district reported this PWN was in response to the March 28, 2023 parent request for an FBA.

Documentation provided by the district showed the parent contacted the district stating that the PWN and consent could not be accessed via ParentVue between March 31, 2023 and April 5, 2023. The district reported it emailed the PWN and consent signature page to the family on March 30, 2023.

Documentation showed that the stepparent signed consent for conducting the reevaluation /FBA on April 6, 2023. The parent and district agreed that the documents sent home with the student were the documents signed and returned for consent.

**Applicable Regulations and Conclusions**

Once parental consent is received to conduct evaluation the district has a 60-school-day timeline to conduct the evaluation (34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f)). The district must further respond to the parental request to conduct evaluation with a Prior Written Notice, either proposing to conduct the requested evaluation or refusing to conduct the requested evaluation (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.304(a)). Further, parents must be provided procedural safeguards to help the family understand the process. Under most circumstances, the Kansas State Department of Education considers 15 school days to be a reasonable time in which to respond to a parent’s request for an evaluation.

The federal and state regulations prescribe the role of the Functional Behavior Assessment (FBA) when a manifestation determination is held. That is not the case in this situation. In this case the family requested an FBA due to the student’s concerning behavior that was not responding to the current services. Therefore, the complaint
investigator treated the parent request for an FBA as a parent making a request for an evaluation in a specific area rather than a discipline action.

In this case there were two separate requests for an FBA, and each will be considered against KSDE’s 15 school days as a reasonable timeframe to respond to the parent's request.

The first FBA request was made on March 1, 2023 and the district provided a PWN to the family on March 30, 2023 rejecting the request. According to the USD 259 Wichita Public Schools School Year Calendar for 2022-2023 March 10-17 were not school days and therefore the district needed to respond to the family with a PWN either agreeing with or rejecting the request by March 30, 2023. The PWN rejecting the request was sent according to documentation on March 30, 2023 and therefore the timeline was met. The school break for spring break extended the timeline.

The second FBA request was made March 28, 2023 and the district provided a PWN to the family on March 30, 2023 agreeing to conduct the FBA evaluation. Again, the district met the timeline for providing a response to the family within the 15 day generally accepted timeline.

It is documented that the parent rights were distributed and that the evaluation 60 day timeline for completion is still open.

Based on the foregoing, it is not substantiated that USD #259 failed to respond appropriately to a parent request for a functional behavioral assessment. While the spring break days that are not school days did extend the time between request and response they do not count in the school’s time for consideration.

**Issue Two**

The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with appropriate PWN for the 16 things that are incorrect in the IEP.

**Positions of the Parties**

The family alleged that our student’s IEP was wholly incorrect in many areas and was not caught by the IEP support staff until we brought it to their attention. There were 16
items that we believed were incorrect. The family stated that the district recognized this and have begun to correct some of these items in a stepwise fashion.

The district responded that they provided the family with appropriate PWNs for “the 16 things that are incorrect in the IEP.” The district believes that the list of “16 things that are incorrect in the IEP” were part of an agenda for May 3, 2023 IEP continuation meeting that had 16 items on it and was sent in an email on April 28, 2023 to the family, which included concerns and/or questions Parents had sent to staff April 27, 2023, as well as items staff placed on the agenda to make sure got discussed.

Findings of the Investigation

The findings of Issue One are incorporated herein by reference.

The district and family agreed that the list of “16 things that are incorrect in the IEP” were part of an agenda for the May 3, 2023 IEP continuation meeting that had 16 items on it and was sent in an email on April 28, 2023 to the family, which included concerns and/or questions the family had sent to staff on April 27, 2023, as well as items staff placed on the agenda to make sure they were discussed.

Item 1: The family was having difficulty accessing ParentVue and the student’s progress reports were not accessible in the last IEP meeting by any parent. As a result, the family requested a copy of the last three progress reports for review by email.

Evidence Item 1

Documentation provided by the district showed the progress reports for October, December, and March for the 2022-2023 school year were sent in an email to the family on April 28, 2023.

Item 1a: In the last February 28, 2023 IEP meeting, progress reports were not provided, and the goal scores were not finalized. After reviewing the most recent IEP the family learned that the student was not meeting any of his reported goals with the exception of the behavioral goal which should be excluded since it was just recently added in the last meeting. The family stated there may be a disconnect in the current plan which could be resulting in the student not meeting any of his benchmark goals. The family wanted to know how these goals were being addressed with the student’s April 11, 2023 IEP.
Evidence Item 1a

The district reported the student showed growth/progress on his goals but stated that some life changes and challenges he experienced outside of school (moving between his parents' houses, outpatient treatment for mental health concerns, etc.) may have impacted his scores because they coincide with the timing.

Documentation from the March 22, 2023 IEP Meeting Notes and Progress Reports showed the Student was passing Math Intervention and Reading Intervention, had an F in Social Studies, a D in Technology, a D in Science, a B in Math, an A in Coding, and was Passing Advocacy. Progress Reports showed some of his IEP goal percentages went down between December and March, 2023. The May 3, 2023 Meeting Notes reported the IEP Team agreed to leave goals as drafted in the IEP provided.

Item 2) On page 2 of the February 28, 2023 IEP it stated the student’s exceptionalities but excluded the student’s diagnosis of "other specified depressive disorder" otherwise known as bipolar disorder. The student is currently being treated for Bipolar disorder. This was documented on Page 6, paragraph's 1 and 7 of his Psychology report listed in the IEP.

Evidence Item 2

The April 11, 2023 IEP documented that the “other specified depressive disorder” was listed both on p. 2 under Impact of Exceptionality and on p. 6 under Relevant Medical Information-Health Summary. It was listed on the May 8, 2023 PWN, “The IEP Team updated the Impact of Exceptionality statement by adding Other Specified Depressive Disorder."

Item 3) The family requested that the IEP team consider the outside report from St. Joseph’s hospital to determine if any specific findings or recommendations needed to be included in the IEP. Additionally, they requested that the St. Joseph’s hospital report be uploaded to the student electronic special education file.

Evidence Item 3

The May 3, 2023 IEP Meeting Notes showed that the IEP team accepted the St. Joseph discharge summary and determined to consider the full St. Joseph report at a later date.
when a full copy of the report was obtained and upload the report to the student's electronic special education file.

Documentation in a follow-up email between the school's social worker and the district's hospital liaison that it was the practice of St. Joseph that a discharge summary would be considered the full report since the student was in outpatient care.

The stepparent reported that the outside St. Joseph discharge summary has not yet been considered by the IEP team.

**Item 4** The family reported that on Page 7 of the February 28, 2023 IEP under the behavior needs heading it was incorrectly written that a "A Functional Behavior Assessment has been conducted" and also that "A Behavior Intervention Plan is not warranted, current interventions are working". The parent questioned if the FBA was completed or was it being conducted and how were these interventions working if the student’s measurable goals were not being met at their specified targets or outright failing classes?

**Evidence Item 4**

The May 3, 2023 meeting notes reported the FBA status was corrected to state that a functional behavior assessment will be completed within 60 school days of parent consent in the April 11, 2023 IEP.

The Behavioral Needs section of the April 11, 2023 IEP showed the IEP Team answered “Yes” to the question, “Does the student’s behavior impede his or her learning, that of others, or their ability to access the general curriculum?”

**Item 5** The family reported that under Physical Education Needs on p 8 of the February 28, 2023 IEP it stated that adapted PE was not needed. In response to the concerns the family had voiced earlier they requested that an accommodation be added for the student to use an alternate area to dress out due to sexually aggressive language and inappropriate comments to other students.
Evidence Item 5

Documentation showed that the April 11, 2023 IEP included the accommodation, an alternate location for dressing out when enrolled in classes that require changing clothes and the May 8, 2023 PWN documented that request and change.

Item 6) During the February 28, 2023 IEP meeting the family requested that an accommodation be added that the student be moved to a smaller group in any core classes he currently had a D or F in. This accommodation was not included in this February 28, 2023 IEP.

Evidence Item 6

The May 3, 2023 IEP Meeting Notes showed that the IEP Team reviewed edits to accommodations and parents requested wording that accommodation be changed to specify who would be providing para support/small group support when he was completing independent work and agreed to document in the plan how to support this accommodation at the school as well as a back-up plan for staff absences within the school team rather than recording it on the IEP. The Team agreed to keep the accommodation as, offer the student access to a smaller, alternative setting for testing and independent classwork.

The May 8, 2023 PWN stated that the accommodations were updated to include small group support during independent work.

Item 7) On page 13 of the February 28, 2023 IEP it was documented that the student had received ESY services in the past. This is incorrect to the family's memory.

Evidence Item 7

Documentation from the May 3, 2023 IEP Meeting Notes documented that the school verified that this was a paperwork error and corrected the box on the IEP. The April 11, 2023 IEP showed it was corrected.

Item 8) The family requested that the IEP team consider the student for ESY services as he showed active regression yearly during the summer and entering the new school year.
Evidence Item 8

The May 3, 2023 agenda documented that the IEP would consider and review data to determine if there were areas of significant functional, academic, and/or behavioral regression experienced by the student over extended breaks from school.

The May 3, 2023 IEP Meeting Notes documented that the IEP Team reviewed ESY guidance and student data/circumstances and determined that ESY services were not warranted.

The May 8, 2023 PWN documented that the district refused the parent request for ESY services for the student.

Item 9 On Page 16 of the February 28, 2023 IEP it stated that the IEP had determined the student’s current placement meets his needs. The family questioned how the student’s current placement is meeting his needs if he did not meet a single goal and at the last IEP meeting was failing three of his classes?

Evidence Item 9

The May 3, 2023 IEP Meeting notes documented that the school explained that Educational Placement referred to where the Student received his education relative to non-exceptional peers.

Documentation showed that the school asked the family if the concerns were about a specific academic or behavioral need that is occurring during the school day that would warrant a move to a more restrictive environment. It was noted that the family wished for the student to move to the adapted setting (services provided within a special education classroom with no non-exceptional peers). The district reported it reviewed academic and behavior data showing that the student was having success in the CWC setting (services provided within a general education classroom alongside non-exceptional peers) with current accommodations and services.

Documentation showed and the district reported it discussed that interventions implemented as part of the FBA process, Counseling services, and accommodations could help the student develop emotional/behavioral strategies to communicate his needs with school staff and feel more successful in the school setting. As a part of this discussion the team also reviewed his current grades. It is documented he was failing
computer coding (in which he had an A just two months before) and they discussed whether additional supports were needed.

Documentation showed the team agreed that the services of CWC for core courses will remain the same for the IEP year in order to allow for the supports of counseling, accommodations, and FBA strategies to be implemented before moving to a more restrictive environment.

The May 8, 2023 PWN documented that “[student] will continue to receive special education services for all core courses in a general education building, participating with non-exceptional peers for the same frequency and duration as his non-exceptional peers.” and refused the Educational Placement change request, including an explanation of why the action was refused, options considered and why rejected, and a description of data used as a basis for the refusal.

**Item 10** The family requested an increase counseling minutes and/or therapy services as a related service at the May 3, 2023 IEP meeting.

**Evidence Item 10**

Documentation showed that the IEP team discussed increasing the counseling minutes at the May 3, 2023 IEP team meeting by reviewing present levels, behavior data, and behavior goal data and determined he was making progress with the current services and supports. The family also requested mental health therapy services for the student.

The May 8, 2023 IEP documented that the district refused refuses to increase counseling services at this time including an explanation of why the action was refused, options considered and why rejected, and a description of data used as a basis for the refusal.

The May 8, 2023 IEP documented that “therapy” is not a related service and provided resources for community partners that offer mental health services.

**Item 11** To track the student's behavior the student was hand carrying a tracking form to be completed by his teachers. The student destroyed at least some of the forms that reported negative behavior. The family reported that his negative behavior was underreported for this reason and requested that the tracking form be completed electronically.
**Evidence Item 11**

Documentation reported that the student refused to use behavioral tracking sheet.

Documentation reported that staff will transition to electronic behavioral tracking form filled out by teachers to gather data. Further, staff will collect electronic data and present it to the family at the April 11th meeting to review the student's progress within new interventions/accommodations.

Documentation from April 12, 2023 showed that the stepparent requested that the electronic behavior tracking sheet should continue to be implemented weekly. She further requested it be listed in the IEP.

**Item 12** The family reported that a safety plan allowing the student to use an alternative passing period and/or a bathroom escort was not included in the February 28, 2023 IEP although discussion had occurred.

**Evidence Item 12**

The May 3, 2023 IEP Meeting Notes documented the team discussed an alternative passing period and use of a bathroom escort.

The April 11, 2023 IEP documented that an alternative passing period was added as an accommodation.

The May 8, 2023 PWN documented that an accommodation was added to the IEP to allow for alternative passing period.

**Item 13** The family reported that an accommodation for a smaller setting to work on assignments was not included in the February 28, 2023 IEP although discussion had occurred.

The May 3, 2023 IEP Meeting Notes documented the team discussed this accommodation.

The April 11, 2023 IEP documented that “Offer access to a smaller, alternative setting for testing and independent classwork” was added as an accommodation.
The May 8, 2023 PWN documented that this accommodation was added to the IEP.

Evidence Item 13

Item 14) The family requested to know what the FBA Target Behavior(s) will be addressed in the functional behavior assessment that was agreed upon.

Evidence Item 14

Documentation from the April 11, 2023 IEP documented the following targeted behaviors:

- off task/disruption of the learning environment;
- inappropriate verbal comments/noises (moaning, cursing at peers or under his breath, laughing at inappropriate times, mocking/mimicking other students);
- inappropriate hand gestures (flipping off others);
- over-focused on others (staring at other students, hypervigilance/repeatedly looking around and surveying his surroundings).

The family reported they were interested in the FBA focusing on target behaviors that would manage off task behaviors, decrease destructive behaviors, and encourage independent schoolwork.

Item 15) The family reported that an accommodation for Shortening assignments to show mastery was not included in the February 28, 2023 IEP although discussion had occurred.

Evidence Item 15

The May 3, 2023 IEP Meeting Notes documented the team discussed this accommodation.

The April 11, 2023 IEP documented that “Shortened assignments (reduce workload as appropriate to learning standards)” was added as an accommodation.

The May 8, 2023 PWN documented that this accommodation was added to the IEP.
Item 16) The family reported that the student’s afternoon medication was not being consistently provided to the student.

Evidence Item 16

Documentation from April 12, 2023 showed that the stepparent requested assistance in reminding the student to take his lunch medication from the nurse.

Documentation from the May 8, 2023 IEP Meeting Notes reported, “Parents want to add an (sic) accommodation to remind [student] to take his meds. Staff reports they send people to find [student] to take his meds.”

Documentation from the May 8, 2023 IEP Meeting Notes reported, “Team decided to not add accommodation, states Nurse sends adults or makes arrangements with teachers to send student to take meds.”

Parents reported “we were told there would be a three week trial from our IEP meeting on April 11th. The next meeting was on May 3rd, during this gap we were asked to get the student on an afternoon dose of ADHD medication. We had this in place and ready to go by the following Tuesday. The school only administered his medication during this timeframe between April 18th- May 3rd one to two times according to the student. When we brought it up, they said he wasn’t remembering to come get his medication and blamed him. The school said they couldn’t force a student to take their meds. I told them that the student was willing, but it was up to them to call him down for medication. They were not doing that, and per his IEP he has to be prompted to remember anything.”

Applicable Regulations and Conclusions

Federal law at 34 C.F.R. 300.503 and 72-3430 direct the district’s requirements for providing parental notice and requesting consent. The Kansas Special Education Process Manual, dated 2018 to guide districts to times in which a prior written notice is indicated for a special education action to include: initiate an evaluation, refuse to initiate initial evaluation or reevaluation, identification and eligibility determination, initial provision of IEP services (placement), reevaluation of a student, substantial change (more than 25% of student’s day) in placement, change in placement that is 25% or less of the student’s day, material change in services (25% of more of any one service) includes accommodations listed on the IEP, change in instructional methodology specified in IEP, change in service that is less than 25% of the service being changed, add a new service
or delete one completely, evaluation, reevaluation or initiate service for children parentally placed in private schools. The following actions require notification: notification of an IEP meeting, invitation of an outside agency to the IEP for secondary transition, use of Medicaid, and use of private insurance. Some of these actions require parental consent.

In this case none of the items necessitated parental consent based on the IEP team decisions but the items requiring a change to the IEP did require consent. In all cases it is found that the district provided PWN correctly for the items requiring PWN.

It is found that two of the items have not been completed according to IDEA and Kansas regulations.

Item 3, considering the outside St. Joseph's report: According to Federal regulations at 34 C.F.R. 300.305(a)(1)(i) a district must review existing evaluation data on the child, including information provided by the parents of the child. However, the school is not obligated to implement the recommendations made by the outside team.

In this case, it is found that the district has not met its obligation to date to consider the parent provided outside report. While the parent provided the discharge summary and the district agreed to consider it, a decision was made to wait until the full record was obtained. It is noted that it was only on May 8, 2023, it was learned that this was the final and official outside report with the final school day on May 24, 2023.

Item 14, involving the family in the evaluation (FBA) by specifying the target behaviors: According to federal regulations at C.F.R 300.305(a)(1)(i) and state regulations at K.A.R 91-40-8(c)(1)(A) the family should be involved in the planning of the evaluation. In this case the family has not been notified as to the specific target behaviors. It is noted that the district may be conducting the evaluation with these behaviors.

Although Item 16 was discussed during the May 3, 2023 IEP meeting and a decision made about medication the family continues to report that the student does not receive his medication regularly. While not out of compliance it would be recommended that the team discuss whether the student not taking his medication is the school's enacting its responsibility to not force a student to take a medication or the student's need for an accommodation to provide him the structure and support to manage his own health.

Based on the foregoing, it is substantiated that USD #259 failed to provide the parent with appropriate PWN for two of the sixteen things that are incorrect in the IEP.
**ISSUE THREE**: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide access to student’s educational records, specifically IEP goal progress reports, grades, and a copy of the student’s IEP.

**Positions of the Parties**

The complainants alleged that the IEP platform had not been accessible to all of the student’s parents. The stepparent was removed as an active participant so could not see quarterly goals and/or grades and the IEP during the 2022-2023 school year. The stepparent was told she did not have rights to view as a stepparent and after much persistence the district admitted that she had those rights under FERPA law and permitted her access.

USD #259 responded the student’s family had access to his educational records, including his IEP, IEP goals, IEP Progress Reports, and Grades. Grades were posted online at the conclusion of each semester, and mid-semester progress toward class grades is posted at the end of 1st and 3rd quarters. Grade Reports were posted to ParentVue at the conclusion of each semester and the school sent a ParentLink electronically to notify parents when grades were posted. The Student’s special education records were on the other side of Synergy, but Parents could gain access via ParentVue in the same way they do for non-special education records, and they would not see any difference between accessing records that were housed on one or the other sides. In addition to the parents having access to the Student’s IEP, including goals, the student’s IEP Progress Reports were contained in Synergy with access via ParentVue; however, as the school had an affirmative obligation to send IEP Progress Reports to parents, the school sent the Student’s IEP Progress Reports to Parents each quarter via their preferred delivery method. Because the school had a form signed by Parents to send other information electronically, the final IEPs were sent via emails as documented in student logs.

**Findings of the Investigation**

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

The district reported that ParentVue is an electronic platform used to provide parents access to grades and special education records such as progress reports and IEPs.
The district reported that grades were posted to ParentVue at the conclusion of each semester and at the end of the first and third quarters a mid-semester grade status was provided. The district reported that the district’s ParentLink electronically notified parents when grades were posted.

The district reported that the student had access to grades and student progress via StudentVue, the electronic platform used to provide students access to grades and special education records such as progress reports and IEPs.

Documentation showed the student had five IEPs in effect during the 2022-2023 school year, May 5, 2022 IEP; February 8, 2023; February 28, 2023; April 11, 2023; May 17, 2023.

The district reported and documentation showed the school counselor sent weekly emails of the student’s progress and included the contents of those emails in the Student Contact Log entries.

Documentation showed a campus support staff emailed the October, December, and March IEP Progress Reports to the family members on April 28, 2023 in response to family request.

The district reported and documentation from the Parent Consent for Receipt of Special Education Documents by Electronic Mail dated April 11, 2023 showed the parents signed that they indicated their preference to receive special education documents electronically. The district additionally reported that they sent the Student’s IEP Progress Reports to Parents each quarter and the final IEP via their preferred, electronic delivery method.

The special education contact log provided by the district documented that in March 2022 (predating the one year from the file date of the complaint) the SLP stated that by state law, biological parents were the only ones with educational rights. Documentation later and parent report showed that the parent worked with the district office to correctly receive access to her stepchild’s school records.

An email dated February 2, 2023 to the special education teacher documented that the stepparent reported she and the father were having issues with ParentVue.

Documentation showed that the school counselor emailed the district’s technology support on April 19, 2023 stating that “several parents experiencing a glitch with
accessing ParentVue, getting an error when in the special education side of the electronic system where student records are kept”. Documentation showed the support technician’s email reply asked for more information and told the Counselor to make sure that parents were using the newer link to ParentVue.

Documentation showed that on April 20, 2023 the school’s counselor emailed the family,

Wanted to keep you posted regarding the Parentvue (sic) issues. According to our downtown people they have to get with the manufacturer regarding the app issues. However, they’d like us to make sure parents are using the following link when on a computer (not a Chromebook, tablet, or iPad - all of these actually use a mobile version of the app software). The downtown person tested all the access links for your parentvue (sic) accounts on the test server and it appears to work when on an actual computer. Once I hear anything more about the app I will forward that information on to you all.

Documentation showed that all family members were sent the finalized IEP electronically on May 15, 2023 at 1:50 p.m.

**Applicable Regulations and Conclusions**

This issue addresses two separate components of federal and state regulations. First, if the stepparent should have had access to the student’s special education records and second, if the district completed its obligation to provide access to grades, progress notes and the student’s IEPs to the parents.

According to K.S.A. 72-3404(m) Kansas defines “parent” according to six situations.

1. A natural (biological) parent;
2. An adoptive parent;
3. A person acting as a parent; “person such as a grandparent, stepparent or other relative with whom a child lives, or a person other than a parent who is legally responsible for the welfare of a child.”
4. A legal guardian;
5. An officially appointed education advocate; or
6. A foster parent, if the foster parent has been appointed the education advocate of an exceptional child.
In this case the complainant meets the definition of parent for the student and legally has access to student records for the 2022-2023 school year along with both biological parents. Documentation provided by the district through general education and special education logs, emails and IEP signature pages demonstrated that the IEP and school teams included both parents and the stepparent in all school communications examined.

Documentation provided by the district demonstrated that one staff member in the district was incorrect in telling her that only biological parents have rights in regards with the student. It is reported by the stepparent that she had to expend extra effort to exercise those rights, but documentation during the 2022-2023 school year demonstrated that the stepparent had equal access to the student records as the biological parents.

The second part of this issue addressed parent (biological parents and stepparent) access to the IEP, special education progress reports and grades.

Federal regulations at 300.322 (f) and state regulations at K.A.R. 91-40-18(d) state that districts must provide families with a copy of the IEP free of charge. In this case the student had five IEPs in effect during the 2022-2023 school year, May 5, 2022 IEP (in effect beginning the 2022-2023 school year); February 8, 2023; February 28, 2023; April 11, 2023; May 17, 2023.

In this case it is found that the parents were provided a copy of the IEP via the ParentVue portal. Further, it was documented that a copy of the IEP was provided to the family upon request. It is noted however, that there were noted difficulties in access to ParentVue during the school year that necessitated the parents having to reach out to the district. While the district provided the requested documents in other ways it slowed down the parent’s access to the parent’s information.

Federal regulations implementing the IDEA at C.F.R., 300.320 (a)(3) and K.S.A. at 72-3429(c)(3) describes that districts must report “…the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards)”

In this case, it is found that the Progress reports and grades were completed according to the timelines specified in the federal and state regulations. Further, the grades and reports were placed in ParentVue, which parents had access to, but a newer link to
ParentVue made access troublesome and delayed access. It was found that the parents spent extra effort reaching out to the district to problem solve this access.

It is reported that the student had access to the progress reports, grades, and IEPs via StudentVue, however, his access should not be considered parent access to the documents.

Based on the foregoing, it is not substantiated that USD #259 failed to provide access to student's educational records, specifically IEP goal progress reports, grades, and a copy of the student's IEP.

It is noted however that ParentVue access was troublesome with the new access link and likely contributed to the family experiencing extra challenges in getting timely information for decision making. Although it does not rise to the level of failure to provide access it should be resolved to avert problems in the future.

Corrective Action

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

A. Federal regulations at 34 C.F.R. 300.305(a)(1)(i) specify that information provided by the family must review existing evaluation data on the child, including - evaluations and information provided by the parents of the child.

In this case, the evidence supports the finding that USD #259 did not consider the St. Joseph discharge summary. Documentation shows this. It is noted that the school accepted the discharge summary but believed that a full report was coming and documented that they would review and consider it. They later learned that the discharge summary would be the only report but have not yet considered it.

B. Federal regulations at C.F.R 300.305(a)(1)(i) and state regulations at K.A.R 91-40-8(c)(1)(A) the family should be involved in the planning of the evaluation.

In this case parent report and documentation supports the assertion that the family has not been notified as to the specific target behaviors. It is noted however, that the district may be conducting the evaluation with these behaviors, but the investigator was unable to determine what the target behaviors were since the FBA is ongoing.
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 comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at Federal regulations at 34 C.F.R. 300.502(c)(1) and state Regulations at K.A.R. 91-40-12 by ensuring that any outside evaluations received from parents are considered by the IEP teams.

2. Within the six weeks of the start of the 2023-2024 school year USD #259 will submit to Special Education and Title Services (SETS) documentation that the student's IEP team considered the discharge summary report from St. Joseph's hospital.

3. Further, by the start of the 2023-2024 school year USD #259 will provide the target behaviors under evaluation with the ongoing FBA to the family and submit to Special Education and Title Services (SETS) documentation that this has been completed. If the target behaviors are not those included in the parent's request as stated in this report the IEP team will meet and consider the parent's requested target behaviors USD 259 will provide to Special Education and Title Services (SETS) documentation showing the IEP team agreeing on the target behaviors within one month of the start of the 2023-2024 school year.

**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 of 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.

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)