

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES  
REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #500  
ON FEBRUARY 7, 2025 AND FEBRUARY 11, 2025  
DATE OF REPORT: MARCH 18, 2025

This report is in response to two complaints filed with our office against USD #500 by two individuals who work with Wyandotte County Infant Toddler Services (hereafter referred to as ITS). Complaint 25FC500-004, received by the Kansas State Department of Education (KSDE) on February 7, 2025 was filed by -----, a social worker for ITS, on behalf of ----- In her complaint, in addition to specific concerns regarding -----, she also alleges that systemic violations of special education statutes and regulations have impacted other students going through the transition process. For the remainder of this report, -----, will be referred to as "Complainant 1." ----- will be referred to as "Student 1."

Complaint 25FC500-005, received by the KSDE on February 11, 2025, was filed by -----, a Family Service Coordinator for ITS. For the remainder of this report, ----- will be referred to as "Complainant 2." Complainant 2 alleges systemic violations of special education statutes and regulations related to the transition process, including the development of IEPs, for students who are transitioning to Part B services through the school district. These allegations involve the same cohort of students identified under the February 7, 2025 filing by Complainant 1.

For the remainder of this report, USD #500 will be referred to as "the district."

### **Evidence Reviewed**

The investigation of a formal complaint requires the investigator to contact the complainant in order to gather additional information and verify specific allegations of noncompliance that may be relevant to the investigation. To that end, the investigator spoke with Complainant 1 on February 11 and 13, 2025. On February 28, 2025, the investigator spoke by telephone with Complainant 2.

On February 12 and March 6, 2025, the complaint investigator spoke via telephone with the Director of Special Education for the district. In the process of this investigation, the investigator spoke with additional staff from both ITS and the district in order to develop a list of students whose services could have been impacted by issues raised by these complaints. From the cohort of students who have transitioned from Part C to Part B services during the 12-month period covered by these complaints, a total of 25 students were identified by the parties (complainants and district). Each of these students will be identified by number in the remainder of this report.

In completing this investigation, the complaint investigator reviewed the following materials:

- Document entitled "Kansas Early Childhood Transition from IDEA Part C to Part B" developed by the Kansas State Department of Education
- Document entitled "KCKPS Special Education Status Review" prepared for the district by the Achievement & Assessment Institute of the University of Kansas in the Spring of 2024
- Document entitled "Kansas Early Childhood Transition from IDEA Part C to Part B - Frequently Asked Questions" developed by the Kansas State Department of Education in July 2023
- 2024-25 Case Manager Handbook for the district
- Part C to Part B Transition Handbook for the Wyandotte Special Education Comprehensive Cooperative
- Part C to Part B MOU
- Email exchange dated January 29, 2025 between the ITS Program Coordinator to the Executive Director of Special Education for the district
- Documents related to Student 1:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 1/17/25
  - Notice of Meeting on 1/24/25 (Eligibility and IEP) dated 1/17/25
  - Evaluation/Eligibility Report dated 1/24/25
  - Notice of Meeting on 2/12/25 (IEP) dated 2/7/25
  - IEP for this student dated 2/12/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/12/25
- Documents related to Student 2:
  - Email exchange dated August 5, 2024 between ITS and district staff
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 8/20/24
  - Evaluation/Eligibility Report dated 8/20/24
  - Notice of Meeting on 8/22/24 (Eligibility and IEP) dated 8/20/24
  - IEP for this student dated 8/29/24
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 8/22/24
- Documents related to Student 3 (DOB 9/25/21):
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 6/21/24
  - Notice of Meeting on 9/12/24 (Eligibility and IEP) dated 8/27/24
  - Notice of Meeting on 9/23/24 (Eligibility and IEP) dated 9/3/24
  - IEP for this student dated 9/23/24
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 9/23/24
- Documents related to Student 4:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 10/6/23
  - Evaluation/Eligibility Report dated 11/9/23

- Notice of Meeting on 11/9/23 (Eligibility and IEP) dated 10/19/23
  - IEP for this student dated 11/9/23
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 11/9/23
- Documents related to Student 5:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 1/16/25
  - Evaluation/Eligibility Report dated 2/4/25
  - Notice of Meeting on 1/30/25 (Eligibility and IEP) dated 1/16/25
  - Notice of Meeting (IEP) on 2/13/25 dated 2/7/25
  - IEP for this student dated 2/13/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/13/25
- Documents related to Student 6:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/14/23
  - Notice of Meeting on 2/12/24 (Eligibility and IEP) dated 1/23/24
  - Notice of Meeting on 2/13/24 (Eligibility and IEP) dated 2/7/24
  - IEP for this student dated 2/13/24
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/13/24
- Documents related to Student 7:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 10/17/23
  - Evaluation/Eligibility Report dated 1/16/25
  - Notice of Meeting on 12/10/24 (Eligibility and IEP) dated 11/12/24
  - Notice of Meeting on 1/16/24 (Eligibility and IEP) dated 1/16/24
  - IEP for this student dated 1/16/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 1/16/25
- Documents related to Student 8:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 11/29/23
  - Notice of Meeting on 1/8/24 (Eligibility and IEP) dated 1/4/24
  - IEP for this student dated 1/8/24
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 1/8/24
- Documents related to Student 9:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 2/5/24
  - Evaluation/Eligibility Report dated 4/5/24
  - Notice of Meeting on 4/18/24 (Eligibility and IEP) dated 4/5/24
  - IEP for this student dated 4/18/24
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 4/18/24

- Documents related to Student 10:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 11/17/23
  - Evaluation/Eligibility Report dated 3/1/24
  - Notice of Meeting on 3/8/24 (Eligibility and IEP) dated 3/1/24
  - IEP for this student dated 3/8/24
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 3/8/24
- Documents related to Student 11:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 1/11/24
  - Evaluation/Eligibility Report dated 3/1/24
  - Notice of Meeting on 3/4/24 (Eligibility and IEP) dated 2/29/24
  - IEP for this student dated 3/4/24
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 3/4/24
- Documents related to Student 12:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 11/22/24
  - Evaluation/Eligibility Report dated 1/7/25
  - Notice of Meeting on 2/11/25 (IEP) dated 2/6/25
  - IEP for this student dated 2/11/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/11/25
- Documents related to Student 13:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 1/31/25
  - Notice of Meeting on 2/20/25 (Eligibility) dated 2/7/25
  - Notice of Meeting on 3/3/25 (Eligibility) dated 2/10/25
  - IEP for this student dated 3/3/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 3/3/25
- Documents related to Student 14:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 1/14/25
  - Evaluation/Eligibility Report dated 1/30/25
  - Notice of Meeting on 1/30/25 (Eligibility and IEP) dated 1/14/25
  - Notice of Meeting (IEP) on 2/13/25 dated 2/6/25
  - IEP for this student dated 2/13/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/13/25
- Documents related to Student 15:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 3/25/24
  - Evaluation/Eligibility Report dated 4/2/24

- Notice of Meeting on 4/11/24 (Eligibility and IEP) dated 4/2/24
  - IEP for this student dated 4/11/24
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 4/11/24
- Documents related to Student 16:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 3/4/24
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 3/25/24
  - Notice of Meeting on 5/6/24 (Eligibility and IEP) dated 5/6/24
  - IEP for this student dated 3/7/34
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 5/6/24
- Documents related to Student 17:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/4/24
  - Evaluation/Eligibility Report dated 1/27/25
  - Notice of Meeting on 1/7/25 (Eligibility and IEP) dated 12/12/24
  - Notice of Meeting on 2/14/25 (IEP) dated 2/5/25
  - IEP for this student dated 2/14/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/14/25
- Documents related to Student 18:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/4/24
  - Evaluation/Eligibility Report dated 12/12/24
  - Notice of Meeting on 1/9/25 (Eligibility and IEP) dated 12/12/24
  - Notice of Meeting on 1/31/25 (Eligibility) dated 1/31/25
  - Notice of Meeting on 2/10/25 (IEP) dated 2/5/25
  - IEP for this student dated 2/10/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/10/25
- Documents related to Student 19:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/4/24
  - Evaluation/Eligibility Report dated 2/25/25
  - Notice of Meeting on 2/18/25 (Eligibility and IEP) dated 1/28/25
  - IEP for this student dated 2/25/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/25/25
  - Attempts to contact the parent covering the period of September 30, 2024 through January 22, 2025
- Documents related to Student 20:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/4/24

- Evaluation/Eligibility Report dated 1/30/25
- Notice of Meeting on 1/22/25 (Eligibility and IEP) dated 1/13/25
- Notice of Meeting on 1/30/25 (Eligibility) dated 1/30/25
- Notice of Meeting on 2/11/25 (IEP) dated 2/6/25
- IEP for this student dated 2/11/25
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/11/25
- Documents related to Student 21:
  - Attempts to contact the parents covering the period of November 19 - 21, 2024
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 1/16/25
  - Evaluation/Eligibility Report dated 1/29/25
  - Notice of Meeting on 1/24/25 (Eligibility and IEP) dated 1/16/25
  - Notice of Meeting on 2/6/25 (IEP) dated 2/4/25
  - IEP for this student dated 2/6/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/4/25 (for a meeting on 2/6/25)
- Documents related to Student 22:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/13/24
  - Evaluation/Eligibility Report dated 1/29/25
  - Notice of Meeting on 1/28/25 (Eligibility and IEP) dated 1/14/25
  - IEP for this student dated 1/29/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 1/28/25
- Documents related to Student 23:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/6/24
  - Evaluation/Eligibility Report dated 12/5/25
  - Notice of Meeting on 1/10/25 (Eligibility and IEP) dated 12/6/24
  - Notice of Meeting on 2/6/25 (IEP) dated 2/5/25
  - IEP for this student dated 2/6/25
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/5/25
- Documents related to Student 24:
  - Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 12/12/23
  - Evaluation/Eligibility Report dated 1/26/24
  - Notice of Meeting on 2/14/24 (Eligibility and IEP) dated 1/26/24
  - IEP for this student dated 2/22/24
  - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 2/22/24
- Documents related to Student 25:

- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated 2/6/24
- Evaluation/Eligibility Report dated 3/22/24
- Notice of Meeting on 3/29/24 (Eligibility and IEP) dated 3/19/24
- Notice of Meeting on 4/1/24 (Eligibility and IEP) dated 3/29/24
- IEP for this student dated 4/1/24
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated 4/1/24

## **Background Information**

This investigation involves students who are transferring from Part C services through ITS to Part B services through the district. All district evaluations to determine eligibility for special education services through Part B are conducted by a single designated team of professionals. At the beginning of the 2024-25 school year, that team was comprised of a school psychologist, an "Academic Evaluator" (a special education teacher) and a Speech/Language Pathologist, (SLP) with an Occupational Therapist (OT), Physical Therapist (PT), and Audiologist available on an on-call basis. The school psychologist - who works from a remote location - is assisted in-district by a paraeducator.

For most transitions during the time period investigated, the task of scheduling evaluations and IEP team meetings fell to the school psychologist and the school psychologist's paraeducator. It was the job of the Academic Evaluator to assist with evaluations and to develop IEPs for transitioning students.

The Academic Evaluator who began the 2024-25 school year with the district was a contracted employee - not a direct district hire. That individual resigned her position for personal reasons as of November 12, 2024 and was replaced by a second contract employee. That second individual gave notice on January 24, 2025 that she would be leaving her position on January 31, 2025 to accept a position with another agency.

The Executive Director of Special Education for the district was copied on the evaluator's email notice of resignation on January 24, 2025 but was out of the office at the time and did not become aware of the vacancy until the Program Coordinator for ITS sent her an email on January 29, 2025 notifying her that IEPs had not been completed on two transitioning students.

## **Issues Investigated**

Issues One through Three below were presented by Complainant 1. Issue Four below outlines the systemic concerns specified by Complainant 2. Because Issue Three and Issue Four both allege systemic violations regarding the provision of FAPE, the applicable statutes and regulations, investigative findings, and summary/conclusions for both issues are combined below.

## **Issue One**

Although Student 1 has been found by the district to be eligible for special education services and has reached the age of three, an IEP has not yet been developed for the student, and he is not yet receiving special education services from the district.

### **Position of Complainant 1**

Complainant 1 asserts that while Student 1 was, on February 4, 2025, determined to be eligible to receive special education services from the district, no IEP was developed. As of the filing of this complaint on February 7, 2025, Complainant 1 contends that no IEP had been developed for the student, no date for an IEP meeting had been proposed to the parent and no special education services were being provided to the student by the district even though the student was now age 3.

### **Applicable Statutes and Regulations**

As required by K.A.R. 91-40-2(b)(1) and (2),

"Each agency shall make FAPE [a free appropriate public education] available to each child with a disability residing in its jurisdiction beginning not later than the child's third birthday [and] an IEP or IFSP shall be in effect by the child's third birthday [unless that birthday occurs during the summer when school is not in session]."

### ***Position of the District***

The district stipulates that an IEP had not been developed for Student 1 by his third birthday, and no district-provided special education services were being provided by that date.

### **Investigative Findings**

The resignation of the contracted academic evaluator (special education teacher) for the district's Part C to B team on January 24, 2025 (discussed in the "Background" section of this report and below under Issue Two) left the team without anyone tasked with the specific responsibility of developing a draft IEP for Student 1 (as well as other students). The decision was made by the executive director of special education on January 29, 2025 to have the team conduct evaluation/eligibility meetings for transitioning students but to delay the development of IEPs for those students until a new academic evaluator had been hired and appropriately trained.

Student 1 turned age 3 on February 6, 2024. On January 17, 2025, the parent was given 7-day written notice of a meeting on January 24, 2025 for the purpose of determining the student's eligibility for special education services and developing an IEP. An evaluation/eligibility meeting for Student 1 was held on January 24, 2025, before a new academic evaluator was in place, so the IEP meeting for the student was delayed.



On February 7, 2025 the parent was given 5-day prior notice of an IEP team meeting on February 12, 2025. That meeting was conducted as scheduled on February 12, 2025 - 6 days after the student's 3rd birthday.

According to his February 12, 2025 IEP, Student 1 was to receive 15 minutes a week of speech/language services in an Early Childhood location, 15 minutes a week of speech/language services in a special education setting, and 30 minutes of Early Childhood special education services 4 days a week in an Early Childhood setting.

While the student's IEP shows that the district was prepared to implement services to the student beginning on February 12, 2025, and the student's father provided written consent for those services on the same date, preschool students did not attend class on February 12, 2025, so services for the student actually began on February 13, 2025 at the earliest - 7 days (4 school days) after his 3rd birthday. As a result, Student 1 did not receive the special education support shown in his IEP and is entitled to the following compensatory services:

- o 15 minutes of speech/language services in an Early Childhood location;
- o 15 minutes of speech/language services in a special education setting; and
- o 120 minutes of Early Childhood special education services in an Early Childhood setting.

### **Summary and Conclusions**

Student 1 was not being provided a FAPE through the implementation of an IEP by his 3rd birthday and for four school days after that time. A violation of special education statutes and regulations *is substantiated* on this issue.

### **Issue Two**

The district provided the parents of Student 1 with a statement that compensatory services would be provided to the student, but that statement lacked any tangible information regarding what services would be provided to the student.

### **Position of Complainant 1**

According to Complainant 1, the LEA representative read aloud at the evaluation/eligibility meeting for Student 1 a written statement which told the parent that compensatory services would be offered to the student. Complainant 1 questions the legality of such a statement and contends that the parent was given no clear explanation regarding the nature of the compensatory services to be provided.

### **Applicable Statutes and Regulations**

Districts are encouraged to be open and transparent when talking with parents regarding the provision of special education and related services for their children. Special education statutes and regulations do not prohibit districts from providing parents with information regarding the provision of services.

## Position of the District

It is the position of the district that the reading of the written statement was designed to provided consistency for teams who were transitioning students under the circumstances described above.

## Investigative Findings

In an email sent on Wednesday, January 29, 2025 at 10:44 AM, the program coordinator for ITS notified the executive director of special education for the district that, at meetings for two Part B eligible students, their parents were informed that no one from the district was available to write IEPs for their children. As a result, no IEP would be proposed for these two students - one of whom was turning 3 on the following Monday. The names of both students (Student 21 and Student 22) were provided to the executive director.

The executive director called a meeting with the Part B evaluation team at 3:30 PM on January 29, 2025 to discuss the situation reported by the ITS program coordinator. In attendance (virtually or in person) were 3 school psychologists, the Part C to Part B SLP team evaluator, the school psychology paraeducator (also called the "Psych Facilitator"), and the special education coordinator for Part C to B who oversees the Part C to B team. According to the executive director, she was told by the school psychologist at the meeting that the exiting teacher had provided the psychologist a list of students who were still in the transition process at the time of her resignation. The psychologist forwarded that list of students to the executive director during the meeting.

The executive director, after hearing about what the evaluation team had been trying to handle on their own, told the evaluation team to pause any further action until they had received follow up from the executive director who would also follow up with the principals of the early childhood centers to ensure that everyone was "on the same page" regarding next steps.

At 6:49 PM on January 29, 2025, the executive director sent an email to the Director of Early Childhood and to the KSDE Assistant Director of Special Education to inform them of the situation and the actions she had taken, writing:

*"I am reaching out to communicate about a situation I am currently facing in [the district].*

*I have had 2 sped teachers assigned to part c to b evals resign recently and I have not been able to fill their positions and have been without a teacher for almost 2 weeks. I now have a contracted teacher who will begin next week, but as a result of no staff, I have about 20 students who will not have an IEP in place by their 3rd birthday, but we have been able to or will be holding eligibility meetings before their 3rd birthday, with the exception of some that were scheduled during the winter blizzard that happened earlier this month that we weren't able to hold, but those have been rescheduled and our psych will be doing those.*

*My plan is to communicate honestly with the parents and staff that we will not be able to hold those IEP meetings before the child's 3rd birthday, and I will offer compensatory services*

*for anytime missed. I am providing the building LEAs with uniform communication to share with parents at their eligibility meetings about the situation but I can only anticipate that parents may be encouraged to file state complaints due to this, which is absolutely their right to do so, but I just wanted to check with you to see if there was anything else I should consider?*

*Once the teacher starts next week, her priority will be to contact these families and schedule their IEP meetings and we should be good moving forward with our late February and March students.*

*I am trying to be as proactive as possible, but I am also a realist and I know we are out of compliance for these students.*

*Any advice will be appreciated.*

*Thank you."*

The KSDE Assistant Director of Special Education responded:

*"I agree with being proactive with the parents, and this is consistent with our guidance, if a district cannot provide a service, notify the parents as to why, what the district is doing to remedy the issue, and will evaluate potential compensatory services when remedied. Also, you are correct, parents may still file a complaint, and it may occur...Again, thank you for working with the families and continuing to be transparent with them, and for letting us know."*

At 7:00 PM on January 29, 2025, the executive director sent an email to the building principals as well as the Director of Early Childhood and the Executive Director of Leadership and Learning for the district writing:

*"SPED has had some changes in staffing for the part C to B evaluation team. We no longer have an in-person academic evaluator to conduct academic testing for students C to B or to write the initial IEPs for those students. To ensure we are able to meet the evaluation needs for our Part C to B students, please see our plan below:*

- We will have a virtual sped teacher, with experience in Early Childhood to join the C to B eval team the first week of February*
- The virtual sped teacher will be responsible for drafting the C to B IEPs and facilitating the C to B IEP meetings*
- Our C to B school Psych will conduct the evaluations with her facilitator and continue to use the data from the evaluation results and IFSP to determine eligibility for C to B students*
- Our SLP for C to B will continue to conduct her evaluation and hold IEP meetings for Speech only students.*

*Since last week, we have only been able to hold eligibility meetings with the C to B eval team. All of those students who qualified for DD (not Speech Only) will have to have their IEP*

*meeting held once we have onboarded the new sped teacher. There are about 20 students from last week through the first week, maybe 2nd week, of February who most likely will be delayed with having an IEP in place by their 3rd birthday, and I do understand what this means for our SPED compliance, and I will navigate that piece with the state.*

*Please note, any C to B meetings scheduled for tomorrow through the end of the first full week in February (could be longer, but hoping not) will only be eligibility meetings (No IEP meetings).*

*As the LEA for these C to B meetings, please state the information below to parents before starting the meeting (please print and have available for the meeting to ensure the message for all parents is the same):*

*Today's meeting will only be an eligibility meeting to determine if your child is eligible for Part B services. After this meeting, you will be contacted by a SPED teacher within 10 days to schedule an IEP meeting for your student to initiate SPED services. The district is unable to offer your child services until an IEP meeting is held and initiated by you, the parent, and unfortunately due to staffing constraints, we will not be able to implement an IEP by your child's 3rd birthday, as required, however the district is making all efforts to remedy this situation to get your IEP meeting scheduled as soon as possible.*

*Any services missed as a result of this delay, will be considered for compensatory services by the district's SPED Department, which are special education services offered to you for your child, to make up for the services not provided by your child's 3rd birthday.*

*To answer any further questions, please contact Dr. Lawrie, our Director of Special Education office at 913-627-5674.*

*Thank you.*

*I have attached a copy for you to print to have readily. Once you state this message, it will be captured in the meeting notes. You will receive an email from [the Part C to B coordinator] introducing you to the new sped teacher once everything is confirmed with her.*

*Please direct any questions the parent, parent advocate or Infant Toddler worker may have to me in the SPED department. I will keep you updated on any changes.*

*If you have any questions for me, please contact me...*

*Thank you."*

At 7:14 PM on January 29, 2025, the executive director sent an email to the ITS program coordinator writing:

*"I had a chance to meet with the C to B eval team and I have provided guidance to the LEAs on how to address the situation for those students who only have had eligibility meetings or will have only eligibility meetings and no IEP meetings.*

*We have secured a teacher this evening, but we will be out of compliance for part B for not having an IEP in place by the child's 3rd birthday due to this transition with staffing.*

*Each parent will be contacted by the end of this week to have a discussion about the situation and how we plan to remedy the situation for part B by offering compensatory services for these families impacted by this delay.*

*It is our priority to quickly onboard the new teacher and she will get those IEP meetings scheduled accordingly. I anticipate there to be an impact on part C to B students through mid February and then we should be caught up.*

*I understand this is not an ideal situation, but thank you for bringing this to my attention and know we are addressing it on Part B side.*

*I have asked the LEAs and Part B team to direct all parent concerns to me, but I understand parents have a right to file complaints, but it's my hope that I can explain and offer remedy to the parent regarding the situation.*

*What will be helpful for you and your staff to understand and communicate with parents?"*

The ITS program coordinator responded:

*"This will help explain to parents. I'm sorry this is happening.*

*We will let the parents know they will all be contacted for explanation and a plan to develop and implement the IEP. We will also explain to parents that in this situation, concerns should be directed to you if they need more clarification on the plan.*

*We will inform parents that no matter what we will remain in support of family until the IEP is implemented. If there is anyway you can keep providers updated as parents are contacted I believe it will help us guide parents back to you.*

*We will also ask parents to let us know when IEP will be scheduled so we can document and attend.*

*We will inform KDHE that they will see billing logged after the child's 3rd birthday but I will direct staff to log it as non-billable. Any idea how many IEPs could be late?*

*Is there anything I can do for you to help with this? I know onboarding a new teacher is not easy."*

The executive director replied:

*"Thank you, I appreciate it. I also reached out to the state too, but not KDHE.*

*I can make sure the new teacher keeps the ITS worker in the loop of the date so they can attend.*

*I'm over projecting but I think it will impact about 20 students, but hopefully not that many.*

*Let me think about if there is anything that you can do to help, I don't think so, but once the state responds back they may give me some ideas."*

On February 12, 2025, the executive director sent a follow-up email to building leaders, the Part C to B team, the ITS coordinator and supervisors directing staff to stop the reading of the January 29, 2025 statement. The executive director told staff that the newly hired academic evaluator was working with parents to schedule IEP meetings and that the team would be returning to the previous practice of holding evaluation/eligibility and IEP team meetings if feasible.

### **Summary and Conclusions**

Special education statutes or regulations do not prohibit a district from developing and/or presenting a statement such as the one written by the executive director. As will be discussed below in subsequent issues, such a statement does not in any way obviate the district's obligation to provide the compensatory services due students as a result of the circumstances alluded to in the executive director's statement.

While the statement prepared by the executive director did incorrectly state that the subsequent delayed IEP meeting would need to be "initiated by...the parent," there is no evidence to show that the district abdicated its responsibility to schedule and hold these meetings.

A violation of special education statutes and regulations *is not substantiated* on this issue.

### **Issue Three**

The district is failing on a systemic level to provide special education services in a timely manner to students who are transitioning from Part C services through Infant Toddler to Part B services from the district.

#### **Position of Complainant 1**

Complainant 1 asserts that, in addition to Student 1 and his family, other parents and students have also been read the statement referenced above under Issue Two. Complainant 1 contends that services to other students have been delayed beyond those students' third birthday with no specific discussion of what compensatory services would be provided.

It is also the position of Complainant 1 that IEP meetings are not routinely timely held in order to smoothly transition ITS students to Part B services by the time that those students turn 3.

### **Issue Four**

The district has failed on a systemic level to properly develop and implement IEPs for students prior to their third birthday.

## Position of Complainant 2

Complainant 2 states that she attended an eligibility meeting on February 3, 2025 for a student who was transitioning from ITS to the district. She reports that at this meeting the Local Education Agency (LEA) representative - the building principal - began the meeting by reading the following statement:

*"Today's meeting will only be an eligibility meeting to determine if your child is eligible for Part B services. After this meeting, you will be contacted by a SPED teacher within 10 days to schedule an IEP meeting for your student to initiate SPED services. The district is unable to offer your child services until an IEP meeting is held and initiated by you, the parent, and unfortunately, due to staffing constraints, we will not be able to implement an IEP by your child's third birthday, as required, however, the district is making all efforts to remedy this situation to get your IEP meeting scheduled as soon as possible.*

*Any services missed as a result of this delay, will be considered for compensatory services by the district's SPED Department, which are special education services offered to you for your child, to make up for the services not provided by your child's 3rd birthday. To answer any further questions, please contact...our [Executive] Director of Special Education office...Thank you."*

Complainant 2 asserts that this action denied the student a free appropriate public education (FAPE) by his third birthday by failing to timely develop and implement an IEP for the student.

Complainant 2 further asserts that the parents were informed that the evaluation report which was developed through the eligibility meeting would be forwarded to a "virtual case manager" who would "write the IEP" for the student. It is the position of Complainant 2 that the parents had not met the virtual case manager but were told that she had not participated in the evaluation of their child and would not be providing services for their child. Complainant 2 contends that having a virtual case manager write the IEP does not comply with the State's expectations regarding the appropriate development of a student's IEP.

According to Complainant 2, she was informed that this virtual case manager would be "writing all of the IEPs" and that numerous families being served by ITS have been informed that an IEP for their child would not be developed and implemented by the child's third birthday - a systemic violation of special education statutes and regulations. Complainant 2 states that the ITS Coordinator had - during the week of February 3, 2025 - been informed by the Executive Director of Special Education that more than 28 children had not/would not have an IEP developed and implemented by their third birthday with that number expected to grow over the weeks ahead.

## Applicable Statutes and Regulations

As stated in the Kansas State Department of Education document entitled "Kansas Early Childhood Transition from IDEA [Individuals With Disabilities Education Act] Part C to Part B - Frequently Asked Questions" published in July 2023,

*"A vital part of providing quality services to children with disabilities is assuring a smooth transition from Infant Toddler Services to Preschool Services. Part C of IDEA is a federal program that assists states in operating a comprehensive, statewide program of early intervention services for infants and toddlers with disabilities, from birth through 2 years of age. Part C Indicator 8 identifies the responsibility of Part C service programs in transition planning and engaging in timely planning in support of the child's transition to Part B preschool services or other community services by their 3rd birthday.*

*Part B of IDEA defines the preschool program, which guarantees a free appropriate public education (FAPE) to children with disabilities ages 3 through 5. Part B Indicator 12 covers the transition from IDEA Part C to IDEA Part B, documenting the children referred by IDEA Part C prior to age 3, who are found eligible for IDEA Part B, and who have had an IEP developed and implemented by his or her third birthday.*

*...A referral to a local education agency (LEA)/state education agency (SEA) is required for every child potentially eligible for IDEA Part B that has been referred to or is receiving IDEA Part C services (at least 90 days and no more than 9 months prior to the third birthday). Potentially eligible is defined in the Kansas Infant-Toddler Services Procedures Manual, XIV-2 as children receiving services [Part C] 90 days prior to their 3rd birthday or determined eligible for Part C services at least 45 days prior to their 3rd birthday.*

*Part C is required to refer to the LEA [typically a school district]/SEA as soon as possible after eligibility is determined for any child referred to Part C between 45 and 90 days prior to the 3rd birthday.*

*...When a child who has been served Part C is referred to Part B, the LEA is responsible to giving the parents of the child a copy of the procedural safeguards notice [34CFR 300.504(a)(1)]. A child who is receiving services in Part C, 90 days prior to their 3rd birthday, or determined eligible 45 days prior to their 3rd birthday, is potentially eligible for Part B. Therefore, the LEA must initiate the evaluation process to determine whether the child is a child with a disability [34 CFR 300.301(b)]. Before conducting an initial evaluation under Part B, the LEA must, after providing the parents prior written notice consistent with 34 CFR 300.503, obtain informed written consent...from the parent of the child [34 CFR 300.300(a)]."*

At K.A.R. 91-40-8, Kansas special education regulations require the following:

- f) Unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g), the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child:
  - (1) Conduct the evaluation of the child;



- (2) conduct a meeting to determine whether the child is an exceptional child and, if so, to develop an IEP for the child. The agency shall give notice of this meeting to the child's parent or parents as required by K.A.R. 91-40-17(a); and
  - (3) implement the child's IEP in accordance with K.A.R. 91-40-16.
- g) An agency shall not be subject to the time frame prescribed in subsection (f) if either of the following conditions is met:
- (1) The parent or parents of the child who is to be evaluated repeatedly fail or refuse to produce the child for the evaluation.
  - (2) The child enrolls in a different school before the evaluation is completed, and the parent and new school agree to a specific date by which the evaluation will be completed.
- h) In complying with subsection (f), each agency shall ensure that an IEP is developed for each exceptional child within 30 days from the date on which the child is determined to need special education and related services.

As stated under question 18 of the document entitled "Kansas Early Childhood Transition from IDEA Part C to Part B - Frequently Asked Questions" developed by the Kansas State Department of Education (see page 12), if a mutually agreed upon time for the scheduling of an IEP team meeting cannot be scheduled before a child's 3rd birthday, a district would be considered noncompliant with the State's Indicator 12. It is the responsibility of the district to proactively schedule IEP meetings at a time that allows such meetings to be rescheduled should unexpected events occur. Question 19 of that same document notes that a district cannot extend the timeline for evaluation beyond a child's third birthday unless the parents have repeatedly refused to make the child available for an evaluation.

Evaluations and IEP meetings should be scheduled with enough lead time to allow the parent viable options. The inability of a parent to present their child for evaluation on a given day should not be considered as "refusal" if other options have not been offered.

### **Investigative Findings**

In conducting this investigation, the investigator reviewed documents related to a total of 25 students who were identified by one or more of the parties (Complainant 1, Complainant 2, and the district). Two of the students identified by complainants went through the transition from Part C to Part B outside of the 12-month window covered by these complaints; their cases were, therefore, not investigated.

The 23 remaining students represent only a tiny portion (less than 4%) of the approximately 620 referrals that have been received and processed for Part C to Part B during the period of July 23, 2023 through March 7, 2025. While both complainants allege that there have been widespread violations of the requirement to provide FAPE to students by their third birthday, no other specific students were identified.

The case of one of the identified students was addressed in a formal complaint filed in August 2024 (24FC500-009). Issue 7 of that complaint specifically targeted the question of whether the student was receiving services on his 3rd birthday. That investigator determined that a violation of special education statutes and regulations had not been substantiated. No further investigation of that issue was conducted as a part of this complaint.

One of the students identified by a complainant was referred to Part B less than 45 days before the student's third birthday.

In the course of this investigation, the investigator reviewed documents related to each student in order to determine,

- when consent was obtained from the parent(s) for evaluation to determine eligibility for special education services;
- when the evaluation was completed;
- when an evaluation meeting was held;
- when notice of meetings were provided to the parent(s);
- when IEP meetings were held;
- what services were recommended; and
- when the parent(s) provided written consent for those services to be provided.

**Student 1:**

A violation regarding Student *1 was established* under Issue 1.

**Student 2:**

This student was born on August 23, 2021. An email from ITS staff dated July 30, 2024 shows that contact had been lost with the parent who had gotten a new phone number. The district had been unable to reach the parent in June to schedule an earlier evaluation. The ITS staff member reported that the parent was still interested in having the student evaluated in order to determine eligibility for special education services. Contact information for the parent was provided, and the district reached out to the parent who provided written consent for evaluation of the student on August 20, 2024. The student was evaluated on that same date. An evaluation/eligibility meeting was scheduled for August 22, 2024, but that meeting was subsequently rescheduled for August 29, 2024, 6 days after the student's third birthday. An IEP for this student was developed on August 29, 2024, 6 days after the student's third birthday.

Because of the mitigating circumstances outlined above, a violation of special education statutes and regulations *is not substantiated* with regard to this student.

**Student 3:**

This student was born on September 25, 2021. The district obtained consent for evaluation of this student on June 21, 2024. An eligibility/IEP team meeting was conducted for the student on August 27, 2024. The parent provided written consent for proposed services on September 23, 2024, and services were initiated on September 25, 2024.

A violation of special education statutes and regulations *is not substantiated* with regard to this student.

**Student 4:**

This student's date of birth is November 9, 2020. The student's transition from Part C to Part B fell outside of the 12-month window covered by this complaint and therefore *was not investigated* further.

**Student 5:**

This student was born on February 5, 2022. The student's parents provided consent for his evaluation on January 6, 2025. An eligibility/IEP meeting was originally scheduled for January 30, 2025, but that meeting was delayed because the student was not evaluated until February 4, 2025. The student's IEP meeting was conducted on February 13, 2025, the same day the parents gave written consent for proposed services.

As a result of the delay, Student 5 is entitled to compensatory services of:

- 15 minutes of Occupational Therapy;
- 30 minutes of Speech/Language services;
- 795 minutes of special education services in an Early Childhood Special Education classroom setting; and
- transportation to and from these services if needed in order to access these additional services.

A violation of special education statutes and regulations *is substantiated* with regard to this student.

**Student 6:**

This student was born on March 10, 2021. The students provided consent for an evaluation on December 4, 2023. A meeting to discuss eligibility and develop an IEP was originally scheduled February 12, 2024 but was moved to February 13, 2024. The parents provided consent for the provision of special education services on the day of the IEP meeting, and services for the student were initiated on the student's third birthday.

A violation of special education statutes and regulations *is not substantiated* with regard to this student.

**Student 7:**

This student was born on December 2, 2021. Consent for evaluation was sent to the parents on October 9, 2024 and an appointment for the evaluation was scheduled for November 13, 2024. The parent and student did not come at the scheduled time, and a new evaluation date was set for November 18, 2024 but the student's father cancelled that appointment because of transportation problems. A new appointment was scheduled with the district offering to provide transportation if needed. While the district had proposed that an eligibility/IEP meeting be held for the student on December 10, 2024, the student was not evaluated until January

2025. The student was determined to be eligible for services, and an IEP was developed on January 16, 2025. The parents gave written consent for the provision of those services on that same date.

While the IEP for this student was not implemented until more than 30 days beyond her 3rd birthday, the parent cancelled two evaluation appointments and did not make the student available for evaluation until more than two months after the originally scheduled evaluation date. The district worked promptly to determine the student's eligibility and develop an IEP after the evaluation was conducted.

Because of these mitigating circumstances, a violation of special education statutes and regulations *is not substantiated* in the case of this student.

**Student 8:**

This student was born on January 8, 2021. The transition for this student was completed prior to the 12-month period covered by this complaint. Circumstances regarding this student were, therefore, not investigated.

**Student 9:**

This student was born on April 25, 2021. Consent for evaluation of the student was provided by the parents on February 5, 2024, the same date the evaluation was conducted. A meeting was held to determine the student's eligibility and to develop an IEP on April 18, 2024. The parents provided consent for services to begin on the student's birthday.

A violation of special education statutes and regulations *is not substantiated* in the case of this student.

**Student 10:**

This student was born on March 17, 2021. While the parent provided consent on November 17, 2023 for the student to be evaluated, the evaluation was not completed until March 1, 2024. An eligibility/IEP meeting was held on March 8, 2024 and the student began receiving services on her birthday.

A violation of special education statutes and regulations *is not substantiated* in the case of this student.

**Student 11:**

This student was born on March 14, 2021. While consent was obtained on January 11, 2024 for the evaluation of this student, the evaluation was not completed until March 1, 2024. An Eligibility/ IEP meeting was held on March 4, 2024. While the district proposed that the IEP for the student be implemented as of her 3rd birthday, the parents did not give consent for services to be implemented until March 20, 2024.

Because the parents did not provide written consent for the implementation of the student's IEP until after her 3rd birthday, a violation of special education statutes and regulations *is not substantiated* in the case of this student.

**Student 12:**

This student was born on January 29, 2022. Consent for evaluation was provided by the parents on December 13, 2024, and the results of the initial evaluation of the student were presented to the parents on January 7, 2025. An IEP was developed for the student on February 11, 2025, 14 calendar days (7 school days) after the student's 3rd birthday. The parents provided written consent on February 11, 2025 for the services outlined in the student's IEP.

Because of the delay in provision of services, Student 12 is entitled to the following compensatory services:

- 30 minutes of Speech/Language services in a special education setting;
- 30 minutes of Speech/Language services in a Reverse Mainstream setting; and
- 140 minutes of special education services in a Reverse Mainstream ECSE setting.

Because the district failed to provide a FAPE to this student beginning on his 3rd birthday, a violation of special education statutes and regulations *is substantiated*.

**Student 13:**

This student was born on January 28, 2022. Records provided by the district show that the district first contacted the parent on January 14, 2025. Questions surfaced as to whether the student was a resident of the state since the student's siblings attended school in Missouri. Ultimately, the district determined that the student should be evaluated, and consent for evaluation of the student was provided by the parent on January 31, 2025. An eligibility meeting was scheduled for the student on February 20, 2025, but the physical therapy evaluation of the student was not conducted until February 14, 2025, and an IEP was not developed for the student until March 3, 2025, at which time services were initiated with the written consent of the parent.

As a result of the delay, the student did not receive a FAPE until more than 30 calendar days and 17 school days beyond his 3rd birthday. Therefore, Student 13 is entitled to the following compensatory services:

- 75 minutes of Occupational Therapy;
- 75 minutes of Physical Therapy;
- 150 minutes of Speech/Language Therapy;
- 600 minutes of B time; and
- transportation to receive these services if needed.

Because the district failed to provide this student with a FAPE by his 3rd birthday, a violation of special education statutes and regulations *is substantiated*.

**Student 14:**

This student was born on February 2, 2022. Consent for an initial evaluation of the student was obtained from the parents on January 14, 2025, and the results of the evaluation of the student was reported to the parents on January 30, 2025 at an eligibility meeting. An IEP was developed for the student on February 13, 2025, the same day the parents gave written consent for services to be provided - 11 calendar days and 6 school days after the student's 3rd birthday.

As a result of this delay, Student 14 is entitled to the following compensatory services:

- 30 minutes of Speech/Language Therapy in a special education setting;
- 30 minutes of Speech/Language Therapy in a Reverse Mainstream ECSE setting; 180 minutes of Special Education services in a Reverse Mainstream ECSE setting; and
- transportation to receive these services if needed.

Because the district failed to provide a FAPE to this student by his 3rd birthday, a violation of special education statutes and regulations *is substantiated*.

**Student 15:**

Because this student was referred for Part B services less than 45 days prior to her 3rd birthday, this case *was not investigated* further.

**Student 16:**

This student was the subject of a formal complaint (24FC500-009) filed against the district in April 2024. Issue 7 of that complaint addressed the allegations of the parents that the district had failed to provide services to the student by his 3rd birthday. The investigator determined that a violation of special education statutes and regulations *was not substantiated*. This case was not reviewed further as a part of this investigation.

**Student 17:**

This student was born on January 24, 2022. Consent for an initial evaluation of the student was provided by the parents on December 4, 2024. On February 14, 2025, the district conducted an eligibility/IEP meeting regarding the student, and the parents provided written consent for services proposed by the district - 21 calendar days after the student's 3rd birthday. Because students were not in school on February 14, 2025, services for the student were initiated on February 18, 2025, 13 school days after the student's birthday.

Because of the delay in the provision of FAPE to this student, Student 17 is entitled to the following compensatory services:

- 45 minutes of Occupational Therapy in a special education setting;
- 45 minutes of Speech/Language Therapy in a special education setting;
- 45 minutes of Speech/Language Therapy in a Reverse Mainstream ECSE setting; and
- 3 hours of special education services in a Reverse Mainstream ECSE setting.

Because the district failed to provide this student with a FAPE by her 3rd birthday, a violation of special education statutes and regulations *is substantiated*.

**Student 18**

This student was born on January 31, 2022. The written consent of the parents for the initial evaluation of this student was obtained on December 4, 2024. The student was evaluated in December 2024, but an eligibility meeting for the student was not held until January 31, 2025. The parents then participated in an IEP meeting for the student on February 10, 2025 and gave their written consent for the services proposed by the district.

As a result of delays, Student 18 did not receive special education services until 5 school days after his 3rd birthday and is entitled to the following compensatory services:

- 15 minutes of Speech/Language Services in a special education setting;
- 15 minutes of Speech/Language Services in a Reverse Mainstream ECSE setting;
- 150 minutes of Special Education services in a Reverse Mainstream ECSE setting; and
- transportation for these services if needed.

Because the district failed to provide a FAPE to this student by his 3rd birthday, a violation of special education statutes and regulations *is substantiated*.

**Student 19:**

This student was born on January 6, 2022. Consent for evaluation was emailed to the parents on September 30, 2024, and attempts to schedule the initial evaluation of the student were made in October 2024. A scheduled evaluation in early December was rescheduled when the parent experienced car trouble. The parents signed a new consent for evaluation on January 28, 2025. Ultimately, the IEP meeting for this student was not held until February 25, 2025, and the parents did not provide written consent for the district to implement proposed services until March 4, 2025.

While the district's staffing problems certainly contributed to a delay of special education service implementation of more than 2 months beyond the student's 3rd birthday, the student was not made available for evaluation until nearly a month after he turned 3, and the parents took a few days to consider the district's recommendations for service before providing their written consent.

In a report provided to the investigator, the district has calculated compensatory special education services for this student covering 25 school days, which, in the opinion of the investigator more than makes up for any of the missed services that were solely the responsibility of the district. Therefore, Student 19 is entitled to the following compensatory services:

- 90 minutes (6 weeks at 15 minutes per week) of Speech/Language Services in a Reverse Mainstream ECSE setting;
- 90 minutes (6 weeks at 15 minutes per week) of Speech/Language Services in a special education setting; and

- 750 minutes of Special Education Services in a Reverse Mainstream ECSE setting.

Because the district failed to provide a FAPE to this student by his third birthday, a violation of special education statutes and regulations *is substantiated*.

**Student 20:**

This student was born on January 30, 2022. Consent for an initial evaluation of this student was obtained from the parents on December 4, 2024. The results of the evaluation were reviewed with the parents on January 30, 2025, and an IEP meeting for the student was held on February 11, 2025, the same day the parents provided written consent for the district's proposed services. This resulted in the student missing 7 school days of special education services.

Student 20 is therefore entitled to the following compensatory services:

- 30 minutes of Speech/Language Services in a special education setting;
- 30 minutes of Speech/Language Services in a Reverse Mainstream ECSE setting;
- 210 minutes of Special Education Services in a Reverse Mainstream ECSE setting; and
- transportation to receive these services if needed.

Because the district did not provide special education and related services to this student until 7 school days past her 3rd birthday, a violation of special education statutes and regulations *is substantiated*.

**Student 21:**

This student was born on February 3, 2022. The district first contacted the parent in mid-November 2024 but did not obtain parental consent for an initial evaluation until January 16, 2025. An eligibility meeting for the student was held at the end of January 2025, and an IEP team meeting was held on February 6, 2025 at which time the parent provided written consent for the delivery of special education services to the student. This delay resulted in the student missing a total of 30 minutes of special education services in an Early Childhood classroom. The student is, therefore, entitled to compensatory services for this time.

Because the district failed to provide special education services to this student by his 3rd birthday, a violation of special education statutes and regulations *is substantiated*.

**Student 22:**

This student was born on February 13, 2022. On December 13, 2024, the district obtained consent from the parents for an initial evaluation of the student. That evaluation was completed and an eligibility/IEP meeting regarding the student was held on January 28, 2025. It was determined that the student's primary delays were in the area of speech and language. The IEP team recommended that he receive 30 minutes of speech/language services per week, and the parent provided written consent for those services to begin on the student's 3rd birthday.

A violation of special education statutes and regulations *is not substantiated* in the case of this student.



**Student 23:**

This student was born on February 5, 2022. The district obtained parental consent from the parents on December 6, 2024 to conduct an initial evaluation of the student. Inclement weather caused the district to cancel an eligibility/IEP team meeting originally scheduled for January 31, 2025. That meeting - which included representatives from outside agencies - was held on February 6, 2025 - the first school day following the student's third birthday. The parents provided written consent on February 24, 2025 for the services proposed by the district.

The district was ready, willing, and able to begin providing services to this student on the first school day following his 3rd birthday, however, they lacked the parents' consent until 18 calendar days later. Therefore, a violation of special education statutes and regulations *is not substantiated* in the case of this student.

**Student 24:**

This student was born on February 17, 2021. The parents provided written consent on December 12, 2023 for the district to conduct an initial evaluation of the student. An eligibility/IEP meeting regarding the student was conducted on February 22, 2024 - 2 school days after the student's 3rd birthday. The parents provided written consent that same date for the special education services proposed by the district.

Because this student was not receiving special education services from the district as of her 3rd birthday, a violation of special education statutes and regulations *is substantiated*.

No evidence was presented to show that the district failed to provide the speech and language services (15 minutes a week of speech/language services in a special education setting and 15 minutes a week of speech/language services in an Early Childhood setting) called for in the student's IEP during the two days the student attended school in the week of February 19, 2024. Therefore, no compensatory services are warranted.

**Student 25:**

This student was born on April 3, 2021. Consent for an initial evaluation was given on February 6, 2024. An eligibility/IEP meeting regarding the student was conducted on April 1, 2024. The parents provided written consent on that same day for the implementation of the special education services specified in the student's IEP, and he was able to begin to receive those services on April 4, 2024, the first school day after his 3rd birthday. A violation of special education statutes and regulations *is not substantiated* in the case of this student.

**Summary and Conclusions**

Twenty-five (25) students were identified by the parties to this complaint for review, and as noted above the records for 23 of those students were investigated. Violations of special education statutes and regulations regarding the provision of services to those students by their 3rd birthday were substantiated for 11 of the 23 students (48%). Of those 11 students, 9

were self-identified by the district as having been negatively impacted due to the resignation of the contracted academic evaluator (special education teacher) for the Early Childhood evaluation team, far fewer than the twenty or more students that the executive director of special education had - as she told the director of ITS in an email - feared might be impacted.

The district anticipated that compensatory services could be warranted for students impacted by this situation, and compensatory services are due to 8 of these students as enumerated above.

The complainants identified 2 other students who were determined through this investigation to have not been receiving services by their 3rd birthday, but compensatory services are only warranted for 1 of those students.

While the resignation of the special education teacher did result in numerous violations of special education statutes and regulations, there is - based upon this investigation - no indication of a systemic violation outside of this situation caused by that resignation.

It is important to note, however, that while there are no indications that the district is routinely delaying services to students transitioning from Part C to Part B services beyond their 3rd birthday, this investigation did determine that there are reasons for the district to take a close look at how the transition process is being managed.

The district generally appears to be providing services to students by the deadline established by statutes and regulations - the child's 3rd birthday. However, the district's transition process has not consistently provided these children and their families with what the Assistant Director of Special Education for the Special Education and Title Services (SETS) division of the Kansas State Department of Education (KSDE) describes as "a soft landing" into public school programs.

Much attention is given by KSDE to the transition process from Part C to Part B. Part C providers, in this case ITS, are directed to refer students to the district well before their 3rd birthday so that the district can obtain consent for and conduct evaluations to determine whether or not a student is eligible to receive special education services from the district under an IEP. There is an expectation that there will not be an eleventh-hour rush to complete the process so that the district can meet the letter-of-the-law deadline for the provision of services.

Rather, the intent of established policies and procedures is to ensure that - even if there are bumps in the road due to scheduling problems - families will glide into that soft landing in plenty of time for all arrangements regarding the provision of special education services to have been put in place well before their child turns 3.

District procedural guides direct staff to move promptly to complete evaluations of students once they are referred by ITS. A review of the records associated with the students identified in this complaint shows that consent for evaluations were for the most part obtained early on in the transition process. On average, the district obtained consent for evaluations 44 days ahead of students' 3rd birthdays (median of 35 days with a range of 120 days ahead to 3 days ahead).

However, the results of these evaluations were not reviewed with the parents until on average 6 days before the child's birthday (median of 4 days with a range of 50 days before to 45 days after). While this pattern may not be typical of all transitioning students, the data suggests that the evaluation team has not consistently acted timely to complete evaluations once consent had been obtained.

The district is strongly encouraged to establish and follow timelines for completing evaluations so that IEPs for students can be developed at least 2 weeks prior to a student's 3rd birthday. Doing so will allow time to set up transportation if needed and will provide some "wiggle room" in those cases where last-minute meeting changes need to be made.

### **Additional Issues**

The investigator reviewed the IEPs and associated meeting notices of each of the 25 students identified through this investigation. In the course of those reviews, two additional issues were identified. Both of these issues appear to be systemic in nature.

#### **Issue Five**

Parents have not consistently been provided with 10-day notice of their child's IEP team meeting.

### **Applicable Statutes and Regulations**

After an evaluation is completed and the information is compiled, the team must schedule a time to convene in order to make the determination of eligibility. Parents are to be provided an opportunity to participate in the eligibility meeting, which can be conducted at the same time as the IEP team meeting. The school must provide a notice of the meeting at least 10 calendar days prior to the meeting date that includes the requirements in K.A.R. 91-40-17(b)(1). The notice must indicate the purpose, time, and location of the meeting and who will be in attendance, and inform the parents that they may invite others who have knowledge of or special expertise about the child.

If the parents want to waive their right to 10-day notice of an IEP team meeting in order to expedite the development of their child's IEP, the district may honor their request and have the parents formally waive the required notice. It should not, however, be a common practice of a district to request that parents waive their right to 10-day notice because tight time lines make it difficult to complete a student's IEP and have him/her ready for service by the student's third birthday.

### **Investigative Findings and Conclusions**

In 13 of the 23 (57%) cases investigated, parents were given less than a 10-day notice of eligibility and/or IEP team meetings. In some cases, parents were given less than a 10-day notice of more than one meeting. On average, this group of parents were given a 5-day notice of meetings (range of 0 to 9 days and a median of 5).

While the resignation of the special education teacher may have prompted teams to try to move quickly in scheduling meetings once staff was in place, it is noteworthy that in at least five of the cases reviewed, parents were given less than a 10-day notice and did not waive their right for that notice.

Because in multiple cases associated with this investigation parents were provided with less than a 10-day notice of meetings and did not waive their right to such notice, a violation of special education statutes and regulations has been identified.

## **Issue Six**

A general education teacher was not consistently included as a member of the IEP team for students transitioning from Part C to Part B.

### **Applicable Statutes and Regulations**

K.S.A. 72-3404(u)(2) requires that the IEP team include at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment.

If a school district provides "regular education" preschool services to nondisabled children, or if a preschool child with disabilities is enrolled in a preschool program for children without disabilities operated by the school district, the preschool teacher has the same requirements to attend the IEP meeting as for school age children. If the child is enrolled in a preschool program for children without disabilities that is not operated by the school district, the school is required to invite the preschool teacher, but has no authority to require the preschool teacher's attendance. If the preschool teacher of the child does not attend, the school shall designate a teacher who, under state standards, is qualified to serve children without disabilities of the same age.

For a child 3–5 years of age, the representative may be a preschool teacher (e.g., regular preschool, Title I preschool, Even Start, Head Start, Migrant, Bilingual, Early Learning Kansans, Kansas Parent Education Program, etc.). For a child 3–5 years of age that is in a setting that does not provide a preschool educational component (e.g. home setting or child care), it is considered the child does not have a regular education teacher and is not participating in a general education environment, therefore, a general education teacher is not required to be part of the IEP team. However, a parent may invite a child care provider to attend the IEP team meeting as a person with knowledge or expertise about the child.

### **Investigative Findings and Conclusions**

In the course of reviewing student records related to these complaints, the investigator observed that a general education teacher was rarely in attendance at the IEP meetings for these students including the case of students whose IEPs reflected that they were participating in "K" setting programs. "K" programs are defined by the KSDE Data Dictionary as

*"...a regular early childhood program. These qualified programs may include Head Start; community based or private preschools, group child development / childcare center,*

*Preschool age at risk programs, district run universal preschool programs, preschool classes offered to eligible pre-KG children by the public-school system."*

In total, 10 of the 23 (43%) students whose files were reviewed as a part of this investigation had IEPs that referenced participation in a K setting, but a general education teacher did not participate in the development of the IEPs of any of those students. In fact, in none of the 23 cases reviewed was a general education teacher identified as a part of the IEP team.

Because the district has on multiple occasions failed to include a general education teacher as a member of the team when developing IEPs for students who either were or might be participating in a regular education environment as defined for children ages 3 to 5 years of age, a violation of special education statutes and regulations has been identified.

### **Corrective Action**

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations on an issue presented in this complaint. Specifically, multiple violations were substantiated with regard to K.A.R. 91-40-2(b)(1) and (2) which require districts to provide FAPE (a free appropriate public education) to each child with a disability residing in its jurisdiction beginning not later than the child's third birthday and to ensure that an IEP or IFSP is in effect by the child's third birthday unless that birthday occurs during the summer when school is not in session.

Additionally, during the course of this investigation, violations were also established with regard to:

- K.A.R. 91-40-17(b)(1) which requires that parents be provided 10-day notice of an IEP team meeting for their child; and
- K.S.A. 72-3404(u)(2) which requires that a general education teacher participate as a member of an IEP team when determining services for a child who is, or may be, participating in the regular education environment.

Therefore, USD #500 is directed to take the following actions:

- 1) Submit to Special Education and Title Services (SETS) by no later than April 14, 2025 a written statement of assurance stating that it will comply with
  - a. K.A.R. 91-40-2(b)(1) and (2) by making a FAPE available to all applicable resident students by their 3rd birthday;
  - b. K.A.R. 91-40-17(b)(1) by routinely providing 10-day notice to parents of children transitioning from Part C to Part B of eligibility/IEP team meetings; and
  - c. K.S.A. 72-3404(u)(2) by including a general education teacher as a member of the IEP team for every child transitioning from Part C to Part B services who is, or may be, participating in the regular education environment.

- 2) By no later than April 14, 2025, USD #500 shall develop and present to the parents of each of the following students a plan for the delivery of compensatory services in the amounts outlined below. (The names of the numbered students below will be provided to the district.)

Parents shall be given the option of accepting some, all, or none of the compensatory services offered. If any of these plans require the student to come to a district location at times outside of the regular school day for the 2024-25 school year, the district shall either provide transportation for the student or shall compensate the parents at the standard district rate for transporting their child for services.

All compensatory services shall be delivered by no later than August 1, 2025.

- a) Student 1:
  - i. 15 minutes of speech/language services in an Early Childhood location;
  - ii. 15 minutes of speech/language services in a special education setting; and
  - iii. 120 minutes of Early Childhood special education services in an Early Childhood setting.
- b) Student 5:
  - i. 15 minutes of Occupational Therapy;
  - ii. 30 minutes of Speech/Language services; and
  - iii. 795 minutes of special education services in an Early Childhood Special Education classroom setting.
- c) Student 12:
  - i. 30 minutes of Speech/Language services in a special education setting;
  - ii. 30 minutes of Speech/Language services in a Reverse Mainstream setting; and
  - iii. 140 minutes of special education services in a Reverse Mainstream ECSE setting.
- d) Student 13:
  - i. 75 minutes of Occupational Therapy;
  - ii. 75 minutes of Physical Therapy;
  - iii. 150 minutes of Speech/Language Therapy; and
  - iv. 600 minutes of B time.
- e) Student 14:
  - i. 30 minutes of Speech/Language Therapy in a special education setting; and
  - ii. 30 minutes of Speech/Language Therapy in a Reverse Mainstream ECSE setting; 180 minutes of Special Education services in a Reverse Mainstream ECSE setting.

- f) Student 17:
    - i. 45 minutes of Occupational Therapy in a special education setting;
    - ii. 45 minutes of Speech/Language Therapy in a special education setting;
    - iii. 45 minutes of Speech/Language Therapy in a Reverse Mainstream ECSE setting; and
    - iv. 3 hours of special education services in a Reverse Mainstream ECSE setting.
  - g) Student 18:
    - i. 15 minutes of Speech/Language Services in a special education setting;
    - ii. 15 minutes of Speech/Language Services in a Reverse Mainstream ECSE setting; and
    - iii. 150 minutes of Special Education services in a Reverse Mainstream ECSE setting.
  - h) Student 19:
    - i. 90 minutes (6 weeks at 15 minutes per week) of Speech/Language Services in a Reverse Mainstream ECSE setting;
    - ii. 90 minutes (6 weeks at 15 minutes per week) of Speech/Language Services in a special education setting; and
    - iii. 750 minutes of Special Education Services in a Reverse Mainstream ECSE setting
  - i) Student 20:
    - i. 30 minutes of Speech/Language Services in a special education setting;
    - ii. 30 minutes of Speech/Language Services in a Reverse Mainstream ECSE setting; and
    - iii. 210 minutes of Special Education Services in a Reverse Mainstream ECSE setting.
- 3) By no later than August 2, 2025, USD #500 shall provide to SETS a summative document showing, for each of the 9 identified students,
- a) whether the offered compensatory services were accepted in whole or in part by the parents or were rejected by the parents, and
  - b) when any accepted compensatory services for each student were completed.
- 4) By no later than April 14, 2025, USD #500 shall provide to SETS a plan to train all staff involved in the Part C to Part B transition process on the requirement for providing parents with 10-day notice of eligibility and IEP team meetings. This plan should address the training of current staff and any new staff members joining the transition team at the beginning of the 2025-56 school year.
- 5) By no later than August 1, 2025, USD #500 shall provide to SETS a summative report documenting the delivery of 10-day notice to parents of any eligibility or IEP team meeting held with regard to Part C to Part B students during the period of April 14, 2025 through July 31, 2025. That report should include documentation as to why any parent is provided with less than 10-day notice of such a meeting. For

any instance where less than 10-day notice was provided, the report should include a copy of the notice of meeting form documenting the parents' consent to waive the prior notice requirement.

- 6) By no later than April 14, 2025, USD #500 shall provide to SETS a plan for the training of all Part C to Part B transition staff regarding the requirement that a general education teacher be included as a member of the IEP team of any transitioning student who either is or may be participating in a regular education environment during the course of the period covered by the student's IEP. This includes any student who is being considered for services through any K setting.

A document entitled "Regular Education Preschool Teacher at the IEP/IFSP Meeting" developed by the Kansas State Department of Education provides guidance to districts on when a preschool general education teacher must attend the IEP meeting and who meets the requirements of a general education teacher for early childhood may prove useful to the district in establishing who teams should be inviting to participate in these meetings.

- 7) By no later than August 1, 2025, USD #500 shall submit to SETS a summative document reflecting the presence of a general education teacher as a part of the IEP team for each student transitioning from Part C to Part B services during the period of April 14 through July 31, 2025. For any case wherein a general education teacher did not participate, the district shall provide documentation (e.g. IEP service delivery pages) to show that the student will not be participating in the regular education environment during the period covered by the student's IEP.

Further, USD #500 shall, within 20 calendar days of the date of this report, submit to SETS one of the following:

- a) A statement verifying acceptance of the corrective action or actions specified in this report;
- b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
- c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f).



Diana Durkin  
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](mailto: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)