

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #418
ON JANUARY 15, 2025

DATE OF REPORT: MARCH 3, 2025

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 #418, McPherson (McCSEC) Public Schools. In the remainder of the report, the “School,” the “District,” and the “local education agency (LEA)” shall refer to USD #418.

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 January 15, 2025. Mediation paused the timeline on January 23, 2025, and the investigation resumed on February 5, 2025. The 30-day timeline ended on March 3, 2025.

Allegations

The following six issues will be investigated:

ISSUE ONE: Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the least restrictive environment when the Student was "separated and secluded in a room ..." and not able to participate in the general education classroom. K.A.R. 91-40-1.(II); K.S.A. 72-3420; 34 CFR § 300.116.

ISSUE TWO: Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student’s healthcare plan or accommodations related to the Student’s Type 1 Diabetes and other health needs, including not allowing the Student to drink water or use the restroom, and failing to offer restroom breaks or change the Student’s pull-ups. Further alleged was that the Student was receiving occupational and physical therapy from a paraprofessional, the online speech therapy was not effective for the Student, the behavior intervention plan was not being implemented, and the social skills instruction was not being provided. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

ISSUE THREE: Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), offered the Student access to non-academic and extra-curricular activities such as recess. K.A.R. 91-40-1(ttt); 34 CFR § 300.117.

ISSUE FOUR: Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), developed an IEP that included accurate data regarding the Student's behavior, positive behavioral supports, or an accurate behavior intervention plan. The Complaint further alleged that the staff working with the Student were not appropriately trained to work with the Student. K.A.R. 91-40-18; 34 CFR §300.320.

ISSUE FIVE: Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the Student with the special education placement as described in the Student's IEP. Further, the Complaint alleged that the Parent has requested an alternate placement, and the District had not considered this request. K.A.R. 91-40-21 ; 34 CFR §§ 300.224, 300.116.

ISSUE SIX: Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the Student with a free appropriate public education (FAPE). The Complaint alleged that "[the Student] has regressed academically, behaviorally, and on [their] potty training, and now shows signs of P.T.S.D., anxiety, and stress." K.A.R. 91-40-1(z); 34 C.F.R. § 300.101.

Investigation of Complaint

The Complaint Investigator interviewed the Parent by video on February 19, 2025. District staff were interviewed on February 24, 2025 and February 25, 2025.

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

1. Complaint, 02/6/25
2. District Response, 02/26/25
3. Behavior data and graphs, 09/9/24
4. Training schedule, 01/18/25 rescheduled for 2/3/25
5. Behavior consultant log, 08/20/24-12/20/24
6. Data summary, no date
7. BIP, no date
8. Crisis plan, no date
9. Evaluation and Eligibility Report, 05/15/24
10. IEP, 05/15/24
11. PWN re: eligibility ... CONSENT, 05/15/24

12. Teacher information page, 05/17/24
13. Doctor's note, 04/19/24
14. Ambulatory clinic notes from [Hospital], 8/14/20
15. Medical management for Diabetes, 08/24
16. Checklist for Proper Documentation of Initial Placement, 08/13/24
17. Communication log, 08/02/24-01/16/25
18. Consult log for OTR, 09/19/24-12/03/24
19. Student Observation Summary, ATBS Technical Assistance Consultant, 10/25/24
20. TLC Notice of Meeting, re: develop IEP, parent signed to waive rights for 10-day PWN of meeting, 08/06/24
21. TLC PWN, re: amending IEP and parent consent, 08/12/24
22. Team meeting notes, re: PT, OT, busing, health care plan, 09/11/24
23. IEP Amendment, 08/13/24
24. Skill point log, 08/09/24
25. Emergency Safety Intervention Documentation Form (ESODF), TLC Incident Reports, skills charts re: biting, kicking, aggressive behavior, 08/19/24, 08/26/24, 08/27/24, 08/28/24
26. TLC meeting notice, re: discussing changes to IEP, 09/03/24
27. TLC PNW and Consent, re: Spec Ed, related service, placement, addition, modification, 09/11/24
28. TLC meeting notes, 09/11/24
29. TLC IEP, 08/12/24
30. ESODF, TLC Incident Reports, skills charts re: biting, kicking, aggressive behavior, 09/03/24, 09/05/24-09/30/24
31. TLC Notice of Meeting, re: changes to IEP, 09/23/24
32. ESODF, TLC Incident Reports, skills charts re: biting, kicking, aggressive behavior, 10/03/24-10/30/24
33. [Student] NOM Audit Report, 11/07/24
34. Notes, re: behavior, 11/14/24
35. Notes for IEP team meeting, 11/18/24
36. TLC team notes, 12/9/24
37. TLC team meeting notes, 01/15/25
38. Team meeting notes, 01/15/25
39. Daily Log, 08/12/24-01/17/25
40. [Student] attendance log, 08/14/24-01/29/25
41. TLC progress report, 12/20/24
42. School text communication, 12/02/24-12/20/24

- 43. School text communication, 01/06/25-01/17/25
- 44. Field Trip Documentation, re: Student, 09/12/24-01/12/25
- 45. Emails from 08/01/24 through 02/26/25

Background Information

This investigation involved a third-grade student enrolled at the Transitional Learning Center (TLC) on a shortened day schedule in USD #418. The Executive Director described the TLC, "... The TLC is a special purpose day school. This is the most restrictive setting available for students. There are no students that attend TLC without a disability. The special purpose day school does not offer all of the same opportunities to students in a typical general education setting due to the nature and focus of the program. The goal is to always work with students to support the development of emotional regulation skills and student success in order to begin a transition back to a less restrictive environment."

Findings of the Investigation

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

1. The Student is nine years old and attends third grade at the TLC at a non-school location. The Student is on a shortened day schedule.
2. A medical report dated April 19, 2024 indicated, "[The Student] ... needs special educational services due to a complex genetic neurological disability."
3. On May 15, 2024, the Student was found eligible for special education services under the category of Other Health Impairment (OHI) and Speech Language Disabilities (SL). The Student was diagnosed with the following:
 - a. Cerebellar Cortical Dysplasia;
 - b. Dystonia;
 - c. Joubert Syndrome with ocular defect;
 - d. Oculomotor Apraxia; and
 - e. Type 1 Diabetes.
4. According to an Evaluation and Eligibility Report (Re-evaluation) dated May 15, 2024, the re-evaluation indicated that additional modifications to services were needed to enable the Student to meet IEP annual goals and participate as appropriate in the general curriculum. Gross and fine motor concerns were noted. The following assessments and results were listed:
 - a. The Test of Visual-Motor Integration (VMI): average visual attention.
 - b. Fine Motor: No dominant hand preferred, struggled with cutting; can dress themselves.
 - c. The Student did not attempt any handwriting trials.

- d. Physical Therapy: Test of Gross Motor Development-3rd Edition (TGMD-2) indicated the following results:
 - i. "Locomotion-25%."
 - ii. "Ball Skills-1%."
 - iii. "Gross Motor Quotient-4%."
- e. Social/Emotional Behavior: The Behavior Assessment System for Children-Third Edition (BASC-3) listed the following results:
 - i. "Externalizing Problems-Clinically Significant, Parent 85, Teacher 88."
 - ii. "Hyperactivity-Clinically Significant, Parent 76, Teacher 79."
 - iii. "Aggression-Clinically Significant, Parent 90, Teacher 89."
 - iv. "Conduct problems, Clinically Significant, Parent 76, Teacher 88."
 - v. "Learning problems, Clinically Significant, Teacher 70."
 - vi. "Behavioral symptoms index, Clinically Significant, Parent 77, Teacher 79."
 - vii. "Atypicality, Clinically Significant, Parent 77, Teacher 93."
- 5. Relevant items from the IEP from the Student's previous school dated May 15, 2024 indicated the following:
 - a. The Student's re-evaluation was on May 15, 2024.
 - b. Student Strengths: The Student could identify when they were getting angry in three out of five situations before showing physical aggression. The Student was curious and interested in trying new things. The Student made progress in reading. Additional Student strengths were:
 - i. Could spell the words cat, fat, mat, bat, hat, rat, sat, pat, wet, bet, set, met, mop, and top, using phonemic hand gestures to prompt in sounds in 4 out of 5 sessions. The Student could give a verbal sentence independently with practiced words in 2 out of 5 sessions.
 - ii. Could write their name without assistance.
 - iii. Could add or subtract lower-level numbers with the answer being five or less using mental math and can add or subtract using manipulatives with the answer being 10 or less.
 - iv. Could identify numbers 0-20 in 2 out of 5 learning sessions.
 - v. Could be very sweet and hardworking when they were up to it.
 - vi. Had some good receptive language skills.
 - c. The Student's Present Levels of Academic and Functional Performance included:
 - i. Health: The Student was diagnosed with diabetes mellitus type 1 on December 15, 2023.
 - ii. Motor: The Student did not require specially designed adaptive physical education.

- iii. Fine Motor: The Student demonstrated average visual attention on the Visual Motor Integration but had difficulty cutting and holding scissors.
- iv. General Intelligence: The Student was not administered any formal cognitive assessment "owing to [their] reluctance to engage and the manifestation of extreme behaviors in situations where the Student feels overwhelmed." The Special Education Teacher completed a comprehensive Kindergarten Readiness Checklist. It was noted that "[The Student] can complete simple puzzles, focuses and pays attention during an activity such as story time, and engages in memory games."
- v. Social-Emotional: The Student's behavior impeded the learning of themselves and others. The Student had shown extreme physical aggression, resulting in being placed in the safe room for [their] safety, the staff, and other students' safety. "The Student has spit at the window, urinated on the floor, taken off [the Student's] clothes, made threats to kill staff, curses and other verbal aggression."
- d. The Student's goal in behavior was "In 36 instructional weeks, [the Student] will be able to refocus, use safe hands, calm body while choosing a calming technique (deep breathing, calming corner, safe room, asking for one more minute) when given a verbal prompt (green day behavior) by staff and or adult, in 4 out of 5 situations."
- e. The Student's goal in reading was, "In 36 instructional weeks, [the Student] will be able to identify the letter names and sounds of all 26 letters in 4 out of 5 sessions."
- f. The Student's goal in written language was, "In 36 instructional weeks, [the Student] will demonstrate improved letter formation and legibility in writing [their] first and last name with appropriate size, shape, and spacing by using the three-lined writing paper or similar paper. [The Student] will demonstrate this skill in 4 out of 5 trials as measured by teacher-generated writing probes and or district allowable measures, while inside the resource room."
- g. The Student's goal in math was, "In 36 instructional weeks [the Student] will score 5/16 correct on a curriculum based second[-]grade math numbers and operations probe in 2 out [of] 3 trials as measured by teacher[-]generated math probes and or district allowable measures, while inside the resource room."
- h. The following communication goals were listed:
 - i. Goal 1: "Within 36 instructional weeks, [the Student] will produce age-appropriate sounds (l,s,z) in all positions of words and phrases with at least 80% accuracy as demonstrated on 3 of 4 data opportunities."
 - ii. Goal 2: "Within 36 instructional weeks, when completing activities or picture description tasks, [the Student] will use grammatically correct sentences targeting subject-verb agreement (verb tense-present/past regular and irregular, future tense) with 80% accuracy, over two consecutive data collection dates, as measured by the SLP, when completing targeted activities in the speech room."

- i. The following Accommodations/Modifications/Supplementary Aids were listed with the location of “all classrooms including general education and special education,” with a start date of May 15, 2024 and an end date of May 14, 2025:
 - i. Record 1: “[The Student] will have all written language read aloud to [the Student] either by person or electronic device (text to speech).”
 - 1. Frequency: “Whenever written language is present on assignments, tests, and exams in all classrooms including general education and special education.”
 - 2. Duration: or the duration of the assignment, test, and or exam.”
 - ii. Record 2: “[The Student] will not have tests, exams, or progress monitoring timed.”
 - 1. Frequency: “When given an exam, test, or progress monitoring [the Student] will not be given a timed exam (example: Oral reading fluency 1 minute).”
 - 2. Duration: “For the duration of the exam, test, and or progress monitoring.”
 - iii. Record 3: “[The Student] will be given 2 minutes [of] think time to problem solve without redirection.”
 - 1. Frequency: “When given a task, progress monitoring, directions given, and assignment is given.”
 - 2. Duration: “[The Student] will be given the task, progress monitoring, directions read aloud, and or assignment. Once item is read, [the Student] will receive 2 minutes of think time prior to being prompted to answer the question/task. After 3 total wait times, (total of 6 minutes, 3 prompts), [the Student] will be moved to the next item to complete.”
 - iv. Record 4: “Scribe will be provided.”
 - 1. Frequency: “For all in-class assignments, projects, and assessments that require writing.”
 - 2. Duration: “Until the completion of the assignment and or project.”
 - v. Record 5: “Reteaching when [the Student] doesn’t understand the material presented to [the Student].”
 - 1. Frequency: “For all in-class directions, assignments, projects, and tests.”
 - 2. Duration: “[The Student] will be given initial directions, class assignments, projects, and tests with all students and then asked for understanding. If [the Student] does not understand, directions will be restated in a simpler manner up to three additional times. If [the Student] is still not understanding the assignment test, project will be modified to a simpler version and or counted as a no count.”
 - vi. Record 6: “Breaks and/or redirection will be offered when [the Student] shows frustration.”

1. Frequency: "When [the Student] shows frustration during a work task."
 2. Duration: "[The Student] will be given redirection first when [the Student] becomes frustrated with a work task. (Safe hands, calm body, prompt for breathing exercise). If redirection is not successful within one minute, a break (calming corner, walk, soft task) will be offered."
- vii. Record 7: "Breaks will be offered when [the Student] becomes frustrated and requests a break or is prompted by staff to take a break."
1. Frequency: "[The Student] will ask for a break when frustrated and/or prompted to ask for a break when frustrated."
 2. Duration: "[The Student] will be allowed to take a break when frustrated, either by request and or prompted. [The Student] will have no less than 2 minutes and no more than 5 minutes for break. [The Student] will only be allowed one break per 10 minutes of task demand."
- viii. Record 8: "[The Student] will be given a soft task (something easier than the task asked of [the Student] prior to escalation, these are already learned skills that come easy to [the Student] after being escalated to assist in returning to work task."
1. Frequency: "[The Student] will be given a soft task after exiting the safe room, or high escalation situation.'
 2. Duration: "[The Student] will be given a soft task after a high escalation behavior. [The Student] will be given a soft task such as (1 to 1 correspondence, matching, felt board activity, etc.) before returning to previous task asked of [the Student] to complete. Once the soft task is completed, [the Student] will be given the initial task prior to escalation."
- j. Supports for School Personnel indicated, "The special education staff is available to help with questions that the general education staff may need assistance with. This may include working to modify assignments or teaching strategies to help [the Student] be successful within the least restrictive environment."
- k. Educational Placement indicated the Student received special education outside of the general education classroom. The team first considered placement in the regular environment with supplementary aids and services. The team determined that the "nature or severity of the Student's disability is such that placement in the regular education environment with supplementary aids and services cannot be achieved satisfactorily." The Student was placed outside of the regular environment. No harmful effects were anticipated as a result of the recommended placement.
- l. The Parent was informed of the Student's progress at least one time every quarter, at least as often as parents are informed of their nonexceptional children's progress.
- m. Specially Designed Instruction beginning August 14, 2024 and ending May 15, 2025, included:

- i. Special education services in a Non-School Location for 250 minutes one day every week and 270 minutes 4 days every week for “core math, core ELA, social[-]emotional learning, and other academics.”
 - ii. “Consult occupational therapy services [for] 10 minutes, [one time] every month in a [s]pecial [e]ducation setting.”
 - iii. “Pull-out speech and language services [for] 20 minutes [one] day per week in a [s]pecial [e]ducation setting.”
 - iv. “Consult physical therapy services for 15 minutes, [one time] every 9 weeks in a [s]pecial [e]ducation setting.”
6. A Prior Written Notice For Identification, Special Education, and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated May 15, 2024 indicated a substantial change in placement and documented the IEP amendments.
7. An email exchange between the Executive Director of Special Education and the Program Coordinator stated, “We have a student moving in from [the Previous District]. In talking with [the Previous District], the behavior classroom was not successful and they created their ‘own’ specialized program off-site for [the Student]. It was staffed with a teacher and a para (so 2 on 1). [The Student] will need a TLC placement and parents are on board. [The Student] is only able to manage ½ day of school: 8-12:30 at the end of the year. I don’t know if [the Student] can transport with others or not. That’s a convo [sic] I’ll need to have with [the Parent] now that we know the TLC is [their] LRE.”
8. Regarding the Student’s placement, the Executive Director of Special Education described the following in an interview with the Complaint Investigator:
 - a. The Student moved into the District with an existing IEP in which the District County Cooperative was able to provide an equivalent LRE, ensuring continuity of services, which explained the rationale for not considering a more restrictive placement like a placement in a TLC.
 - b. The PAUSE program was a less restrictive setting for students who experienced autism with lower-level behaviors. The Student was not considered for this program.
9. A TLC Notice of Meeting dated August 6, 2024 indicated a meeting to develop the IEP for the Student.
10. The amended IEP dated August 12, 2024 indicated a Behavior Intervention Plan (BIP) was needed. The Service Summary indicated the Student would receive the following from August 14, 2023, through May 14, 2025:
 - a. Special Education/Specialized instruction at a special day school for behavior, 200 minutes weekly, behavior 195 minutes four days a week, and speech/language 20 minutes, one day a week.
 - b. Social Work Services at a special day school for behavior 45 minutes, four times a week and 45 minutes four days a week for emotional regulation and appropriate social skills.
 - c. Special Education/Transportation, extracurricular, behavior, 80 minutes five days a week.

- d. Special Education Services/Instructional Support, indirect services for behavior, 15 minutes 1 day every 4 weeks for behavioral consultation to assist behavioral management and updates.
 - e. Related Services included:
 - i. OT for indirect services: fine motor, 10 minutes, one day every week.
 - ii. PT for indirect services: gross motor, 10 minutes, one day every week.
 - iii. School Nurse services- indirect services, health, 30 minutes, one day every four weeks.
 - iv. School Nurse services: special day school, health, 30 minutes, five days every week. "The Student requires nursing services to address/support [their] diabetes."
11. A Request for Consent for Special Education Action indicated the Parent consented to the special education placement dated August 12, 2024. IEP Meeting Notes reported, "The Student attends a day school program outside of [their] neighborhood school building, will only have access to identified peers 100% of [their] school day and will not have access to the general education curriculum and experiences. [The Student] currently has a shortened school day due to inability to maintain for a longer period of time."
12. A Checklist for Proper Documentation of Initial Placement dated August 13, 2024 indicated the Student would be provided special transportation and that the nurse was notified about the Student.
13. The unsigned, amended IEP dated August 13, 2024 [sic] added the following to the social-emotional performance: "When [the Student] becomes dysregulated, [the Student] demonstrates aggressive behavior towards staff that includes biting, pinching, hitting, scratching, hair pulling or lunging towards adults. [The Student] also engages in self-injurious behaviors by biting [themselves]. On occasion, [the Student] will try to elope from the classroom, remove [their] clothing, and urinate. These behaviors occur on average about 1 time per week and last 7 to 10 minutes." The Executive Director of Special Education indicated in an interview with the Complaint Investigator that the dates on the goals for this document were incorrect and 2024 was the correct year. The following new goals were described:
- a. Social/Emotional Goal 1: "By October of 202[4] [the Student] will display appropriate responses to frustration 80% of the time by displaying self[-]calming strategies (sensory support, movement break, deep breathing, deep pressure, activity etc.) or taking a break when frustrated."
 - b. Social/Emotional Goal 2: "By October of 202[4], [the Student] will use [their] words 75% of the time to express [their] emotions and needs."
 - c. Social/Emotional Goal 3: "By October of 202[4], [the Student] will increase [their] school day, from 90 daily minutes to 420 daily minutes (Full School Day)."
 - d. Reading and writing goals were created.
14. In an interview with the Complaint Investigator, the Parent shared the following:

- a. Regarding occupational and physical therapy, "My understanding is that [the Student] is supposed to have hands-on physical, speech, and occupational therapy Unfortunately, we've never actually been able to get [the Student] to cooperate with occupational therapy. So, if they're actually doing it, I'm very surprised. But as I understand it, at this school, they have the paras do the physical therapy. I don't know anything about occupational, and as for speech, it is done through a Zoom call, which [the Student] does not participate in."
 - b. Regarding physical education, the Parent shared, "They do not allow [the Student] to go outside for anything. They don't allow [the Student] out of the room that [the Student] is in. They don't even allow [the Student] to go to the bathroom. So there is no outside time. There is no playtime, there is no physical exertion at all throughout [the Student's] day there. They don't have a gym. They don't do any of that, not with my child." The Parent described that the Student is confined to a room for long periods of time with minimal movement. The Parent shared that the Student was not allowed to go outside because, on one occasion, the Student refused to come back into the school and was found naked outside. The Parent indicated the school refused to take the Student outside after that incident.
 - c. The Parent described that while the Student was not a big fan of being outdoors, the Student played with siblings outside. The Parent confirmed that when the Student is determined to stay outside, it is difficult to get the Student to come back inside.
15. The Teacher shared the following in an interview with the Complaint Investigator:
- a. The Student rarely used the restroom at school, even when prompted during natural breaks in activities. The Teacher indicated the Student would typically decline, saying, "No thank you." While the Parent took the Student to the bathroom upon arrival, and staff offered throughout the day, the Student infrequently went to the bathroom. According to the Teacher, a bathroom schedule was not initially in place but was added to the Student's schedule after the Parent raised concerns. The Teacher described that the Student had not been present to implement the scheduled bathroom breaks.
 - b. According to the Teacher, the Student's "best" attendance occurred in August and September.
 - c. The Teacher shared that the Student is allowed to stand in class, but when the Student becomes aggressive, they asked that the Student sit to determine compliance, "So if [the Student] [has] been escalated and [the Student] hasn't been safe ... then we'll say, 'If you want us to return to work with you, then you need to sit down so that we can know that you're safe.'"
 - d. Regarding drink breaks, the Teacher shared, "... I don't really count them. They are offered drinks, but kind of at the same time after physical activities, they've gone to the bathroom and coming back and just the natural breaks. [The Student] was always asked if [they] needed a drink. [The Student] also has the ability to have snacks because of [the Student's] diabetes."
 - e. The Teacher indicated they were not involved in the implementation of the healthcare plan. Regarding snacks and water, the Teacher shared, "The snacks [the Parent]

provides don't have anything that needs insulin or non-carbs" and that the Student didn't usually want them.

- f. Regarding the Student's access to water, the Teacher shared, "[The Parent] always said to try to push water if [the Student's] blood sugar was getting high. So we always encouraged [the Student] to drink more" The Teacher said the Student was never denied water and that it "was offered at least every hour."

16. In an interview with the Complaint Investigator, the Nurse shared the following:

- a. Regarding eating lunch and checking blood sugar, "I do know that [the Student] would refuse to have [their] blood sugar checked because of the neurological disorder [the Student] has and behaviors, and also at times [the Student] would refuse to eat. ... So we would give [the Student] some time and ask [the Student] if [the Student] was ready to be checked and if [the Student] wasn't, we would set a timer and give [the Student] some time to calm down if [the Student] needed to and ask [the Student] to be checked again. And if [the Student] refused, we would give [the Student] one more chance after 10 or 15 minutes to be rechecked. And then, at that time, if [the Student] refused, the three chances is what [the Parent] and staff agreed on." After three chances, the Nurse indicated that they would let the Student go and would later ask, "Are you ready to be checked?" The Nurse was not aware of a time when the Student did not receive blood checks or meals due to staff errors or staff shortages.
- b. Regarding bathroom usage and water breaks, the Nurse shared, "Staff would offer [the Student] to go to the bathroom or offer [the Student] water and if [the Student] would say no, they would just wait and offer that again at another time." The Nurse was not aware of any specific intervals or set times for offering the Student water or bathroom breaks and did not know if they were ever denied due to staffing issues or errors.
- c. The Nurse shared that they did not provide direct services to the Student; they were provided through nurse delegation. Staff, including a licensed practical nurse, received training from the Nurse on August 16, 2024, covering blood sugar checks, doctor's orders based on blood sugar levels, and insulin administration based on carbohydrate intake. According to the Nurse, no follow-up training was needed, and the nurse delegation training was included in the health plan review.

17. According to a Medical Management for Diabetes Record dated August 2024 the Student's blood glucose monitoring occurred mid-morning and pre-lunch by staff. During the A.M. time, the Parent would send a snack. The Student would drink 6-8 oz. of water every hour when glucose was elevated.

18. An undated Behavior Intervention Plan (BIP) was completed when the Student was in third grade. "Data from the FBA indicated a need for the following BIP:"

- a. Behavioral Descriptions:
 - i. "Emotional/Behavioral Outburst. ... yelling, crying, physical aggression toward self and others, verbal aggression, elopement."
 - ii. "Removal of [the Student's] own clothes and/or peeing in inappropriate places, and destruction of property or attempts for destruction."

- b. Behavior Data:
 - i. "[The Student] [attended] the TLC on August 19, 2024, ... attendance a total of ten days."
 - ii. "Physical aggression toward others: on 8 of 10 days."
 - iii. "Aggression toward self: on 6 of 10 days."
 - iv. "Elopement: on 2 of 10 days."
 - v. "Removal of clothes: on 5 of 10 days."
 - vi. "Peeing: on 3 of 10 days."
 - vii. "Verbal aggression/Threats: on 6 of 10 days."
 - viii. "Episodes lasted a minimum of 8 minutes to as long as 2 hours and 40 minutes."
 - ix. "Fire alarm pulled on two occasions."
- c. "Behavior function- Attention: positive or negative from staff."
- d. "Behavioral goal: [The Student] will be able to refocus, use safe hands, calm body while choosing a calming technique (deep breathing ... safe room, asking for one more minute) when given a verbal prompt by staff in 4 out of 5 situations."
- e. "Reinforcement:
 - i. "Give frequent positive reinforcement."
 - ii. "Opportunity to participate in desired activities."
 - iii. "Opportunity to reintegrate back into more activities with [their] peers."
 - iv. "Individual/Flexible schedule."

19. A Behavior Consultation Log indicated the following:

- a. August 20, 2024 - the School Psych/Behavior Consultant met with the TLC Principal and TLC Teacher to discuss learning strategies to meet the Student's needs. "The Behavior Consultant will observe the Student."
- b. August 23, 2024 - an observation of behaviors during blood sugar level testing was completed. A discussion of using a preferred task while checking blood sugar such as videos on the Promethean Board [occurred]. TLC concerns continue to be [the Student's] physical aggression during [their] checking of blood sugar levels."
- c. August 30, 2024 - a "Team meeting /discussed creating a Crisis Cycle for staff to follow during [the Student's] escalation. [The Behavior Consultant] met with the CPI trainer regarding strategies for prevention of restraints. [The] Team did discuss the safety of staff and other students."
- d. November 14, 2024 - "Provided TLC Principal an example of a regulation schedule. This schedule provided relationship[-]building with staff and peer times, sensory times, academic work times, and movement times. These activities are built into the day, and times of work expectations are around 15 min. Use of first/then language for non-preferred tasks. Recommended to have a peer come to [the Student] for unconditional relationship building with peers."

20. In an interview with the Complaint Investigator, the Executive Director of Special Education shared that they were involved in all of the Student's meetings. They also shared the following related to the team considering whether the Student may experience autism:
- The decision to not further pursue or consider the autism diagnosis for the Student related to the Parent's assertion that the Student's behaviors were due to Joubert syndrome. The School focused on supporting the Student based on Joubert syndrome's characteristics.
 - The School had "... both our behavior consultants and autism consultants ... to look at physical space, present some ideas for increasing visuals, helping structure because we recognized [the Student] had [their] own unique needs and we wanted to make sure we were aligning our strategies and supports to be more similar" to what had been at the Student's previous school.
 - The School consulted with TASN and Kansas Behavioral Support, and adjustments were made to support the student. A daily preference assessment was implemented to identify the Student's current interests and use them as motivators. According to the Executive Director of Special Education, the Student's irregular attendance prevented consistent implementation of the strategies.
21. According to a Comment Log with a date range of August 12, 2024 through January 17, 2025, the following relevant entries included:
- "8/16-Nurse's Training for Health Care Plan."
 - "8/19-Nurse for support. [The Student] did not get blood checked and did not eat lunch. 11:00-12:00 due to safety."
 - "8/23-Staff for COPING Model after ESI."
 - "9/6-Autism team for ideas."
 - "10/16-At home ABA scheduled to start up again."
 - "10/30-Behavior Supports to set up training for staff."
22. According to an Attendance Log with a date range of August 14, 2024 through January 20, 2025 the following attendance percentages were noted:
- From August 14, 2024 through August 30, 2024, the Student attended class 46% of the time.
 - From January 6, 2025, through January 29, 2025, the Student attended class 18% of the time.
23. Behavioral referrals indicated the following:
- August 19, 2024: kicking and biting; was restrained for 1 minute and secluded for 18 minutes.
 - August 20, 2024: physical assault/self-harm; was able to return to class; restrained for 2 minutes and secluded for 8 minutes.
 - August 26, 2024: physical aggression; was restrained for 2 minutes and secluded for 8 minutes.

- d. August 27, 2024: physical aggression; was restrained for 1 minute and secluded for 2 minutes.
 - e. August 28, 2024: physical aggression; was secluded for 8 minutes.
 - f. September 4, 2024: physical aggression; was secluded for 20 minutes and 12 minutes.
 - g. September 5, 2024: physical aggression/staff; was secluded for 110 minutes total.
 - h. September 10, 2024: physical aggression; was secluded for 20 minutes, twice.
 - i. September 12, 2024: physical aggression; was secluded for three minutes total.
 - j. September 13, 2024: physical aggression; was secluded for three minutes.
 - k. September 16, 2024: physical aggression; was restrained for less than one minute and secluded for 3 minutes.
 - l. September 19, 2024: physical aggression; was secluded for one minute.
 - m. October 15, 2024: physical aggression; was secluded for one minute.
24. The following information was listed in a Field Trip Documentation spreadsheet:
- a. On September 12, 2024, the Student was present at school but did not attend the field trip to the State Fair because the Student "did not meet expected 75% for weekly behavior data to attend field trip." There were 15 aggression codes from September 3, 2024 through September 11, 2024 resulting in a 55% for weekly behavior data.
 - b. On October 18, 2024, the Student was neither present at school nor did the Student attend the field trip to the pumpkin patch. According to the spreadsheet, "[The Parent] indicated [the Student] refused to come to school. [The Parent] reported [the Student] barricaded self in room." Behavior data from October 7, 2024 through October 18, 2024 indicated 66% with six aggression codes.
 - c. On October 31, 2024, the Student was present at school and participated in trick-or-treating.
 - d. On December 10, 2024, the Student was neither present at school nor did the Student attend the field trip to the movie. The notes indicated: "IEP Team determined [the Student] would stay home until Winter Break to attend multiple Dr. appointments and work with new ABA technician. Both Kansas Behavior Supports and Parents wanted [the Student] to have consistent time to work with new ABA therapist and build relationships."
25. In an interview with the Complaint Investigator, the Parent indicated that the Student did not participate in field trips or extracurricular activities at this School. According to the Parent, the District did not provide a reason for the Student's lack of field trip participation. The Parent was unsure if the School offered field trips.
26. The Teacher shared in an interview with the Complaint Investigator, "I don't believe [the Student] was here when we attended the field trip. I don't think we took one in August. ... [The Student] was absent October. I'm trying to remember when we even went on field trips. [The Student] has not attended a field trip. [The Student] went trick or treating with us upstairs, but I don't think [the Student] hasn't [sic] made it to any field trips, but I'd have to look back at the corresponding dates to tell you why that was. It could have been

because ... [the Student's] behaviors were too unsafe to take into the public if it was around the time that [the Student] had not been safe." Regarding communicating that information with the family, the Teacher said, "There would've been conversations if [the Student] didn't turn in the field trip. I sent [the Student] a letter about what the requirements are to make it to field trips. I'd have to look back at the dates and [the Student's] corresponding attendance to see if that was the reason why [the Student] didn't make it or if it was because of behavior."

27. According to a Communication Log with entry dates ranging from August 2, 2024 through October 11, 2024, the District requested Technical Assistance System Network (TASN) support. The TASN TA Provider indicated they would observe the Student and work with the TLC staff. On October 11, 2024, the Program Coordinator emailed to indicate the Student was "beginning ABA services in the home the following Wednesday (10/16/24) so [the Student] would not be at school for an observation on that date. Confirmed new observation date/time of 10/25/24." The TASN TA Provider inquired about the TLC Autism/Behavioral Supports.
28. According to a behavioral log dated September 9, 2024, the Student started "throwing things, kicks feet, becomes louder with 'no' and moves out of the assigned area." The adult response was to provide space, shorten directions, and distract the Student with preferred activities. Behavioral plan notes described ideas that could help enforce behaviors, including social stories, teaching emotions, and calming.
29. A Notice of Meeting dated September 3, 2024 indicated a meeting request to discuss possible changes to the IEP.
30. Team Meeting Notes dated September 11, 2024, indicated the Student would receive PT and OT consultation services provided by the classroom teacher. Speech services were provided virtually. Transportation services would be added to the IEP. A PWN dated September 11, 2024 indicated the team met to update the Behavior Intervention Plan/Crisis Plan. Changes were made due to safety concerns. The Parent consented to the changes. Interventions discussed to try were separate location, video of the Parent speaking to the Student, picture of the Parent for the Student to have while at school, visual schedule, reward system, frequent breaks with preferred activities, 'my singing monster,' and using the same verbiage to speak to the Student.
31. A Consultation Log for communication with a date range of August 29, 2024, through January 16, 2025, indicated that out of 21 days, the Student was:
 - a. Absent from speech services 11 times.
 - b. Attempted to be seen four times.
 - c. No school four times.
 - d. Seen by a Speech Therapist two times.
32. According to a Training/Observation/Collaboration Log, on September 6, 2024, the staff that worked with the Student reviewed autism best practices to be implemented in class by the TLC Teacher to support the Student. On November 14, 2024, the Staff attended a Crisis Prevention Institute (CPI) Training, which included controlled hold techniques, non-harmful

physical interventions, de-escalation, and safety strategies. On November 18, 2024, ABA Pairing techniques were presented to the staff of the Student. On December 9, 2024, the Autism Specialist gave feedback and support for the Student. The ABA Technician shared ideas “that could be quickly implemented, and also strategies, and staff training ideas.” In an interview, the Executive Director [of Special Education] also shared that the staff “completed some webinars and online training that [Kansas Behavioral Support] as well as in-person trainings focused around [the Student] with some different strategies that they typically don’t train all staff on.”

33. In an interview with the Complaint Investigator, the Executive Director of Special Education shared that a Director from Kansas Behavioral Support trained the staff on two different occasions. The training focused on relationships and task completion as opposed to academics. The Executive Director of Special Education indicated that the Student’s attendance impacted the School’s ability to determine whether or not these strategies were effective for the Student.
34. A Consultation Log for Occupational Therapy with a date range of September 19, 2024 through December 3, 2024 indicated:
 - a. The Student was observed in the classroom environment.
 - b. The Student was provided with theraputty with hidden Lego figures inside for fine motor strength.
 - c. An email consultation with the teacher occurred to discuss additional fine motor and/or sensory processing concerns.
35. A Notice of Meeting dated September 23, 2024 requested a meeting for October 15, 2024 to discuss possible changes to the IEP. Meeting Notes dated October 15, 2024 indicated concerns for Student and peer safety due to behaviors and noted the lack of ABA therapy, “there has been a ‘huge regression’ over the period of 5 months and will take a longer period to build back up to where [the Student] was before. ... ABA will be attending 1 day per week to evaluate this Student’s needs to provide services and supports.”
36. A Student Observation Summary dated October 25, 2024 indicated the Student was observed to “gain insight into the current strategies, environment, and behaviors of the Student to support the team in future planning.” Strategies observed were:
 - a. “Interactions were calm and structured.”
 - b. “Consistent verbal prompts across staff.”
 - c. “Neutral tone and processing time before repeating prompts or moving to the next activity.”
 - d. “Positive engagement was observed during OT and PT activities.”
 - e. “Incorporated timers and countdown.”
 - f. “Provided the option of ‘one more minute’ when [their] time was up.”
 - g. “Materials for each task were organized ... outside the classroom.”
 - h. “A behavior chart was filled out by staff after each activity.”

- i. "During escalation, one para remained outside the door at all times while another para documented events, including timestamps, verbalizations, and staff responses."
 - j. Professional Development recommendations included Registered Behavior Technician (RBT) Modules and ABA Therapist Resources.
37. On November 7, 2024 a Notice of Meeting indicated a meeting request for November 14, 2024 to consider possible changes to the IEP. Meeting Notes dated November 14, 2024 indicated that according to data, the Student exhibited physical aggression towards staff and bit themselves. The Student's daily schedule was discussed. The staff gave the Student choices of activities and shortened activities. A reintegration plan described "3 days of 80% safety." A suggested update to the FBA and BIP was recommended to reinforce activities daily.
- The Parents wondered if a behavioral decline occurred in the academic room. The Student was used to going to a safe room when having behavioral issues. When the Student showed they were calm, they were able to leave the safe room. According to the Parent, now, the Student "views the room as punishment at TLC."
38. According to a message from the Parent dated November 14, 2024, the Student would try a soft start with their peers first thing and then transition to a smaller room for social skills after meeting with the Behavioral Support Technician.
39. In an email exchange with the Program Coordinator and the Regional Clinical Director dated November 18, 2024, the following pairing goals for the Student were suggested:
- a. "Approaches school staff to get desired items."
 - b. "Initiates interaction with school staff."
 - c. "Responds to name when said by school staff."
 - d. "Student engages in activity of their choice with the school staff member."
40. IEP Team Meeting notes dated November 18, 2024 indicated the team discussed the current needs and support for the Student. The team wanted to "map out a plan with a memo of understanding (MOU). ... [The Parent] said the Student has a neurology appointment." The team discussed services in the home. The Parent declined, stating that they did not want two different techs. The team discussed the least restrictive environment and a time frame before placement, having some concerns with home status, with other children, and a need to look at residential placement.
41. On December 4, 2024, a Notice of Team Meeting requested a meeting for December 9, 2024 to discuss possible changes to the IEP. According to Team Meeting Notes dated December 9, 2024, the purpose of the meeting was to discuss concerns that the Student had not been in attendance at the TLC since November 18, 2024. "Of the 12 days since then, [the Parent] has attempted to get [the Student] to school twice, but [the Student] has not successfully entered the school building. [The Student] had:
- a. Been sick for two days.
 - b. Had high blood sugar for four days.
 - c. Refused to leave the house one day.

- d. Did not attend due to a lack of sleep for three days.

The team met to discuss the Student's "current health and behavioral needs and to discuss if any changes needed to be made to [their] school plan at this time." The team discussed several potential changes, which included:

- a. Transportation: discussed a type of safety harness to use for transport.
- b. Adjust start time to start at 9:30 a.m. drop-off and stay later in the day.
- c. ABA In-Home Services: ABA offered by the same support worker that supported the Student in the school setting.
- d. Virtual School Check-In: The TLC could set up a time for virtual checks with the Student.
- e. School work sent home: materials sent for preferred tasks.

42. A Report of Academic Progress for the 2024-2025 School Year indicated:

- a. The Student was absent 17 days out of 41 days in the first nine weeks.
- b. The Student was absent 33 days out of 39 days in the second nine weeks.
- c. Progress for Behavioral goals indicated no progress as of 12/20/24.
- d. Progress for the reading goal indicated no progress due to attendance dated 12/20/24.
- e. Progress for the writing goal indicated no progress due to attendance dated 12/20/24.
- f. Progress for the math goal indicated no progress due to attendance dated 12/20/24.
- g. Progress for speech/language goal indicated no progress due to the Student only attending one speech session dated 12/20/24. TLC.

43. A Notice of Team Meeting dated January 8, 2025 requested a meeting for January 10, 2025 to discuss possible changes to the IEP. Meeting Notes dated January 15, 2025 indicated:

- a. The team scheduled to meet on December 19, 2024 as a follow-up to the plan implemented on December 9, 2024.
- b. The team was unable to meet on December 19, 2024.
- c. The meeting was rescheduled to January 10, 2025.
- d. ABA and Home Services Update: The new ABA Tech began services in the home in December and provided services through December 20, 2024.
- e. ABA Tech worked on pairing with the Student.
- f. TLC Attendance: The Parent reported that they did not believe the Student would return to the TLC, and the Parent did not want the Student at the TLC.
- g. Transportation: The ABA Technician would ride the special education transportation with the Student to and from the TLC and home.

44. In an interview with the Complaint Investigator, the Parent shared that the last day the Student attended was in January 2025, "It was a Wednesday, and it was the first day [the Student] rode the bus. So [the Student] got to go, and [the Student] was doing fine, and then they checked [the Student's] blood sugar and [the Student] was high, so they had to send [the Student] home. And I asked ... can [the Student] please stay because if you make [the Student] go home, I'm never going to get [the Student] to go back. I was like, 'Give [the

Student] water. [The Student] has [their] insulin. We can try and get [the Student] to come down by giving [them] water.' And they said, 'No.'"

45. In an interview with the Complaint Investigator, the Parent shared information about the implementation of the Student's healthcare plan, "I don't think they failed to implement it. They implement it because if [the Student's] at 280, they send [the Student] home. I think it was the fact that they would not check [the Student]. They do not give [the Student] water Because [the Student] is a type one diabetic, [the Student] needs the water to help regulate and keep [the Student] low because [the Student] pees out [their] sugars. And so if [the Student's] not given the water, then [the Student] does not urinate enough. And so, not that it matters, because they don't take [the Student] to the bathroom. But that was the problem with the health plan is that they were not checking [the Student] regularly. They would say [the Student] was unsafe or stuff like that, and so they wouldn't check [the Student's] blood sugar, and they wouldn't give [the Student] the water."
46. The Parent shared, in an interview with the Complaint Investigator, "... I asked them to see about sending [the Student] to [Another Location], which is a TLC school because they're saying that [the Student] can't go less restrictive. And I understand I'm not asking [the Student] to go less restrictive. I'm asking [the Student] to be able to join a class instead of be by [themselves]. I'm asking them ... the teachers and staff be open to the engagement with [the Student]. The School that [the Student] is currently in, they do not engage with [the Student]. [The Student's] not allowed to be with the other students. The paras are afraid of [the Student]. They stand in the doorway and like I said, whenever [the Student] stands up, they shut the door so there is no engagement."
47. In an interview with the Complaint Investigator, the Parent shared that "[The Student] refuses to go to school. [The Student] refuses to have anything to do with that school. They've tried to do Zoom meetings with [the Student], and [the Student] [will] throw the phone. [The Student] just says [the Student] doesn't want to go. ... I just know that I can ask [the Student] three times if [the Student's] ready to get on the school bus. [The Student] [will] get up in the morning, [the Student] [will] take [their] meds, [the Student] [will] eat breakfast, [the Student] [will] get dressed, and then the school bus shows up and I am like, 'Okay, the school bus is here' and [the Student] refuses. And I'm like, 'Okay, let's at least walk to the door.' And [the Student's] like, refuses. I can get three refusals and then [the Student] [will] get violent." The Parent indicated that they did not have a problem getting the Student to school last year. The Parent shared that the School had not offered solutions for reengaging the Student in school except for Zoom meetings with the para.
48. According to a message to the Parent from the TLC staff, dated January 15, 2025, the Student had a bathroom break before heading to the classroom. "It seemed a positive time here."
49. An email exchange between the Executive Director of Special Education and the Program Coordinator dated January 22, 2025 indicted, "On the document of [the Student's] data summary that provides the analysis of data (validity, daily performance summary, safety data, trends, etc.), what program does [the] TLC use to run/analyze that data? Walk me through the process as I need to include that in the Formal Complaint Process." The

Program Coordinator replied, "The validity statement is based on the consistency of the data collected as stated (i.e., the percentage of data entered versus data cells with nothing entered). Based on the message you receive; it lets you know how much is missing and changes the interpretation and presentation in subsequent summaries."

50. An undated Student Data Summary indicated that based "on the overall consistency of data collection (0%), the summary is likely an accurate representation of the Student's performance:"
- a. "Daily performance summary - Reviewing the overall data collected to date, there is a small upward trend in [the Student's] average performance."
 - i. "Made gains on the goal: On-time, follows routine, stays in area/seat over the last 30 days (100%) compared to the overall 51.61%."
 - ii. "Progress has been made with completes assigned work, stays on task, participates appropriately over the last 30 days (100%, overall 56.9%."
 - iii. "Progress has been made with Safe words and actions over the last 30 days (100%, overall 57.19%)."
 - iv. "Progress has been made with Cooperates with neutral/positive interactions to students and adults over the last 30 days (100%, overall 46.28%)."
 - v. "Progress has been made with Positive peer interactions over the last 30 days (100%, overall 50.51%)."
 - b. Safety data included:
 - i. "84 instances of aggression - zero occurred within the last 30 days."
 - ii. "22 instances of property destruction - zero occurred within the last 30 days."
 - iii. "39 instances of verbal/gestural threats - zero occurred within the last 30 days."
 - iv. "38 instances of self-harm - zero occurred within the last 30 days."
 - c. "Currently, there is no day of the week that [the Student] performs notably better or worse."
 - d. "[The Student's] performance across activities (times of day) is similar (average 100%)."
 - e. Intervention Impact-Ten intervention changes were noted with the following results, which indicated not enough data had been collected to examine the impact of the intervention change:
 - i. "Tier 3 (off classroom) intervention."
 - ii. "Rotation of staff each hour."
 - iii. "Visual schedule and picture of [the Parent] intervention."
 - iv. "Changed ... time at am, [the Student] escalated, and [the] service provider was unable to deliver services. Continue[d] with escalated behavior and was unsafe at speech time so service was not delivered."
 - v. "Impact of intervention."
 - vi. "Began PT/OT services from consult recommendations intervention."

- f. "Overall, [the Student] has had the most success with the staff going to [the] vehicle to encourage coming in intervention - and the least success with the Intervention-could call [the Parent] on [the] phone to talk."
51. In an interview with the Complaint Investigator, the Teacher shared the following:
- g. The data collected, including task completion, safe actions, cooperation, and peer interactions, and IEP goals were not accurate due to the Student's limited attendance.
 - h. The Student's day consisted of lunch, pe, a social skills activity, and "towards the end of the time," ABA. According to the Teacher, "People were telling us to not do any academics and just try to do pairing and getting to know [the Student]"
 - i. The Teacher's understanding of the ABA support was to help the Student with compliance at home and school.
52. A PE Time document with no date indicated the following PE delivery methods:
- j. Tier 1 PE Time: In playground area, whole class participation.
 - k. Tier 2 PE Time: The Student worked with a staff member in a separate location, away from peers.
 - l. Tier 3 PE Time: The Student worked with a staff member in a separate location, inside, away from peers.
 - i. The Teacher shared in an interview that Tier 3 PE was "PE away from [the Student's] peers."
53. In an interview with the Complaint Investigator, the Teacher shared, "When [the Student] first started, [the Student] was going to all of those with the rest of the class. After [the Student] became aggressive, then the plans kind of changed. [The Student] was still getting the social skills, but it was just [the Student] and ... somebody delivering the social skills activities with [the Student] and PE. [The Student] was was doing activities within another area that was free of the other students that [the Student] was getting to play and work out and [the Student] played with [parents] and those kinds of things and and lunch [the Student] had here because [the Student] had to do [their] insulin and count [their] carbs and [the Parent] said [the Student] wouldn't walk as far as we have to walk to get to lunch." The Teacher indicated that they had to walk to the high school for lunch. Additionally, the Teacher clarified that the Student participated in parallel activities during PE within their special education classroom. The School lacks a gym and general education classrooms, so activities occur in the special education classroom. All classrooms at the School were special education classrooms.
54. In an interview with the Complaint Investigator, the Parent shared that the Student's behavior worsened at their current school. The Parent attributed the Student's behavioral regression to the Student's isolation in the current school. The Parent believed that this led to the Student experiencing anxiety, an inability to sleep alone, and clinginess.
55. At the conclusion of their interview with the Complaint Investigator, the Executive Director of Special Education shared that they attributed the Student's attendance challenges to a lack of consistent in-home and behavioral support since the family's move. Previously, consistent support was effective, and the move, along with inconsistent staffing from

Kansas Behavioral Supports, created a gap in home and school support. The Executive Director of Special Education indicated they believed that this gap impacted the Student's functioning and attendance.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the least restrictive environment when the Student was "separated and secluded in a room ... " and not able to participate in the general education classroom. K.A.R. 91-40-1.(II); K.S.A. 72-3420; 34 CFR § 300.116.

According to K.A.R. 91-40-1.(II), K.S.A. 72-3420, and 34 CFR § 300.116, The least restrictive environment (LRE) means the educational placement in which, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled and meet the requirements of K.S.A. 72-976, and amendments thereto. The placement shall be determined at least annually, based upon the student's individualized education program, and provided as close as possible to the child's home.

The Parent alleged that when the Student was excluded from the main classroom, the Student did not have opportunities to rejoin their classmates.

The District indicated that the Student's current educational placement at the TLC, "the most restrictive environment in the [District] is appropriate." The District indicated that this placement decision was based "on a comprehensive reevaluation that was completed in May 2024 by ... the entity that had provided [the Student] special education services since age 3. The TLC modeled and implemented supports similar to those provided by [the Previous District] in collaboration with Kansas Behavioral Supports and TASN. The [S]tudent's attendance has been very limited, and there is no data to support that a move to a lesser [sic] environment is appropriate at this time. Parents have provided consent for this educational placement both in the previous [District] and in the [current] [District]."

The Student entered the District with an existing IEP that placed them in a specialized program outside of the general education setting. The District determined that an equivalent LRE could be provided at the TLC to provide continuity of services, and the Parent consented. As the year progressed, the Parent was concerned about instances of the Student's isolation and lack of access to the "main classroom" and peers. The Student's behaviors escalated, and their attendance declined, limiting their access to education. The IEP team met on several occasions and discussed the Student's LRE. Safety, peer interaction, and access to curriculum were discussed.

The District and the Parents made an individualized placement decision based on the Student's unique needs and the Student's IEP and periodically reviewed factors that impacted that decision through the IEP meeting process. While the Student's access to the "main classroom" was, at times, limited due to the Student's behaviors, the District made efforts to maximize inclusion where appropriate and provided specialized supports to address the Student's behavioral challenges.

Based on the foregoing, according to IDEA and Kansas special education regulations, it *is not substantiated* that the District failed to provide the least restrictive environment for the Student.

Issue Two

Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's healthcare plan or accommodations related to the Student's Type 1 Diabetes and other health needs, including not allowing the Student to drink water or use the restroom, and failing to offer restroom breaks or change the Student's pull-ups. Further alleged was that the Student was receiving occupational and physical therapy from a paraprofessional, the online speech therapy was not effective for the Student, the behavior intervention plan was not being implemented, and the social skills instruction was not being provided. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

According to K.A.R. 91-40-16(b)(3) and 34 C.F.R. § 300.323. An IEP is to be in effect for each exceptional child at the beginning of each school year.

The Parent alleged the Student was not provided water to drink and needed to have access to water because of the Student's diabetes. According to the Parent, the Student was required to stay in the classroom, required to sit for four hours each day, and was not provided opportunities to use the bathroom facilities, and the Student's pull-ups were not changed. The Parent alleged the Student did not receive occupational therapy. According to the Parent, physical therapy was provided by a paraeducator in the same classroom. Speech services were provided on ZOOM, which, according to the Parent, was not productive for the Student.

The District "... acknowledges that it has been challenging to provide all identified services at [the] TLC due to the [S]tudent's dysregulation and limited attendance. Daily logs will show the desire of staff and attempts made to deliver special education services and educational instruction. The TLC staff continue to be willing to receive training and adjust interventions to try to impact the [S]tudent's success."

To manage their diabetes, the Student required regular blood sugar monitoring, insulin administration, and access to water and bathroom breaks, all of which were documented in their healthcare plan. The Student received consultative occupational therapy and physical

therapy services per their IEP. The Student received speech services virtually but frequently missed sessions due to absences and behavioral issues.

The Student exhibited significant behavioral challenges, including physical aggression, self-harm, and verbal aggression. A BIP was implemented, however, the Student's inconsistent attendance impacted its effective implementation. The Student also struggled with social-emotional skills and received that instruction in various settings to address these needs. Despite these services, the Student showed little to no progress on their IEP goals primarily due to persistent absences and behavior challenges.

While concerns were raised by the Parent regarding the consistency of the healthcare plan implementation, the effectiveness of certain related services, and the Student's limited progress, the District demonstrated a good faith effort to implement the Student's IEP despite the Student's behavioral and attendance challenges. The District monitored the Student, consulted with specialists, and trained staff to support the Student's behavioral and educational needs.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated that the District failed to implement the Student's healthcare plan*. Regarding speech, OT, PT, and social skills, the Student's lack of progress and engagement was not a result of the District's failure to implement the IEP. Those allegations are not substantiated.

Issue Three

Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), offered the Student access to non-academic and extra-curricular activities such as recess. K.A.R. 91-40-1(ttt); 34 CFR § 300.117.

According to K.A.R. 91-40-1(ttt) and 34 CFR § 300.117, "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings, as well as extracurricular and non-academic settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate.

The Parent alleged that the TLC refused to provide alternative accommodations to the Student, despite repeated Parent requests. The Parent alleged that the Student was subjected to prolonged separation and seclusion from their peers. Additionally, according to the Parent, the Student was not provided an opportunity to engage in physical exercise and was asked to remain seated for the duration of the Student's school day.

The District indicated that "... the educational environment in a non-school setting is not the same as a traditional educational environment. The structure and support provided, as well as access to non-identified peers and opportunities, are different from a traditional educational

setting. The Student attends a partial day, which is in alignment with the school day structure provided previously. Parents have provided consent for this placement both in the [Previous District] and in the [District]."

The District indicated that the setting in which the Student received their special education services was very different from a traditional general educational environment. The Parent reported concerns regarding the Student's access to non-academic and extracurricular activities. The Student's participation in physical education was limited. The School did not have a gym, and the Student primarily participated in physical activities in the classroom as a modification for the Student's aggressive behaviors. The Student was excluded from one field trip for documented behavioral challenges and either attended or was absent for the other opportunities. The Student's attendance and behaviors impacted their educational progress.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the District failed to offer access to non-academic extra-curricular activities.

Issue Four

Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), developed an IEP that included accurate data regarding the Student's behavior, positive behavioral supports, or an accurate behavior intervention plan. The Complaint further alleged that the staff working with the Student were not appropriately trained to work with the Student. K.A.R. 91-40-18; 34 CFR §300.320.

According to K.A.R. 91-40-18 and 34 CFR §300.320, in developing or reviewing the IEP of any exceptional child, each agency shall comply with the requirements of K.A.R. 91-40-18 and shall consider the results of the child's performance on any general state or districtwide assessment programs. As a result of its consideration of the special factors, an IEP team determines that a child needs behavior interventions and strategies, accommodations, assistive technology devices or services, or other program modifications for the child to receive a FAPE, the IEP team shall include those items in the child's IEP.

The Parent reported repeatedly informing the TLC that the Student does not learn when isolated. According to the Parent, the Student's Behavioral Therapist witnessed the staff shutting the door to the room the Student was in while the Student escalated. If the Student did not comply with the sit-down directive and moved to get up, the staff at the TLC would shut the door from the outside. If the Student went to open the door, the staff held the door closed, which escalated the Student's behavior further. Additionally, the Parent alleged that the staff presented inaccurate percentage data regarding the Student's behaviors and believed that the percentages reported were largely skewed due to low attendance.

The Parent reported that while staff documented an increase in the Student's aggression, they failed to mention that it was due to severe isolation. The Parent asserted that the staff was hyper-focused on negative behaviors and established unachievable goals for the Student. Additionally, the Parent identified deficiencies in the Student's BIP and cited the poor identification of targeted behaviors and their functions, as well as a failure to include comprehensive teaching strategies for replacement behaviors. Finally, the Parent believed that the staff at the TLC lacked documented training to appropriately address the needs of the Student.

The District indicated that the "... staff at the TLC have been willing to engage in regular collaboration, communication, and reflection to support [the Student's] needs. This is evidenced by communication with [the Previous District], Kansas Behavioral Supports, TASN, and internal consultants. Staff have repeatedly demonstrated a responsiveness to behavioral data and have continued to seek the best approaches to use with the [S]tudent to impact [the Student's] success. A barrier to implementing [the Student's] educational plan has been daily attendance. The limited attendance has impacted the consistent delivery of special education services and for enough opportunities to implement and assess effectiveness of the current plan."

An IEP was in place at the beginning of the year and was revised as needed. A BIP was in place to document the Student's behavioral challenges. Data from August 2024 revealed concerns about the Student's aggression and elopement. IEP meetings were held to discuss the documented concerns, which led to revisions in the BIP and adjustments to the Student's schedule.

Staff received various training to address the Student's needs, including autism best practices, crisis management techniques, and individualized strategies focused on relationship building and task completion. Medical training on blood sugar management was also provided. However, the Student's inconsistent attendance limited the School's ability to assess the training's effectiveness.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the District failed to develop an IEP that included accurate data regarding the Student's behavior, positive behavioral supports, or an accurate behavior intervention plan. It is also not substantiated that the staff working with the Student were not appropriately trained.

Issue Five

Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the Student with the special education placement as described in the Student's IEP. Further, the Complaint alleged that the Parent requested an alternate placement, and the

District had not considered this request. K.A.R. 91-40-21 ; 34 CFR §§ 300.224, 300.116.

According to K.A.R. 91-40-21 and 34 CFR §§ 300.224, 300.116, each agency shall ensure that a continuum of alternative educational placements is available to meet the needs of children with disabilities. These alternative placements shall include instruction in regular classes, special classes, and special schools, instruction in a child's home, instruction in hospitals, and other institutions. Alternative educational placements shall make provisions for supplementary services, including resource room and itinerant services, to be provided in conjunction with regular class placement. Each placement decision shall be made by a group of persons, including the parent and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options.

The Parent reported that alternative schooling options were denied and that the TLC would not offer alternative accommodations, despite repeated requests. According to the Parent, both the TLC staff and the special education department cooperative personnel, including the Director, acknowledged the detrimental effects of the room and the TLC on the Student. According to the Parent, the Director replied by citing adherence to educational guidelines. The Parent detailed the Student's regressions academically, behaviorally, and in their potty training and suggested the Student also showed signs of Post-Traumatic Stress Disorder (PTSD). Finally, the Parent indicated they were informed that the special education cooperative had a contract with the TLC and that they would not fund the Student's placement at an alternative location.

The District "... do[es] not believe that the [S]tudent would be safe in a less restrictive setting at this time. In [the District], the TLC is the most restrictive environment for students that demonstrate intensive social/emotional needs. The TLC is designed to have additional support and resources available for students that demonstrate those needs. This is the same setting (non-school location) identified to be the [S]tudent's least restrictive learning environment by [the Previous District] through a comprehensive re-evaluation in May of 2024. There is not sufficient data to indicate that a move to a less restrictive environment would be appropriate at this time. The [District] acknowledge[s] that a Prior Written Notice should have been presented to Parents to formally document the request and the school's decision to deny that change of placement based on current performance data."

The Student's initial placement in the TLC was discussed and documented through the IEP process and prior written notices. However, in November, when the IEP team reconvened to discuss the Student's current needs and supports, other placement options were discussed. For this discussion, there was no PWN to document the Parent's request or the District's response regarding the consideration of an alternative placement for the Student.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the District failed to provide the Student with the special education placement as described in the Student's IEP. However, *it is substantiated* that the District

violated K.S.A 72-3430(b) and K.S.A 72-3432 (a-c), describing that Parents of exceptional children have the right to written prior notice whenever an agency proposes or refuses to initiate or change the "... educational placement of the child" Documentation of special education decisions must include a clear description of the proposed or refused action, a detailed explanation for the reasons behind the decision, and a summary of alternative options that were considered and/or rejected.

Issue Six

Whether USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the Student with a free appropriate public education (FAPE). The Complaint alleges that "[the Student] has regressed academically, behaviorally, and on [their] potty training, and now shows signs of P.T.S.D., anxiety, and stress." K.A.R. 91-40-1(z); 34 C.F.R. § 300.101.

According to K.A.R. 91-40-1(z) and 34 C.F.R. § 300.101, every child with an exceptionality is entitled to receive a free appropriate public education (FAPE). FAPE is defined as special education and related services that are provided at public expense, meet the standards of the state board, include appropriate preschool, elementary, and secondary education, and are provided in conformity with an individualized education program.

The Parent alleged that the Student was secluded in a separate room and was not afforded opportunities to rejoin the other students. The Parent believed that the Student was prohibited from outdoor play. This restriction stemmed from a previous incident where the Student, when upset, refused to return indoors and proceeded to take off all of their clothes. According to the Parent, the Behavior Therapist attended the School to observe the Student, and after two hours, the Behavior Therapist inquired about scheduled bathroom breaks. The Paraeducator responded that the Student was not allowed to leave the room because their behavior was unpredictable. Additionally, the Parent indicated the Student did not receive occupational therapy and that physical therapy was provided by a paraeducator within the same room.

The Parent reported that the Student had experienced significant regression across multiple areas, including academic performance, behavior, and potty training, and was now exhibiting signs of PTSD, anxiety, and stress. The Parent further indicated that the Student began to engage in self-harm when a door is closed and refuses to sleep alone in their room. Additionally, the Parent noted that if the Student was left alone in their room for an extended period, they would seek out a family member and express fear. Finally, the Parent indicated that the Student became visibly upset and displayed both physical and verbal aggression when school was mentioned.

The placement of the Student in a non-school location was approved by the IEP team, provided a continuity of services, and was determined necessary to meet the Student's needs. The

Student's attendance impacted the School's ability to provide services. The Student's healthcare plan was implemented to the extent possible despite the Student's refusals and safety issues. The School engaged in ongoing communication and collaboration with the Parent regarding the Student's needs.

The School made reasonable efforts to provide a FAPE to the Student. The Student's challenges with attendance, behavior, and medical needs presented obstacles, but the School continued to adjust the Student's program, seek support and training, and communicate with the Parent.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the district failed to provide a FAPE to the Student.

Corrective Action

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

A. Federal regulations at 34 C.F.R. 303.503(a-b) and K.S.A 72-3430(b) and K.S.A 72-3432 specify the requirements for PWN.

In this case, the evidence supports the finding that USD #418 did not provide a PWN to describe the proposed or refused action and the reasoning behind it regarding the educational placement of the Student. Documentation and the District Response letter dated February 6, 2025 document this.

Based on the foregoing, USD #418 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD # 418 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 34 C.F.R. 303.503(a-b) and K.S.A 72-3430(b) and K.S.A 72-3432 by providing parents with PWN when refusing to implement requests made by parents.
2. Within 15 calendar days of the date of this report, USD #418 shall submit a PWN to the Parent documenting the proposed and refused actions and an explanation of those actions regarding the educational placement of the Student.
3. Within 20 days of the date of this report, USD #418 shall submit documentation that the PWN was provided to the Parent.
4. Within 45 days of the date of this report, USD #418 shall train District special education staff and administrators on the PWN requirements. The District shall submit copies of the training materials and attendance sheets.

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.gov. 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)