

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #497
ON MARCH 3, 2025

DATE OF REPORT: APRIL 11, 2025

This report is in response to a systemic complaint filed with our office on behalf of employee ---
----. In the remainder of the report, the employee will be referred to as "Complainant".

The Complaint is against USD # 497 Lawrence Public Schools. In the remainder of the report, the "School," the "District," and the "local education agency (LEA)" shall refer to USD #497

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 March 3, 2025 and the 30-day timeline ended on April 2, 2025. Due to the systemic nature of the complaint and the volume of materials received, an extension was granted by the KSDE and the timeline was extended to April 11, 2025.

Allegations

The following three issues will be investigated:

ISSUE ONE: Whether USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide an environment appropriate to the instructional program being provided. K.A.R. 91-40-52(d).

ISSUE TWO: Whether USD #497, in violation of state and federal regulations implementing the IDEA, failed to provide qualified staff to implement Individual Education Programs (IEPs) for the Students enrolled in the Autism Classroom. K.A.R. 91-31-34; 34 C.F.R. 300.156.

ISSUE THREE: Whether USD #497, in violation of state and federal regulations implementing the IDEA, failed to implement the IEPs of the Students enrolled in the Autism Classroom when the Special Education Teacher was absent. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Complainant by video conference on March 27, 2025. The following District staff were interviewed on March 26 and March 28, 2025: the School Principal, the Autism Behavior Consultant, the Assistant Director for Special Education, the Special Education Teacher, and a Paraeducator.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the Complainant 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:

Relevant Materials from the District:

1. Email, re: fwd: SCM, 09/26/24
2. Email, re: fwd: [Student 6] OT, 09/09/24
3. Email, re: [Student 3], 09/27/24
4. Email, re: [Student 3] ESI, 10/24/24
5. Email, re: SCM, 09/26/24
6. Email, re: [Student 5] and [Student 6], 11/06/24
7. Email, re: students, 08/26/24
8. Email, re: students, 08/25/24
9. Substitute Log, 08/13/24
10. [Staff] Leave Information, 08/10/24
11. Autism student attendance, no date on first page, second page 09/18/24
12. [Student 4] meeting attendance summary, 02/21/25
13. [Student 5] meeting attendance summary, 03/05/25
14. [Student 6] meeting attendance summary, 02/14/25
15. [Student 1] Individualized Education Program, 10/17/24
16. [Student 1] Progress Report, 12/18/24
17. [Student 1] Progress Report, 12/17/24
18. [Student 1] Individualized Education Program, 10/19/23
19. [Student 2] Individualized Education Program, 05/10/24
20. [Student 2] Progress Report, 12/20/24
21. [Student 2] Progress Report, 03/09/25
22. [Student 3] Individualized Education Program, 10/18/23
23. [Student 3] Progress Report, 10/11/24
24. [Student 3] Progress Report, 10/15/24
25. [Student 3] Individualized Education Program, 10/30/24
26. [Student 4] Individualized Education Program, 02/29/24
27. [Student 4] Progress Report, 12/18/24
28. [Student 5] Individualized Education Program, 12/03/24
29. [Student 5] Progress Report, 12/18/24
30. [Student 5] Progress Report, 12/17/24
31. [Student 5] Progress Report, 12/18/24

32. [Student 6] Progress Report, 12/19/24
33. [Student 6] Progress Report, 12/17/24
34. [Student 6] Progress Report, 12/19/24
35. [Student 6] Individualized Education Program, 11/17/23
36. BMMS Autism Consultant Meeting Notes, 08/09/24
37. Email, re: check in, 08/19/24
38. Email, re: update, 08/26/24
39. Photo, physician note, 08/23/24
40. Supplemental Health Care Payroll Records, 10/19/24

Relevant Materials from the Complainant:

1. Formal Complaint, 02/28/25
2. Photos of Teacher/Classroom, no date
3. Text Message, re: absences, 09/16/[24]
4. Text Message, re: absences, 09/16/[24]

Background Information

This investigation involved an Autism classroom at a Middle School "School" in Lawrence Public Schools USD #497. The Complainant is a former employee who worked in this classroom for three years. This classroom experienced challenges with personnel from the start of the school year including a teacher being out for extended periods, a paraeducator who was eventually dismissed from the School, and interpersonal relationship issues among adults. There were six students in the classroom eligible to receive special education or related services as children with a disability 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 Complainant and staff in the District.

Allegation #1

The District failed to provide an environment appropriate to the instructional program being provided. K.A.R. 91-40-52(d)(3).

1. On August 19th, 2024 and again on August 26th, 2024, in an email from the Special Education Teacher to the Principal, Assistant Principal, and Director of Special Education it was mentioned that the Special Education Teacher has a PICC line (Peripherally Inserted Central Catheter) on their right arm and would be returning to the School with this. The Special Education Teacher also provided a doctor's note stating "[Special Education Teacher] cannot lift more than 10 lbs with right arm for [the] duration of having IV in place... "

2. On multiple occasions between September 9th, 2024 and September 26th, 2024, the Special Education Teacher was observed by the Complainant and Paraeducator 1 administering Intravenous Fluids through a PICC line in the Autism Classroom.
3. In an email dated September 26, 2024, the Special Education teacher stated they will be getting their PICC line removed the next day.
4. On October 1, 2024, it was noted in the "BMMS Autism Consultant Meeting Notes" that on September 30, [2024] the Special Education Teacher had ADHD medication that was in an Ibuprofen bottle, in a lunch bag, and it went missing during the school day. The Special Education Teacher suspected it was the Complainant. The Autism Behavior Consultant recommended the Special Education Teacher report this to administration.
5. On October 4, 2024, it was noted in the "BMMS Autism Consultant Meeting Notes" that the Special Education Teacher reported to the Autism Behavior Consultant that "more medication was missing out of [Special Education Teacher]'s purse (2 Adderall) before [Special Education Teacher] had a chance to get them to the nurses office for safe keeping." It is also noted that the Special Education Teacher was reporting the theft to the School Resource Officer.
6. On October 9, 2024, it is noted in the "BMMS Autism Consultant Meeting Notes" that the Special Education Teacher reported to the Autism Behavior Consultant that, via text message, the Complainant admitted to stealing the Special Education Teacher's medication.
7. On November 11, 2024, it is noted in the "BMMS Autism Consultant Meeting Notes" the Complainant was "let go" and the Special Education Teacher was pressing charges for theft. It was also noted that on November 7, [2024] the Complainant "blew up" and "yelled...through the hallways" at the Special Education Teacher.
8. The Autism Behavior Consultant reported that the Special Education Teacher had "IV Antibiotics" that were administered usually a time of day where things were relatively calm in the room, but we just don't have enough staff for [them] to be completely out of the space... [they] would sit in the back corner at [their] desk with [their] IV." It was also stated, "[Special Education Teacher] wasn't able to interact with students physically" and "I never witnessed a time where it prevented [them] from doing what [they] needed to do to help or get help."
9. The Autism Behavior Consultant reported that there were students ("probably three") in the classroom while the Special Education Teacher was administering medication through the PICC line.
10. The Autism Behavior Consultant reported that the Special Education Teacher's medication was stored in a classroom refrigerator that does not lock and students "technically" have access to.
11. The Special Education Teacher stated, they "had to do an infusion once a day at two o'clock every day." They stated, "there was never a student in the classroom."

12. The Special Education Teacher reported [The Director of Special Education] provided an area and time of day to do the IV infusions, but they were not able to get to that location, so they did it in the classroom. They stated they worked on their computer at their desk during this time.
13. The Special Education Teacher reported that their IV medication was stored in their desk and said they kept the desk locked.
14. The Special Education Teacher reported that one time they had their ADHD medication (Adderall) in their lunchbox in a childproof container in the classroom.
15. The Special Education Teacher reported that the Complainant admitted to stealing their Adderall out of their lunchbox that was in the refrigerator and the Complainant was “fired for stealing medication.”
16. The Special Education Teacher was shown photos provided by the Complainant and stated, it must have been after the infusion and “I probably just didn’t take the bag down.” In addition they reported they did not know who the person in the yellow shirt is and they think it is Paraeducator 3.
 - a. Paraeducator 3 started working in this classroom in November, 2024 after starting the school year working at an elementary school in the district.
17. The Complainant reported the provided photos were taken September 19th, [2024].
18. Paraeducator 1 reported that the Special Education Teacher did an infusion through her PICC line during the day when there was “maybe only one student and another para.” Paraeducator 1 observed this one time and reported that Student 4, along with the Complainant, were in the room.
19. The Principal reported that the Special Education Teacher had ADHD medication (Adderall) under their desk and not locked up.
20. The Principal stated, when asked where the best place would be to administer medication through the PICC line, the Special Education Teacher said it would be administered in the classroom when there was “no one else in the room.”
21. The Assistant Director of Special Education indicated the Nurse was asked about where the IV could be administered and the Nurse identified a space that was not in the classroom.
22. The Principal reported the Special Education Teacher performing the procedure with their PICC line in the classroom was an accommodation due to a medical condition.
23. The Complainant reported the Special Education Teacher administered IV medications in the classroom at least four times during the middle of the day with students and other adults in the classroom.
24. The Complainant reported there was a bag of needles behind the Special Education Teacher’s desk and that medication was stored in the unlocked classroom refrigerator, visible to students and staff.

25. The Complainant reported that students have access to the classroom refrigerator.
26. The Complainant reported that the Special Education Teacher had a "narcotic" in their lunchbox at school.
27. The Complainant reported staffing issues and the lack of people trained in Safe Crisis Management (SCM) created a less safe environment in the classroom.
28. In a follow up email dated April 2, 2025, the Assistant Director of Special Education noted that "[Special Education Teacher] reports she kept [IV medicine] in a small zipped pouch that was locked in [the] desk."
29. In a follow up email dated April 2, 2025, the Assistant Director of Special Education noted that "[Special Education Teacher] reported "when [the Complainant] stole my meds, my ADHD meds were in a childproof locked pill bottle in the zipper pocket of my lunch bag in the refrigerator."
30. In a follow up email dated April 2, 2025, the Assistant Director of Special Education noted that the Principal recalled "[Special Education Teacher] did have personal medicine (prescription and OTC) that [they] kept in [their] purse in a marked non-student area and in [their] teacher desk." The Special Education Teacher was instructed by the Principal to lock up the medication from that point forward.
31. In a follow up email dated April 2, 2025, the Assistant Director of Special Education noted that the Director of Special Education confirmed that the classroom refrigerator is in a shared area and that students are not in the space without supervision.

Allegation #2

The District failed to provide qualified staff to implement IEPs for the Students enrolled in the Autism Classroom. K.A.R. 91-31-34; 34 C.F.R. 300.156.

1. On August 29th, 2024, records reflect that the Special Education Teacher was not at work. One record reflects the Autism Behavior Consultant substituted, but a text message from them to the Complainant on August 29th, 2024, 7:17 a.m. states "...I'll be there this morning to help get everyone settled, but then I have to get home."
2. On September 12th, September 13th, and September 16th, 2024 records reflect that the Special Education Teacher was not at work and there is no record of certified classroom coverage for the afternoons.
3. On Monday, September 16th, 2024, the assigned certified substitute was in the Autism classroom from 8:00 a.m. -10:00 a.m. only.
4. On Monday, September 16th, [2024], a text message was sent from the Complainant to the Speech Therapist that stated, "...it's just [Paraeducator 1] and I this morning. But we will figure it out."
5. On Monday, September 16th, [2024], a text message was exchanged between the Complainant and the Autism Behavior Consultant as follows:

Complainant: "Good Morning, so [Paraeducator 2] is running late, so [Paraeducator 1] has to get them off the bus, and I am not sure how I am going to get [Student 3] and [Student 4] this morning? Any idea if anyone is coming in today?"

Autism Behavior Consultant: "I don't know and I am not able to be there. Let your administration know you need help. Click your button [three] times if you have to."

6. On September 25th, 2024, an email was written by the Complainant and addressed to the Special Education Teacher, the Principal, the Speech Therapist, the Autism Behavior Consultant, and "everyone who [the Complainant] could think of that has been in [the] classroom at [the Middle School] lately," requesting the need for "more people to be SCM trained in case of emergency."
7. On October 3rd, 2024 records reflect that the Special Education Teacher was not at work and there is no record of certified classroom coverage for that day.
8. On Tuesday, October 8th, 2024, the Special Education Teacher was the only adult present in the Autism Classroom who was trained in SCM. There were five out of six students present in the classroom on this day. Four of these students are on a Behavior Intervention Plan (BIP). Student 3 escalated in behavior and untrained staff, Paraeducator 2, "attempted a hold from behind on [Student 3] in order to get [them] moving back towards the school building."
9. On November 4th, 2024 records reflect that the Special Education Teacher was not at work. One record showed a substitute did cover, but a text message from the Substitute on November 4th, 2024 at 6:46 a.m. stated "I will not be in as well today."
10. On January 28th and February 6th, 2025 records reflect that the Special Education Teacher was not at work in the morning and there was no record of certified classroom coverage during that time.
11. SCM certifications are valid for one year. The following is a list of trained staff with certification dates: Principal (June 13, 2024 recertification), Complainant (October 23, 2023 certification, October 2, 2024 recertification), Special Education Teacher (October 2, 2024 certification), Paraeducator 1 (October 11, 2024 certification), Autism & Behavior Consultant (October 24, 2022 recertification).
12. The Autism Behavior Consultant reported they were a long-term sub assigned to the Autism classroom at the beginning of the school year through September 9th [2024] due to the teacher being out on medical leave. They also stated they were "pretty consistently in the classroom" through October 24th [2024].
13. The Special Education Teacher stated, the students that require one-on-one support always had somebody with them during the day.
14. Paraeducator 1 reported there had been a day or two where the Special Education Teacher was absent and a certified person was not in the classroom "all day long."
15. The Principal stated, "we always had a certified staff member in the room" and if there was somebody missing, support would be found. It was also stated that on occasion

the Principal or the Assistant Principal would stay in the room until someone with a special education background arrived.

16. The Complainant reported, at the beginning of the school year (August through September), there was no certified substitute provided on “most days.” It was also reported that the Autism Behavior Consultant was in the classroom during these times.

Allegation #3

The District failed to implement the IEPs of the Students enrolled in the Autism Classroom when the Special Education Teacher was absent. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

Student 1

1. Student 1 is eligible for special education services due to Autism and is described as “really smart and great with technology.

Student 1 had a BIP with “problem behaviors” listed as “Vocal Disruptions, Biting, and Aggression.” Student 1’s BIP called for daily data collection to monitor progress.

Student 1’s IEP required staff to have training on guided access, reading a schedule, logging into various academic websites, speech goals, behavior management, data collection, and supporting a student in general education.

Student 1’s IEP required direct speech services in the special education setting 20 minutes, 2 times per week, in 3 out of 4 weeks. Student 1’s IEP required special education support in Math, English Language Arts (ELA), Social Studies, Elective(s), and Science for a total of 120 minutes 1 day per week, 110 minutes 1 day per week, and 140 minutes 2 days per week, and 90 minutes 1 day per week. The IEP also required adaptive PE services in the special education setting for 90 minutes 1 time per week and swimming 45 minutes 1 time per week.

By December 18, 2024 (based on Student 1’s IEP dated October 17th, 2024), Student 1 demonstrated “Progress adequate to meet annual goal” on 12 out of 25 measurable objectives/goals. 1 out of 25 measurable objectives/goals was “not yet introduced” and 12 out of 25 measurable objectives/goals had not been reported on at this time.

Student 2

2. Student 2 is eligible for special education due to Autism and is described as showing more confidence and improvement in being able to advocate for [themselves], along with following procedures well.

Student 2 had a BIP with “problem behaviors” listed as “Verbal Disruptions, Property Destruction, and Self Injurious Behavior.” Student 2’s BIP called for daily data collection to monitor progress.

Student 2's IEP required staff to "be apprised of the visual supports, strategies, accommodations and modifications needed to support [Student 2] in the educational setting." The IEP also required staff to have training on using aided language simulation on the communication device.

Student 2's IEP required direct speech services 20 minutes 2 times per week and indirect speech services 20 minutes once a month. Student 2's IEP required special education support in Social Studies, Elective(s), and Science for a total of 70 minutes 3 days per week, 40 minutes 1 day per week, and 60 minutes 1 day per week. Also required was transportation in the mornings and afternoons, along with indirect occupational therapy (OT) services. The IEP also required adaptive PE services in the special education setting for 90 minutes 1 time per week and swimming 45 minutes 1 time per week.

By December 18, 2024, Student 2 demonstrated "Progress adequate to meet annual goal" on 8 out of 17 measurable objectives/goals and Student 2 met the objective benchmark in 5 out of 17 measurable objectives/goals. 2 out of 17 measurable objectives were "not yet introduced" and 2 out of 17 measurable objectives/goals had not been reported on at this time .

Student 3

3. Student 3 is eligible for special education due to Autism and Speech and Language Impairments. Student 3 is described as building independence and a participant of group activities to engage in social skills.

Student 3 did not have a BIP in the 2023 IEP. In the 2024 IEP, Student 3 did have a BIP with "problem behaviors" listed as "aggression, self-injury, eloping, property destruction," and "pours out soaps and lotions on the floor, licks/mouths everything, throws items on floor/across room." Student 3's BIP called for daily data collection to monitor progress.

Student 3's IEP required staff to have training on how to facilitate specialized instruction and interventions. In addition, once per semester, "all adult support (special education, general education, related services, paraprofessionals and other consistent adults in Student 3's day) will collaborate and be trained on how to facilitate specialized instruction and interventions in both the general and special education setting, for at least thirty minutes. New staff that will be working with Student 3 will be trained directly by the Student's case manager and previously trained staff, for at least a week prior to the staff being scheduled to work independently with Student 3. The IEP also required staff support during school pick up and drop off.

Student 3's IEP required direct speech and language therapy services for 20 minutes 2 times per week for 3 out of 4 weeks and indirect therapy services for 10 minutes 1x

every 2 weeks. Student 3's IEP required direct OT (Occupational Therapy) services for 20 minutes 1 time every 3 out of 4 weeks and indirect OT services for 15 minutes 1 time every 4 weeks. Student 3's IEP also required 35 minutes per day 5 times per week in attendant care. "This will cover special education staff coverage during lunch (25 minutes per day, 5 days per week) and special education staff coverage during arrival and dismissal routines (10 total minutes per day, 5 days per week)." The IEP also required adaptive PE services for 40 minutes 1 time per week and swimming 60 minutes 1 time per week.

By October 15, 2024, Student 3 demonstrated "Progress adequate to meet annual goal" on 4 out of 15 measurable objectives/goals and Student 3 met the objective benchmark in 2 out of 15 measurable objectives. 6 out of 15 measurable objectives/goals had not been reported on at the time and 3 out of 15 objectives/goals had progress reported prior to the start of the 2024-25 school year. Student 3 also showed growth in OT during quarter 1 in the 2024-2025 school year.

Student 4

4. Student 4 is eligible for Special Education due to Multiple Disabilities (other than Deaf-Blind). Student 4 is described as playful, funny and joyful when emotionally regulated.

Student 4 had a BIP with "problem behaviors" listed as "Physical Aggression: scratching, pinching, biting; Vocal Aggression: screaming, yelling; and Self-injury: biting hands." Student 4's BIP called for frequency data to monitor progress.

Student 4's IEP required staff to have training on using aided language stimulation on the communication device.

Student 4's IEP required speech therapy services for 15 minutes 3 times per week for 3 out of 4 weeks. In the 4th week the Student was required to receive 15 minutes of indirect speech services. The IEP also required direct OT services for 20 minutes every 4 weeks and consultative OT services for 25 minutes per month. The IEP also required direct instruction for vision impairment for 20 minutes every week and indirect vision impairment services for 30 minutes every 4 weeks.

By December 18, 2024, Student 4 demonstrated "Progress adequate to meet annual goal" on 12 out of 35 measurable objectives/goals and Student 4 met the objective benchmark in 1 out of 35 measurable objectives/goals. 4 out of 35 measurable objectives/goals were "not yet introduced" at the time and 18 out of 35 had progress reported prior to the start of the 2024-25 school year.

Student 5

5. Student 5 is eligible for special education due to Autism. Student 5 is described as happy and one who enjoys engaging in physical activities.

Student 5 did not have a BIP.

Student 5's IEP required staff to have training on aided language stimulation on the communication device.

Student 5's IEP required direct speech services 20 minutes twice per week for 3 out of 4 weeks of the month and indirect collaborative speech therapy once per month for 20 minutes. It also required direct OT services 20 minutes every 2 weeks and indirect OT services for 20 minutes every quarter. Also required was direct music therapy for 30 minutes once per week, and special education support in the general education setting for 184 minutes 2 out of 3 days every 4 weeks, 139 minutes for 2 days every 2 weeks, 94 minutes 1 day per week and 137 minutes 1 day per week. The IEP also required adaptive PE services 47 minutes 1 time per week.

By December 18, 2024, Student 5 demonstrated "Progress adequate to meet annual goal" on 13 out of 31 measurable objectives/goals. 18 out of 15 measurable objectives/goals had not been reported on at the time.

Student 6

6. Student 6 is eligible for special education due to intellectual disability. Student 6 is described as personable, easy going and eager to participate in fine motor activities.

Student 6 did not have a BIP during the time period of this investigation, although it was noted in an email from the Special Education Teacher to the Autism Behavior Consultant dated November 5, 2024, that they should start the process of adding a BIP to Student 6's IEP.

Student 6's IEP did not require "supports for school personnel."

Student 6's IEP required direct speech services 2 times per week for 20 minutes, 3 out of every 4 weeks and indirect speech services 1 time per month for 15 minutes. It also required that Student 6 receives direct OT services for 20 minutes 1 time every 3 out of 4 weeks and indirect OT services for 15 minutes 1 time every 4 weeks. Also required was adaptive PE 40 minutes 1 day per week and special education support within the general education setting for 90 minutes focusing on peer interactions and language. The IEP also required adaptive PE services for 40 minutes 1 time per week.

By December 19, 2024, Student 6 demonstrated "Progress adequate to meet annual goal" on 14 out of 34 measurable objectives/goals and 20 out of 34 measurable objectives/goals had not been reported on at the time.

7. On August 28, 2024, it was noted in the "BMMS Autism Consultant Meeting Notes" that data for student IEP's had not been taken by staff yet due to being "short staffed" and having staff who are "brand new to supporting students with autism." The expectation was set for data collection to start September 3, [2024].

8. On Monday, September 16th, [2024], a text message was exchanged between the Complainant and the Autism Behavior Consultant that stated there were only two paraeducators on staff that morning and shared concern about Paraeducator 1 having to get Student 3 and 4 off the bus.
9. On the week of September 16 through September 20, 2024, the following OT and speech services were provided:
 - a. Student 1 OT- None
 - b. Student 1 speech services- 105 total minutes, 3 days
 - c. Student 2 OT- None
 - d. Student 2 speech services- 115 total minutes, 3 days
 - e. Student 3 OT- 20 minutes, 1 day
 - f. Student 3 speech services-125 total minutes, 3 days
 - g. Student 4 OT- None (services provided the prior week and the following 2 weeks)
 - h. Student 4 speech services- 85 minutes, 2 days (student absent September 18, 2024)
 - i. Student 5 OT- None (services provided the prior week and the following week)
 - j. Student 5 speech services- 55 minutes, 1 day (student absent September 18, 2024)
 - k. Student 6 OT- None (services provided the prior week and the following 2 weeks)
 - l. Student 6 speech services- 55 minutes, 1 day (student absent September 16 and 17, 2024)
10. On the week of September 30 through October 4, 2024, the following OT and speech services were provided:
 - a. Student 1 OT- None
 - b. Student 1 speech services- 30 minutes, 1 day
 - c. Student 2 OT- None
 - d. Student 2 speech services- 30 minutes, 1 day
 - e. Student 3 OT- 20 minutes, 1 day
 - f. Student 3 speech services- 40 minutes, 2 days
 - g. Student 4 OT- 20 minutes, 1 day
 - h. Student 4 speech services- 30 minutes, 1 day
 - i. Student 5 OT- 20 minutes, 1 day
 - j. Student 5 speech services- 0 minutes, 0 days (student was absent October 4, 2024)
 - k. Student 6 OT- 20 minutes, 1 day
 - l. Student 6 speech services- 30 minutes, 1 day (student was absent October 4, 2024)
11. On the week of November 4 through November 8, 2024, the following OT and speech services were provided:
 - a. Student 1 OT- None

- b. Student 1 speech services- 30 minutes, 1 day
 - c. Student 2 OT- None
 - d. Student 2 speech services- 30 minutes, 1 day
 - e. Student 3 OT- 20 minutes, 1 day
 - f. Student 3 speech services-70 minutes, 3 days
 - g. Student 4 OT- 30 minutes, 1 day
 - h. Student 4 speech services- 30 minutes, 1 day
 - i. Student 5 OT- 20 minutes, 1 day
 - j. Student 5 speech services- 50 minutes, 2 days
 - k. Student 6 OT- 20 minutes, 1 day
 - l. Student 6 speech services- 30 minutes, 1 day (student was absent November 6, 2024)
12. The Autism Behavior Consultant stated, there has always been enough staff to implement the IEP's of students in this classroom.
13. The Special Education Teacher stated, they have a weekly meeting with the Autism Behavior Consultant.
14. Paraeducator 1 recalled, during days when the classroom did not have a certified teacher, IEP work was done throughout the day, though it was not "to the peak of it" and "the principals and speech pathologists [were] coming in to make sure that we had everyone accounted for and under control."
15. Paraeducator 1 stated, the inconsistency of staff made it difficult for student routines to be performed.
16. The Complainant stated, IEP accommodations not being met were: Student 3 and Student 4 were "supposed to have one-on-one [paraeducators]" but did not; students had a certain amount of time in general education class that was not met "for at least the first month or so" due to not having enough paraeducators and having "such behavioral issues" in the classroom; and some students did not get adaptive PE days.

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide an environment appropriate to the instructional program being provided. K.A.R. 91-40-52(d).

According to K.A.R. 91-40-52(d), Each agency shall ensure that all facilities for exceptional children shall be comparable to those for non-exceptional children within the same school building. If an agency operates a facility solely for exceptional children, the facility and the services and activities provided in the facility shall be comparable to those provided to nonexceptional children. All facilities for exceptional children shall be age appropriate

environments, and each environment shall be appropriate for the instructional program being provided.

The Complainant alleged, "This is a Specialized Classroom. This is also a classroom with multiple aggressive behavior students. [The Special Education Teacher] had to [sit] [there] multiple times, several days in a row, for almost an hour each time with an IV bag and all hooked from the wall to [their] arm."

The District acknowledged that the Special Education Teacher returned to work on September 9, 2024 after significant illness and had a PICC line in which infusions would be done daily at 2:00 PM and last for 30 minutes. The Human Resources Director reported this as an allowable accommodation. The District maintained that an appropriate environment was provided for this classroom and this accommodation did not pose "danger to students."

The District also acknowledged that the Special Education Teacher had brought narcotic/pain medication to school in an unmarked container, but contended that as soon as the Principal learned this, the Special Education Teacher was directed to lock up the purse in which the medication was located.

The Special Education Teacher administered IV fluids through their PICC line in the Autism Classroom on multiple occasions between September 9th and 26th, 2024. The Assistant Director of Special Education indicated the Nurse identified a space outside the classroom for the IV to be administered. The Principal stated the procedure being done in the classroom was a medical accommodation and the Special Education Teacher said they would administer medication in the classroom when no one else was present.

The Special Education Teacher stated they administered infusions daily at 2:00 p.m. and there were never students present. They also stated they did the infusions in the classroom because they couldn't easily get to the provided area. The Special Education Teacher was shown photos that were taken on September 19th, 2024 that showed people in the room while they were administering medication with the PICC line. The Special Education Teacher said they were likely taken after an infusion and they didn't recognize one of the people in the photos, but they thought it might be Paraeducator 3. Paraeducator 3 was not working in this classroom until November 2024, which is after the Special Education Teacher had the PICC line removed.

The Autism Behavior Consultant reported the Special Education Teacher administering IV antibiotics in the classroom, sometimes with students present. Paraeducator 1 reported seeing the Special Education Teacher do an infusion with one student and another paraeducator present. The Complainant reported the Special Education Teacher administered IV medications in the classroom at least four times with students and other adults present.

The Special Education Teacher said their IV medication was stored in a locked desk. They also reported having Adderall in a childproof bottle in their lunchbox in the classroom refrigerator. The Autism & Behavior Consultant and Complainant reported medications being stored in the

unlocked classroom refrigerator. The Complainant added that this medication was visible to students and staff. The Complainant stated the Special Education Teacher had a "narcotic" in their lunchbox. The Principal reported the Special Education Teacher had ADHD medication (Adderall) under their desk, in their purse and not locked up. When the Principal learned this, they instructed the Special Education Teacher to lock it up.

The Director of Special Education stated the classroom refrigerator was in a shared classroom area, but also noted that students were supervised. Employees who directly work in the classroom (the Complainant, Paraeducator 1, and the Autism Behavior Consultant) all stated that students had access to the unlocked refrigerator.

The Special Education Teacher's ADHD medication (Adderall) went missing from their lunchbox in the classroom, and they suspected the Complainant. More medication later went missing and the Special Education Teacher reported the theft to the School Resource Officer. The Complainant later admitted to stealing the Special Education Teacher's medication and was subsequently terminated. The Special Education Teacher was pressing charges against the Complainant for theft.

These three requirements are intended to add substance to the Least Restrictive Environment (LRE) portion of the Kansas Special Education for Exceptional Children Act. The second part of requirement (3), that "each environment shall be appropriate for the instructional program being provided," refers to the extent to which a child is in a regular education classroom, a special education classroom, self-contained classroom, special school, homebound, etc., and whether that "environment is appropriate for the instructional program being provided." It does not refer to procedures that school officials adopt in the ordinary course of operating a public school, including the kinds of safety concerns presented in this issue. Such procedures often involve judgements, the soundness of which may be questioned publicly or privately, but the special complaint process is not the proper (or legal) forum to do so.

The evidence *does not support* the allegation that the district failed to provide an environment appropriate to the instructional program being provided, as that requirement is intended under K.A.R. 91-40-52(d)(3).

After reviewing documentation and interviews with the Complainant and District staff, it was determined that according to Kansas special education regulations the District provided an age-appropriate environment that was appropriate for the instructional program being provided.

Issue Two

Whether USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide qualified staff to implement IEPs for the Students enrolled in the Autism Classroom. K.A.R. 91-31-34; 34 C.F.R. 300.156.

According to 34 C.F.R. 300.156 and K.A.R. 91-31-34(b)(2)(3)(4)(5)(A), If a teacher holding an appropriate license or certificate is not available, the education system shall use a substitute teacher holding a valid Kansas teacher or administrator license or certificate at any level or in any field or subject. If a substitute teacher holding a valid Kansas teacher or administrator license or certificate is not available, the education system shall use a substitute teacher holding a valid Kansas substitute teaching license or certificate. If a substitute teacher holding a valid Kansas substitute teaching license is not available, the education system shall use a person who holds a baccalaureate degree and an emergency substitute teaching license or certificate. If a person holding a baccalaureate degree and an emergency substitute teaching license is not available, the education system shall use a person who has been licensed or certified by the state board as an emergency substitute teacher.

The Complainant alleged there had been many days that there has been no certified staff in the classroom when the Special Education Teacher has been out sick. Multiple times the paraprofessionals had been responsible for running the classroom with a no certified substitute to provide qualified instruction.

The District responded that qualified staff had been secured to implement IEPs for students in this classroom.

On August 29, 2024, the Special Education Teacher was absent. The Autism Behavior Consultant was present in the morning to help settle students, but then had to leave. There is no record of certified classroom coverage for this afternoon.

September 12th, 13th, and 16th, 2024, the Special Education Teacher was again absent, and there was no record of certified classroom coverage for the afternoons. On Monday, September 16, 2024, the assigned certified substitute was only in the Autism classroom from 8:00 a.m. to 10:00 a.m. A text message from the Complainant to the Speech Therapist that morning indicated that only Paraeducator 1 and the Complainant were present. The Complainant also texted the Autism Behavior Consultant about staffing issues, and they stated they could not be there on that day.

On October 3, 2024, the Special Education Teacher was absent, and there was no record of certified classroom coverage. On November 4, 2024, the Special Education Teacher was absent, and although the long term substitute was scheduled, they texted at 6:46 a.m. that they would not be on that day.

In addition, on January 28th and February 6th, 2025, the Special Education Teacher was absent in the morning, and there was no record of certified classroom coverage during those times.

The Principal stated, "we always had a certified staff member in the room" and if there was somebody missing, support would be found. It was also stated that on occasion the Principal or the Assistant Principal would stay in the room until someone with a special education

background arrived. Paraeducator 1 reported there had been days where the Special Education Teacher was absent and a certified person was not in the classroom “all day long.” After reviewing documentation and from interviews with the Complainant and District staff, it was determined that according to IDEA and Kansas special education regulations the District *failed to provide* qualified staff to implement IEPs for the Students enrolled in the Autism Classroom.

Issue Three

Whether USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEPs of the Students enrolled in the Autism Classroom when the Special Education Teacher was absent. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

According to K.A.R. 91-40-16(b)(3) each agency shall ensure that an IEP is in effect for each exceptional child at the beginning of each school year.

The Complainant alleged that in the Autism Classroom, specialized instruction must be delivered according to the IEP and the concern revolved around multiple and lengthy absences by the Special Education Teacher, along with staffing shortages, which resulted in student IEPs not being followed as written.

The District responded that student IEPs were appropriately implemented and that each student in the classroom had received a Free and Appropriate Public Education during the Special Education Teacher’s absence.

The Complainant stated that IEP accommodations were not always met and specifically cited issues with one-on-one paraeducators for certain students, insufficient time in general education classes due to staff shortages and behavioral issues, and some students missing adaptive PE days.

The Autism Behavior Consultant believed there was always enough staff to implement IEPs. Paraeducator 1 recalled that while IEP work was done on days without a certified teacher, it wasn't at the peak of what could normally be done. Paraeducator 1 also noted that staff inconsistency made it difficult to maintain student routines, but principals and speech pathologists helped ensure student accountability and control on days there was not a certified teacher. The Special Education Teacher mentioned having weekly meetings with the Autism Behavior Consultant, which helped with communication about implementation of IEP's.

Based on service logs and student attendance reports, the IEP requirements for all 6 students for speech and occupational therapy services were met during the times when the Special Education Teacher was absent. In addition, all 6 students demonstrated adequate progress on their IEP goals/objectives to meet the requirements of the IEP.

After reviewing documentation and from interviews with the Complainant and District staff, it was determined that according to IDEA and Kansas special education regulations, the District *did implement* the IEPs of the students enrolled in the classroom while the Special Education Teacher was absent.

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 regulations at K.A.R. 91-31-34 specify a clearly defined order in which certified substitute teachers should be provided in a classroom. IDEA regulations at 34 C.F.R. 300.156 specifies that school districts must ensure that all personnel necessary to carry out the requirements of the IDEA are appropriately and adequately prepared and trained.

In this case, the evidence supports the finding that USD #497 did not provide certified substitute teachers as defined in K.A.R. 91-31-34. The provided materials and Interviews document this.

Based on the foregoing, USD # 497 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #497 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.156, and K.A.R. 91-31-34 by providing an age-appropriate environment for the instructional program being provided and by ensuring certified substitute teachers are provided in the classroom.
2. Within 30 calendar days of this report, USD#497 will review policies related to substitute requirements and will provide a clear directive to school administrators that outlines a step-by-step procedure to ensure qualified substitutes in classrooms.

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)