This report is in response to a complaint filed with our office on behalf of -------------- (23FC260-003) and -------------- (23FC260-004) by --------------, a former school employee at USD #260. In the remainder of the report, -------------- will be referred to as “the complainant”, -------------- will be referred to as “student 1”, and -------------- will be referred to as “student 2.”

Student 1 and student 2 are the sons of --------------. She will be referred to as “the mother” or “the parent” in this report. It is noted that the mother did not provide written consent for personally identifiable information contained in this investigation report to be shared with the complainant.

The complaint is against USD #260 (Derby Public Schools). In the remainder of the report, “USD #260,” the “school,” the “district” or the “local education agency (LEA)” shall refer to this responsible public agency.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE and USD #260 received the complaint on May 25, 2023 and the timeline to investigate the allegations was extended by fourteen days to allow the parents to participate in the investigation process and to accommodate the summer / July 4 holiday break.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the Director of Special Education, Dawn Gresham, by telephone on May 26, 2023. The complainant was interviewed by telephone on June 13, 2023. The mother was interviewed by telephone on June 27, 2023 as part of the investigative process. Casey Lucas, Assistant Director of Special Education, was interviewed by telephone on July 5, 2023.
In addition to interviews, the Complaint Investigator reviewed documentation provided by the complainant, the parent and the LEA. While all of these documents were used to provide background and context, the following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Plan (IEP) for student 1 dated November 30, 2022
- IEP for student 2 dated January 6, 2023
- Emails dated March 31, 2023 at 1:53 p.m. 2:09 p.m. and 2:23 p.m. between Brooke Stuckey, School Psychologist at Oaklawn Elementary School, and Whitney Burke, School Psychologist at Stone Creek Elementary School
- Admit Report for student 1
- Admit Report for student 2
- Email dated April 4, 2023 at 3:02 p.m. written by Ms. Stuckey to Dawn Gresham, Director of Special Education, and Casey Lucas, Assistant Director of Special Education, regarding the transfer process
- Email dated April 5, 2023 at 3:38 p.m. written by Ms. Lucas to Ms. Stuckey with clarification and next steps
- IEP Amendment Form for Minor Changes Not Requiring a Full IEP Team Meeting for student 1 dated April 18, 2023
- IEP for student 1 developed on November 30, 2022 and amended on April 18, 2023
- Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated April 4, 2023 for student 2
- Email dated April 10, 2023 at 1:22 p.m. written by Ms. Casey to the school teams at Swaney Elementary School and Tanglewood Elementary School regarding a change in location for student 2
- Email dated April 12, 2023 at 3:41 p.m. written by the complainant to Lacey Browning, Teacher of student 1, regarding transfer IEP information not displaying in the USD #260 student information system
- PWN dated April 18, 2023 for student 1
- IEP Goal Progress Reports for student 1 dated May 15, 2023
- IEP Goal Progress Reports for student 2 dated May 22, 2023

**Background Information**

This investigation involves two brothers who transferred into the USD #260 in April 2023. Student 1 was enrolled in kindergarten and student 2 was enrolled in second grade at the time of the transfer. Student 1 was initially evaluated on January 3, 2021.
and determined eligible for special education due to the exceptionality of Developmental Delay. Student 2 most recent reevaluation was conducted on December 5, 2020 and he continued meeting eligibility criteria for the exceptionality of Developmental Delay.

Both students transferred from USD # 407 (Russell Public Schools) with current IEPs in place. Student 1’s IEP was developed on November 30, 2022 and student 2’s IEP was developed on January 6, 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, the complainant raised one issue that was investigated for both students.

**ISSUE ONE:** The USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate transfer procedures for the student during the 2022-23 school year.

**Positions of the Parties**

The complainant reported the transfer process for both students was not followed resulting in both students being placed inappropriately. The complainant indicated that both students were administratively placed in Derby school special education programs that differed significantly from the services described in their IEPs and that the school psychologists who should have handled the paperwork were not involved in the process. Both students were placed in settings in accordance with a reported verbal description of their placements by unknown staff at the previous district to unknown staff at Derby schools.

In regards to student 1, the complainant stated, “The team at the school where he was placed reported within days that they felt his placement was not appropriate. Administration indicated that he would not be moved.”
In regards to student 2, the complainant stated, “The team at the school where he was placed reported within days that they felt his placement was not appropriate. He was moved to another program in another building within a short time of enrolling. It would appear the service line indicating ‘Life Skills’ was misinterpreted by someone not familiar with the Life Skills program in Derby.”

USD #260 reported that the steps in the transfer process for students transferring from one school district in Kansas to another school district in Kansas were followed appropriately for both the student during the 2022-23 school year. School staff reported that the parent was involved in the decisions regarding services and placement of the students.

**Findings of the Investigation**

The following findings are based upon a review of documentation and interviews with the parent of the student, the complainant, and LEA staff in USD #260.

Student 1’s IEP was originally developed on November 30, 2022 in USD #407. The IEP required special education services in the general education setting for 600 minutes per week, attendant care for 60 minutes per week, special education instruction for reading and math in the special education setting for 1025 minutes per week, speech therapy for 40 minutes per week, occupational therapy (OT) for 20 minutes per week, and group counseling for 40 minutes per week. Based on a seven-hour school day, the student was placed in the general education setting with special education support for approximately 46% of the school day and in the special education setting for approximately 54% of the school day.

Student 2’s IEP was originally developed on January 6, 2023 in USD #407. The IEP required special education services in the general education setting for 675 minutes per week, attendant care for 150 minutes per week, special education instruction for reading, math, science, and life skills in the special education setting for 1350 minutes per week, speech therapy for 40 minutes per week, and group counseling for 20 minutes per week. Based on a seven-hour school day, the student was placed in the general education setting with special education support for approximately 33% of the school day and in the special education setting for approximately 67% of the school day.

Based on the home address, the boys were initially enrolled at their neighborhood school, Stone Creek Elementary. An email exchange between Brooke Stuckey, School Psychologist at Oaklawn Elementary School and Whitney Burke, School Psychologist at
Stone Creek Elementary School on March 31, 2023 indicated that the students were “walk in” enrollments. Ms. Stuckey shared concerns that the district’s transfer procedures had not been followed for student 1 prior to his assignment to her building and he needed a more restrictive setting.

Responding to Ms. Stuckey’s email, Casey Lucas, Assistant Director of Special Services, reported the Stone Creek Principal contacted the sending school upon the students’ enrollment and believed neither students’ IEP could be implemented in that building. Ms. Lucas indicated she spoke with USD #407 staff and the mother as well as reviewed both IEPs. Based on that information, the staff at the Central Office determined that both students needed placement in “categorical programs” housed in other elementary buildings. She indicated that the school team would need to gather data to support their recommendation for a more restrictive environment.

Enrollment documentation showed that student 1 was assigned to a PBIS [Positive Behavior Interventions and Supports] classroom in Oaklawn Elementary School at the time of enrollment. The school team was asked to collect data to support their recommendation that a more restrictive program was needed and a reevaluation of the student was initiated. The parent reported and documentation confirmed the IEP team for student 1 met on April 18, 2023 and amended the IEP to delete goal 4 and add benchmarks to goal 9 as well as to add transportation as a related service since the student was placed in the PBIS classroom at Oaklawn Elementary School rather than receiving services in his neighborhood school, Stone Creek Elementary School.

Student 2 was initially assigned to a Life Skills classroom at Swaney Elementary School. However, the school assignment for student 2 was changed when the IEP team at Swaney Elementary School collected data to show the student’s IEP should be implemented in a Functional Skills classroom rather than a Life Skills classroom and the student was subsequently reassigned to that type of “categorical classroom” at Tanglewood Elementary School approximately two weeks following his initial enrollment.

The mother stated that she was contacted regarding the transition of both students into USD #260. She was in agreement with the change of building assignments for student 2 to a classroom setting that better “matched” his IEP. She also agreed with the addition of transportation as a related service for student 1 so that his IEP could be implemented in the PBIS classroom at Oaklawn Elementary School. The mother stated she has been very pleased with the services the students are receiving in their “categorical classrooms” at this time and the progress they have made since enrollment.
Applicable Regulations and Conclusions

If a child with a disability who had an IEP that was in effect in a previous public agency in the same State transfers to a new public agency in the same State, and enrolls in a new school within the same school year, federal regulations at 34 C.F.R. 300.323(e) require that the new public agency (in consultation with the parents) must provide FAPE to the child, including services comparable to those described in the child's IEP from the previous public agency, until the new public agency adopts the child's IEP from the previous public agency or develops, adopts, and implements a new IEP for the child.

Section G. Transfer within the State and from Out of State in Chapter 4: The Individualize Education Program (IEP) of The Kansas Special Education Process Handbook states:

When a student moves into a new school district, the school district must take reasonable steps to promptly obtain the child’s records, including IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous school district in which the child was enrolled.

When a child with an exceptionality transfers to a new school district in Kansas, with a current IEP in a previous school district in Kansas, the new school district, in consultation with the parents, must provide a free appropriate public education (FAPE) to the child, including services comparable to those described in the child's IEP from the previous school district. Once the new district receives the current IEP the new school district may adopt the child's IEP from the previous school district or develop and implement a new IEP. If the new district develops a new IEP, parent consent is required for any substantial change in placement or any material change in services proposed in the new IEP K.S.A. 72-3430(b)(6). When a student moves within the state, eligibility has already been established and a reevaluation is not required.

While the district may have specific procedures that should be followed when a student transfers into the district, it is noted that neither the IDEA nor the Kansas regulations require specific school personnel to conduct the transfer process. Instead, the requirement is that school staff, in consultation with the parents, determine the comparable services to be provided to the student until such time that the IEP document is received and, either adopted by the new school district, or a new IEP is developed and implemented by the new school district following the requirements of prior written notice for any changes in services or placement.
In this case, both students transferred into USD #260 from USD #407, another school district in Kansas. It appears that USD #260 had at least two staff members contact the sending school district to obtain copies of the students’ IEPs and gather information about the students’ special education and related services and placement. The mother reports speaking to school staff when the students enrolled regarding their IEPs and the services each received in USD #407. Documentation shows the students were initially enrolled and assigned to schools which housed specific “categorical classrooms” and special education programs on April 4, 2023 based on these interviews with the parent and the previous school district.

In student 1’s case, it was determined that the IEP could be implemented in a PBIS classroom at Oaklawn Elementary School. The school team was initially concerned that the placement was not the most appropriate for the student. Documentation shows the school team was advised to gather any additional data to support their belief that a more restrictive setting was required by the student. The mother and school staff reported that a reevaluation is currently being conducted to help the IEP team to make a determination as to providing FAPE for this student. The IEP team met on April 18, 2023 and amended student 1’s IEP to delete a goal, add benchmarks to another goal, and add transportation as a related service since the student was not receiving his special education and related services in his neighborhood school.

In student 2’s case, the building assignment was changed from a “Life Skills” classroom to a “Functional Skills” classroom based upon data collected by the IEP team during the first two weeks of attendance. The school team determined that even though the transfer IEP stated “life skills”, the comparable services required by the IEP were more appropriately implemented in the “categorical classroom” that USD #260 labels as “Functional Skills”. Documentation shows this change of building assignment was discussed with the mother prior to making any change and coordinated with staff from both effected school buildings.

It is important to note that IDEA court decisions have differentiated between the placement, which is the special education program (services), and the location, which is the LEA assigned building/classroom where those services are provided to the student. The IDEA transfer procedures require comparable services be provided to the student but allows each public agency to determine the building/classroom within the district where those services will be provided. A change of services always requires appropriate prior written notice while a change in location does not. In this case, student 2’s building assignment was changed but the services (program) remained the same.
Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to follow the in-state transfer process for both student 1 and student 2 during the 2022-23 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 from the date of this report.

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

Nancy Thomas

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

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

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

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

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