

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #475  
ON JUNE 5, 2025

DATE OF REPORT: JULY 7, 2025

**Background Information**

This report is in response to a complaint filed with our office by ----- on behalf of his son, ----- For the remainder of this report ----- will be referred to as "the student." ----- will be referred to as "the parent." USD #475 will be referred to as "the district."

**Investigation of Complaint**

On June 12, 2025, the complaint investigator spoke via telephone with the Executive Director of Special Education for the district. On June 12, 2025, both parties were sent summaries via email of the issues to be addressed through this investigation. The investigator spoke by telephone with the parent on June 12 and 13, 2025. During the June 13, 2025 telephone call, the parent confirmed his agreement with the issues as outlined by the investigator.

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

- IEP for the student dated April 30, 2024
- Safety Plan: Self Harm dated September 26, 2024
- Staffing Summary dated November 6, 2024
- Staffing Summary dated March 7, 2025
- Notice of Meeting on April 4, 2025 signed by the parent on March 28, 2025
- Staffing Summary dated April 4, 2025
- Email dated April 9, 2025 from the case manager (special education teacher) to the parent
- Email exchange dated April 14, 2025 between the executive director of special education and the parent
- Email dated April 26, 2025 from the parent to the student's special education teacher
- Email dated April 28, 2025 from the executive director of special education to the parent
- Email exchange dated May 5, 2025 between the executive director of special education to the parent
- Email dated May 14, 2025 from the parent to the executive director of special education

- Email exchange dated May 15, 2025 between the executive director of special education and the parent
- Email exchange dated May 19, 2025 between the parent and the executive director of special education
- Email dated May 20, 2025 from the parent to the executive director of special education
- Email exchange dated May 20, 2025 between the parent and the student's special education teacher
- Email dated May 22, 2025 from the student's special education teacher to the parent
- Email dated May 23, 2025 from the parent to the student's special education teacher and the executive director of special education
- Daily behavior reports provided by the district covering the period of August 13, 2024 through March 4, 2025
- Behavior data summary covering the period of October 21, 2024 through March 25, 2025
- Daily behavior charts dated April 17 and 28, 2025
- Staffing Summary dated April 22, 2025
- Draft IEP for the student dated April 22, 2025 provided by the district
- Final IEP for the student dated April 25, 2025 provided by the district
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 25, 2025
- Staffing Summary dated April 25, 2025
- Documents submitted by the parent including the following:
  - Draft IEP for the student dated April 22, 2025
  - Letter to the parent regarding an ESI (Emergency Safety Intervention) on April 22, 2025
  - Emergency Safety Intervention Documentation Form regarding an incident on April 22, 2025
  - Emergency Safety Intervention Documentation Form regarding an incident on May 23, 2025
  - Daily schedule for the student
  - Emergency Safety Intervention Documentation Form provided by the parent on June 12, 2025 regarding an incident on April 29, 2025
- Daily schedule for the student for the period beginning April 10, 2025

## **Background Information**

This investigation involves a 7-year old boy who has completed the first grade in a district elementary school. He has received special education services since the preschool level and has been determined eligible to receive these services under the categorical designation of Developmental Disability.

The student's parents are divorced, and the student lives with his paternal grandparents. The parent is the educational decision-maker for the student and a sister who, according to the parent, also has been determined eligible for and in need of special education.

The student has been diagnosed with a seizure disorder, ADHD, attachment disorder, and an acute stress disorder. He has an Individual Health Plan (IHP) and until April 2025 also had a Mental Health IHP with a safety plan due to expressions of suicidal ideation. In a telephone call with the investigator on June 12, 2025, the student's father stated that while the student has not recently expressed suicidal thoughts, the father stated that he believes that a safety plan should continue to be in place.

The student's IEP team has determined that he displays unsafe behavior which impedes his learning or the learning of others. He has been provided accommodations including a visual schedule, visual cues, wait time, sensory supports, and social stories. The student has a Behavior Intervention Plan (BIP).

The student is provided with Attendant Care during lunch and recess. He is supported in the general education classroom for specials, math, science, and social studies. He also receives support in a special education classroom setting for core content and social skills. His IEP team determined that he should also receive social work services, but the student declined to participate in activities with the social worker for much of the 2024-25 school year.

## **Issues**

In his complaint, the parent raised 6 issues.

### **Issue One**

The district failed to provide the parent with copies of the daily behavior charts on dates specified in the complaint.

### **Position of the Parent**

The parent asserts that, pending a change in communication strategies between himself and the special education teacher, the district failed to provide the parent with the student's behavior charts on the eight school days between April 17 and May 23, 2025.

### **Position of the District**

The district stipulates that there have been occasions when behavior data was not provided to the parent on a daily basis. However, it is the position of the district that the student's April 30, 2024 IEP does not require the daily provision of data sheets to the parent. According to the district, the April 2024 IEP states that while behavior data will be taken daily for the purpose of determining the student's progress toward attaining an IEP goal, progress on that goal was to be reported to the parent on a quarterly basis.

The district acknowledges that, based on a request from the parent, daily behavior sheets were being sent to the parent. According to the executive director of special education, the district – at the April 25, 2025 annual review meeting - proposed sending data to the parent on a weekly basis, but the parent objected. It was subsequently determined that the data would be transmitted via email rather than through the “Class Dojo” communication system in order to better maintain a record of the transmission of the data to the parent.

### **Applicable Statutes and Regulations**

At K.A.R. 91-40-51, Kansas regulations state that, when filing a formal complaint, the complainant must allege that a violation of federal or state special education laws or regulations has occurred during the 12-month period preceding the date the complaint is received and filed with the commissioner of education.

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an Individualized Education Program (IEP). However, special education statutes and regulations do not require that every action taken by a school district with regard to a student who has been determined to be a student with an exceptionality be specifically addressed in a student's IEP.

### **Investigative Finding**

The parent participated in the development of the student's April 30, 2024 IEP. That IEP included a Behavior Intervention Plan (BIP). According to a portion of the “Present Level of Academic Achievement and Functional Performance (PLAAFPs)” section of the student's April 2024 IEP entitled “Emotions/Self-Regulation,”

*“Due to the intensity of [the student's] physical aggression a daily data collection of compliant/non-compliant and physically aggressive behaviors will be used. When [the student] is able to display behaviors of following directions for 80% of his school day and no*

*physical aggressions for 4 consecutive days the team will look at proposing a change to increase the amount of time he is within the general education setting."*

The student's April 2024 IEP states that his needs in the area of Emotion/Self-Regulation would be met through an accommodation/modification, an annual goal, and a Behavior Intervention Plan. The annual goal established to address the student's needs was as follows:

*"Within the IEP year, when given a direction that [the student] perceives is aversive, displayed by eloping, engaging in physical aggression, or using profanity, he will communicate through a visual cue or verbally that he needs help on 70% of opportunities throughout his school day, as documented by observation and data collection."*

The student's April 2024 IEP established four times at which time the student's progress toward attainment of the above annual goal would be monitored and reported – October and December 2024 and March and April 2025.

According to the BIP included in the student's April 2024 IEP, data regarding compliant/non-compliant and physically aggressive behaviors was to be collected on a daily basis and reviewed monthly by a team which included the student's case manager, the school psychologist, the social worker, the behavior consultant, the student's general education teacher, and the principal. While the parent and the district both report that the parent was provided with copies of the daily charts regarding the student's behavior, the student's 2024 IEP does not require that these daily reports be provided to the parent or that the parent be a part of the monthly data review process.

The annual review/revision of the student's IEP began on April 25, 2025. The district's proposed IEP again included a BIP. The proposed plan did not require the daily provision of behavior reports to the parent. The parties were unable to come to agreement regarding revisions to the student's IEP on April 25, 2025. Though numerous attempts were made to reconvene the IEP team to complete the annual review, none were successful. The student's April 2024 IEP remained in effect until the end of the last day of the 2024-25 school year on May 23, 2025 at which time the parent agreed to the implementation of a revised IEP proposed by the district.

### **Summary and Conclusions**

The student's April 2024 IEP – which remained in effect throughout the 2024-25 school year – did not require the district to provide the parent with copies of the daily behavior data collected on the student. The parent asserts and the district stipulates that the parent was nonetheless being provided with that data during April and May 2025. The district provided the investigator with copies of data sheets for two of the dates specified by the parent in his complaint – April 17 and 28, 2025.

Because the student's April 2024 IEP did not specify that the parent was to receive copies of daily data sheets, a violation of special education statutes and regulations *is not substantiated*

on this issue. However, the district is strongly encouraged to provide the parent with copies of data sheets for the dates identified by the parent (if they are extant) in a good faith effort to comply with the parties' mutually agreed-upon decision to share this information with the parent.

## **Issue Two**

The district failed to timely provide the parent with a draft copy of the proposed IEP prior to the April 25, 2025 IEP meeting.

### **Position of the Parent**

The parent contends that the district did not provide him with a copy of its proposed IEP for the student until 7:24 AM on the day the student's annual IEP review was scheduled for 1:15 PM. It is the parent's position that this late delivery of the document did not give him sufficient time to review the document and participate meaningfully when making decisions regarding the student's IEP.

### **Position of the District**

The district stipulates that, on the morning of the April 25, 2025 annual review, the district provided the parent with a draft IEP which included revisions proposed by the district.

### **Applicable Statutes and Regulations**

IDEA (the Individuals with Disabilities Education Act) 2004 has been cautious about encouraging the use of "draft" IEPs fearing that they may send a message that parental concerns and parental participation are not valued.

Commentary published in the Federal Register, Volume 71, pages 46540-46845 notes that if a draft is developed, a copy of that draft should be provided to parents, and the team must ensure that the parents understand that the document is a draft and is not set in stone. While it is reasonable for a district to provide drafts to parents sufficiently in advance of the meeting to give parents enough time to allow the careful consideration of the recommendations outlined in the draft, statutes and regulations do not specify precise timelines for the delivery of a draft document to the parents.

### **Investigative Findings, Summary, and Conclusions**

In his complaint, the parent confirms that the district did provide him with a draft of the proposed IEP. The district and the parent agree that the draft was not sent to the parent until approximately six hours prior to the scheduled IEP team meeting.

There is no requirement in special education law for districts to provide parents with a draft of a proposed IEP prior to the meeting. In fact, the development of drafts is not encouraged. If a district decides to develop a draft document and to provide parents with a copy of the draft

IEP for their review prior to the team meeting, it would not, in the opinion of the investigator, be unreasonable for the parent to expect to receive the draft with enough time for a careful review – perhaps at least 24 hours prior to the IEP meeting. Many parents would not have the time for sufficient review if they did not receive the draft document until the morning of the day the meeting is to be held.

If the district decides that it wants to continue to provide parents with drafts of proposed IEPs, the investigator suggests that staff be given guidance on the timely delivery of these documents. However, because special education laws do not require districts to provide parents with draft copies of proposed IEPs, a violation of special education statutes and regulations *is not substantiated* on this issue.

### **Issue Three**

The district failed to provide the parent with revisions to proposed IEP goals.

#### **Position of the Parent**

The parent contends that he did not feel that the goals proposed by the district in the draft IEP for the student were “S.M.A.R.T.” goals, not specific, measurable, achievable, relevant, and time-bound. According to the parent, the district had agreed to revise the goals to which he objected and would provide those revised goals for the parent to review and approve. The parent asserts that he was never provided with revised goals.

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

The district asserts that – in response to feedback provided by the parent at the April 25, 2025 annual IEP review meeting – revisions were made to the district’s proposed IEP goals for the 2025-26 school year. The district contends that attempts were made to reconvene the IEP team to review these revisions, but the parties could not reach mutual agreement on a time for such a meeting. Additionally, it is the position of the district that the parent refused to discuss proposed IEP revisions at one mutually agreed upon meeting time (May 19, 2025) stating in an email to the executive director of special education that he would “shut down” the meeting if the district attempted to talk about anything other than the student’s lack of progress on the goals established in the student’s April 2024 IEP.

#### **Applicable Statutes and Regulations**

The Individualized Education Program (IEP) team is a group of people, knowledgeable about the child, who come together at an IEP meeting in order to develop or review and revise a child’s IEP. Collaboration among IEP team members is essential to ensure that each child’s educational experience is appropriate and meaningful. All members of the IEP team are equal partners in IEP discussions. Because of their long-term perspective and unique relationship, parents bring a valuable understanding of their child to the table.

Educators, on the other hand, bring an educational focus to the meeting: an understanding of the curriculum, the challenging educational standards for the child, and the relationship to the general education environment. The IEP team should work toward consensus, however, if an IEP team is unable to come to consensus the school has the ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive a free appropriate public education (FAPE). Following the IEP team meeting, the school must provide the parents Prior Written Notice of the school's proposal for services as identified in the child's IEP. If, after all options have been exhausted, the parents and the school cannot come to agreement, either party may ultimately utilize mediation or due process proceedings to resolve the differences.

### **Investigative Findings**

The parent was provided with a copy of a draft revision to the student's April 2024 IEP on the morning of April 25, 2025 – prior to an annual review meeting held later that same day. The staffing summary of the April 25th meeting reflects extensive discussion of many elements of the district's proposed IEP including the student's BIP and annual goals for the student. According to the summary, the executive director of special education told the parent that

*"...we have taken notes on [the parent's] concerns, and we will adjust based on...input...Since we have not come to a consensus on the annual, we will draft something new. Dad asked if he will receive another draft, and [the executive director] said we will send home another ROI and PWN. The team shared that everything will remain the same until the team comes to a consensus. Dad asked what happens if it is not signed by 4/30 and the team said things will remain the same as parents wish to have a new proposal."*

In an email to the student's special education teacher on April 26, 2025, the parent wrote

*"I should be available May 19, 2025. I'm available via zoom between 12p-1p Monday-Friday. It should be a rather quick meeting. Before signing a proposed BIP and IEP, we should review his current IEP and goals/benchmarks."*

On April 28, 2025, the parent sent an email to the executive director of special education writing

*"Zoom time would have to be between 1115am-1200pm. In person, would be May 19th, 2025."*

The executive director responded on April 28, 2025 writing

*"Thank you for your follow-up email. In order to guide our team forward, I want to be sure that I am understanding. Are you asking that an IEP team meeting be scheduled for May 19th in person or that we could meet sooner any day of the week, but it would need to be via Zoom at 12:00 PM?"*



On May 5, 2025, the executive director sent an email to the parent and the student's mother writing

*"It is my understanding that based on the availability shared by [the parent] that May 14th and May 15th at 11:15 am via Zoom was proposed to hold the continuation of [the student's] IEP meeting from 4/25/25. We could also do May 19th in person as originally suggested, too. What option can we tentatively schedule for to allow us to provide 10 day written notice? Should the date need to change later and you consent to waiving your 10 day notice, that will be fine.*

*The IEP team will also be prepared to share a draft of the updated IEP, behavior intervention plan, and data chart proposals prior to the meeting."*

The parent sent an email to the executive director on May 5, 2025 stating

*"I waive the 10 day notice, however the meeting is just to go over this CURRENT IEP, Goals/Benchmarks. I don't think you can develop a new or draft a new IEP plan if you have no idea of his current goals/benchmarks were even met. If they weren't, I am expecting a very thorough explanation why not. Please do not have or present any proposal. I will shut it down immediately. I only care if his goals/benchmarks were met in accordance to his current IEP. If not, why not? I'll have more information regarding my availability by Friday, May 9th."*

On May 14, 2025, the parent sent an email to the executive director and the student's special education teacher stating

*"Hello, sorry for the extremely late notice. Is May 19th still a good date to meet? If not, I can do a zoom at 1115 am tomorrow, May 15th. Please let me know if that works."*

The executive director responded to the parent via email on May 15, 2025 writing

*"Thank you for getting back to us. In following up with the team, we were not able to get the minimally required team members to be present for today on short notice. However, we could do Monday, May 19th at 8:30 AM at [the student's school] if that would work. If so, [the special education teacher] will get a Notice of Meeting together sometime today and send it to both parents/guardians."*

The parent responded that same date

*"Could we possibly do the afternoon?"*

The executive director responded promptly writing

*"Yes, we can offer 2:25 on Monday, May 19th at [the student's school]. We will wait to hear from you and then [the special education teacher] will follow up as previously mentioned."*

The parent wrote back stating that the proposed time would work.

On May 19, 2025, the parent sent an email to the executive director and the special education teacher stating

*"I won't be able to make today's meeting, it'll have to go on without [the student's mother] or me present, if possible."*

The executive director wrote back to the parent stating

*"Thank you for the notice regarding your inability to attend today's meeting. The IEP team did not convene an IEP meeting as the specific topic requested by parents/guardians was looking at the IEP goals from this past year and the data updates. This meeting was specifically set to address your concerns and questions regarding this information. I did talk with the school, though, about how we'd like to proceed."*

*With this being the final week of school for the 2024-25 year, it is our desire to have a resolution to enable us to start the next school year from day one with a plan that supports [the student's] needs and allows the school-based team to move forward. At our April 25th meeting, we proposed a new IEP. You shared concerns regarding the proposed adjustments with the behavior intervention plan specifically the reinforcement system, changing of the communication/data sheet, and the ability for [the student] to spend more time in the general education environment. The meeting ended with documents left unsigned and unsettled at that time for which we were seeking a continuance meeting to resolve. The April 25th documents have been updated according to the comments shared at that meeting. Likely tomorrow, you can anticipate receiving a copy of those items for review from [the special education teacher] including the previous goals and data updates. You can opt to sign them or we can have the continuance meeting to review and finalize. However, after this Friday, May 23rd, staff will be off contract until next school year. Our goal is to work collaboratively as a team and have us all in agreement. Please be advised, though, that changes to services or placements that are not considered material or substantial (less than a 25% change) do not require parent/guardian consent in order to be implemented...*

*As always, please reach out with questions. I appreciate your time and attention to this information. We look forward to hearing from you soon and tying up these loose ends."*

The parent responded on May 20, 2025 saying that he would be back in town the next day.

On May 20, 2025, the special education teacher sent the parent the updated IEP noting

*"I included the goal that is in place now, the two goals that we want to add, and the BIP."*

The revised IEP included a number of changes including a minor revision to one of the two proposed IEP annual goals. The goal as proposed on April 25, 2025 read as follows:

*"When given a non-preferred instruction or direction (i.e. It's time to stop playing and get out your Wonders Book for ELA), by the end of the IEP period, [the student] will demonstrate control by using a learned strategy (i.e. counting to 5, taking a deep breath, 'Stop. Think. Act*

*Strategy') and making a safe choice (remaining in the designated area, remaining seated at his desk, using kind words) 80% of the time during 5 data collection days, as measured by teacher observation and behavior tracking."*

The goal included in the document provided to the parent on May 20, 2025 read as follows:

*"When given a non-preferred instruction or direction (i.e. It's time to stop playing and get out your book), by the end of the IEP period, [the student] will demonstrate control by using a learned strategy (i.e. counting to 5, taking a deep breath, 'Stop. Think. Act Strategy') and making a safe choice (remaining in the designated area, remaining seated at his desk, using kind words) 80% of the time during 5 data collection days, as measured by teacher observation and behavior tracking."*

In the district's May 20, 2025 IEP proposal, the second annual goal remained unchanged from the district's original proposal on April 25, 2025.

The parent was provided with prior written notice regarding proposed changes to the student's IEP including the minor change to the annual goal outlined above. Both annual goals were listed on the prior written notice form.

The parent responded to the case manager's email with a question about the BIP (see Issue Four) which the teacher answered on May 22, 2025. The parent replied that same date writing

*"Okay I'll be back in town between tonight and the morning, I should have everything signed and dropped off at the school tomorrow."*

No evidence was provided to show that the parent raised any additional questions about the annual goals proposed by the district. On May 23, 2025, the parent provided his written consent for all of the district's proposed actions – including both annual goals.

In a telephone call with the investigator on June 12, 2025, the parent stated that he decided to go ahead and sign the documents thinking that the team could meet in the Fall if necessary.

### **Summary and Conclusions**

Prior to the annual IEP review meeting for the student on April 25, 2025, the district provided a draft document which included two proposed IEP annual goals for the student. The staffing summary of the April 25th meeting shows that during the IEP meeting, the parent and other members of the team engaged in extensive discussion of the district's proposed IEP. When consensus could not be reached, the decision was made to reconvene for further discussion. However, the parties were unable to agree on a time to reconvene the IEP team meeting. The district made changes to the originally proposed IEP based on feedback from the parent during the April 25, 2025 meeting and provided the parent with a revised proposal on May 20, 2025. The parent provided his written consent for the district's proposed changes, including the minor change to one annual goal, on May 23, 2025.

In his complaint, the parent alleges that the district failed to provide revisions to proposed annual goals. However, minor changes were made to at least one of the annual goals originally proposed to the parent on April 25, 2025. There is clear evidence of the district's attempt to reconvene the IEP team for further discussion of the parent's concerns regarding the student's goals, but the parent ultimately opted to consent to the two goals proposed by the district as well as other changes outlined in the district's prior written notice form. Under these circumstances, a violation of special education statutes and regulations *is not substantiated* on this issue.

### **Issue Four**

The district removed a safety plan from the student's IEP without the parent's agreement.

#### **Position of the Parent**

The parent asserts that he did not agree to the removal of a safety plan from the student's IEP. It is the opinion of the parent that while the plan might have needed modification to remove aspects related to self-injury associated with suicidal ideation, a safety plan should remain in place to ensure the safety of other students.

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

It is the position of the district that while the parent did, on May 20, 2025, send an email to the student's special education teacher (case manager) asking why the safety plan had been removed from the student's proposed BIP, the parent did not make any specific request either at the April 25, 2025 annual IEP team meeting or during the remainder of the 2024-25 school year that the district continue to include a safety plan in the student's IEP.

The district asserts that the BIP included in the IEP initially proposed by the IEP team on April 25, 2025 and agreed to by the parent on May 23, 2025 includes strategies specifically designed to address the parent's concerns regarding the prevention of injury to other students by the student.

The district contends that had the parent made a specific request to include such a safety plan in the student's revised IEP, that request would have been given due consideration.

### **Applicable Statutes and Regulations**

At K.S.A. 72-3430(b)6, special education statutes require that a district obtain the informed written consent of the parent before making a substantial change in placement (more than 25% of the child's school day) or a material change in services (25% or more of the frequency or duration of any one service). Adding or deleting a service is a material change in services because it is a 100% change of both the frequency and the duration of that service. If the

parent refuses to consent to add or delete a service, the school may, but is not required to, pursue the action by using mediation or due process procedures.

At K.S.A. 72-3430(b)(2), special education statutes also require that parents be given prior written notice when the district proposes to make a change to the provision of special education and related services or placement that is not substantial or material even though parental consent is not required for these changes.

When parents make a request for an evaluation, KSDE (the Kansas State Department of Education) has determined that, unless there is an unusual circumstance, 15 school days is a reasonable time for providing parents with a Prior Written Notice of the district's proposal to conduct the evaluation or the

district's refusal to conduct the evaluation (See KSDE Memo, "Reasonable Time" to respond to parent request for evaluation, January 8, 2002, at <https://www.ksde.gov/Default.aspx?tabid=614>). KSDE also applies this same standard with regard to any parent request related to identification, evaluation, placement, or the provision of FAPE.

It is important to note that a change in the instructional methodology used to provide a service, even if the methodology is specified in an IEP, is not a material change in services. For example, a change to a strategy within a behavior intervention plan is a change in the instructional methodology, not a material change in services.

### **Investigative Findings**

The BIP in the student's April 2024 IEP contains the heading entitled "Safety Plan" with an option to check "Yes" or "No." As of April 30, 2024, the "Yes" option had been selected. According to the parent and the district, the student was at that time expressing suicidal ideations which the IEP team (made up of staff at the student attended during his Kindergarten year) addressed.

The district provided a copy of a document entitled "Safety Plan: Self Harm" written by the school social worker on September 26, 2024. According to that document, the student should use his safety plan "when I feel increasingly agitated, when I feel like I'm a bad person, when I feel like I want to go to Heaven as an escape." During those times, the student could use coping strategies like "hold my stuffie 'Puppy,' take deep breaths, wrapy [sic] myself up securely in a blanket, color." For support, the student could "check in with [the special education teacher or the school social worker] or any other staff I feel safe with." The parent was listed as someone the student trusted who could "help me during a crisis."

Both the district and the parent (in a telephone call with the investigator on June 12, 2025) agreed that the student had not expressed suicidal ideation since his transfer to his current school for the 2024-25 school year.

When a draft revision to the student's IEP was proposed to the parents on April 25, 2025, the Safety Plan section of the proposed BIP was checked "No." That box was also checked in the revised document sent to the parent via email on May 20, 2025 by the student's special education teacher.

The staffing summary from the April 25, 2025 annual IEP team review meeting does not reflect any discussion of the discontinuation of a safety plan for the student.

At 1:12 PM on May 20, 2025, the student's special education teacher sent an email to the parent which included

*"...the IEP that we updated from our last [April 25, 2025] meeting. I included the goal that is in place now, the two goals that we want to add, and the BIP. Please let me know if you have any questions."*

The parent responded via email at 1:16 PM that same date writing

*"Why does [the student] currently have a safety plan on his BIP, but not on his new proposed BIP?"*

The special education teacher responded at 6:28 AM on May 22, 2025 writing

*"Good morning! There is no safety plan for the current BIP as [the student] is not displaying the behavior that it was written for. The safety plan that he had was due to statements of suicidal ideation. Those statements are not being made so a safety plan for that is no longer deemed necessary. I hope that this explains the reasoning for not having a safety plan..."*

The parent responded via email at 8:18 AM on May 22, 2025 writing

*"Okay I'll be back in town between tonight and the morning, I should have everything signed and dropped off at the school tomorrow."*

On May 23, 2025 the parent sent an email to the executive director of special education and the student's special education teacher stating

*"I signed the IEP forms through blue ink. Thank you ladies! Have a wonderful summer!"*

No evidence was provided to show that the parent objected to the change in the student's BIP.

It is important to note that, aside from the change to the use of a safety plan, the district made other changes to the student's BIP when revising the student's IEP. These revisions included changes related to target behavior, strengths of the student, replacement behaviors, reinforcement strategies, reactive planning, data collection, and follow-up. None of these changes, however, constitute a material change in services (25% or more change in the frequency or duration of a service) because these changes were merely changes to the methods to be used in the BIP, but they made no change to either the frequency or duration of the BIP itself.

No reference to these changes was included in the prior written notice form provided to the parent on May 20, 2025.

### **Summary and Conclusions**

The district is allowed to make changes to the structure and content of the behavior plan for the student without first obtaining the written consent of the parent. As noted above under the “Applicable Statutes and Regulations” section of this issue, a change to a strategy within a behavior intervention plan is a change in the instructional methodology, not a material change in services.

The parent should nonetheless be provided with prior written notice that this non-material change has been made.

Because when providing the parent with prior notice of proposed changes to the student’s IEP the district failed to call out the non-material changes to the student’s BIP, a violation of special education statutes and regulations *is identified* with regard to this issue.

### **Additional Comments**

The staffing summary shows that at the April 25, 2025 annual IEP review meeting, the team engaged in discussion about one of the Supplementary Aids and Services/Accommodations included in the student’s April 2024 IEP – the use of a “Token Board/Tracking System.” The district proposed that the provision of this token system be continued under the new IEP. However, the parent strongly opposed the continued use of a token system, stating that he didn’t “want [the student] to earn a reward for the behavior he should be doing [and didn’t] want it used anymore [sic].”

The district removed the accommodation from the student’s IEP when presenting its proposed revision to the IEP to the parent on May 20, 2023. However, the prior written notice form provided to the parent on that same date did not call out the removal of the accommodation and did not request written parental consent for the discontinuation of this service.

Because the district did not obtain the written consent of the parent for the removal of this accommodation, a violation of special education statutes and regulations is identified.

Additionally, the prior written notice form provided to the parent on May 20, 2025 specified a change in social work services. Specifically, the social work services which were to be provided in a special education setting were to be reduced from 20 minutes twice weekly to 15 minutes twice weekly – a reduction of 25% in services. While the form recognized that this represented a change in services, the district checked the box to indicate that this change did not require the consent of the parent. However, because this change would result in a decrease of 25% in services, parental consent was required.

The parent signed the prior notice form on May 23, 2025 giving his written “consent for the special education placement and services action(s) in this notice for my child.” Nonetheless,

because the district failed to properly notify the parent that the change in social work services represented a material change in services, a procedural violation of special education statutes and regulations is identified.

### **Issue Five**

**By removing the student for special education services beyond the level of services specified in the student's IEP, the district failed to follow the student's IEP**

#### **Position of the Parent**

The parent asserts that reports provided by the district regarding ESI incidents show that the student has been removed from the general education environment and placed in a special education setting for greater portions of the school day than required by the IEP.

The parent contends that an April 29, 2025 ESI report provided to him by the district showed that the student was in the resource room at the time the intervention was initiated. According to the parent, the student should have been in a general education classroom at that time.

The parent asserts that when he came to school on May 23, 2025 to pick the student up for the day at 2:40 PM, the student was not in the general education setting participating in science or social studies instruction as his daily schedule showed he should have been. Rather, the student was in a separate setting being monitored by two of the three staff members who had been involved in an ESI with the student (per an ESI form for that date). The ESI Documentation Form shows that the student's seclusion for that ESI incident ended at 1:43 PM.

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

It is the position of the district that the BIP included in the student's April 2024 IEP outlined interventions for target behaviors which could result in the student's removal from his scheduled class activities in order to address inappropriate behavior. These interventions could result in the removal of the student from a general education classroom setting, thereby resulting in a reduction in the amount of time the student spent in the general education setting on a given day. The district asserts that the parent was aware of and agreed to the district's BIP.

#### **Applicable Statutes and Regulations**

As stated above under Issue One, federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special



education and related services provided in conformity with an Individualized Education Program (IEP).

### **Investigative Findings**

As noted in a letter from the building principal to the parent dated April 22, 2025, emergency safety interventions (ESIs) are utilized with students in the district when the student exhibits “behavior that presented a reasonable and immediate danger of physical harm to [the student] or others.” ESI interventions involve the use of seclusion or physical restraint. These interventions can be used in situations involving students who have been determined eligible for special education services and those who have not. Specific rules have been developed regarding the application of an ESI; these rules are not governed by special education statutes and regulations.

Behavior Intervention Plans (BIPs) can also be utilized for both general education students and special education students. If a special education student has a behavior plan, that plan becomes a part of the student’s IEP.

The parent participated in the development of the student’s April 2024 IEP. According to that IEP, the student was – for the 2024-25 school year – to receive 275 minutes of special education services in a special education setting for 3 days each week and 255 minutes of special education services in a special education setting for 2 days each week.

The BIP included in the student’s April 2024 IEP notes that

*“[The student] requires an alternate quiet setting with limited stimuli in order to remain regulated.”*

According to the BIP, if the student is in a general education setting at the time he displays physical aggression, staff will

*“...evacuate the classroom of other students or if possible safely escort [the student] to a safe location.”*

On April 29, 2025, an ESI was initiated at 2:22 PM. According to schedules presented to the investigator by both the parent and the district, the student was in a special education setting at that time, having left the general education setting at 2:10 PM. The ESI intervention ended at 2:43 PM. No evidence was presented by the parent to show that the student was kept from returning to a general education classroom setting for 7 minutes before going to the resource room as scheduled at 3:00 PM to end his school day.

On May 23, 2025, the last day of the 2024-25 school year, an ESI was initiated at 1:22 PM. The intervention ended at 1:43 PM. No evidence was provided to the investigator by either party to show whether the student did or did not leave the ESI setting for the general education setting. According to the schedules for the student provided by the parties, the student would have been in a special education setting between 2:10 and 2:30 PM and in a general education

classroom setting between 2:30 and 3:00 PM at which time the student would have returned to the special education classroom. The parent states that he arrived at school “around 2:40 pm” and found that the student wasn’t in the general education classroom.

According to the executive director of special education, the building principal states that the student follows his daily schedule unless his behavior has prompted the use of interventions specified in the BIP contained in the student’s IEP.

### **Summary and Conclusions**

The parent asserts that the district has violated special education statutes and regulations by failing to provide the student with opportunities to participate in the general education environment in the manner specified in his IEP. To support this contention, the parent points to two occasions surrounding ESIs when the parent alleges that the student was not in the general education environment as his daily schedule suggests he should have been.

On April 29, 2025, the student was in the special education setting at the time an ESI was initiated. Schedules provided by the parent and the district both show that the student should have been in a special education setting at that time. No evidence was provided to show that the student was not allowed to exit the special education setting and enter the general education setting following the ESI.

On May 23, 2025, the parent alleges that the student was still being secluded at 2:40 PM when the parent arrived to pick the student up from school. That day’s 14-minute ESI had concluded at 1:43 PM at which time the student would – per his schedule -- have been in a special education setting. Based on the schedules provided to the investigator by the parties, the student would have entered a general education classroom at 2:30 PM. It is, therefore, possible that the student could have missed up to 10 minutes of general education opportunity by the time the parent arrived to take the student home.

The application of an ESI is not controlled by special education statutes and regulations. An investigation of general education time missed because of the use of such an intervention falls outside the purview of this investigator.

The BIP contained in the student’s April 2024 IEP states that should the student display physical aggression, the student may be removed from a general education setting and escorted to a safe location.

While this investigator cannot rule out the possibility that the student did – on one occasion specified by the parent – miss out on up to 10 minutes of general education opportunities, no evidence was presented to suggest that the continued removal of the student to a special education setting was not the result of the application of the student’s behavior plan.

This investigation found no evidence to support the parent’s contention that the district is systematically removing the student from the general education setting by failing to follow the

student's established daily schedule. Under these circumstances, a violation of special education statutes and regulations *is not substantiated* on this issue.

### **Issue Six**

The district failed to provide the parent with proper prior written notice of proposed changes to the student's IEP.

#### **Position of the Parent**

The parent asserts that he has not yet been provided with a summary of or minutes from the student's April 25, 2025 IEP meeting or any documents reflecting his refusal of proposed services or proposed revisions to the student's IEP.

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

The district asserts prior written notice of changes to the student's IEP was not provided to the parent following the April 25, 2025 meeting because the IEP team did not reach any final decisions on that date. Rather, the team had agreed to reconvene for further discussion wherein concerns expressed by the parent during the April 25th meeting could be addressed. The district contends that it did not finalize a proposed IEP until May 25, 2025 at which time the parent was provided with prior written notice of the district's proposed changes to the IEP.

#### **Applicable Statutes and Regulations**

As stated above under Issue Four, parents must within a reasonable time be provided with prior written notice of a substantial change in placement or a material change in services.

#### **Investigative Findings**

As outlined in previous issues above, the district convened an annual review of the student's IEP on April 25, 2025. The IEP team had not reached consensus on a number of issues by the time the meeting concluded, and the decision was made to reconvene for further discussion.

As outlined above under Issue Four, the team considered May 14, 15, and 19, 2025 as possible dates to reconvene, but none of these dates proved workable.

After the parent contacted the district on May 19, 2025 to say he would not be available for the proposed meeting that day, the executive director of special education responded to the parent explaining that they had reached the last week of school for the year and staff would no longer be under contract and available after May 23, 2025. She stated that the IEP that had been proposed on April 25, 2025 had been revised and told the parent he would receive revised copies of the IEP the following day, May 20, 2025. In the email, the executive director told the parent he could "opt to sign them or we can have [a] continuance meeting to review and finalize."

The case manager (special education teacher) sent an email to the parent on May 20, 2025 attaching the revised IEP which included staffing summaries from meetings on April 22 and 25, 2025. The parent responded with an email on May 22, 2025 asking a question about the BIP which was contained in the proposed IEP. After receiving the case manager's answer, the parent wrote back stating that he would "have everything signed and dropped off at the school tomorrow [May 23, 2025, the last day of the 2024-25 school year]."

On May 23, 2025 the parent sent an email to the executive director of special education and the student's special education teacher stating

"I signed the IEP forms through blue ink. Thank you ladies! Have a wonderful summer!"

In a telephone call with the investigator on June 12, 2025, the parent stated that he decided to go ahead and sign the documents thinking that the team could meet in the Fall if necessary.

The district provided the investigator with a copy of the initial draft IEP presented to the parent on April 25, 2025 and a copy of the revised proposed IEP sent to the parent on May 20, 2025. A comparison of these two documents shows that the district removed an accommodation at the request of the parent (the use of a token board tracking system). The revised IEP reflected parental input not outlined in the original proposed document as well as a BIP.

The district provided the investigator with copies of the documents dated April 25, 2025, signed in blue ink by the parent and returned to the district on May 23, 2025. Those documents included a revised IEP (including the staffing summaries) and a prior written notice form which outlined proposed changes to the student's IEP including a 4% increase in special education support in the special education setting for "resource core instructions and social skills" and a 25% reduction (10 minutes) in social work services in a special education setting. The prior notice also detailed the two goals the student would be working on during the upcoming school year.

### **Summary and Conclusions**

No final decisions regarding the student's IEP were made during the April 25, 2025 team meeting. The district proposed multiple dates for a follow up meeting for further discussion of the parent's concerns. After the parent notified the district that he was unavailable for a scheduled meeting on May 19, 2025, the district – on May 20, 2025 – sent an email to the parent containing a copy of the IEP which contained staffing reports of previous meetings as well as revisions made in response to feedback provided by the parent at the April 25, 2025 meeting. On that same date, the district also provided the parent with prior written notice of proposed changes to the IEP. The executive director of special education had explained to the parent in an email the previous day that he could opt to accept the IEP or the team could hold a future meeting for further discussion. The parent signed off on the prior notice form, opting to consent to the proposed changes.

The annual review and revision of the student's IEP was not completed at the April 25, 2025 team meeting. The district was under no obligation to provide the parent with prior written notice of proposed changes at that time since no decisions had been made. It was only after the parent became unavailable for a schedule follow up meeting that it became clear to the district that another meeting could not be scheduled before the end of the 2024-25 school year. At that point, the district made the decision to provide the parent with a revised proposal for the student's IEP as well as prior written notice of proposed changes to the IEP. These documents were timely sent to the parent, one day after the May 19, 2025 meeting had been cancelled.

Under these circumstances, a violation of special education statutes and regulations *is not substantiated* on this issue.

### **Corrective Action**

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations on issues presented in this complaint or identified through the course of this investigation. Violation were identified with regard to

- K.S.A. 72-3430(b)6, which requires that a district obtain the informed written consent of the parent before making a material change in services (25% or more of the frequency or duration of any one service). In this case, the district failed to inform the parent that it was making a material change by reducing social work services by 25% and failed to obtain the written consent of the parent before discontinuing an accommodation.
- K.S.A. 72-3430(b)(2), which requires that parents be given prior written notice when the district proposes to make a change to the provision of special education and related services or placement that is not substantial or material even though parental consent is not required for these changes. Here, the district failed to provide the parent with notice of changes to the student's BIP.

Therefore, USD #475 is directed to take the following actions:

1. Submit to Special Education and Title Services (SETS) by no later than August 1, 2025, a written statement of assurance stating that it will comply with
  - a. K.S.A. 72-3430(b)6 by obtaining the informed written consent of parents by clearly notifying them when a proposed change represents a material change in services or before removing an accommodation from a student's IEP; and
  - b. K.S.A. 72-3430(b)(2) by giving parents prior written notice before making a change to the provision of special education services such as a BIP even if the consent of the parent is not required for that change.
2. By no later than August 1, 2025, USD #475 shall
  - a. Provide the parent with a revised prior written notice of proposed changes to the student's IEP including changes to the BIP, social work services, and

the discontinuation of the token-related accommodation. The parent shall be informed that the proposed accommodation and social work service change represent a material change in services, and the written consent of the parent shall be obtained before these changes are implemented.

- b. The district shall provide SETS a copy of the revised prior written notice form no later than August 5, 2025.
3. By no later than August 1, 2025, USD #475 shall submit to SETS a plan for training staff at the student's building regarding prior notice requirements associated with the findings of this complaint.

Further, USD #475 shall, within 20 calendar days of the date of this report, submit to SETS one of the following:

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



Diana Durkin  
Complaint Investigator

## **Right to Appeal**

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to [formalcomplaints@ksde.gov](mailto:formalcomplaints@ksde.gov). The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f).

### **K.A.R. 91-40-51(f) Appeals.**

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

- (A) The issuance of an accreditation deficiency advisement;
- (B) the withholding of state or federal funds otherwise available to the agency;
- (C) the award of monetary reimbursement to the complainant; or
- (D) any combination of the actions specified in paragraph (f)(2)