

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #259  
ON DECEMBER 3, 2024

DATE OF REPORT: DECEMBER 27, 2024

This report is in response to a complaint filed with our office on behalf of a student, ----- by their parent, ----- . In the remainder of the report, the student will be referred to as “the Student” and the parent as “the Parent.”

The Complaint is against USD #259 Wichita Public Schools. In the remainder of the report, the “School,” the “District,” and the “local education agency (LEA)” shall refer to USD #259.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. A complaint is considered to be filed on the date it is delivered to both the KSDE and the school district. In this case, the KSDE initially received the complaint on December 3, 2024, and the 30-day timeline ended on January 2, 2025.

### **Allegations**

The following issue will be investigated:

**ISSUE ONE:** Whether USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement accommodations on the Student’s Individualized Education Program (IEP) by not allowing the Student to call home or receive movement-calm down breaks. K.A.R. 91-40-16(b)(3).

### **Investigation of Complaint**

Tania Tong, the Complaint Investigator, interviewed the Special Education Teacher and an Administrator on December 13, 2024. A written statement from the Classroom Teacher was provided to the Complaint Investigator on December 17, 2024. The Parent was interviewed on December 26, 2024.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the District. Although additional documentation was provided and reviewed, the following materials were used as the basis of the findings and conclusions of the investigation:

1. Schedule, no date
2. Daily Tracker, no date
3. Daily Tracker dated December 4, no year
4. Daily Tracker dated September 27, no year
5. Classroom Photos, no date

6. Attendance Record dated April 25, 2024 through December 9, 2024
7. Contact Log dated August 26, 2022 through December 4, 2024
8. Contact Log dated December 9, 2022 through December 3, 2024
9. Individualized Education Program (IEP) dated November 15, 2023
10. IEP dated March 29, 2024
11. Signed Consent Form dated December 4, 2023
12. Prior Written Notice (PWN) dated November 15, 2023
13. PWN dated February 21, 2024
14. Notice of Meeting dated March 18, 2024
15. Multidisciplinary Team Report (MTR) dated March 29, 2024
16. Behavior Data dated January 3, 2024 through March 25, 2024
17. Emotional Disability Policy KAR 91-40-1 dated July 2023
18. Autism Policy KAR 91-40-1 dated July 2023
19. Signed Consent Form dated March 29, 2024
20. PWN dated March 29, 2024

### **Background Information**

This investigation involved a seven-year-old, first grade student enrolled at USD #259, Wichita Public Schools. The Student is currently receiving special education or related services as a child with a Specific Learning Disability per the Individuals with Disabilities Education Act (IDEA). The Student has a documented Developmental Delay and Emotional Disability which impacts the Student's ability to fully access the general education curriculum.

### **Findings of the Investigation**

The following findings are based on a review of documentation and interviews with staff in the District.

1. The District provided visual schedules for the classroom that included the schedule, the task, a timer, the expected voice level, and first-then visuals. Visual schedules were provided for the following routines: morning routine, circle time, break time, reading rotations, recess/lunch, calm time, reading intervention, recess, snack time, math rotations, and clean-up/home. (D3-D28)
2. The IEP dated November 15, 2023, described the following:
  - a. The Student was six years old and in the first grade, attending their neighborhood school.
  - b. The Student was eligible for Special Education services in the category of Developmental Delay.
  - c. The Student's reevaluation was due on March 3, 2026.
  - d. A summary of the Student's Present Levels of Academic Achievement and Functional Performance was included.
  - e. Special Considerations and Relevant Medical Information were described, and Parent/Guardian Concerns were listed.

- f. Evaluation Results, Behavioral Needs, Communication Needs, and Physical Education Needs were described.
- g. Annual Goals in the areas of Social, Behavioral, Speech, Reading, and Math were included.
- h. A Statement of Special Education/Related Services was included.
- i. The following Supplementary Aids and Services as Classroom Accommodations and Modifications were described:
  - i. "Behavior chart at school sent home daily" beginning on November 15, 2023 occurring throughout the day in all settings.
  - ii. "Preferential seating: assigned seat, defined area" beginning on November 15, 2023 and occurring during the academic portions of the day in the regular education or special education classroom throughout the day.
  - iii. "Movement breaks when needed. (walks, sensory activity, buddy room, in the classroom or out of the classroom)" beginning on November 15, 2023 during academic portions of the day, during transition if possible or when the Student demonstrated a need in the regular education or special education classroom. The duration section described "10 minute breaks after completing a required task, either 10 minutes of work or completing an assignment that satisfied the work expectation."
  - iv. "Visual cards for first, then" beginning on November 15, 2023 throughout the core academic portion of the day in the regular education or special education classroom for the academic (core) portion of the day.
  - v. The Least Restrictive Environment section described the rationale for the selection.
  - vi. Parental Rights/Procedural Safeguards were provided on November 15, 2023.
  - vii. A Behavior Intervention Plan described that when the Student was unsafe, the response to the behavior would include "Restat[ing] expectations of how to ask for break and expectations."
  - viii. The Parent signed the IEP on December 4, 2023 under the "I give consent" section, but the "I give consent" box was not checked. (D37-D56)
- 3. The IEP dated March 29, 2024, listed the following:
  - a. The Student was seven years old, in the first grade, and was attending their neighborhood school.
  - b. The Student was eligible for special education services in the area of Emotional Disability.
  - c. The reevaluation was scheduled for March 28, 2027.
  - d. The Present Levels of Academic Achievement and Functional Performance indicated that the Student "currently uses the following accommodations:
    - i. "Sentence starters";
    - ii. "Scribes";
    - iii. "Preferential Seating";
    - iv. "Safe space to use when [the Student] is upset";
    - v. "Small group instruction for most instruction";
    - vi. "Connections behavior chart";

- vii. "Frequent monitoring redirections";
- viii. "Repeated directions";
- ix. "Extra time"; and
- x. The general education teacher indicated that "[The Student] does much better when offered these accommodations and they are needed most of [their] day for [the Student] to be successful."
- xi. According to the IEP Manager, "[The Student's] goals and accommodations established in November 2023 were reviewed prior to this meeting; however goals have not been met and no changes were made."
- e. The following Classroom Accommodations and Modifications were listed in addition to the accommodations from the November 15, 2023 IEP:
  - i. "Proactive support from adults regarding student's concerns" beginning on March 29, 2024, occurring throughout the day in all settings for the duration of the day, especially at times when the Student begins to show behaviors or agitation.
  - ii. "Providing a 'job' and adding weight to meet a sensory need as well as a social need (responsibility)" beginning on March 29, 2024 when making the transition to and from the special education classroom or other setting in the school building for the time required to make the necessary transition.
  - iii. "Separate area for testing" beginning on March 29, 2024 throughout the school day in all settings. (D72-D90)
- 4. A PWN indicated that the Parent consented to the Student's placement and services on March 29, 2024 by checking the "I give consent" box and signing in the same section. (D115-D121)
- 5. The Special Education Teacher explained they use a work break system in their classroom, which includes 20 minutes of work time. Then the Special Education Teacher started a five minute timer which denoted the start of a break time. The Special Education Teacher said this totaled about 10 minutes. To meet the Student's accommodation, the Special Education Teacher explained that anytime the Student was getting overstimulated or required a movement break, whether the Student asked for the break or it was offered to the Student and they accepted, the movement break was always granted. (Special Education Teacher Interview, P1, 00:56)
- 6. Regarding the Student calling home, the Special Education Teacher reported during interviews, "[The Student is] able to, but we like [them] to do it when [they are] in a safe area and not around other students because [they] can get pretty physical and start throwing things. So [the Student] tends to try to just pick up any and every phone [they] can grab to try to call and we're like, 'Hey, let's go to this area so that you can call your [the Parent].' But [the Student] takes that kind of out of context of we're not letting you call [their Parent] at that exact moment." (Special Education Teacher Interview, P2, 03:20)
- 7. The Special Education Teacher stated the Parent had not asked for the accommodation of calling home to be added to the IEP. The Special Education Teacher said, "No, we just met with [the Parent] and [they] mentioned that [the Student] is not allowed to call

whenever they wants [sic]. ... So we were adding that accommodation for specific times that [the Student] can call [the Parent], ... . And that was by [the Parent's] request." (Special Education Teacher Interview, P2, 04:09) The Special Education Teacher indicated the Parent made this request after the complaint was filed. (Special Education Teacher Interview, P2, 04:41) During the interview, an Administrator explained that calling home was not a formal request for the IEP and the Parent did not mention it prior to filing the complaint. (Special Education Teacher Interview, P2, 04:46)

8. The Special Education Teacher stated they did not know why the Parent believed the Student was not receiving movement breaks. The Special Education Teacher said, "... [the Parent] knows our work break system and we have told [the Parent] that several times. We've also told [the Parent] that we do offer [the Student] movement breaks when [they are] becoming escalated, and oftentimes [the Student] will deny them. So we can't obviously force [the Student] to get up and go take a movement break." (Special Education Teacher Interview, P2, 05:08)
9. According to the Classroom Teacher, during classroom rotations, students moved every 10-12 minutes during instructional time. They stated the Student was given flexible seating options such as a rocking chair, wobble stool, inflatable donut seat or rocking seat for carpet time. (Written Statement from Classroom Teacher, December 17, 2024)
10. The Classroom Teacher explained the Student had scheduled movement breaks after every 10 minutes of work time, where the Student could go on a walk with a paraprofessional, or go to a sensory room to play in a sand/rice table. The Classroom Teacher indicated the Student could ask for a break during their work time. The Classroom Teacher would pause the Student's timer and the Student could go on a break if needed. Then the Student would return and complete the remainder of work time before their next break. (Written Statement from Classroom Teacher, December 17, 2024)
11. The Classroom Teacher said, "The [S]tudent had never requested to me to call the parent. There were times when [the Student] was dysregulated where I would call [the Parent] and [they] would request to speak to [the Student]. Some of the time, this would help support de-escalation and other times I saw no effect." (Written Statement from Classroom Teacher, December 17, 2024)
12. During interviews, the Parent stated there was initially no structure regarding how the Student should be allowed to call home. The Parent indicated the Student said there were numerous times the School would not allow them to call home. The Parent did not have dates for these incidents. (Parent Interview, P1, 01:03) The Parent said they spoke to the school on several occasions about the Student calling home, which they recalled taking place from August through December 7, 2024. The Parent said they told the School the Student was supposed to be able to call the Parent to help stop the Student from escalating. (Parent Interview, P1, 02:31)
13. The Parent believed the accommodation to call home was in the Student's IEP from their previous school. The Parent explained in March 2024, they and a previous teacher created an undocumented routine for when the Student was supposed to call home. (Parent Interview, P2, 04:26) The Parent said, "That it wasn't going to be written ... it was

just something that we agreed on to try to assist with some of [the Student's] behaviors. But it wasn't because of how we had the IEP set up. It wasn't going to be written down... ." (Parent Interview, P2, 05:44) The Parent believed the accommodation to call home was in the Student's March 2024 IEP. (Parent Interview, P2, 06:51) During the interview, the Student's Grandparent said, "... it was discussed about the calls and the teacher agreed, again, it wasn't written in the IEP or anything ... ." (Parent Interview, P3-4, 08:10) The Parent indicated the Student would elope and call the Parent, right up until their last day at the School. (Parent Interview, P4, 10:41)

14. The Parent believed the School was counting the Student's movement breaks as a free break. The Parent believed the School would not allow the Student to go into another room when they wanted to do so. (Parent Interview, P5, 13:07) The Parent indicated the School told them they had a place for the Student to go. The Parent believed the School did not start putting the Student into another room until they gave the Student an in-school suspension. (Parent Interview, P5-6, 14:16)
15. The Parent indicated the Student was given a free break if they completed their work, in addition to a separate break for calm down and movement based on how they were regulating. The Parent believed the Student wasn't receiving either break because the Student told them they were not getting breaks. (Parent Interview, P6, 15:08)

## **Positions of the Parties, Applicable Regulations, and Conclusions**

### **Issue One**

Whether USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement accommodations on the Student's IEP by not allowing the Student to call home or receive movement-calm down breaks. K.A.R. 91-40-16(b)(3).

According to 34 CFR § 300.320 and K.A.R. 91-40-16(b)(3), an IEP is in effect for each exceptional child at the beginning of each school year.

**Parent Position:** The Parent alleged the School failed to implement the Student's IEP by not allowing the Student to call home or receive movement-calm down breaks.

**District Position:** The District responded that it did not violate state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), and it did not fail to implement accommodations included in the Student's IEP. K.A.R. 91-40-16(b)(3).

**Analysis & Conclusion:** In accordance with the Student's IEP, the Student received certain accommodations, including movement breaks. In interviews with District staff, it was explained that a movement break was granted any time the Student was getting overstimulated or required such a break. This was also documented in data sheets provided by the District.

Additionally, while calling home was not listed as an accommodation in the IEP, contact logs documented times when the Student was allowed to call their Parent/home.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the District failed to implement accommodations listed in the Student's IEP.

Tania Tong, Licensed Complaint Investigator

### **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](mailto: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).

### **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)