

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #402
ON MARCH 19, 2025

DATE OF REPORT: APRIL 15, 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 #402 Augusta Public Schools. In the remainder of the report, the “School,” the “District,” and the “local education agency (LEA)” shall refer to USD #402.

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 19, 2025, and the 30-day timeline ended on April 18, 2025.

Allegations

The following issues will be investigated:

ISSUE ONE: Whether USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), on March 11, 2025, failed to implement the Student’s Individual Education Program (IEP) when a substitute teacher did not follow the Student’s behavior intervention plan (BIP). K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

ISSUE TWO: Whether USD #402, in violation of state and federal regulations and the IDEA, failed to inform the substitute teacher of their roles and responsibilities in implementing the Student’s IEP on March 11, 2025. K.A.R. 91-40-16(b)(5); 34 C.F.R. 300.323(d)(2).

Investigation of Complaint

The Complaint Investigator interviewed the Parent and District staff by video on April 8, 2025.

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

1. District Response, no date
2. Communication Logs, re: March 11, 2025, 03/09/2025-03/11/2025
3. Individualized Education Program, 10/04/2024

4. Chronological Timeline of Events, 08/30/2024-03/11/2025
5. County Special Education Process Handbook, Publish Date 08/01/2024

Background Information

This investigation involved a 13-year-old seventh-grade student enrolled at a Middle School in USD #402. The Student receives services as a child with a disability per the IDEA.

Findings of the Investigation

The following findings are based on a review of documentation provided by the parties.

1. In the District Response, Teacher 1 described that the Student was “roaming around” the classroom. Teacher 1 stated that when they asked the Student to return to their seat, the Student was “argumentative” but did so. Teacher 1 stated that when the bell rang at 2:06 p.m., Teacher 1 went to the classroom door, and the Student left their seat and headed for the door. Teacher 1 said the Student’s name and explained that the Student, “... deliberately shoulder[-]checked me, (with the intent of knocking me down), and pushed their way out the door.” (D1)

Teacher 1 stated they followed the Student to another room and asked them to go to the office. Teacher 1 described that the Student would not leave the room and said Teacher 1 did not need to yell at them. The IEP Manager arrived and helped escort the Student to the office. Teacher 1 reported the Student’s behavior to the Principal. (D1)

2. The District Response indicated, “... based on the information from staff, while the substitute teacher had not read [the Student’s] IEP, there was a special education staff member assigned to the class that is very familiar with [the Student], [their] IEP and [their] behavior intervention plan.” (D3)
3. Communication Logs regarding March 11, 2025 indicated:
 - a. March 11, 2025 at 2:45 p.m.
 - i. The Principal and the Assistant Principal contacted one of the parents to inform them of the classroom incident and assign consequences.
 - b. March 11, 2025 at 2:59 p.m.
 - i. The Parent called the School and asked if Teacher 1 had been provided with the Student’s behavior plan. The Parent was informed that Teacher 1 had not received it, but that a paraprofessional was in the classroom. (D4)
4. The Student’s IEP, dated October 4, 2024, indicated:
 - a. The Student experienced a primary exceptionality of an Other Health Impairment (OH).
 - b. The Impact of Exceptionality stated, “Due to difficulties in regulating [their] attention and emotional responses, [the Student] requires support with [their] organizational skills, in staying on task during class, and being able to implement coping strategies when emotionally dysregulated. Due to [the Student’s]

difficulties in regulating [their] emotions, [the Student] requires gentle redirection, friendly reminders, provided breaks, and emotional understanding from [their] teachers to be able to regulate [their] emotions and continue to participate in the general education and special education classroom settings.”

- c. Strengths and Needs:
 - i. The Student actively participated in class discussions and asked relevant questions. The Student struggled with organization, following directions, accepting feedback, completing assignments, and staying on task. The Student would talk out of turn and seek attention more frequently than their classmates. They had difficulty with multi-step instructions and were easily distracted.
- d. Current Performance:
 - i. Teacher and parent rating scales indicated the Student demonstrated significantly elevated levels of hyperactivity compared to their peers and elevated or significantly elevated levels of inattentiveness, atypicality, and anxiety, which were correlated with school problems. The Student’s twice-daily visits to the special education room have improved their ability to maintain attention in class while also offering opportunities to recharge and minimize sensory overload.
- e. Accommodations/Modifications/Supplementary Supports in the special education and general education settings, from October 4, 2024 through October 3, 2025 included:
 - i. Extra time (not to exceed 1.5 times that of general education peers);
 - ii. A quiet and separate setting for school and state assessments;
 - iii. Small breaks when the Student is dysregulated and/or showing signs of escalation;
 - iv. A scribe when a written exercise exceeds more than one paragraph in length;
 - v. Shortened assignments when general education and special education teachers determine the assignment or assessment is too difficult; and
 - vi. Notes provided when the Student is asked to copy information during whole group instruction.
- f. The BIP indicated:
 - i. “[The Student] engages in off-task or inappropriate behavior (breaking classroom or school rules) resulting in redirection from school staff. Needing redirection from school staff can escalate [the Student’s] frustration and potentially lead to [the Student] becoming verbally and physically aggressive.”
 - ii. The Student’s behavior occurred within all of their core classes and was more likely to occur during afternoon classes such as ELA or Science.

The Student had the most difficulty with off-task behavior, resulting in redirection during ELA class. The Student also struggled during unstructured times, such as passing periods and lunch.

- iii. The Student's behavior could interrupt the learning environment for themselves and their peers when needing redirection, which could escalate the Student's frustrations and potentially their aggressive behavior, verbal or physical. The Student's refusal and off-task behaviors could lead to the Student falling behind in instruction/assigned work, which could impact their understanding of material and grades.
- iv. Staff Response to Targeted Behavior:
 1. "Staff will gently and [with] the use of general rules [,] will redirect the Student."
 2. "Staff will walk away after redirection immediately."
 3. "Staff observe from [a] distance."
 4. "If [the Student] starts to argue [,] staff will ignore and walk away."
 5. "If [the Student] begins cussing excessively and arguing [the IEP Manager] will be called or [the Paraeducator] ... to remove [the Student] from class: [they] will take a walk, practice self-regulation strategies such as yoga, deep breathing and or drawing."
 6. "If these strategies work [,] [the Student] will be allowed to go back to class with a clean slate. If not [,] administration will be contacted." (D5)
5. A documentation log indicated that on March 11, 2025, the Student received an out-of-school suspension for two days due to physical contact. The log stated, "During English, a teacher told the class that they needed to wait until [they] dismissed them to ensure everything was handled in the classroom. [The Student] proceeded to use [their] body to push the teacher out of the way. [The Student] left the classroom, when the teacher asked [them] to come back, [they] proceeded to say 'You can't tell me what the fuck to do. I can do whatever the fuck I want.'" (D6)
6. The County Special Education Interlocal Special Education Process Handbook indicated that:
 - a. An IEP "needs to be provided to all general education teachers responsible for providing services or accommodations or modifications for the student."
 - b. "Distribution must occur no later than September 1."
 - c. "IEPs at a Glance may need to be sent throughout the year as annuals or amendments occur which impact accommodations, modifications, behavior plans, etc." (D39-D40)

Interview Summaries

The following findings are based on interviews with the District and the Parent and have been compiled as interview summaries.

Teacher 1

7. In an interview with the Complaint Investigator, Teacher 1 described that they were a full-time 6th-grade English teacher in the building and covered (substituted) for Teacher 2 for one period on March 11, 2025. (P2, 05:01)
8. According to Teacher 1, "I was asked to cover a seventh-grade English class in the afternoon, and when I reached the class, I was met at the door by the teacher next door asking me if I had seen [their] email. I told [them] I hadn't, and [they] said it was a forwarded email from the office with [Teacher 2's] lesson plans. So I opened that up. Once I got seated at the desk, I read it briefly. I explained my expectations. Most of them [students] knew who I was because I'm a sixth-grade teacher. They were working on some rough drafts for a paper, and midway through, [the Student] was wandering between two desk areas. I asked [the Student] to sit down, [the Student] got a little argumentative. I asked [them] again, and [the Student] returned to [their] seat. Then the hour continued. The hour ended at 2:06. At 2:04, I asked the students who had me last year, I asked if any of them could raise their hand and remind everybody what my policy was for dismissal. And one of the kids raised their hand and said, '[Teacher 1] dismisses the class. [Teacher 1] stands by the door, [Teacher 1] dismisses the class.' The bell rang at 2:06. I was standing by the door. I was saying, 'You may go ... you may go.' [The Student] was out of [their] seat, heading towards the door. I pointed back to [their] chair. [The Student] continued to come forward. I said [their] name, [the Student], and [the Student] came straight up to the door. I was standing off to the side, and ... a little bit of me was in front of the door. [The Student] shoulder checks my right shoulder and then goes out the door." (P1, 01:06)

Teacher 1 continued, "[The Student] went straight to [their] seventh-hour class, and I was in the hallway. I asked [the Student] from the doorway to go to the office, and [the Student] said that I couldn't talk to [the Student] like that because I wasn't [the Student's] [parent]. ... I requested for [the Student] to go to the office. [The Student] wouldn't come out of the room. And [the Student] said I did not need to yell at [the Student] because I was not [their] [parent]. And then [the IEP Manager] arrived at [Teacher 3's] room. Shortly afterwards, [the IEP Manager] began escorting [the Student] to the office and [the IEP Manager] asked me to accompany so I could explain what happened." (P1, 03:21)

9. Teacher 1 indicated that the email they received with the lesson plans contained "... nothing ... about anyone's behavior plan." (P2, 04:43) Teacher 1 shared that they were aware that the Student was a part of the special education program, "... but I didn't know anything about a behavior plan." (P3, 05:33) Teacher 1 explained that they were not provided any information about Student 1's IEP or behavior plan before covering the class period on March 11, 2025. (P3, 05:46)

The Paraeducator

10. In an interview with the Complaint Investigator, the Paraeducator said they supported the Student with the Student's work when needed and encouraged the Student to

focus. According to the Paraeducator, sometimes the Student listened, sometimes not, depending on the day. The Paraeducator shared that the Student was working on that specific day, March 11, 2025. (P4, 07:02)

11. The Paraeducator was present in the classroom on March 11, 2025 when Teacher 1 covered a class period for Teacher 2. The Paraeducator described, "During that time in class, it was a little different. We had a teacher, [Teacher 1], who was subbing, and it was a different feeling in the room because [Teacher 1] likes to keep things a little more tight than maybe the regular teacher. And so the kids knew to hold ... still do their work, not any talking really, which was fine. The kids were doing great. ... Towards the end of the class, there's a little more movement. At that point, [the Student] wanted to talk to another student. [The Student] just got up and did it, but [the Student] was standing in the middle of the room also. And that's when [Teacher 1] was asking [the Student] to sit down, and they went back and forth with ... more of an argument. Eventually, though, [the Student] sat down. At that point, it felt like [the Student] was deescalated, and there was no other thing to do. There was maybe five minutes before class was getting ready to let out. So at that moment, [Teacher 1] preferred to release the students instead of just going out of the class, stand up, walk out [sic]. And so [the Student] bolted out of the classroom without being told to go, and that's when [the Student] ran into [Teacher 1]." (P2, 01:53)
12. The Paraeducator described that typically, with Teacher 2, students gather their belongings a couple of minutes before the bell and are often standing by the door, ready to leave. This differed from Teacher 1's approach, where students were told to stay seated until explicitly released. On March 11, 2025, the exit procedure differed from the usual routine in Teacher 2's class. (P2, 03:27) When asked how the Student responds to "different" regarding the classroom procedures, the Paraeducator said, "I would say that [the Student] might do it but not like it. [The Student] might argue a little bit more, but if you can tell [the Student], just hold on, it's almost time to go or whatever, [the Student] [will] do it. But in this case, [the Student] did, for the most part, stay quiet. [The Student] stayed where [the Student] was supposed to be, and [they] stayed in [their] seat until it was time to go. But [the Student] didn't wait for ... 'You may be dismissed,' [the Student] just left." (P3, 05:46)
13. After the Student left the classroom, the Paraeducator shared, "... I heard the confrontation when [the Student] was leaving. [The Student] went to [their] next class, and that's when [Teacher 1] went to the next room and confronted [the Student] in there for what [the Student] had done by running into [Teacher 1]." The Paraeducator said that the Student did not respond well to confrontation or adult directives unless mutual respect had been established. (P3, 05:30)

The IEP Manager

14. In an interview with the Complaint Investigator, the IEP Manager described that the Student was in one of their classes and shared that the Student struggled with impulse control and became dysregulated if they did not feel heard. The IEP Manager described, "If [the Student] sees other people ... getting in trouble or [the Student] feels that

they're not getting justice, [the Student] would take it into [their] own hands and [their] words to try to make everything okay." (P2, 03:25)

15. The IEP Manager described that on March 11, 2025, they were not in the classroom where the "shoulder-checking" incident occurred, "I was in another classroom and it was passing and I came out to go to my classroom and [the Student] and another teacher were engaged in a conversation about what had happened, and I got [the Student] to calm down and just got [the Student] out of the situation and brought [the Student] to the office." (P1, 01:56) The IEP Manager described, "[The Student] was just engaging, yelling with the other adult ... I just told [the Student], 'Let's not do this in the hallway. You're making a scene. It's embarrassing. We're going to go to a private area, and we can discuss it there.' [The Student] continued to yell at [Teacher 1], and I just told [the Student] to, 'Please stop. We would discuss it when we got to the office' and [the Student] stopped talking in the hallway until we got into the office." (P1, 01:56)
16. The IEP Manager recalled the Student saying things like, "[Teacher 1] wasn't going to keep me in the classroom. [Teacher 1] can't hold me there.' [The Student] said that [they] had not shoved [Teacher 1], but kind of moved [Teacher 1] out of the way." The IEP Manager's impression was that the Student felt Teacher 1 couldn't keep them in the classroom and took steps to ensure that did not happen. (P1, 02:28) The IEP Manager described that en route to the office, the Student was "upset, obviously, but I think [the Student] was fine. I mean, until [the Student] got a consequence and then [the Student] was upset about the consequence." (P3, 04:36)
17. When asked about the Student's ability to negotiate changes in procedures, the IEP Manager indicated that the Student's reaction to new procedures was dependent on how the Student was feeling. (P3, 05:01)
18. The IEP Manager indicated that Teacher 1 knew the Student from last year and knew that the Student had an IEP. (P3, 05:48)

The Parent

19. The Parent shared in an interview with the Complaint Investigator that the Student experienced ADHD and anxiety that were "pretty well managed." The Parent shared that the Student struggled to employ appropriate coping mechanisms when upset and that the Student was learning how to manage the diagnosis of Disruptive Mood Dysregulatory Disorder. The Parent indicated that the behavior plan was in place for the Student's and others' safety. The Parent described, "So that headstrong inability to employ any kind of rational thought with [the Student] is a lot of what we see with [the Student's] disability' which was evidenced by verbalizations and "sometimes physical aggression with peers" and resulted in multiple suspensions. (P2, 07:10)
20. The Parent shared their perception of events involving the Student on March 11, 2025. The Parent said, "So [the Student] was in [their] English class with a substitute teacher. [The Student] reported to me that I think some things had not been picked up in the classroom by other students and the teacher asked the whole class to stay after the bell rang. [The Student] does have multiple mental health conditions, one of them

being anxiety, and [the Student] had received some counsels for being late to the class that directly follows English. And so [the Student] said, 'My stuff's picked up. I'm leaving.' And the teacher put [themselves] between [the Student] and the door. [The Student] said [Teacher 1] was physically barricading [the Student] in the classroom, and [the Student] pushed past [Teacher 1] to get out the door. After that, [Teacher 1] accosted [the Student] out in the hallway to further discuss the issue and told [the Student] that [they] needed to come back and [the Student] did cuss at [Teacher 1] and ... told [Teacher 1], 'You can't tell me what the fuck to do. I'll do whatever the fuck I want.' Or something along those lines." (P1, 00:50)

21. When asked to describe "accosted," the Parent said, "[The Student] said that [Teacher 1] ran out of the classroom after [the Student] left and came out into the hallway and was yelling at [the Student] and telling [the Student] [they] needed to come back. And that's when [the Student] turned around and cussed at [Teacher 1] and said, 'No, I'm not going to do that.'" (P2, 04:06)
22. The Parent indicated they were concerned about the School's lack of adherence to the Student's behavior plan, felt the Student had been physically restrained, and that Teacher 1 engaged in a verbal interaction with the Student in the hallway, an action that was contrary to the Student's behavior plan. (P1, 01:39)
23. According to the Parent, the Principal said, "Well, I don't even think the teacher was aware of [the Student's] behavior plan. We don't share that information with our substitute teachers. That's confidential.' And I said, 'Well, if there are any kids whose plans should be shared with subs, I would think it would be your behavior kids.' And [the Principal] said, 'Sometimes they get a list of accommodations, but they are not privy to that information.' ... my concern was, I felt like the School did not follow that behavior plan" (P1, 02:40)
24. The Parent listed the parts of the Student's behavior plan they believed should have been implemented:
 - a. "Staff will walk away after redirection is given immediately." According to the Parent, "This was not done. After [Teacher 1] told [the Student] to sit back down."
 - b. "If [the Student] starts to argue, staff will ignore and walk away." The Parent said, "Apparently there was some kind of conversation that occurred in the classroom between [the Student] and [Teacher 1] when [the Student] said, 'No, I'm leaving.' And [Teacher 1] said, 'No, you're not.'" According to the Parent, the Student reported that "... if [the Student] began cussing excessively or arguing, [the IEP Manager] or [the Paraeducator] will remove [the Student] from the classroom. That did not happen." (P2, 04:46)
 - c. The Parent shared, "[The Student] also knows that if there is an incident that occurs during the classroom, that it is not [the Student's] to handle and that it will be handled by [the] administration. So the minute that [Teacher 1] thought [they] had a problem with [the Student], there should have been a call either to

[the IEP Manager] or to the Principal to say, 'We have an issue. Can somebody please come down and address this' (P5, 15:28)

The Principal

25. In an interview with the Complaint Investigator, the Principal shared that on March 11, 2025, Teacher 2 had an emergency and "... ended up leaving ... sometime in the morning, so it came out of nowhere. [Teacher 2] didn't even have a lot of time to make sub plans. [Teacher 1] kind of made them up on the fly and knew that the kids were working on a paper" The Principal shared that the sub plans were more generic than if a teacher were to have written plans for a scheduled absence. The Principal shared. "... because it was so late in the day, we couldn't find a substitute, so we had a certified teacher cover those classes during [their] plan time." The Principal shared that when a teacher covers a class for another teacher, they do not have access to the Student Information System like the assigned teacher. The Principal confirmed that teachers do not have universal access to student information in the Student Information System. (P2, 06:25)
26. According to the Principal, after the incident with the Student, they spoke with Teacher 1, who was upset about being physically contacted by a student. The Principal shared that they consulted with the assistant principal, who talked to the Student. The Principal also spoke with the Paraeducator and students to gather more information. Ultimately, the Principal decided to issue consequences for the Student's actions and communicated with the Student's parents. (P1, 00:59)
27. The Principal shared that the Parent "... was frustrated that the sub didn't have access to [the Student's] behavior plan. I shared with [the Parent] that we don't usually share that information with subs because it's pretty confidential information and we don't want a sub folder to be left out on a teacher's desk with confidential information on it." The Principal stated that they shared with the Parent that "... there was a Para in the classroom who did know [the Student's] behavior plan and who was actually named in [the Student's] behavior plan. ... [The Paraeducator] worked with [the Student] when [the Student] was a sixth grader and also when [they] were a seventh grader, so [the Paraeducator] [was] pretty knowledgeable in what [the Student's] behavior needs are." The Principal indicated that the Paraeducator had taken the Student out of classrooms following the Student's behavior plan when the Student had been elevated in the past. The Principal said, "... We felt comfortable that [the Paraeducator] knew how to help support [the Student] in that situation." (P2, 03:41)
28. The Principal explained that Teacher 1 likely knew the Student by sight due to the Student's presence in the sixth-grade hallway and the Student's history of behavior issues at the School, which led to a behavior plan. However, because Teacher 1's team did not include special education teachers the previous year and Teacher 1 hadn't taught the Student directly, Teacher 1 would not have had access to the specifics of [the Student's] behavior plan despite knowing the Student received special education services due to the resource classroom's proximity to Teacher 1's classroom. (P2, 05:08)

29. The Principal shared that it was common class dismissal practice for a teacher to say, "I dismiss you, not the bell." (P1, 02:45)
30. The Principal described the Student's behaviors, "[The Student] is very physical. I have seen [the Student] physical with peers more so than anything else. I have not seen [the Student] physical with staff members until this instant [sic]. But [the Student] has a track record of being physical with other peers and sometimes in a playful manner, sometimes not in a playful manner" (P3, 09:18) When asked about the Student's ability to navigate a change in procedure, the Principal stated, "[The Student] is a hardheaded child who, if [the Student] wants to do something, [the Student's] going to do it. And if [the Student] doesn't want to do it, [the Student's] not going to do it. This might be a change in procedure for this one particular class. ... [The Student's] a very strong relationship kid and [the Student] didn't have a relationship with ... [Teacher 1]. So asking [the Student] to do something [they] didn't want to do wasn't going to go over well. That doesn't excuse the fact that [the Student] still has to follow our code of conduct at our building." (P3, 10:08)

The Director of Special Education

31. In an interview with the Complaint Investigator, the Director of Special Education described that the Paraeducator had access to the Student's IEP and behavior plan and was "... specifically mentioned in [the Student's] behavior intervention plan as a strategy for non-productive behaviors." (P2, 03:39)
32. The Director of Special Education indicated that the Student was suspended for physical aggression toward Teacher 1. (P3, 04:59)
33. The Director of Special Education shared that "... as a system, we do share IEP and behavior plan information with long-term subs. ... This was a unique situation where it wasn't really a sub, it was a teacher taking over for a class." (P4, 07:33)

On March 19, 2025, the Parent filed this complaint.

Positions of the Parties, Applicable Regulations, and Conclusions

ISSUE ONE

Whether USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), on March 11, 2025, failed to implement the Student's IEP when a substitute teacher did not follow the Student's behavior intervention plan. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

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

The Parent alleged that on March 11, 2025, the Substitute Teacher violated the Student's behavior intervention plan. The Student shoved past the teacher to leave the classroom. The

Substitute Teacher approached the Student in the hall afterwards, and it was reported that the Student was verbally inappropriate. Due to making bodily contact with staff, the Student received two days of out-of-school suspension.

In their Response, the District indicated that there had not been a violation of the Student's IEP. The District said neither an IEP nor a BIP removes the option to issue a disciplinary action for a code of conduct violation. The District indicated that physical aggression toward a staff member was a severe code of conduct violation that warranted disciplinary action.

The District's Response did not address the allegation in this Complaint. While it is correct that a District may impose a short-term suspension, even for behavior that is a manifestation of a student's disability (34 C.F.R. 300.530(b)), that does not excuse the District's duty to provide a Free Appropriate Public Education (FAPE) by implementing the IEP. The issue in this Complaint is not that the District suspended the Student, but rather, that it failed to implement the Student's IEP when a Substitute Teacher did not follow the Student's BIP.

On March 11, 2025, when Teacher 1 covered a class for Teacher 2 due to an emergency, the District and Teacher 1 both acknowledged that Teacher 1 had not been provided with the Student's IEP or BIP. K.A.R. 91-40-16(b)(3) and 34 C.F.R. § 300.323 requires an IEP to be in effect, implying that all relevant staff responsible for the Student's education should be aware of and able to implement it. Although testimony revealed that Teacher 1 knew that the Student had an IEP, they were unaware of the specific details, which impacted their ability to follow the IEP and BIP.

The BIP outlined specific staff responses to the Student's behavior, including the following:

- a. "Staff will gently and [with] the use of general rules [,] will redirect the Student."
- b. "Staff will walk away after redirection immediately."
- c. "If [the Student] starts to argue [,] staff will ignore and walk away."

Teacher 1 was not privy to the specifics of the IEP or BIP, despite knowing the Student was on an IEP, and their ability to respond appropriately in certain situations was compromised. If Teacher 1 had been furnished with the necessary information and had responded to the verbal interactions with the Student in accordance with the BIP, the subsequent escalation and physical interaction, which ultimately led to the Student's two-day suspension, might have been avoided.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is substantiated* that the District failed to implement the Student's IEP when a substitute teacher did not follow the Student's behavior intervention plan, which resulted in a material failure to implement the IEP, denying the Student a FAPE.

ISSUE TWO

Whether USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to inform the substitute teacher of their roles and responsibilities in implementing the Student's IEP on March 11, 2025. K.A.R. 91-40-16(b)(5); 34 C.F.R. 300.323(d)(2).

According to K.A.R. 91-40-16(b)(5) and 34 C.F.R. 300.323(d)(2), each agency shall ensure that each teacher and provider is informed of the following: that individual's specific responsibilities related to implementing the child's IEP, and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

The Parent alleged that the School acknowledged that they do not share behavior plans with substitute teachers and violated the Student's plan.

The District responded that while the Substitute Teacher had not read the Student's IEP, there was a special education staff member assigned to the class who was familiar with the Student and their IEP and behavior intervention plan.

On March 11, 2025, when Teacher 1 covered a class for Teacher 2 due to an emergency, the District and Teacher 1 both acknowledged that Teacher 1 had not been provided with the Student's IEP or BIP. K.A.R. 91-40-16(b)(5) and 34 C.F.R. § 300.323(d)(2) requires each teacher (which would include a substitute teacher covering a class) to be informed of their specific responsibilities for the implementation of a Student's IEP. Testimony indicated that Teacher 1 knew that the Student had an IEP but may not have known the specifics, which impacted their ability to follow the IEP and BIP. Reinforcing this point, the Principal indicated that the District does not "usually share that information with subs because it's pretty confidential."

Although the Paraeducator was aware of the Student's BIP and was present during Teacher 1's class coverage, there was no evidence beyond the Paraeducator's observation that indicates they actively facilitated the BIP's implementation by Teacher 1. Consequently, the argument that the Paraeducator's presence ensured IEP/BIP implementation is unsupported. While the Paraeducator's familiarity with the IEP is a mitigating circumstance, it does not relieve the District of its duty to ensure Teacher 1, the responsible adult for instruction and classroom management on March 11, 2025, received specific information regarding their role in the Student's IEP implementation.

Despite the emergent nature of the need to have a class period covered, the District was obligated to inform Teacher 1 of their responsibilities regarding the implementation of the Student's IEP and BIP, even for a single period. The law does not provide an exception for short-term substitutes related to providing this information.

Additionally, the District's policy of not sharing behavior plans with substitute teachers, while potentially intended to protect confidentiality, creates a barrier to implementing IEPs in situations involving substitute coverage and is contrary to the law.

Relevant caselaw includes:

- Michigan City Area Schools, 74 IDLER 272 (2019)
- Robertson V. East Baton Rouge Parish [school]. Bd., 61 IDELR 201 (2013)
- Douglas County School District, 70 IDELR 111 (2017)

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is substantiated* that the District failed to inform the substitute teacher of their roles and responsibilities in implementing the Student's IEP on March 11, 2025, which resulted in a material failure that denied the Student a FAPE.

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. Federal regulations at K.A.R. 91-40-16(b)(3) and 34 C.F.R. § 300.323 specify that an IEP must be in effect for each exceptional child at the beginning of the school year.

In this case, the evidence supports the finding that USD #402 did not implement the Student's IEP when a substitute teacher did not follow the Student's BIP. Documentation and Interviews document this.

- B. Federal regulations at K.A.R. 91-40-16(b)(5) and 34 C.F.R. 300.323(d)(2) specify that each agency shall ensure that teachers and providers are informed of their specific responsibilities related to the implementation of a child's IEP.

In this case, the evidence supports the finding that USD #402 did not provide the substitute teacher with their specific responsibilities related to the implementation of the Student's IEP and BIP. Documentation, Interviews, and the District's undated Response letter document this.

Based on the foregoing, USD #402 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #402 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. 91-40-16(b)(3), 34 C.F.R. § 300.323, and K.A.R. 91-40-16(b)(5), 34 C.F.R. 300.323(d)(2) by designing and describing a system in which all substitutes, internal or external, have access to students' IEP information prior to the commencement of their role as a substitute.
2. Within 20 calendar days of the date of this report, USD #402 shall notify all relevant internal stakeholders of the revisions to substitute staff's access to IEP information. Verification of this notification shall be provided to the Department.

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)