

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #446
ON FEBRUARY 17, 2025

DATE OF REPORT: MARCH 19, 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 #446, Independence Public Schools. In the remainder of the report, the “School,” the “District,” and the “local education agency (LEA)” shall refer to USD #446.

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 February 17, 2025, and the 30-day timeline ended on March 19, 2025.

Allegations

The following issues will be investigated:

ISSUE ONE: Whether USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student’s IEP when the bus frequently arrived at the Student’s house 5-7 minutes late. K.A.R. 91-40-16(b)(3); 34 CFR §300.323(a).

ISSUE TWO: Whether USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide information to the Parent in their native language to assist the Parent in understanding the special education proceedings. K.A.R. 91-40-1(I)(1), K.A.R. 91-40-17(d), K.A.R. 91-40-21(d)(5), K.A.R. 91-40-26(b); 34 C.F.R. §§ 300.322(e), 300.503(c), 300.504(d).

ISSUE THREE Whether USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to offer the Student a free appropriate public education (FAPE) in the least restrictive environment when the Student was in school for only two hours per day. K.A.R. 91-40-1(II), K.A.R. 91-40-2, K.A.R. 91-40-3, K.S.A. 72-3420; 34 C.F.R. § § 300.101(a), 300.114, 300.116-117.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video conference on March 4, 2025. The following District staff were interviewed on March 7, 2025 and March 14, 2025: the School Psychologist, the Special Education Teacher, and the Assistant Principal.

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

District Materials:

1. District Response, no date
2. Individualized Education Plan (IEP), 04/23/24
3. IEP Spanish, 04/23/24
4. Student Information Page Spanish, various dates
5. Prior Written Notice (PWN), 04/23/24
6. PWN Spanish, 04/23/24
7. Notice of Meeting, 04/19/24
8. Notice of Meeting Spanish, 04/19/24
9. Progress Report, 04/29/24
10. Progress Report, 05/21/24
11. Progress Report, 09/17-10/31/24
12. Progress Report, 11/04-12/16/24
13. Progress Report, 04/22-12/19/24
14. Notice of Meeting, 01/31-02/05/25
15. Notice of Meeting Spanish, 01/31/25
16. PWN, 02/06/25
17. PWN Spanish, 02/06/25
18. Notice of Meeting, 02/07/25
19. Notice of Meeting Spanish, 02/07/25
20. Schedule, no date
21. Complaint Notes, no date
22. Assessment Results, various dates
23. Daily Data Pages, 08/22/24-02/11/25
24. Grade Reports, Q2 2024-2025
25. IEP Amendment, 02/28/25

Parent Materials:

1. Email from Parent, re: New information from [Parent], 02/26/25

Background Information

This investigation involved a second-grade student enrolled at an elementary school in the District. The Student is eligible for special education services with a disability of Autism Spectrum Disorder (ASD), per the Individuals with Disabilities Education Act (IDEA).

Findings of the Investigation

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

Bus Arriving Late

1. According to the District Response, the Student's IEP indicated Transportation service was to be provided for 30 minutes a day, 5 days a week, to and from the School. The Parent had not sent the Student on the bus since December 23, 2024, at the Parent's request.

Per the Transportation Director of the District, when the Student utilized the school bus, they were picked up at home between 11:50-11:55 a.m. and dropped off at the School at 12:00 p.m. The Student was picked up from the school at 2:00 p.m. and returned home at 2:10 p.m. The District stated special transportation was still available to the Student and wrote that there was, "... no documentation to show that the bus picked [the Student] up late or brought [them] back late."

2. The Student was assigned to bus #11, which picked up students at their residences. The driver of bus #11, who the Parent had an issue with, was no longer the bus driver. Additionally, all the information shared with the Parent about transportation was provided by a district-provided interpreter.
3. During an interview with the Complaint Investigator, the Parent explained the Student stopped taking the bus around February 2025. The Parent stated this was their decision. The Parent shared that when the bus was late, it would arrive at the house at the time the Student was supposed to be at school. They said they observed the bus be up to 15 minutes late during the 2023-24 school year. The Parent believed this impacted the Student's education because they were spending less time in school. The Parent said there was no reason given for why the bus was late.
4. During an interview with the Complaint Investigator, the Special Education Teacher explained the Student arrived on time when taking the bus and when the Parent dropped them off. They stated that neither the bus nor the Parent was late in picking the Student up from school.
5. During an interview with the Complaint Investigator, the Assistant Principal stated that during the 2023-24 school year there were issues where the bus went to the Student's house and nobody came out, and then the bus had to be called back to the house.) The Assistant Principal recalled it happened more than once, but stated it was not a

consistent, pervasive issue. They did not recall any issues with the bus in the 2024-25 school year after a new bus director was hired.

Translation Services

6. According to the District Response, most meetings with the Parent had an interpreter present, and if an interpreter was not available through the District, the District had a contract with a translating service. The District stated they had not utilized that service yet because translators were available.
7. The Parent explained that at the beginning of the 2023-24 school year, they had a relative come and translate for them two or three times. They did not recall specific dates. The Parent recalled having an interpreter at meetings where the Student's IEP was discussed. The Parent stated that documents were not consistently provided to them in Spanish. The Parent explained they only started receiving documents in Spanish at a meeting in 2025.
8. The District Response indicated that the Parent received a NOM through text and hand delivery on January 31, 2025. Parent Rights were provided in English and Spanish on February 6, 2025, and a PWN was given to the Parent in English and Spanish the following day. The District indicated a translator attended the meeting on February 6, 2025.
9. The District Response indicated that for the IEP meeting on April 23, 2024, the Parent was provided a Notice of Meeting (NOM), IEP, and PWN in English and Spanish. The Parent also initialed that Parental Rights were provided to them in their native language. The Spanish IEP was signed by the Parent. The District indicated there was no documentation to show there was a translator present at the IEP meeting on April 23, 2024.
10. The Special Education Director did not recall if a translator was present at the meeting on April 23, 2024, but stated that translators did attend most of the IEP meetings. They explained that if a translator attended a meeting, they would sign the signature page. The Assistant Principal did not recall if a translator was present at the meeting, but did not recall attending a meeting without a translator.

FAPE & Least Restrictive Environment

11. The Parent stated in their interview that the Student attending school less than full-time impacted their emotional and psychological development, and that the Student had regressed.
12. During an interview with the Complaint Investigator, the School Psychologist explained the Student was on a shortened day because the Student required significant adult intervention. They said the Student had a limited tolerance for this type of interaction, and when that limit was reached, the Student exhibited aggressive behaviors. The Assistant Principal stated their understanding of why a shortened day was the least restrictive environment was because the Student was an "eloper" and "aggressive".

13. The Special Education Teacher stated the Student did not go to the general education classroom, had lunch in the classroom, and attended recess. The Assistant Principal stated the Student participated in lunch and recess as a group with the special education class, which sometimes coincided with the general education students.
14. According to the District Response, the Student had started their elementary school career on a shortened school day of 60 minutes/day.
15. A NOM dated April 19, 2024 proposed a meeting for April 23, 2024 to conduct an annual review of the Student's IEP. It was signed by the Parent on April 22, 2024, and provided in English and Spanish.
16. The Student's IEP, dated April 23, 2024, and provided in English and Spanish, indicated:
 - a. The Student demonstrated motor skills at a lower level than same-aged peers. The IEP Team had concerns about the Student in the area of "Motor" that impacted the ability to learn or access the general curriculum.
 - b. The IEP Team had concerns about the Student in the area of "Communication" that impacted the[ir] ability to learn or access the general curriculum.
 - i. The Student had been receiving speech therapy services to increase communication skills; and
 - ii. A Speech-Language goal was created to address a language delay.
 - iii. "[The Student's] participation and behavior is not consistent. There are sessions that have been productive; however, there are also sessions [the Student] runs, hits, and spits."
 - c. The Student's social/emotional skills were delayed when compared to same-aged peers. The IEP Team believed the delay would negatively impact the Student's ability to interact with peers in the general education classroom.
 - i. "[The Student] needs constant staff supervision to ensure [their] safety in the classroom."
 - d. The IEP Team had concerns about the Student in the area of "General Intelligence" that impacted their ability to learn or access the general curriculum.
 - i. The IEP indicated the Student was diagnosed with Autism Spectrum Disorder, Level Three, and struggled with "...expressive communication, social skills, and engage[d] in repetitive/stereotyped behaviors."
 - e. The IEP Team had concerns about the Student in the area of "Academic/Functional Performance" that impacted their ability to learn or access the general curriculum.
 - f. The Student required Assistive Technology aids/services in order to be educated in a less restrictive environment.

- i. The Student had been introduced to the LAMP program on the iPad for communication, and had been working on using voice buttons to communicate.
 - g. The IEP determined that for the Student to have opportunities to participate with non-disabled peers in extracurricular and nonacademic activities, regularly scheduled special education and related services would not occur when it would prevent the Student from participating in field trips, assemblies, and special events for the general education classroom.
 - h. In response to the question "Do the positive effects of the placement outweigh the potential harmful effects?", the IEP team wrote, "... the positives outweigh the harmful effects because [the Student] shows a need for individualized instruction in special education and it is the least restrictive placement that is appropriate for [them] at this time."
 - i. When discussing the least restrictive environment for the Student's services to take place, the IEP team considered the Student's current skill level, the quality of services that could be provided in which environments, and the potential harmful effects of each option. After considering those factors, it was determined the Student's needs would best be met in the special education setting. The IEP team reviewed the educational placement and/or services and considered it reasonably designed to deliver a FAPE in the Student's least restrictive environment.
 - j. Services included:
 - ii. "Special Ed Direct Service Outside Regular Ed classroom for academics, life skills, and social[-]emotional, for 120 minutes two days per week";
 - iii. "Special Ed Direct Service Outside Regular Ed classroom for academics, life skills, and social[-]emotional, for 105 minutes three days per week"; and
 - iv. "Special Ed Direct Service Outside Regular Ed classroom for speech and language, for 15 minutes per three days per week."
17. A PWN dated April 23, 2024, written in English and Spanish, indicated:
- a. The IEP Team met to discuss special education and related services the Student needed, and the appropriate educational placement for the Student.
 - b. The IEP team determined to continue a schedule of 120 minutes/day until the end of the 2023-24 school year, and then increase the Student's day to 150 minutes/day at the start of the 2024-25 school year. The Parent provided their consent.
 - i. Through their investigation, the District found that the increased service time did not begin in the 2024-25 school year as indicated in the IEP, and remained at 120 minutes/day. The District wrote, "... the current school team failed to implement the IEP beginning 8/14/24 through current. Based on

the [D]istrict calendar, [the District] owes [the Student] 57 hours of compensatory services from 8/14/24-2/28/25."

- c. "The team supports increasing time in the special education classroom and it is most appropriate for the least restrictive environment. [The Student] is making progress towards [their] goals while in the special education classroom."
18. The Student's Progress Report dated April 29, 2024 described the Student's progress toward their goals and indicated:
 - a. As of April 23, 2024, it was anticipated the Student would not meet their communication goal.
 - b. As of March 18, 2024, it was anticipated the Student would meet their Academic Performance goals in designated area and engagement.
 - c. As of March 18, 2024, it was anticipated the Student would meet their Social-Emotional goal.
19. The Student's Progress Report dated May 21, 2024 described the Student's progress toward their goals and indicated:
 - a. As of May 15, 2024, it was anticipated that the Student would meet their communication goal.
20. A summary of the Student's 1st Quarter and 2nd Quarter Progress Reports detailed the Student's use of the iPad and LAMP program, in addition to notes on the Student's participation in activities and the level at which they could express vocabulary words and make requests. The information was also written in Spanish.
21. The Student's Progress Report for the 2024-25 school year described their Measurable Annual Goal. Updates for the Speech-Language goal were the only ones written in English and Spanish. The report indicated:
 - a. As of December 16, 2024, it was anticipated the Student would meet their Speech-Language goal.
 - b. As of December 19, 2024, it was anticipated the Student would meet their Academic Performance goals in letters and numbers, and for daily living skills.
22. On January 30, 2025, the Parent arrived at the School and spoke to the Assistant Principal, and stated they wanted the Student's educational day to be extended. The Assistant Principal stated to the Parent that an action to extend a student's school day for an IEP would require an IEP team meeting. The Assistant Principal informed the Parent that they would request the Special Education Teacher to set up an IEP meeting, which was set for February 6, 2025.
23. The Assistant Principal recalled the Parent had asked for the Student's day to be extended once each year the Student had been at the School. The Special Education Teacher stated their understanding of why the Parent requested to extend the Student's school day was because the Parent had no way to earn income when the Student was with them all day.

24. A NOM was sent to the Parent via phone/text on January 31, 2025, with a proposed meeting date of February 6, 2025. A copy was also provided to the Parent in Spanish.

- a. A second notification was hand-delivered to the Parent's home on February 5, 2025. Additional notes were written in English and Spanish.
- b. Boxes checked included that the Parent would attend the meeting as scheduled and that they consented to waive their rights to a 10-day PWN of the meeting.

25. A PWN notice sent to the Parent on February 6, 2025 indicated:

- a. A consideration to increase the Student's school day. At the time, the Student was attending two hours daily with 120 minutes of pullout services.
- b. The Parent reported they had been advised not to sign any documents until reviewed by their attorney.
- c. A proposal to increase the Student's school attendance by one hour.
 - i. "Pullout Special Education Setting 180 minutes 4 x a week"; and
 - ii. "Pullout Special Education Setting 150 minutes 1 x a week (district early release day)."
- d. The proposal was agreed to verbally by the Parent. The draft IEP and PWN Identification would be completed and sent to the Parent for review, with a meeting to follow.
- e. "It was relayed to [the Parent] by the interpreter no changes will be made to the schedule until the meeting takes place and official signed consent of [sic] obtained."
- f. The PWN was hand-delivered to the Parent on February 7, 2025 in both English and Spanish, but the Parent did not provide consent. The same day, a new NOM, in English and Spanish, was hand-delivered to the Parent for a meeting scheduled on February 18, 2025.
- g. The follow-up meeting was rescheduled to February 28, 2025 due to inclement weather and illness.
- h. According to the Special Education Teacher, the Student's school day did not increase.

26. The Student's school schedule detailed that for Monday through Friday:

- a. The Student was in the Special Education Teacher's classroom for 1:1 direct instruction from 12:00 p.m. - 1:40 p.m. and 1:55 p.m. - 2 p.m.
- b. The Student was in the gym from 12:05 p.m. - 1:00 p.m. on Tuesdays and Thursdays.
- c. The Student had speech therapy from 1:40 p.m. - 1:55 p.m., Monday through Wednesday.
- d. Dismissal was at 2 p.m.

- e. Paraprofessionals rotated every 30 minutes to work with the Student at 12:00 p.m., 12:30 p.m., 1:00 p.m., and 1:30 p.m.
27. The Special Education Teacher said the Student's school day had recently been extended to four hours a day for the 2024-25 school year. They said that during the 2023-24 school year, the Student attended school from 12 p.m. to 1 p.m., and then from 12 p.m. to 1:30 p.m.
28. The Parent said, "...they told me that the teacher that [the Student] has now is going to be leaving ... and they're gonna put in a substitute The [person] that ... takes [the Student] when I bring [them] to school, told me that there have been four teachers that have been switching off every 30 minutes." The Special Education Teacher stated they only had a substitute when they were gone, but that the same staff remained in their room.
29. Speech Language Pathology Services Data and Notes from August 22, 2024 through February 11, 2025 indicated the Student achieved either minimal improvement, or no level of progress was circled.
30. The Student's Report Card for Q2 of the 2024-25 school year indicated they were absent 1.5 days, had a passing grade for music and PE, and an "A" in grammar and science lab.
31. The District and Parent met on February 28, 2025 to review and revise the IEP and added the following revisions (which were provided in English and Spanish):
- a. Increase special education services for academics and social-emotional skills to 180 minutes, two days a week. Increase special education services for academics and social-emotional skills to 165 minutes, three days a week. Both would begin March 3, 2025.
 - b. Addressed Parent concerns of wanting the Student at school for a full day and the plan on getting them to a full day.
 - c. Signed by the Parent and District on February 28, 2025.
32. A PWN dated February 28, 2025 summarized the meeting and indicated the Student would be attending school for 240 minutes, five times a week. The amendment indicated the Student would start attending school for 180 minutes, five times a week. It also included an additional 60 minutes, five times a week, for compensatory services. The latter would go through the end of the 2024-25 school year, which would be a payback of 49 hours of compensatory services.
- a. The PWN indicated the District would provide 30 minutes four times a week of compensatory services during the Extended School Year (ESY) dates of June 2, 2025 through July 24, 2025, for a total of 65 hours of compensatory services from March 3, 2025 through July 24, 2025. The Parent declined ESY services at this time because the Student would be out of state over the summer.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the Student's IEP when the bus frequently arrived at the Student's house 5-7 minutes late. K.A.R. 91-40-16(b)(3); 34 CFR §300.323(a).

According to 34 CFR §300.323(a) and K.A.R. 91-40-16(b)(3), an IEP must be in effect for each exceptional child at the beginning of each school year.

The Parent alleged that during 2024, the Student's bus "always arrived 5 to 7 minutes late."

The District stated that special transportation continued to be available for the Student, but the service had not been utilized for two months at the Parent's request. There was no documentation to show that the bus picked the Student up late or brought them back late.

The Student's IEP, dated April 23, 2024, indicated Transportation services were to be provided for 30 minutes a day, 5 days a week, to and from the School. The Student had not ridden the bus since December 23, 2024, at the Parent's request. No documentation showed that the bus was late picking up the Student or returning them home. The Student was placed on a bus which picked up identified students at their residences. This information was shared with the Parent through a District-provided interpreter.

The Parent explained the Student stopped taking the bus around February 2025, and that it was the Parent's decision. The Parent said they observed the bus arriving up to 15 minutes late during the 2023-24 school year, and believed this negatively impacted the Student's education. The Special Education Teacher stated that the Student arrived at and left school on time, and that neither the bus nor the Parent was ever late. The Assistant Principal reported that during the 2023-24 school year, the bus sometimes had to be called back to the Student's house because nobody came out to the bus. This was not a consistent issue, and there were no further problems after a new bus director was hired for the 2024-25 school year.

Some inconsistencies were noted with the timelines of when the Student stopped riding the bus, but it was consistently stated that it was the Parent's decision to stop utilizing the bus service. While the Parent indicated they had observed the bus arriving late, there was no documentation or additional evidence to indicate this occurred; however, statements from the Assistant Principal confirmed there were times when the bus was called back to the Student's house. Anecdotal evidence from the Special Education Teacher supported the Student did not arrive at or depart late from school. There were some conflicting statements regarding the bus's arrival, but there was no direct evidence or documentation to corroborate the allegation.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the District failed to implement 34 CFR §300.323(a) and K.A.R. 91-40-16(b)(3).

Issue Two

Whether USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide information to the Parent in their native language to assist the Parent in understanding the special education proceedings. K.A.R. 91-40-1(I)(1), K.A.R. 91-40-17(d), K.A.R. 91-40-21(d)(5), K.A.R. 91-40-26(b); 34 C.F.R. §§ 300.322(e), 300.503(c), 300.504(d).

According to K.A.R. 91-40-17, K.A.R. 91-40-1(I)(1), K.A.R. 91-40-21(d)(5), and 34 C.F.R. § 300.322(e), an agency shall take action to ensure that parents understand the discussions that occur at IEP team meetings, any discussions concerning educational placement, and information related to all activities for which consent is sought. This includes arranging for an interpreter for parents whose native language is other than English. Additionally, K.A.R. 91-40-26(b), 34 C.F.R. §§ 300.503(c), and 300.504(d) require that any procedural safeguards and notices of proposed actions or refusals shall be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so.

The Parent alleged that the District did not provide an interpreter for the school meetings with the Parent. The Parent reported that they brought a relative to help interpret so they could understand what was happening with the Student's education.

The District responded that they had historically, and continued to, provide Notice of Meetings, IEPs, and PWNs in the Parent's native language. Translators were typically at the Student's meetings for the Parent, but there was no documentation to show there was one present at the April 23, 2024 IEP meeting. There was a translator at the February 6, 2025 meeting.

The District stated that most meetings with the Parent had an interpreter present and that they had a contract with a translating service if needed. The Parent noted that during the 2023-24 school year, they had a relative come and translate for them two or three times but did not recall specific dates. However, the Parent recalled having an interpreter at meetings where the Student's IEP was discussed. The Parent stated that documents were not consistently provided to them in Spanish.

The District indicated that for the IEP meeting on April 23, 2024, the Parent was provided a NOM, IEP, and PWN in English and Spanish. The Parent signed the IEP which was written in Spanish. No documentation showed there was a translator present at this meeting, and District staff did not recall whether a translator attended the meeting. However, the Assistant Principal did not recall attending a meeting without a translator present. Parent Rights were provided to the Parent in English and Spanish on February 6, 2025, and a PWN was given to the Parent in English and Spanish the following day. The District indicated a translator attended the meeting on February 6, 2025.

Documentation indicated the Parent received information about the Student's education in English and Spanish, in accordance with K.A.R. 91-40-26(b), 34 C.F.R. §§ 300.503(c), and

300.504(d). There was no documentation or evidence from either party to determine if an interpreter attended the meeting on April 23, 2024. While the Parent stated the District did not provide an interpreter, the statements could not be linked to a specific meeting. While it is plausible that an interpreter was not present at the meeting on April 23, 2024, it could not be conclusively determined.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the District failed to provide information to the Parent in their native language to assist the Parent in understanding the special education proceedings.

Issue Three

Whether USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to offer the Student a free appropriate public education (FAPE) in the least restrictive environment when the Student was in school for only two hours per day. K.A.R. 91-40-1(II), K.A.R. 91-40-2(a)(e), K.A.R. 91-40-3(a)(b), K.S.A. 72-3420; 34 C.F.R. §§ 300.101(a), 300.114, 300.116-117.

According to K.A.R. 91-40-1(II), K.S.A. 72-3420, and 34 C.F.R. § 300.114, "Least restrictive environment" and "LRE" mean the educational placement in which, to the maximum extent appropriate, children with disabilities, including children in institutions or other care facilities, are educated with children who are not disabled. Agencies are to provide special classes, separate schooling, or remove children with disabilities from the regular education environment only when the nature or severity of the disability of the child is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily.

Additionally, K.A.R. 91-40-2(a)(e), K.A.R. 91-40-3(a)(b), and 34 C.F.R. § 300.101(a), requires that agencies provide FAPE based upon a child's unique needs, including offering the same variety of educational programs, services, nonacademic and extracurricular services and activities that are available to nondisabled children served by the agency. These activities and services include counseling, athletics, transportation, health services, and recreational opportunities.

Finally, according to 34 C.F.R. §§ 300.116-117, for any child with a disability, when determining their educational placement, public agencies must ensure specific conditions are met. The placement decision must be made by a group including parents and knowledgeable individuals about the child, evaluation data, and placement options, and must align with the LRE provisions. The child's placement must be determined at least yearly, must be based on the child's IEP, and must be as close as possible to the child's home. Unless the child's IEP requires otherwise, the child must be educated in their neighborhood school, and when choosing the LRE, potential harmful effects on the child or the quality of needed services must be considered. Agencies must also ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

The Parent alleged that the Student was not receiving the support and intervention they needed to address their behavior and receive an appropriate education. The Parent reported that during 2024, the Student was only in school for 2 hours per day and “this has affected [the Student’s] learning progress tremendously.”

The District responded that after investigating the Student’s history and current IEP, the current School team failed to implement the Student’s IEP beginning on August 14, 2024. Based on the District calendar, the District owed the Student 57 hours of compensatory services from August 14, 2024 through February 28, 2025, and a proposal would be offered to the Parent.

The Student began their elementary school career on a shortened school day of 60 minutes/day. The Parent stated the Student had regressed due to not attending school full-time. The School Psychologist explained that the Student was on a shortened day due to requiring significant adult intervention and engaging in occasional aggressive behaviors, which the Assistant Principal confirmed and was indicated in their IEP. The Special Education Teacher stated the Student did not go to the general education classroom.

A NOM, signed by the Parent on April 22, 2024, proposed a meeting for April 23, 2024 to review the Student’s IEP. It was provided in English and Spanish. The Student’s IEP, dated April 23, 2024 and written in English and Spanish, identified significant delays in motor skills, communication, social-emotional development, general intelligence, and academic/functional performance, with a diagnosis of Autism Spectrum Disorder Level Three. The IEP team determined that the Student required individualized instruction in the special education setting and that their current placement was the least restrictive environment appropriate to provide a FAPE. A PWN from the same day summarized the meeting and indicated the Parent consented to increase the Student’s day to 150 minutes per day at the start of the 2024-25 school year.

A Progress Report dated April 29, 2024 indicated it was anticipated the Student would not meet their communication goal, but would meet their Academic Performance and Social-Emotional goals. A Progress Report dated May 21, 2024 stated that it was anticipated the Student would meet their communication goal. The Student’s iPad and LAMP usage, activities, vocabulary, and requests were detailed in their Progress Reports, which were also written in Spanish. The Student’s Progress Report for the 2024-25 school year indicated it was anticipated the Student would meet their Speech-Language and Academic Performance goals. Speech-Language Pathology Services Data and Notes from August 22, 2024 through February 11, 2025 indicated the Student achieved minimal improvement. The Student’s Report Card for Q2 of the 2024-25 school year indicated they had a passing grade for music and PE, and an “A” in grammar and science lab.

On January 30, 2025, the Parent told the Assistant Principal they wanted to extend the Student’s school day. The Assistant Principal stated that would require an IEP meeting, which was scheduled for February 6, 2025. The Assistant Principal recalled the Parent had also asked

for the Student's day to be extended in prior years. A NOM was sent to the Parent on January 31, 2025, with a proposed meeting date of February 6, 2025. A second notification was delivered to the Parent's home on February 5, 2025.

A PWN sent on February 6, 2025 proposed increasing the Student's school day by one hour, which the Parent verbally agreed to. The PWN and NOM were delivered to the Parent in English and Spanish, but the Parent did not provide consent. A follow-up meeting was scheduled for February 28, 2025.

The Student's weekly schedule indicated that paraprofessionals rotated every 30 minutes to work with the Student. The Special Education Teacher said that during the 2023-24 school year, the Student attended school from 12 p.m. to 1 p.m., and then from 12 p.m. to 1:30 p.m. The Parent indicated they were told the Student had four teachers who switched off every 30 minutes. The Parent believed these adults were substitutes.

On February 28, 2025, the Student's IEP was revised, increasing special education services for academics and social-emotional skills, effective March 3, 2025. The meeting outlined a plan to achieve the Parent's desire for a full school day. The Parent signed the IEP amendment, which was provided in English and Spanish. A PWN from the same day documented the meeting, outlining a 240-minute school day, which included 180 minutes of regular attendance and 60 minutes of compensatory services to address past deficits.

When addressing the issue of least restrictive environment, the Student's access to general education, their grades, and attendance were reviewed. Overall, the Student demonstrated progress toward their IEP goals, achieved passing grades, and only missed 1.5 days of school in Q2 of the 2024-25 school year. The District documented in the IEP that the Student occasionally engaged in aggressive behaviors and required "... constant staff supervision to ensure [their] safety in the classroom." The District also provided their reasoning for determining why the Student's needs would best be met in the special education setting. The District detailed in the IEP that they weighed the positive effects of the placement against potential harmful effects and concluded that it was the least restrictive placement.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the District failed to offer the Student a free appropriate public education (FAPE) in the least restrictive environment when the Student was in school for only two hours per day.

While gathering information for the Complaint Investigation, the District discovered it failed to implement the Student's IEP from August 14, 2024 through February 28, 2025, which denied the Student a FAPE. The District did not contest this and created a proposal for compensatory services. *This additional finding is substantiated.*

Corrective Action

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

A. State and federal regulations at K.A.R. 91-40-1(II), K.A.R. 91-40-2, K.A.R. 91-40-3, K.S.A. 72-3420; 34 C.F.R. § § 300.101(a), 300.114, 300.116-117 require that agencies provide a FAPE based upon a child's unique needs.

In this case, the evidence supports the finding that USD # 446 did not provide a FAPE to the Student when the District scheduled the Student to attend only a portion of their shortened school day from August 14, 2024 through February 28, 2025. The Student missed 57 hours of school and instruction.

Based on the foregoing, USD # 446 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD # 446 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 K.A.R. 91-40-1(II), K.A.R. 91-40-2, K.A.R. 91-40-3, K.S.A. 72-3420; 34 C.F.R. § § 300.101(a), 300.114, 300.116-117 that require agencies to provide a FAPE based upon a child's unique needs.
2. Further, by April 15, 2025, USD #446 will complete and submit a written statement of assurance to Special Education and Title Services (SETS) that the district's practices and procedures for a FAPE have been reviewed and revised as appropriate to be responsive and compliant with FAPE requirements of the Individuals with Disabilities Education Act (IDEA) and the Kansas Special Education for Exceptional Children Act.
3. Within 15 calendar days of the date of this report, USD # 446 shall submit a service schedule that shows the dates the 57 hours of compensatory services will be provided.
4. Within one year of the date of this report, USD #446 shall submit verification that the compensatory services have been completed.

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)