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

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 6/15/2023. The KSDE allows for a 30-day timeline to investigate the child complaint, which ends on 7/15/2023. An extension to 7/18/2023 was requested by the investigator on 7/14/2021 and approved by KSDE.

Investigation of Complaint

Doug Tressler, Complaint Investigator, interviewed the parent by telephone on June 23, 2023, as part of the investigation.

USD #233 made the following school staff available for a telephone interview on June 26, 2023:

- Deb Chappell, Assistant Director of Special Education
- Matt Kuntsman
- Judy Martin

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:

- Student fee table 22-23
Background Information

The student is a preschool student who has an IEP for special education speech language services. The student receives these services through Olathe public schools. To receive the services the parent transports the student to the local elementary school where the student receives 30 minutes of speech services twice a week. The student does not receive any regular education through the district, and the student is not involved in any other district activities.

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 one issue that was investigated.

**ISSUE ONE**: Whether the USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a free and appropriate public education by charging an instructional materials fee for speech and language therapy services.

**ISSUE TWO** as a systemic issue: Whether the USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act
(IDEA) 34 C.F.R. 300.39(b)(1), charged fees to children with disabilities as part of their special education program.

Positions of the Parties

Position of the Parent

The parent believes the school is violating their child’s right to a free and appropriate public education by charging their child and their family an instructional materials fee for speech services.

The parent believes the fee schedule is in violation of (IDEA) 34 C.F.R. 300.39(b)(1) and that the family should be refunded the charges they paid to the district. The parent also believes that the district policy J Student Fees, JS wherein students in the district are charged an instructional materials fee as part of the regular education program is in error and the fee schedule based on this policy should be changed.

The parent cites a letter from the United States Department of Education, dated June 27, 2002. In the letter, the United States Department of Education acknowledges that schools may charge incidental fees that are normally charged to nondisabled students or their parents as part of the regular education program.

Position of the District

The district denies that the student was not provided a free and appropriate public education. The district states that they did not charge for the student’s specially designed instruction. The student was asked to pay a $50 enrollment fee (the district uses the term “instructional materials fee” interchangeably with “enrollment fee”), the same fee that is charged to all part-time students regardless of whether they are eligible for special education services or not. The district argues that the federal regulations under IDEA specifically allow school districts to charge enrollment fees that are normally charged to all students. The district believes it followed both special education legal requirements and guidance provided by KSDE when charging this fee.

According to the district, for the 2022-23 school year, all students enrolled in the Olathe Public Schools were charged an enrollment fee. This fee is $100 for students enrolled full-time and $50 for students enrolled part-time (3 hours per day or less). The district notes that the student that is the subject of this complaint was charged $50 as a part-time student enrolled in the District’s Early Childhood program. The student was
charged the same enrollment fee as all other students enrolled and participating in Early Childhood, including non-identified students. The district further contends that the enrollment fee for all students is used to pay for instructional materials, which is why it is also sometimes called an instructional materials fee by the district.

The district further explains that the district Superintendent emailed the parent and copied the district's Board of Education in response to the parent's questions about the enrollment fee on March 28, 2023. The Superintendent provided a full explanation of the legal authority of the district to charge the fee and offered information about how the fee could be waived for financial need.

In the email, the Superintendent noted that the payment of these fees has no impact on the student's ability to attend school, receive general education services, or receive special education services. Students are never declined enrollment in the district based on failure to pay these fees.

In their argument, the parent cites the Board Policy JS and KSA 72-3352 in support of the complaint, however the district believes that the parent has misinterpreted the Board Policy meanings. The district argues that neither precludes the district from charging an enrollment fee for (the student). The district argues that the parent has mistakenly taken a portion of Policy JS out of context with regard to students enrolled in specific courses that require supplemental materials. In their argument, the district cites KSA 72-3352, which includes examples of this, such as specialized clothing and towels in physical education, shop, science courses, musical instruments for use in band or orchestra, materials or supplies which are consumed in specific courses, etc. The district also notes that Board Policy JS does not apply to the student and is not relevant to the parent's complaint since fees for specific courses are unrelated to enrollment fees. However, the investigator finds that neither the parent's nor the district argument, regarding either the Board Policy or KSA 72-3352, are relevant to this complaint. The policy and KSA 72-3352 are both referencing regular education, which this student does not participate in.

The district also argues that the parent also mistakenly cites a letter from the United States Department of Education, dated June 27, 2002. In the letter, the United States Department of Education acknowledges that schools may charge incidental fees that are normally charged to nondisabled students or their parents as part of the regular education program, but states that additional fees may not be charged for extended school year services when there is no general education summer school program. The district believes that this letter is not relevant to the parent's complaint as the
enrollment fee charged for her student was for the regular school year and not extended school year services. In this case the parent’s argument, based on the letter is not relevant, but the district mistakes why it is not relevant. Again, this letter is referencing fees normally charged to students as part of their regular education services. The issue in this complaint is whether or not a student receiving special education only can be charged a fee.

The district also offers an e-mail, forwarded to them by the parent, in which the parents had asked KSDE for guidance on this specific topic. In response to this request, on May 10, 2023, Mr. Ward emailed the parent, stating the following, “In short, special education and related services must be provided at no cost. Therefore, no charge may be made for providing the speech services in your child’s IEP. Speech services are the services the speech therapist provides. Instructional materials are not typically considered a service. Instructional materials in braille, for example, for a child who is blind, would be considered an assistive technology device that must be provided at no cost, but it is the braille component of the materials that must be provided at no cost, not the materials themselves.”

The district argues, referencing the email from Mr. Ward, that it has not charged this student, or any other student, for providing the special education services in their IEP. The district further states that, “We regret if the district’s interchangeable use of the terms “instructional materials fee” and “enrollment fee” have been confusing for the parent and caused her to rely on inapplicable policies, statutes and guidance. Regardless, the district is legally permitted to charge these fees and will review the terminology used to ensure parents clearly understand enrollment fees in the future.”

In summary, the district states that the right of a school district to charge enrollment fees to all students is well established in law and practice. The district also states that it followed this, and guidance provided by the Kansas State Department of Education in charging this student the same enrollment fee that all other part-time Early Childhood Education enrolled students in the district are charged during the regular school year.

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.

The student is enrolled as a part time PRK student.
The student receives 30 minutes of speech services twice a week. The student does not receive any regular education through the district, and the student is not involved in any other district activities.

The enrollment/instructional materials fee for Headstart is $0.00
The enrollment/instructional materials fee for Jumpstart At-Risk is $0.00
The enrollment/instructional materials fee for Early Childhood disabilities classroom is $100.00.

The enrollment/instructional materials fee for non-disabled peer models in the Early Childhood disabilities classroom is $200.00/month. (the enrollment fee for the non-disabled peers is not on the fee schedule but was confirmed to the investigator in an email from Deb Chappell June 28, 2023).

The enrollment/instructional materials fee for part-time 3–5 year-old students receiving related service therapy only is $50.00

The enrollment fee K-12 for all students is $100.00.

The fee schedule was approved by the OPS BOE April 07, 2022, in accordance with OPS BOE Policy JJS “student fees”.

The district uses the words enrollment fee and instructional materials fee interchangeably. This was observed by the district and included in their response to the complaint.

In an email to the parent dated March 28, 2023, the Superintendent stated, “our district understands that because an enrollment fee is charged to all of our families, and the enrollment fee is specially used for the purchase of instructional materials for all of our students, the fee is appropriate under law. Those fees are charged to all students.”

The “Customer Fee Ledger” dated June 20, 2023 from USD #233, sent to the parent, labels the charge as instructional fees with the memo “speech”. Further handwritten notation on the receipt notes that this is an “enrollment fee”.

The Data Dictionary supplied by KSDE instructs district to code students based on the appropriate special education setting as determined by the IEP team. Based on the documentation provided in the student’s IEP dated April 18, 2023, the student would be
coded as a SP (separate Class) setting. Indicating that this student has no contact with the general education setting.

**Applicable Regulations and Conclusions**

**CFR 300.39 (a)(1)** Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education.

**CFR 300.39 (a)(2)** Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards.

**CFR300.39(b)(1) At no cost** means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

Applicable guidance: KSDE Preschool Grants FAQs SY2021-22

“Districts and programs should consider several issues when determining whether they will charge fees and tuition to preschool students benefiting from Preschool-Aged At-Risk and Kansas Preschool Pilot funding:

- **Districts should not charge tuition for services supported by state aid via the Preschool-Aged At-Risk program or by Kansas Preschool Pilot grant funds.** If children are attending full-day programs, districts may charge tuition for the portion of the day that is not supported by state funds.
- **Districts should not charge tuition or fees to students with IEPs.** Students with disabilities must have access to a free and appropriate public education (FAPE).
- **Are processes in place to waive tuition and fees for families experiencing financial hardship?** (answer to question 18 page 12)"

In its position statement, the district references **CFR300.39(b)(1) At no cost** means “that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.” The district’s justification for charging fees for their preschool programs “(it is) the right of school district to charge enrollment fees to all students is well established in law and practice. The district followed this, and
guidance provided by the Kansas State Department of Education, in charging this student the same enrollment fee that all other part-time enrolled students in (the district) are charged during the regular school year”. The district goes further to use emails from KSDE legal to substantiate specifically charging enrollment and instructional fees for the early childhood disabilities classrooms. However, when the district creates a specific fee schedule for students receiving “ONLY” OT, PT or SLP related services and has a “Customer Fee Ledger” from USD #233 which labels the charge as instructional fees with the memo “speech”, the district is clearly identifying this charge as specific to the special education classroom setting and is misunderstanding the provision of related service as special education under CFR 300.39 (a)(2).

The district misinterprets C.F.R. 300.39(b)(1). That regulation states that special education students may be charged “incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program” (emphasis added). It is essential that this provision be read in its entirety. We cannot ignore the part of this provision that says, “as part of the regular education program.” Reading the entire regulation, clarifies that this exception, allowing a charge for incidental fees, applies only to children with disabilities who are participating in the regular education program. That means that when a child with a disability is not participating in the general education program, this exception permitting the charging of incidental fees normally charged to nondisabled students does not apply. The circumstances in this complaint provide a prime example of a situation where this exception, allowing for the charging incidental fees, does not apply. This student is not participating in a general education program in any manner. The student is enrolled in the district only to receive speech services for 30 minutes, two times per week. The student does not receive any regular education through the district and is not involved in any other district activity. Accordingly, the district may not use the exception in C.F.R. 300.39(b)(1), to charge incidental fees to this student.

Further, when the district references the e-mail from KSDE, “Instructional materials are not typically considered a service. Instructional materials in braille, for example, for a child who is blind, would be considered an assistive technology device that must be provided at no cost, but it is the braille component of the materials that must be provided at no cost, not the materials themselves.” as evidence that they are appropriately charging an instructional materials fee, the district misinterprets the intent of the e-mail. The email references those instances where a student participates in both general educational and special educational settings consuming materials associated with general educational activities and special education. However, as indicated above, in the instance under investigation,
the child only attends for Speech Language Therapy. The student’s IEP, dated April, 18, 2023, defines the instructional setting as “Special Education direct services outside the regular education classroom, programs and other locations”; therefore, in this separate class setting (as defined by the KSDE-MIS data dictionary), the instructional materials are a part of the specially designed instruction created for that child as a part of the individualized educational program (IEP) in place for that child.

Based on the unique circumstances of this child per CFR 300.39 (a)(2)(i) the speech and language services being delivered to this child may be either related services or special education. Either way, all materials and instruction provided to the student are a part of the services specified in the student’s IEP, and so are part of the student’s “free” appropriate public education. Therefore, it is the opinion of the investigator that the district is in violation of CFR300.39(b)(1) At no cost, meaning that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

**ISSUE ONE Conclusion:** Based on the foregoing, a violation of special education statutes and regulations is substantiated for the failure of the district to provide special education at no cost, under 34 C.F.R. 300.39(b)(1), to the student in this complaint.

**ISSUE TWO Conclusion:** Based on the foregoing, a systemic violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), under 34 C.F.R. 300.39(b)(1), is substantiated due to the district charging fees to children with disabilities a fee as part of their special education only program.

**Corrective Action**

Information gathered in the course of this investigation has substantiated noncompliance with a special education statute and regulation. A systemic violation occurred in the following area:

A. Federal regulations at:
   a. **34 CFR 300.39 (a)(1)** Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education.
   b. **34 CFR 300.39 (a)(2)** Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—(i)
Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards.

c. **34 CFR300.39(b)(1) At no cost** means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

1. In this case, USD #233 committed a systemic error when it charged disabled students who received ONLY OT, PT, or SLP services as special education for instructional materials in the special education setting.

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

1. By Aug 1, 2023, USD #233 will submit to KSDE a list of all special education part-time students participating only in direct special education therapy services (OT, PT, SLP) and charged a fee in the 22-23 school year.
   1. No later than Sept 1 USD #233 will show evidence that reimbursement for these fees has been provided.

2. By September 1, 2023, USD #233 will submit to KSDE an updated Student Fee Schedule that demonstrates students with IEPs are not charged fees for participating in their special education program.

e. Further, USD # 233 shall, within 10 calendar days of the date of this report, submit to Special Education and Title Services one of the following:

1. a statement verifying acceptance of the corrective action or actions specified in this report;

2. written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

3. a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f). Due to COVID-19 restrictions, appeals may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612

### Right to Appeal

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

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

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)