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

The complaint is against USD #233 (Olathe Public Schools). In the remainder of the report, USD #233 may be referred to as the “school,” the “district” or the “local education agency (LEA).”

The Kansas State Department of Education (KSDE) received the complaint on 5/30/2023. The KSDE allows for a 30-day timeline to investigate the child complaint, which ends on 6/30/2023.

**Investigation of Complaint**

Doug Tressler, Complaint Investigator, interviewed the parent by telephone on June 7, 2023, as part of the investigation.

USD #233 made the following school staff available for a telephone interview on June 8, 2023:

- Deborah Chappell, Assistant Director of Special Services
- Andrea Cronin (English Co-Teacher, Special Education Teacher)
- Heather Smith (Assistant Principal)
- Careth Palmer (English Teacher)
- Stephanie (Stevie) Less (Special Education Teacher, Case Manager)
- Tom Salas (Special Education Coordinator for ON)
- Ashley Enz (Special Education Coordinator)
In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Statement from Andrea Cronin resource room teacher
- Statement from Careth Palmer English teacher
- Discipline records and behavior agreement
- Student discipline referral dated April 18, 2023
- English III career syllabus school year 2022-23
- Current evaluation for the student
- The current IEP dated September 23, 2022, amended April 25, 2022.
- Current grade card
- Staff emails documenting accommodations

**Background Information**

The student is a junior at Olathe North High School and is on track to graduate with peers since the start of the academic school year 2022-2023, the student has struggled to effectively communicate when the student has a problem or perceived issue or conflict.

**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 mother raised two issues.

**ISSUE ONE:** The USD #233, in violation of the state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the accommodations listed in the IEP.

**ISSUE TWO:** The USD #233 staff engaged in bully behavior towards the student in violation of KSA 72-6147.
While the parent specifically noted issue two in the complaint, IDEA does not address this issue therefore it was not within the scope of this investigation and was not investigated.

**Positions of the Parties**

The parent believes the English teacher does not respect the IEP accommodations that were agreed on and bullies (the student) when (the student) needs to have the accommodation.

USD #233 The District denies the parent’s allegation that the accommodations listed in the student’s IEP were not provided. The student’s IEP dated 9/23/22, and subsequent amendment dated 4/25/23 include the following accommodations:

1. Extended time to complete assessments x 1.5.
2. Noise-canceling headphones/earbuds during independent work time, as requested by the student and approved by the instructor/adult.
3. Take tests in a quiet, alternate, non-competitive, small group setting.

The district asserts that these accommodations were implemented by the teacher cited in the complaint as required by the IEP. In addition, the school put in place other supportive instructional practices beyond those included in the IEP to meet the student’s individual needs. These included providing breaks within the parameters of a behavior contract and time extensions for a long-term assignment. Through implementation of the IEP and these general supports, the student made appropriate progress toward (the student’s) IEP goals (see Progress Report dated 5/24/23) and maintained Bs and Cs in (the students) classes (see Report Card).

**Findings of the Investigation**

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #233.

Per the IEP dated September 23, 2022, amended April 25, 2022, the following accommodations were in effect:

- Extended time to complete assignments times 1.5 because the exceptionality requires extra processing time for comprehension this will be provided during assessment in the general education classroom for the duration of the assessment.
- Noise cancelling headphones/earbuds during independent work time, as requested by the student and approved by the instructor or adult to eliminate distractions. This will be provided during independent work time in general education and special education classrooms. This accommodation will be provided for the duration of the independent work time as requested by the student and approved by the instructor/adult.
- Take a test in a quiet alternate noncompetitive small group setting to eliminate distractions. This will be provided during assessments and all general education and special education classrooms. This accommodation will be provided for the duration of the assessment as requested by the student.

Per the discipline report, an incident occurred, dated April 18, 2023, after the teacher made the announcement that the absent students needed to get the handout from yesterday. The student grabbed the wrong one (handout). The teacher redirected her and told the student that she had picked up the wrong packet three times. The teacher asked “why are you ignoring me?” The student continued to ignore the teacher. The teacher told the student to return the wrong paper and pick up the correct packet. The student was angry and threw her materials down, got stuff out of her bag, put stuff in her bag, and then began texting someone on the phone. Five minutes later the student got up and walked out of the room. The teacher asked for a pass. The student ignored the teacher and walked out. The teacher called the office per the behavior contract requiring that the student not leave class without a pass.

During the phone interview with the staff, it was revealed that when the incident occurred the teacher was providing direct explicit instruction concerning the daily assignment and the packet the students were instructed to use. Staff also indicated that the instructions given to the student were the same instructions that were given to all other students. Staff explained that the student picked up the wrong packet and was asked to return that packet so that the student could pick up the appropriate packet which contained her assignment. During this direct instructional time the teacher is required to have the student’s attention and to have the ability to fully communicate with the student using a verbal medium. Staff indicated that the use of headphones throughout the building is inconsistent. Each teacher has specific classroom rules with regard to the use of headphones during the day. Students are often allowed to use headphones in common areas such as the lunchroom. Staff also indicated that the student had received verbal reprimand for misuse of the headphones during the school day on previous occasions.
The teacher’s expectations for cell phones and earbuds are clearly explained in the teacher’s syllabus for English 3. Furthermore, during the phone interview, the teacher indicated that she reviews the syllabus piece-by-piece at the 1st of each semester.

English III Syllabus:

- Technology (Laptops, Cell Phones, & Earbuds):
  - You should bring your charged laptop EVERY DAY. While personal devices are permitted for academic usage in the classroom, I have the discretion to ask the student to put away cell phones or remove earbuds if they become a distraction to the student, or if we are taking an assessment of any kind.

Behavioral records also indicate that the student has been reprimanded for misuse of phones on April 14, 2022, April 19, 2022, May 10, 2022, and October 3, 2022.

Behavioral records further indicate that the student was reprimanded for ignoring staff or walking out of the classroom without permission May 10, 2022, September 20, 2022, September 21, 2022, October 3, 2022, and January 30, 2023.

The student’s tendency to elope when in a stressful situation is identified as a concern in the IEP. The baseline recorded in the IP reads as follows: “since the start of the academic school year 2022-2023 the student has struggled to effectively communicate when (the student) has a problem or perceived issue or conflict which resulted in (the student) leaving the classroom without permission and or acknowledgement from teachers/adults”. This is addressed by a goal as follows: “(the student) will communicate respectively and effectively in all diverse environments with teachers adults peers and OTAC program professionals with 80% accuracy as averaged by the IEP team using the social emotional rubric by September 22, 2023”. Nowhere in the student’s IEP is leaving the classroom without permission listed as an allowable accommodation.

During the phone interview on June 7, 2023, the parent indicated that the primary concern was related to the use of the accommodation allowing for noise cancelling headphones during work time.

In relation to the student’s accommodation allowing for extended time, the teacher statement provided by the English teacher indicated that on Monday May 15, 2023, the lesson plans included specific instructions for the class concerning the packets that they were to pick up each day. The teacher noted that extended time for the packet was offered as an accommodation to the student.
Further notes from the teacher statement indicates that on Tuesday May 16, 2023, more extended time was offered to the student including the opportunity to take the packet home as part of the extended time accommodation. This student was absent on the following day May 17, 2023, and the teacher allowed the student to continue to work from home on the packet as a continuance of the extended time accommodation. When the student returned after having the assignment for three days, the assignment was still incomplete. The teacher also notes that the student's overall performance in the classroom is above average and the student finished this semester with an 82%.

The statement provided by the special education teacher, “(the student) has been given (the student's) accommodations throughout the school year. (The teacher) has been very deliberate about checking with (the resource room teacher) and the (paraeducators) to ensure (the resource room teacher and the paraeducators) are following the IEP. (The teacher) has also been just as delivered about following the behavior plan and double checking with (the resource room teacher) and the (paraeducators). The referral written was due to (the teacher) having to follow the behavior plan. (The teacher) has never raised her voice to a ‘yelling’ level to any student or punished any student out of spite.” indicates that the student was allowed all accommodation required by the IEP on all occasions in which the accommodation was necessary.

Multiple staff emails between Paraeducators stating when and where accommodations were used by the student on a daily basis to the resource room teacher indicate that the accommodations were used effectively by the student in multiple classrooms as needed by the student in accordance with the IEP.

**Applicable Regulations and Conclusions**

Federal regulations implementing the IDEA at 34 C.F.R. 300.311 111(a) and Kansas state Board of Education regulations at K.A.R. 91-40-7 require each school districts to adopt and implement policies and procedures to identify, locate, and evaluate all children with disabilities exceptionalities residing in its jurisdiction who need special education and related services. Special education means specially designed instruction, which is adapted, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction (34 C.F.R. 300.39(a)(1), (b)(3); K.A.R. 91-40-1(kkk), (lll)).

K.A.R. 91-40-16. (b)(5)(B) the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.
The evidence of teacher daily notes and lesson plans detail precise use of extended time and headphone use as accommodations being allowed for the student. The samples of daily email reports from paraeducator staff to the special education teacher recording specific use of the accommodations in the IEP indicate that the accommodations of extended time, noise cancelling headphones/earbuds, and testing in an alternate location were provided on all occasions as allowed by the IEP. As the participating general education IEP team member, the teacher was aware of all accommodations listed in the IEP and the responsibility to implement the accommodations in the general educational setting as a part of the IEP. This was also indicated in the teacher’s written statement “(the teacher) provided all of the accommodations on the students IEP. The student was never removed from my classroom but chose to work on (the student’s) packet Friday during third hour in (the student’s) resource room so the student could focus better.” The implementation of the allowed accommodation for extended time is well documented in the teacher’s daily notes which outlines that the student was allowed to take the assignment related to the incident home for two days, well, beyond the allowed extension of 1.5 X the peer level time. During the incident in question, on May 15, 2023, according to the teacher’s daily lesson notes the teacher was giving direct explicit instruction to the class, the student did not have permission to use the earbuds, and it was not an independent study time. The accommodation for the noise canceling earbuds is conditioned upon teacher approval during independent study times therefore, the accommodation was not allowable as defined in the IEP at that time.

While the teacher did provide evidence of classroom expectations and had daily lesson notes that included allocated time for direct instruction, guided instruction and independent study, there was no mechanism for explicit guidance to the student that would inform the student which instructional condition was in effect. Best practice to increase student engagement, would be a visual cue such as a posted reminder schedule of direct instruction, guided instruction and study time with the associated accommodations allowed in each segment. Never-the-less, the final authority for use of the ear-bud accommodation as written in the IEP is teacher approval.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failure of the general education teacher to implement the accommodations listed in the IEP.

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.

Doug Tressler
BS Elem Ed, MS Sp Ed, MS Ed Admin
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)