This report is in response to a complaint filed with our office on behalf of ------------ by ---- --------. In the remainder of the report, ------------ will be referred to as “the student.” ---------- ---- will be referred to as “the complainant,” “the parent,” or “the mother.” ------------ will be referred to as “the father.” When referring to ------------ mother and father in this report they will be referred to as “the parents” or “the family.”

The complaint is against USD #233 (Olathe 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 25, 2023 and the 30-day timeline ends on June 26, 2023. An extension of one week was requested by the Complaint Investigator and granted by the KSDE for a revised due date of July 1, 2023.

Investigation of Complaint

Donna Wickham, Complaint Investigator initially interviewed the parent by telephone on May 30, 2023. Additionally, the Complaint Investigator exchanged emails, texts, and phone calls and messages with the mother between May 25, 2023 – June 23, 2023.

The Complaint Investigator exchanged emails with Ms. Deborah Chappell and Mr. Matt Kunstman between May 25, 2023 through June 26, 2023 to gather additional information and to clarify documentation provided by the district.
This investigation addressed six issues. Two additional issues were identified but were not investigated because they did not fall under the IDEA regulations. All materials provided by the complainant and district were carefully read. The following materials submitted by the family and district were used in consideration of the issues. They include:

- School Based Medicaid in Kansas Fact Sheet Special Education and Title Services, Revised April 2019
- Oregon Trail Middle School Period Student Attendance Profile Year: 2022 – April 17, 2023
- Behavioral Sciences Regulatory Board Licenses for Kelley Hull and Rebecca Schwer
- Kansas State Board of Education Licenses for Gracyn Miller, Chloe Smith, Nicholas Hofmeier, Karen Fraley, Denise Herman, Johnathan Lynk, Matthew Kunstman, Anthony Neubauer, Ashley Rodden, Jennifer Kaberline, Susan Stessman-Fairley, Catherine Stein, Alison Antwiler, and Kathy Olson.
- Kansas State Board of Nursing License for Kathleen Waage
- Email from Ms. Denise Herman, Assistant Principal, Oregon Trail Middle School to Olathe Trails Middle School staff dated August 7, 2022 at 4:14 p.m. including handouts below:
  - Special Education and 504’s at Olathe Trails Middle School
  - How to Access Special Education and 504’s at Olathe Trails Middle School
  - Reference Guide to Accommodations
  - Modifications, Accommodations, Interventions
  - Olathe Public Schools “Guidelines for Grading students with Disabilities” Draft December 8, 2021
  - Possible Accommodations/Interventions/Supports for Struggling Learners
  - Benefits of Inclusion
  - Challenging Behaviors: Crisis Prevention
  - General Considerations for Children with Special Needs
  - Accommodations and Modifications grid
  - Executive Functioning Skills: The Ultimate Guide
- Email from parent to Mr. Nicholas Hofmeier, Case Manager, Olathe Trails Middle School dated August 21, 2023 at 9:33 p.m.
- Email from parent to Ms. Olson, Mr. Hofmeier, Ms. Herman and Mr. Kunstman dated August 28, 2022 at 4:22 p.m.
- Email from parent to Ms. Herman, Mr. Hofmeier, and Mr. Matthew Kunstman, Special Services Coordinator dated September 20, 2022
- Student Point Sheet dated September 2022 (handwritten note of date)
Email from parent to Ms. Herman, Mr. Hofmeier and Mr. Kunstman dated September 24, 2022 at 10:44 p.m.
Email from parent to Mr. Hofmeier, Ms. Herman, and Mr. Kunstman dated September 27, 2022 at 8:23 p.m.
Email from parent to Ms. Mollie Cooper, culinary teacher, Olathe Trails Middle School, Ms. Herman, and Mr. Hofmeier dated September 27, 2022 at 8:52 p.m.
SPED PLC Agenda dated October 26, 2022
Email exchange between parent and Ms. Cooper dated December 4, 2022 at 8:58 p.m. through December 5, 2022 at 7:44 p.m.
Email exchange between father and Mr. Gregori Hammons, automation and robotics teacher, Olathe Trails Middle School dated between December 1, 2022 at 9:23 p.m. and December 7, 2022 at 2:49 p.m. and
Email from Ms. Gracyn Miller, School Psychologist, Olathe Trails Middle School to student's IEP school team dated January 4, 2023 at 3:50 p.m.
Email from parent to Mr. Neubauer, Mr. Hofmeier, Ms. Herman, and Mr. Kunstman dated January 14, 2023 at 1:38 p.m.
Email from parent to Ms. Antwiler, Mr. Hofmeier, Ms. Herman, and Mr. Kunstman dated January 14, 2023 at 1:42 p.m.
Email from Mr. Kunstman to Ms. Herman, Mr. Johnathan Lynk, Principal, Oregon Trail Middle School; Ms. Miller, and Mr. Hofmeier dated January 19, 2023 at 10:08 a.m.
Email between parent and Mr. Kunstman between January 19, 2023 at 8:52 p.m. and January 20, 2023 at 8:07 a.m.
Email from parent to Ms. Herman, Ms. Olson, Ms. Stein, Mr. Neubauer, and Ms. Antwiler dated January 31, 2023 at 9:04 a.m.
Email exchange between parent, Mr. Hofmeier, Mr. Kunstman, Ms. Miller and Ms. Herman dated January 31, 2023 between 9:29 p.m. and 10:05 p.m.
FAST TM Family Report dated, Winter 2022-2023
Email from parent to Dr. Jim McMullen, Assistant Superintendent, Middle School Education; Mr. Kunstman; Mr. Lynk; Ms. Herman; Karen Fraley, Resource Teacher, Olathe Trails Middle School; Mr. Hofmeier; Anjanette Toman, Special Education Director; and Ms. Miller dated March 8, 2023 at 7:43 a.m.
Email exchange between parent and Ms. Herman dated March 30, 2023 between 7:52 a.m. and 3:08 p.m.
Email exchange between Ms. Miller and Mr. Jeffrey Wilson, Outside ADHD consultant dated between March 31, 2023 at 2:30 p.m. and April 6, 2023 at 12:08 p.m.
HIPPA Complaint Authorization for Exchange of Health & Education Information with Ms. Maria Little, MSN, APRN, consent signed by parent on March 31, 2023
Background Information

This investigation involves a 13-year-old seventh grade student at a middle school in the district. He receives special education and related services under the eligibility category of Other Health Impairment. He has been a student in this district since kindergarten and became eligible for special education services under the eligibility category of Other
Health Impairment in third grade. He has medical diagnoses of ADHD and Chronic Anxiety Disorder, with more specific problems with panic disorder and school avoidance.

The student’s IEP was revised May 1, 2023 and includes input from a recent reevaluation to better meet the student’s disability’s impact on learning. The May 1, 2023 IEP indicates his behavior impacts his learning or the learning of others; a functional behavior assessment is under development, and he uses assistive technology accommodations. The IEP lists three goals for following direction, initiating tasks, and completing a task list. Sixteen types of accommodation are included in the IEP and the student receives accommodations for annual testing. The student received a suspension following a behavior on April 6, 2023 that culminated in a Manifestation Determination and long-term suspension for the remainder of the 2022-2023 school year. He was offered alternate services and completed assignments for his 7th grade coursework through the end of the school year. He is scheduled to return to the middle school for the 2023-2024 school year as an 8th grader with an IEP dated May 1, 2023.

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 six issues that were investigated for the 2022-2023 school year.

**ISSUE ONE**: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide qualified staff for the student during the 2022-2023 school year.

**Positions of the Parties**

The complainant alleged that staff who work with the student were not qualified to teach students with ADHD and their unique learning needs.

USD #233 responded all of the staff on the student’s IEP team, including his direct services providers, were appropriately qualified and current on their certifications by the Kansas State Department of Education or other appropriate licensing agency for the
position they hold. The multidisciplinary team was composed of a variety of professionals with a broad range of expertise and training. The IEP team included several individuals with behavioral, social/emotional, and mental health competencies necessary to address the students’ needs related to ADHD, behavioral concerns, anxiety, and executive functioning.

**Findings of the Investigation**

Documentation showed the student was eligible for special education services under the category of Other Health Impaired. He had medical diagnoses of ADHD and Chronic Anxiety Disorder, with more specific problems with panic disorder and school avoidance.

Documentation showed six IEPs were in effect during the 2022-2023 school year (April 11, 2022; December 12, 2022; March 1, 2023; April 10, 2023; April 20, 2023 and May 1, 2023) and included the following IEP team members.

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Licensure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kelley Hull</td>
<td>Social Worker</td>
<td>Licensed Master Social Worker (Behavioral Sciences Regulatory Board) Expires 3/31/24</td>
</tr>
<tr>
<td>Rebecca Schwer</td>
<td>Behavior Coach</td>
<td>Licensed Professional Counselor (Behavioral Sciences Regulatory Board) Expires 6/30/24</td>
</tr>
<tr>
<td>Gracyn Miller</td>
<td>School Psychologist</td>
<td>School Psychologist (EC-12) KSBE Expires 5/27/24</td>
</tr>
<tr>
<td>Chloe Smith</td>
<td>School Counselor</td>
<td>School Counselor (PRK-12) KSBE Expires 6/1/2024</td>
</tr>
<tr>
<td>Nicholas Hofmeier</td>
<td>Case Manager</td>
<td>Adaptive &amp; Functional K-12 KSBE Expires 12/17/25</td>
</tr>
<tr>
<td>Karen Fraley</td>
<td>Resource Teacher</td>
<td>Behavior Disorders K-12 KSBE Expires 1/20/25</td>
</tr>
<tr>
<td>Denise Herman</td>
<td>Assistant Principal</td>
<td>Learning Disabilities; Bld Ldrshp KSBE Expires 5/22/25</td>
</tr>
<tr>
<td>Johnathan Lynk</td>
<td>Principal</td>
<td>Building Leadership KSBE Expires 4/15/26</td>
</tr>
<tr>
<td>Matthew Kunstman</td>
<td>Special Services Coordinator</td>
<td>Building Leadership; Intellectual Disability (7-12) KSBE Expires 5/6/28</td>
</tr>
<tr>
<td>Anthony Neubauer</td>
<td>Science Teacher</td>
<td>Science (5-8) KSBE Expires 10/15/27</td>
</tr>
<tr>
<td>Catherine Stein</td>
<td>Social Studies Teacher</td>
<td>History, Government, and Social Studies (5-8) KSBE Expires 11/10/23</td>
</tr>
<tr>
<td>Alison Antwiler</td>
<td>Math Teacher</td>
<td>Mathematics (5-8) KSBE Expires 2/10/24</td>
</tr>
<tr>
<td>Kathy Olson</td>
<td>English Language Arts Teacher</td>
<td>English Language Arts (5-8) KSBE Expires 10/8/24</td>
</tr>
<tr>
<td>Kathleen Waage</td>
<td>Nurse</td>
<td>Registered Nurse License Expires 11/30/24</td>
</tr>
<tr>
<td>Name</td>
<td>Position</td>
<td>Licensure</td>
</tr>
<tr>
<td>--------------------------</td>
<td>---------------------------------------</td>
<td>------------------------------------------------------------</td>
</tr>
<tr>
<td>Ashley Rodden</td>
<td>School Counselor</td>
<td>School Counselor PRK-12 KSBE Expires 5/9/29</td>
</tr>
<tr>
<td>Jennifer L Kaberline</td>
<td>School Psychologist</td>
<td>School Psychologist PRK-12 KSBE Expires 6/1/25</td>
</tr>
<tr>
<td>Susan Stessman-Fairley</td>
<td>Special Education, Case Manager</td>
<td>Adaptive Special Education 6-12 KSBE Expires 9/2/25</td>
</tr>
<tr>
<td>Danielle Haldeman</td>
<td>School Psychologist</td>
<td>School Psychologist PRK-12 KSBE Expires 4/1/24</td>
</tr>
<tr>
<td>Richard Hoisington</td>
<td>General Education Teacher</td>
<td>Early-Late Childhood Generalist K-6 KSBE Expires 8/11/25</td>
</tr>
<tr>
<td>Rich Kessler</td>
<td>General Education Teacher</td>
<td>Early-Late Childhood Generalist K-6 KSBE Expires 6/19/25</td>
</tr>
<tr>
<td>Celeste Neubauer</td>
<td>General Education Teacher</td>
<td>Early-Late Childhood Generalist K-6 KSBE Expires 4/29/26</td>
</tr>
<tr>
<td>Lesley Sheldon</td>
<td>General Education Teacher</td>
<td>Elementary and Library Media K-9 KSBE Expires 7/26/25</td>
</tr>
</tbody>
</table>

Documentation from the Olathe Staff Counsel on May 30, 2023 stated,

3. The IEP team did not adopt Parent’s proposal to add an ADHD specialist/coach to the team for the following reasons. The service providers on [student’s] IEP team are appropriately licensed by the Kansas State Department of Education to implement [student’s] IEP and special education services. [student’s] IEP team included individuals with expertise in ADHD such as a district behavior coach, school psychologist, school counselor, school nurse, and student’s resource teacher. The Kansas State Department of Education does not offer teacher endorsement in “ADHD Specialist.” [Student's] IEP team members and service providers have the necessary experience and qualifications to meet his needs related to ADHD.

**Applicable Regulations and Conclusions**

According to 34 at C.F.R. 300.156(c)(1) and 34 at C.F.R. 300.207 school districts must ensure that all personnel necessary to implement the IEP are appropriately and adequately prepared and trained including that those personnel have the content knowledge and skills to serve children with disabilities. Further, each teacher employed by a public school as a special education teacher must meet KSDE qualifications. (34 C.F.R. 300.156(c).)
It is found that all of the education and related services personnel who were listed on the IEPs as providing services to the student possess the necessary qualifications and hold current licenses or certifications to serve in their respective roles.

Based on the foregoing, it is not substantiated that USD #233 failed to provide qualified staff for the student during the 2022-2023 school year.

**ISSUE TWO**: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to train general education staff on how to work with the student during the 2022-2023 school year.

**Positions of the Parties**

The family alleged that staff who work with the student were not trained to teach students with ADHD and their unique learning needs.

The district responded that the student’s IEP did not require staff training of any sort. If staff training were included in the IEP, it would have been documented under the section of the IEP titled, “Supplementary Aids and Services (Accommodations, Modifications, and Staff Training).” However, training was provided to general and special education staff with regard to how to work with the student during the 2022-2023 school year. Also, general and special education staff at the Middle School received training for how to work with the student through a variety of opportunities and formats during the 2022-2023 school year.

**Findings of the Investigation**

The findings of Issue One are incorporated herein by reference.

Documentation showed that on August 5, 2022 the building administration discussed key components of working with students with IEPs with all staff. According to documentation the administrator stressed the importance of all teachers having up-to-date knowledge of IEPs, special education process, laws, and disabilities and demonstrated for all the teachers how to access student IEPs and 504 Plans through their online gradebook (Synergy) to have access to the most current IEP/504 Plans.
Documentation showed that during the beginning of the year meetings in early August, administration provided handouts to staff regarding ways to support student needs on the following topics:

- Reference Guide to Accommodations
- Modifications, Accommodations, Interventions
- Guidelines for Grading Students with Disabilities
- Possible Accommodations/Interventions/Supports for Struggling Learners
- Benefits of Inclusion
- Challenging Behaviors: Crisis Prevention
- General Considerations for Children with Special Needs
- “Accommodations and Modifications” Chart – Teachers were given this so that they would review student IEPs and document which accommodations/modifications were on each student’s IEP.

Documentation showed on August 10, 2022 all building staff received training on Multi-Tiered Systems of Support along with Differentiation Strategies.

Documentation showed on October 26, 2023, the School Psychologist shared “Executive Functioning Skills-The Ultimate Guide” with the Case Manager, Resource Teacher, Social Worker, and another Resource Teacher and SLP.

Documentation showed on January 11, 2023, the School Psychologist held a meeting with all five building Resource Teachers, including the student’s direct service provider and case manager, to train them on Google Keep, an executive functioning tool to help students build organization skills.

Documentation showed on January 18, 2023, the parent shared and discussed the resources, ADDitude and CHADD with the student’s IEP team. The Special Services Coordinator compiled these resources as well as others into a single document and provided them to the team on January 19, 2023.

Documentation showed on February 23, 2023, the Case Manager trained the student’s core teachers on implementation of the student’s amended IEP.

The district reported the school team met with Behavior Coach and School Psychologist Intern on April 6, 2023, to review and receive training on how to implement an “Intensive Behavior Support Plan” created for the student from teacher and staff interview and an hour of observational data.
Applicable Regulations and Conclusions

Federal law at 34 C.F.R. 300.320(a)(4) specifies that the IEP must include any services needed to support school personnel to advance appropriately toward the annual goals in the IEP.

None of the student's IEP in effect during the 2022-2023 school year specified training about how to teach students with ADHD and their unique learning needs.

Documentation showed that the school provided ongoing, student-specific training to the student’s IEP team and disability-specific training to the middle school staff. Further, documentation showed that the complainant provided resources about how to teach students with ADHD and their unique learning needs that were provided to staff working with the student.

Based on the foregoing, it is not substantiated that USD #233 failed to train general education staff on how to work with the student during the 2022-2023 school year.

ISSUE THREE: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to consult with ADHD learning specialists for the student’s educational program during the 2022-2023 school year.

Positions of the Parties

The complainants alleged the district refused to consult with local ADHD learning specialists to support the student with his learning.

USD #233 responded that not consulting with the parent’s ADHD learning specialist was not a violation of special education statute or regulation. However, the parent requested that the student’s IEP team consult with her private ADHD learning specialist and the team agreed and attempted to do so. The IEP team contacted the ADHD Specialist as per parent request and scheduled a collaborative meeting time with him on a date/time offered by him. However, he failed to attend the scheduled meeting and ceased communicating with the team after the student was long-term suspended. Despite explaining to Mr. Wilson that his feedback would be helpful to the team as they completed the student’s reevaluation, he never communicated with them again. The IEP
Findings of the Investigation

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

Documentation showed that the parent provided the names of local businesses with ADHD specialists to the district on September 20, 2022 and mentioned hiring them. “Here’s some ADHD specialists the school can hire to help guide your staff and [student]. Matt, can you please call them?” The district reported that the parent and Special Services Coordinator spoke about the request by phone and agreed an outside ADHD specialist was not needed.

The district reported they received an email on December 1, 2022 from the parent “Please hire an ADHD specialist with [student’s] Medicaid funding to evaluate and give recommendations to your staff. Please let me know who you have selected before the end of the first semester.”

The district reported and staff notes from the December 12, 2022 IEP meeting showed, the parent requested the district use Medicaid funding for [student] to pay for an ADHD specialist to come in and present to staff. It is noted that the district responded that OT has building staff who are appropriately qualified to address the needs of students with ADHD.

Documentation from January 19, 2023 showed that the parent requested an Occupational Therapy instructional Coach to join the student’s IEP team with the Special Services Coordinator explaining that this role was to support new teachers.

Documentation from staff meeting notes on February 22, 2023 noted “Parent requested an ADHD Coach by the end of the year” and staff responded, “Our resource teachers have the skills and training to support/coach the teams with the needs of students specific to the needs with ADHD.”

Email from the parent on March 8, 2023 to the district staff documented the parent requesting the support of someone “ADHD Certified”.

Documentation showed on March 30, 2023 the parent emailed the assistant principal stating,
“Also, I just met with Jeff Wilson, the ADHD specialist. He is able and willing to observe [the student] in school and attend IEP meetings. Please give me the necessary forms I need to sign. Thank you.”

Documentation showed on March 31, 2023, the school psychologist emailed the parent’s ADHD specialist, Jeffrey L. Wilson, Licensed Mental Health Counselor and provided him with a HIPPA release signed by the parent for the school to be able to share information regarding the student. In this email the school psychologist asked Mr. Wilson, “Would you have time next week to have a phone call with myself and/or [student’s] school team regarding his progress and how to build supports for him? We are currently in a special education reevaluation, and any information would be greatly appreciated.”

Documentation between April 3 and April 13, 2023 showed the district and Mr. Wilson agreed to meet and attempted to schedule a time.

Documentation showed that Mr. Wilson emailed at 3:48 PM, “My understanding is that the student we were to discuss is no longer a student at the [middle school]. If I’m mistaken, let me know.” To which the school psychologist replied “[The student] is still technically enrolled at [the middle school]. Although he has been suspended from the building, we are still responsible for his special education reevaluation, which your collaboration would help with! Does this help?”

The district reported that Mr. Wilson never replied to this email or communicated with the school again subsequent to the April 14th email from the school psychologist.

The district reported,

After obtaining Parent’s consent on a HIPPA release, the Assistant Principal and School Psychologist left several voice mail messages for Mr. Wilson and asked him to return their call. On the afternoon of April 13th, 2023, Mr. Wilson called back the Assistant Principal and told her that his understanding was that [student] had been suspended from school and said that he may not be able to talk to them anymore. The Assistant Principal explained that even though the student was suspended, he was still enrolled at [middle school] and the team was asking for his information regarding the evaluation and strategies for working with the student. She reiterated that the school had a HIPPA release signed for them to communicate with him. Mr. Wilson replied that he would like to double check that with Mom. Mr. Wilson told the Assistant Principal that he
would get ahold of Mom and if he was allowed to talk to them he would call back. Mr. Wilson never called back.

The May 25, 2023 PWN documented:

In [student’s] IEP amendment meeting on December 12, 2022, [student’s] mother requested that the district provide an ADHD coach/specialist to address [student’s] special education needs. The school team considered the request for an ADHD coach/specialist; however, rejected this proposal as [student’s] IEP team and teachers have the necessary expertise with regard to ADHD and are highly qualified to provide [student] his special education services per the Kansas State Department of Education.

In another IEP amendment meeting on February 22, 2023 [student’s] mother requested that the district provide an ADHD coach/specialist for [student] and train teachers on ADHD by August 2023. The school team fully considered this request, however, rejected this proposal as the service providers on [student’s] team already have the necessary experience and knowledge necessary to meet [student’s] ADHD related needs.

Documentation from the Olathe Staff Counsel on May 30, 2023 stated,

3. The IEP team did not adopt Parent’s proposal to add an ADHD specialist/coach to the team for the following reasons. The service providers on [student’s] IEP team are appropriately licensed by the Kansas State Department of Education to implement [student’s] IEP and special education services. [student’s] IEP team included individuals with expertise in ADHD such as a district behavior coach, school psychologist, school counselor, school nurse, and student’s resource teacher. The Kansas State Department of Education does not offer teacher endorsement in “ADHD Specialist.” [Student’s] IEP team members and service providers have the necessary experience and qualifications to meet his needs related to ADHD.

4. There is no data to support that not having an ADHD specialist/coach on [student’s] team negatively impacted his school performance. [Student’s] attendance from [school] from the beginning of the school year through April 13th indicated that he missed a minimum of 25 class periods of instruction in each of his classes and missed his first hour class 32 times. Despite his attendance, progress monitoring of [student’s] IEP goals from [school] indicates
that [student] made progress toward his IEP goals through the end of the 3rd quarter this school year. In addition, [student] passed all his general education classes with no grade lower than a C- through the end of the 3rd quarter. During the 4th quarter of the school year, [student] was long-term suspended and enrolled in Project HOPE on 4/24/2023. While in his disciplinary placement at Project HOPE, Parent declined for [student] to attend the available in-person learning and he never participated in the available daily virtual learning. Given [student’s] unavailability for direct instruction while in his disciplinary placement, he still passed his English and social studies classes with grades of C by completing packets of work independently at home.

5. parent fully consented to [student’s] current IEP dated 5/1/2023, that does not include services from an “ADHD Specialist”.

Applicable Regulations and Conclusions

According to federal regulations at 34 CFR § 300.503(a)(2) and K.S.A 72-3430(b)(2) a procedural safeguard afforded to parents is the Prior Written Notice for certain proposed special education actions. The Prior Written Notice documents a description of the action proposed or refused by the district. It is required when the district proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or provision of FAPE to a child. This requirement is triggered regardless of whether it is the school or the parent who is initiating the request.

Issue five investigated the parent’s request for an ADHD specialist on behalf of her student who received special education services during the 2022-2023 school year. It is found that the parent made this request throughout the school year via email, during phone conversations with district staff and in student IEP team meetings. The earliest documented request for an ADHD specialist was in a September 20, 2022 email. The parent made this request again December 12, 2022 during the IEP meeting. The district subsequently attempted to consult with an ADHD specialist requested by the parent and later the district refused this request in a PWN May 25, 2023.

In this case it is determined that procedurally, a Prior Written Notice should have been issued in response to this request as accepting or refusing the request for an ADHD specialist early in the school year when the first request was made. It is determined that a PWN needed to be written for the parent request for an ADHD specialist because this action may impact the services and/or related services of the student.
It is acknowledged that the district had no obligation to consult with the ADHD specialist, however it agreed to consult with an ADHD specialist recommended by the parent in March 2023 and made many attempts to include this specialist in the reevaluation. This effort was however, made months after the initial request.

Based on the foregoing, it is substantiated that USD #233 failed to respond to the parent in regard to her request for an ADHD learning specialist to consult for the student’s educational program during the 2022-2023 school year.

ISSUE FOUR: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to use Medicaid funding to provide support for academic learning during the 2022-2023 school year.

Positions of the Parties

The complainants alleged the student is eligible for Medicaid and that funding has not been used to provide support for him.

USD #233 responded that the district followed the Kansas State Department of Education guidance on how and when Medicaid funds can be used and claimed. During the 2022-2023 school year, the student was Medicaid eligible, but his IEP did not include any services that would qualify for Medicaid reimbursement. His IEP did not include specialized transportation, nursing services, occupational therapy, physical therapy, speech language and hearing services, psychology, or social work services. As a result, the District did not claim or receive any Medicaid funding for the student during the 2022-2023 school year. Parent’s signature on the Medicaid consent form did not result in funding for the District and was only giving the District permission to bill for Medicaid reimbursement if the student has any eligible services on their IEP, which this student does not. Even if the District had received Medicaid funding for the student, that funding was reimbursement for services already provided by the district in accordance with the student’s IEP.

Findings of the Investigation

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

Documentation showed that the parent signed consent April 11, 2022 on the Medicaid Statement for the IEP dated April 11, 2022.
Documentation showed that the parent signed consent December 12, 2022 on the Medicaid Statement for the IEP dated December 12, 2022.

Documentation showed that the parent signed consent April 19, 2023 on the Medicaid Statement for the IEP dated April 10, 2023.

Documentation showed that the parent signed consent April 20, 2023 on the Medicaid Statement for the IEP dated April 20, 2023.

Documentation showed that the parent signed consent May 4, 2023 on the Medicaid Statement for the IEP dated May 1, 2023.

Documentation showed the following services listed in the IEPs in effect during the 2022-2023 school year.

<table>
<thead>
<tr>
<th>Service</th>
<th>April 11, 2022</th>
<th>December 12, 2022</th>
<th>March 1, 2023</th>
<th>April 10, 2023</th>
<th>April 20, 2023</th>
<th>May 1, 2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specialized Transportation</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Nursing Services</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Occupational Therapy</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<td>No</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Speech Language and Hearing Services</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Psychology</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Social Work Services</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

Applicable Regulations and Conclusions

According to regulations at 34 C.F.R. 300.154(d)(2)(iv) and (d)(2)(v) schools must obtain parental consent prior to accessing Medicaid for the first time. Further, written notification that complies with 34 C.F.R. 300.154(d)(2)(v)(A) through (D) must be provided both prior to accessing Medicaid for the first time and annually thereafter. The written notification provided annually must specify the following four things:

1) the personally identifiable information that may be disclosed to Medicaid in order to bill for special education and related services under IDEA;
2) that the parent understands and agrees that the school may access Medicaid to pay for allowable special education and related services under IDEA;
3) a statement of the “no cost” provisions of 34 C.F.R. 300.154(d)(2)(j) through (iii); and
4) that the parents’ withdrawal of consent or refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

The KSDE Fact Sheet for School Based Medicaid in Kansas, revised April 2019 details how and when Medicaid funds can be claimed.

Services covered under Kansas State Plan Amendment include specialized transportation (only cost based reconciliation), nursing services, occupational therapy, physical therapy, speech language and hearing services, psychology, and social work services...school agencies receive periodic “interim” payments during the school year from the state Medicaid agency. These interim payments reimburse the school agency for providing the required school Medicaid services...A school district can receive reimbursement for every Medicaid eligible service that is documented on the IEP or IFSP to support the education of a Medicaid eligible student.

Based on the foregoing, it is not substantiated that USD #233 failed to use Medicaid funding to provide support for academic learning during the 2022-2023 school year.

ISSUE FIVE: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the IEP, specifically providing the supports, interventions, discipline in regard to following direction and accommodations for academic learning listed in the student’s IEP during the 2022-2023 school year.

Positions of the Parties

The complainants alleged the district rarely accommodated the student’s assignments according to his IEP, instead just told him to be more independent and that he should receive the “natural consequences” of not completing his work. She further alleged that they reprimanded him in front of others for not following directions and received daily negative marks and a conduct card for not following directions, threatening him to be removed from the classroom and be placed in the In-School suspension room. She stated that by spring he began to shut down at school and then avoid school altogether. Once he received a long-term suspension the services that he was offered were wholly unacceptable and ended up not having him participate in services during the long-term placement nor receive special education services.
USD #233 responded that the student's special education services were delivered and the IEP implemented during the 2022 through 2023 school year. Further, services were made available to him in his disciplinary placement at Project Hope during his long-term suspension from April 20th through the end of the 2022-2023 school year however the parent elected for the student not to access those services or any other direct instruction. During the intake meeting with staff at Project Hope, the parent changed her mind and indicated that the student would not be participating in virtual special or general education instruction offered and that she only wanted work packets for the student to complete at home.

**Findings of the Investigation**

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

Documentation showed six IEPs were in effect during the 2022-2023 school year and the following services and accommodations in place in the IEPs.

<table>
<thead>
<tr>
<th>Date</th>
<th>Service minutes</th>
<th>Evidence</th>
<th>Goals</th>
<th>Progress reports</th>
<th>Accommodations</th>
<th>evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 11, 2022</td>
<td>50 minutes, 1 day/week</td>
<td>District report, progress reports</td>
<td>1 goal</td>
<td>Quarter 4 progress report 100%</td>
<td>Six listed</td>
<td>Student Planner, examples of accommodated work</td>
</tr>
<tr>
<td>December 12, 2022</td>
<td>50 minutes, 5 day/week</td>
<td>District report, progress reports</td>
<td>1 goal</td>
<td>Quarters 1 &amp; 2 progress report, goal met</td>
<td>Six listed</td>
<td>Accommodations spreadsheet</td>
</tr>
<tr>
<td>March 1, 2023</td>
<td>50 minutes, 5 day/week</td>
<td>District report, progress reports</td>
<td>1 goal</td>
<td>Quarter 3 progress report, goal met</td>
<td>Sixteen listed</td>
<td>End of week communications, examples of accommodated work</td>
</tr>
<tr>
<td>April 10, 2023</td>
<td>50 minutes, 5 day/week</td>
<td>Suspension and then declined services</td>
<td>1 goal</td>
<td>Suspension and then declined services</td>
<td>Sixteen listed</td>
<td>Suspension and then declined services</td>
</tr>
<tr>
<td>April 20, 2023 - suspension</td>
<td>15 minutes 1 day/week</td>
<td>declined services</td>
<td>1 goal</td>
<td>declined services</td>
<td>Nine listed (4/20/23 PWN)</td>
<td>declined services</td>
</tr>
<tr>
<td>May 1, 2023 suspension</td>
<td>15 minutes 1 day/week</td>
<td>declined services</td>
<td>2 goals</td>
<td>declined services</td>
<td>Nine listed (4/20/23 PWN)</td>
<td>declined services</td>
</tr>
</tbody>
</table>
Documentation showed the purpose and directions for the student’s point sheet dated on or about September 2022. The parent reported that the student was informed of this point sheet prior to getting approval from the parent. The parent reported after receiving notification of this documentation she stated she would not consent to his using it. The parent and district agree that the point sheet was not implemented.

The district reported these cards were part of a 7th grade behavior program. The parent reported she requested the cards not be used with the student, but they continued to be used for a period of time thereafter. The parent reported that this type of behavior correction contributed to the student increasing absenteeism. Documentation showed that the student used a Student Behavior Card Conduct Correction Card from January 26, 2023 – February 2, 2023.

Documentation showed that the parent was contacted that the student would serve a detention February 1, 2023 for 15 minutes as a consequence for losing his Conduct card and the parent replied that losing things is a part of his disability.

**Applicable Regulations and Conclusions**

According to Federal Regulations at 34 C.F.R. 300.323(c)(2) as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP and State Regulations at (K.A.R. 91-40-16(b)(2) further define implementation as “once the IEP has been developed services are to be initiated within 10 school days after written parent consent is granted.”

In this case there were six IEPs or IEP amendments in effect during the 2022-2023 school year. It was found in Issue two that IEP team members were provided and trained to work with the student’s IEP plan. Further, it is found that evidence supported that the district delivered the services minutes, implemented the goals, and used the accommodations according to the IEPs in effect at the time.

Although the complainant had concerns about the specificity of the goals and quality of the instruction It is not the role of the Complaint Investigator to supersede the role of the IEP team and investigate the specifics, quality or quantity of the services, goals, or accommodations, only if the IEP was implemented during the 2022-2023 school year.

Based on the foregoing, it is not substantiated that USD #233 failed to follow the IEP, specifically providing the supports, interventions, discipline in regard to following
direction and accommodations for academic learning listed in the student’s IEP during the 2022-2023 school year.

**ISSUE SIX:** The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an appropriate individualized education plan (IEP) based upon reevaluation during the 2022-2023 school year.

**Positions of the Parties**

The complainants stated that they requested a new evaluation to gain a better understanding of how the student’s ADHD impacts his learning. The complainants alleged that the evaluation that was conducted showed he had difficulty with following direction and executive functioning problems, but the IEP didn’t address those things. She further stated that his current IEP goals are too vague and there are no goals or interventions for when the student puts his head on his desk or when he seems confused but does not ask for help.

USD #233 responded that despite student absences data were collected for each area identified in the Prior Written Notice to Consent to Evaluation with the exception of sensory needs due to the failure of the parent making the student available for evaluation. The district reported that they relied on sensory evaluation collected during the 2021-2022 school year. Each of the identified areas were addressed in the Evaluation Report. Parent fully participated in each step of the process and her input was included in the Evaluation Report and IEP.

**Findings of the Investigation**

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

Documentation showed the parent requested a reevaluation to learn how his ADHD impacted his education. A January 26, 2023 Prior Written Notice for Consent for Evaluation or Reevaluation and Request for Consent proposed to conduct the reevaluation for Health/Motor Ability (specifically sensory needs), Vision, Hearing, Social/Emotional Status/Behavioral Status, and Academic Performance. Consent for the reevaluation was signed by the parent on January 29, 2023. The district reported May 1,
2023 as the date targeted to complete the evaluation and May 8, 2023 as the 60 school-day time limit for the reevaluation.

Documentation showed that on March 31, 2023 the parent requested the reevaluation be amended to include sensory needs and acceptance of that request by the district.

Attendance records showed the student missed 27 full days of school and an additional 6 half-days of school, equaling 50% of the school days available to the team to conduct the reevaluation.

The table below shows the evaluation findings and how the evaluation is reflected in the May 1, 2023 IEP.

<table>
<thead>
<tr>
<th>Evaluation Area</th>
<th>Type of evaluation</th>
<th>Evaluation Report Findings dated May 1, 2023</th>
<th>Addressed May 1, 2023 IEP</th>
</tr>
</thead>
</table>
| Health/Motor Ability - Sensory needs (Added 3/31/2023) | Observation | • Evaluation Report: pg 10  
• Sensory Needs Observation by OT not completed due to absence on all days scheduled | • Summary of findings IEP – pg 11  
• Accommodation - movement in classroom; sensory breaks |
| Vision | 10/27/2022 | • Evaluation Report pg 3; Pass | • Summary of findings IEP – pg 5 |
| Hearing | 1/26/2023 | • Evaluation Report pg 3; Pass | • Summary of findings IEP – pg 5 |
| Social/Emotional Status/Behavioral Status | • Behavior Rating Inventory of Executive Functioning, 2nd Edition (BRIEF-2)  
• FBA | • Evaluation Report - pgs 10-13  
• BRIEF-2 inability to resist impulses; adjust to changes in environment; problem solving; working memory; organization; emotional control; initiating tasks  
• Functional Behavior Assessment Plan with 3 target behaviors | • Behavior Intervention Plan, 5/1/2023  
• Goal 1. Follow instruction;  
• Goal 2. Summarize task, initiate task and complete  
• Goal 3. Initiate task (added in PWN)  
• Service minutes  
• Accommodations – alternate work settings, store non homework assignments, preteach/reteach, extra cues/prompts, chunking, planner, preferential seating, sensory breaks, movement, frequent checks for understanding |
The district reported that observational data were not collected for the sensory needs evaluation as the evaluation was added March 31, 2023 and the student was long-term suspended on April 6, 2023. The district reported that they requested the parent provide the student for additional time to complete the observational evaluation, but the parent did not provide the child.

The district reported that since the student was not available for the sensory assessment observations data from the previous April 11, 2022 reevaluation was used as the existing data review.

The district further reported that only one hour of observational evaluation was collected for the Functional Behavior Assessment due to absences and long-term suspension. Again, the district reported that they requested the parent provide the student for additional time to complete the observational evaluation, but the parent did not provide the child.

The Functional Behavior Assessment dated May 1, 2023 identified the following target behaviors 1) refusal to follow adult’s direction (completing expected task); 2) displaying disrespect toward peers and adults (saying “go away”; 3) not engaging in the classroom direction (sleeping, laying head on desk). It is hypothesized the function of the target behaviors are avoiding work. It is noted the parent indicated, “the school’s negative reinforcement system caused the student to refuse to go to school.”

The district reported

The team had to wrap up the FBA as they were near the end of their time to collect data. To conduct an FBA, the team needed 8-10 hours of data, in at least a two week window, to provide data driven results. Due to the student’s excessive absenteeism, the team was only able to collect one hour of data, which was not
sufficient to support the addition of a Behavior Intervention Plan to the student's IEP. Instead, on April 6th, the team met with the behavior coach who created an (sic) "Intensive Behavior Support Plan," which is a general education intervention. Information to support this general education intervention was gathered from conversations with teacher and other staff who knew the student, along with the hour of data that was collected during their observation.

The BRIEF-2 identified deficits in executive functioning skills, specifically resisting impulses, adjusting to changes in the environment, problem-solving, working memory, organization, emotional control, and initiating tasks.

The Winter 2022-2023 FAST TM Family Report indicated the student was at some risk for CBMreading English, eReading and AUTOreading. The report stated he may need additional support to improve accuracy and automaticity in reading, improved phonemic awareness, phonics and vocabulary skills and overall reading scores. The report further reported the student is at high risk in CBMmath Automaticity, meaning he needs additional support to improve math fact knowledge and some risk in eMath meaning he may need additional support to improve mathematics skills.

Documentation showed that the IEP team met on 5/1/2023 to discuss the Reevaluation report and amend Student's 4/10/2023 annual IEP as needed. Based on the reevaluation, the team added an IEP goal for initiating tasks.

Documentation showed that the district identified three areas of evaluation that may have been impacted by the student's absenteeism and long-term suspension: 1) functional behavior assessment observation; 2) sensory assessment; and 3) Numerical Operations of the WIAT-4.

The district reported that due to lack of student attendance during the spring 2023 if the parent requested additional sensory and behavior evaluation the district would issue an appropriate Prior Written Notice to obtain her consent.

After the meeting, Parent signed indicating she agreed with the results of the Reevaluation and signed fully consenting to the amended IEP developed by the team with her participation. The parent reported during interview with the complaint investigator that she did not agree with the findings, but “…felt pressured by the school district and pressured, because he needed a current IEP....”
The parent reported during interview and in an email with the complaint investigator that the district should have additionally evaluated for a learning disability, dyslexia or dysgraphia and been evaluated by a speech and language therapist for receptive language and processing auditory instruction and that they are also trained in executive functioning.

**Applicable Regulations and Conclusions**

Issue six investigated if the IEP team developed an appropriate IEP on May 1, 2023 based upon reevaluation consented to by the parent on January 20, 2023. According to K.S.A. at 72-3429(d)(2) the IEP team must address all of the special education and related service needs of the child including results of the most recent reevaluation.

It is found that the evaluation plan was agreed upon based on the purpose of the reevaluation and followed. The district acknowledged that three areas may have been impacted by the student not being available for observation and the student behavior during one mathematics subtest. The district has offered to collect additional observation data and consider the findings if the parent makes the request.

It is further found that service minutes, goals or accommodations were included in the IEP that correspond to the needs identified in the May 1, 2023 reevaluation report. The parent stated she did not feel the goals were specific or directly addressed the targeted behaviors (putting head down on desk). The May 1, 2023 IEP was signed by all IEP team members, including the parent. It is not the role of the Complaint Investigator to supersede the role of the IEP team and investigate the specifics, quality or quantity of the services, goals, or accommodations only if the needs of the evaluation are addressed by the IEP team in the May 1, 2023 meeting.

It is noted that the parent stated on June 23, 2023 that she felt pressured by the IEP school team members to agree to the May 1, 2023 IEP and stated she thought additional areas of evaluation should have been recommended by the district. This issue was not made as part of the initial part of the May 25, 2023 complaint and was not investigated.

Based on the foregoing, it is not substantiated that USD #233 failed to develop an appropriate education based upon reevaluation during the 2022-2023 school year.
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 CFR § 300.503(a)(2) specify that a Prior Written Notice is to be provided to parents for certain proposed special education actions.

In this case, the evidence supports the finding that USD #233 did not provide a Prior Written Notice either consenting to or refusing to consult with an ADHD specialist in response to parent request. Documentation and interview shows this. It is noted that the district later attempted to consult with an ADHD specialist recommended by the parent.

Based on the foregoing, USD #233 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #233 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 CFR § 300.503(a)(2) and State regulations at K.S.A 72-3430(b)(2) by ensuring that Prior Written Notices are written to ensure parents are always well informed about whatever action the district intends to take (or intends not to take) on behalf of their child.

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)