

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES
REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #233, OLATHE PUBLIC SCHOOLS
ON JULY 28, 2025
DATE OF REPORT: SEPTEMBER 2, 2025

This report is in response to a complaint filed with the Kansas State Department of Education against USD #233 (Olathe Public Schools) on behalf of ----- by his mother ----- . In the remainder of the report, ----- will be referred to as “the student” and ----- as “the parent” or “the complainant.”

The complaint is against USD #233 (Olathe Public Schools). In the remainder of the report, USD #233 will be referred to as “the district”. For the 2024-2025 school year the student attended 6th grade at Prairie Trail Middle School which will be referred to as “the school” in the remainder of the report. School and district staff will be referred to In the remainder of this report as follows:

- Ashley Niedzwiecki, assistant director of special services
- Sheri Krug, deaf and hard of hearing teacher
- Heidi Schneider, special services coordinator
- Angie Sublet, audiologist
- Spencer Nolan, autism specialist
- Erin Elwood, reading teacher
- Jennifer Stoskopf, assistant principal, middle school
- Julie Anselmi, nurse
- Heather Lambing, occupational therapist
- Annette Johnson, retired deaf and hard of hearing teacher
- Bruce Milford, school psychologist
- Saige Kovaleski, social worker
- Jo Taylor, special education teacher (case manager)
- Melanie Burris, speech language pathologist
- Vanessa Guzman-Suarez, contracted transportation company senior student router/dispatcher specialist
- Michelle Pirie, contracted transportation company project specialist
- Daniel Perez, School Psychologist, school associated with residential facility
- Michael McGuire, Principal, school associated with residential facility
- John Lafoon, chief clinical program officer, residential facility

- Megan Smith, care coordinator, residential facility
- Ashley Barr, psychiatric mental health nurse practitioner, residential facility

Between October 29, 2025 through December 2, 2025 the student was medically, placed in the Psychiatric Residential Treatment Facility (PRTF) at kidsTLC and as a consequence of this residential placement attended the residential facility's school, Claire Learning Center. Claire Learning Center is the educational day school provided by Olathe Public Schools for children receiving treatment through KidsTLC. In the remainder of the report kidsTLC will be referred to as the residential facility and the Claire Learning Center will be referred to as the school associated with the residential facility.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on July 28, 2025. While the report was due on August 27, 2025 the investigator requested and was granted a week extension to complete the report for the investigation.

Evidence Reviewed

The investigator interviewed the assistant director of special services for USD #233 on August 14, 2025 as part of this investigation. Additional evidence was requested and provided following the interview.

Nancy Thomas was originally assigned to investigate this case, but due to a personal obligation at the last minute she was not able to conduct the originally scheduled interview, and it was terminated. As a result, the complainant requested a different investigator on August 12, 2025. It is noted that the complainant made additional allegations while providing evidence to the previous investigator on August 3 and 5, 2025 following the August 1, 2025 letter of allegations being provided to the parent and district. These allegations are related to the IEP team developing an appropriate service for the child in the IEP and the assistant director of special services not disclosing being an attorney and attending IEP meetings without being an IEP team member. These issues are not addressed in this report, and the complainant may file a complaint with these allegations if desired.

During the investigation, the reassigned Complaint Investigator, Donna Wickham, reviewed all evidence and documentation provided by the district and the parent. Additionally, the complaint investigator contacted the parent on August 12, 13, 14, 15, 18, 19, 20, 21, 25 and 27, 2025 by email to arrange an interview to clarify evidence and documentation. During the time Donna Wickham was the investigator the parent did not have a working phone, and a phone interview could not be arranged.

In completing this investigation, the complaint investigator reviewed documentation provided by the complainant and district. Although additional documentation was provided and

reviewed, the following materials were used as the basis of the findings and conclusions of the investigation:

Documents:

1. KSA scores from 2021-2022 school year through 2023-2024 school year; MAP scores from 2021-2022 school year (review for context) and FastBridge scores from December 13, 2023 – May 16, 2025
2. Individualized Education Program amendment dated May 16, 2024
3. Evaluation report dated May 16, 2024
4. Thirteen pages of student work samples dated August 16, 2024, August 19, 2024, August 26, 2024
5. Individualized Education Program meeting notes dated September 9, 2024
6. Prior Written Notice and Request for Consent, Identification, Initial Services, Placement or Change in Services dated September 26, 2024 and signed by parent September 27, 2024
7. Individualized Education Program amendment dated September 27, 2024
8. Functional Listening Evaluation Report dated October 3, 2024
9. Progress Report for October 10, 2024, December 20, 2024, March 14, 2025, and May 1, 2025
10. Individualized Education Program amendment dated November 12, 2024
11. Notice of Meeting dated November 22, 2024 for December 6, 2024 IEP meeting
12. Individualized Education Program amendment dated December 12, 2024
13. Prior Written Notice and Request for Consent dated December 12, 2024 and signed by parent February 28, 2025
14. Attendance dated between January 9, 2025 and March 5, 2025
15. Data sheets for February 3 -February 28, 2025
16. Special education bus transportation request dated February 21, 2025 with start date of February 26, 2025 through May 22, 2025
17. ESY Progress Report dated June 24, 2025
18. District response dated August 11, 2025
19. Eleven pages of student work samples undated

Emails:

1. Email exchange between mother and project specialist from contracted transportation company dated August 5, 2024 between 9:12 a.m. and 10:08 a.m.
2. Email from assistant principal to mother dated August 7, 2025 at 3:41 p.m.
3. Email exchange among mother, parent advocate and school IEP team including special education teacher, occupational therapist, now retired deaf and hard of hearing teacher, speech and language pathologist, nurse, social worker, reading teacher, autism

specialist, audiologist, special service coordinator, parent advocate dated between August 29, 2024 at 11:50 a.m. and September 16, 2024 at 12:23 a.m.

4. Email from school psychologist to mother dated September 10, 2024 at 4:37 p.m.
5. Email from school psychologist to mother dated September 20, 2024 at 1:51 p.m.
6. Email exchange between mother and school psychologist dated September 12, 2024 between 9:01 a.m. and 2:08 p.m.
7. Email exchange between mother and special service coordinator dated between September 12, 2024 at 4:53 p.m. and September 14, 2024 at 5:11 p.m.
8. Email from reading teacher to parent dated September 21, 2025 at 7:26 p.m.
9. Email exchange among mother, special service coordinator and school psychologist dated between September 23, 2024 at 10:41 a.m. and September 26, 2024 at 8:46 a.m.
10. Email exchange between mother and outside school, school psychologist dated between November 20, 2024 at 2:02 p.m. and November 22, 2024 at 1:150 p.m.
11. Email exchange among mother, principal associated with residential facility, chief clinical program officer for residential facility, care coordinator for residential facility, and psychiatric mental health nurse practitioner for the residential facility.
12. Email exchange between mother and reading teacher dated between February 11, 2025 at 8:59 a.m. and February 13, 2025 at 8:53 a.m., forwarded to parent advocate on February 13, 2025 at 7:25 p.m.
13. Email from senior student router/dispatcher specialist from contracted transportation company to mother dated February 25, 2025 at 2:35 p.m.
14. Email exchange between mother and deaf and hard of hearing teacher dated between February 26, 2025 at 7:09 p.m. and February 27, 2025 at 4:28 p.m.
15. Email from special services coordinator to mother dated February 28, 2025 at 11:44 a.m.
16. Email from deaf and hard of hearing teacher to mother dated March 3, 2025 at 2:15 p.m.
17. Email from deaf and hard of hearing teacher to mother dated March 10, 2025 at 1:07 p.m.
18. Email from deaf and hard of hearing teacher to mother dated March 11, 2025 at 3:35 p.m.
19. Email from parent to reading teacher dated April 14, 2025 at 7:47 p.m.
20. Email between parent and reading teacher, deaf/hard of hearing teacher, special education teacher (case manager), and middle school principal, dated May 8, 2025 between 2:34 p.m. and May 9, 2025 9:07 a.m.
21. Email from the assistant director of special services to the investigator dated August 25, 2025, at 10:29 a.m.

Background Information

The subject of this complaint was an 6th-grade student during the 2024-2025 school year who lives at home with their mother. As noted in the May 16, 2024, evaluation report the student was found eligible for special education services with the exceptionalities of autism and hearing impairment. The student additionally has medical diagnoses of KBG Syndrome, autism, ADHD, and anxiety. Between October 29, 2024 and December 2, 2024, the student was medically placed in a residential program and consequently the student's education was provided by a school associated with the residential facility. When the student returned to the district middle school the student began using special education transportation through a contracted transportation company beginning February 26, 2025. When the 2025-2026 school year commenced the student's transportation was provided by the contracted bus service.

For the duration of the 2024-2025 school year three IEPs were in effect, dated May 16, 2024 and amended on September 27, 2024 and December 12, 2024. As a part of the three IEPs the student received nursing, audiologist, direct and indirect special education services through deaf and hard of hearing, speech, language pathology, social work, and transportation services. The student additionally had learning and hearing accommodations for testing and academics.

Issues Investigated

Issue One

USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with access to educational records, specifically the IEP goal progress data, during the 2024-25 school year.

Applicable Law

Federal regulations at 34 CFR §300.613(a)(b)(1) state, "Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made. (b) The right to inspect and review education records under this section includes— (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records.

Parent Position

The child complaint stated that on April 14, 2025 the mother emailed her child's reading teacher, deaf and hard of hearing teacher, special education teacher, and principal that in

Parent Vue her child's reading score was and "F". As a result, she wanted to review the data collected for the most recent IEP goals reported on March 14, 2025. She reiterated this request on May 9, 2025.

District Position

The district response dated August 11, 2025 reported that they provided quarterly progress monitoring data during the 2024-2025 school year as specified in the student's IEP on October 10, 2024, December 20, 2024, March 14, 2025, May 15, 2025, and June 24, 2025. The district responded that they provided the raw data requested by the parent with the May 15, 2025 progress report. They reported that the raw data was provided to the parent 31 days after the request was made on April 14, 2025, within the 45 day period in which to provide educational records.

Analysis: Findings of Fact

1. The student's IEPs in effect during the 2024-2025 school year (May 16, 2024, September 27, 2024, and December 12, 2024) state that the student's progress will be reported quarterly for each of the goals and a report of progress for each goal was dated October 10, 2024, December 20, 2024, March 14, 2025, May 15, 2025 and June 24, 2025.
2. An April 14, 2025 email at 7:47 p.m. showed that the parent contacted the reading teacher stating, "I see [student] has a F in reading. As [student] is not making progress in reading and continues declining I want to review the data collected for the most recent IEP goal, 3/14/2025."
3. The email from the reading teacher to the mother dated April 15, 2025 at 5:30 p.m. described that the student has only three assignments during the quarter and does not hold him accountable for any work outside of reading. The reading teacher went on to explain that the score of "F" was primarily due to not turning in school work (earning 0/30 points) from March 31, 2025 through April 4. The teacher explained that if the work were turned in the score would be 38/50 points which would change the score to a mid C.
4. The email from the reading teacher to the mother at 2:24 p.m. on May 8, 2025, in response to the mother's request again for data collection at 9:48 a.m. clarified, "I update the gradebook at the end of each week, and I believe the assignments that were skewing [student's] grade from your last request were both updated in ParentVue by April 21. It has been a few weeks and more assignments, so I'll share that as of today, [Student's] 4th quarter grade is a solid C at 76%."
5. The mother replied to the reading teacher on May 8, 2025 at 5:40 p.m. inquiring specifically about the raw data, "...but I am still inquiring on viewing the raw data used for the last IEP goal. Should I request this thru another entity, if so please advise. The Special Education Dept can only provide me IEP progress reports, not the data collected & used to measure the goals the IEP updates throughout the school year."

6. On May 9, 2025 at 9:07 a.m. in response to the mother's request for raw data she received this email from the middle school principal, "Once providers record data it is destroyed, as data has been recorded and documentation is complete. [IEP team members] have comprehensive performance data to share with the team and will share the draft IEP with you by Tuesday of next week. We can certainly talk through data collection in person with you in our IEP meeting. Currently, [student] is reading at the 4th grade level and has reached 5th grade level math standards."
7. The assistant director of special services emailed the investigator on August 25, 2025 at 10:29 a.m. stating, "At the time of the records request, the raw data had already been summarized in the progress report and was no longer available. However, the team was also preparing for an upcoming IEP team meeting and [middle school principal] explained that [student's] IEP team members would be able to further discuss general progress and data collection with [parent] at that time."

Conclusion

IDEA required that the district must comply with the parent's request for the student data no more than 45 days after the request was made. The initial request for raw data for quarter 3 IEP goals was made on April 14, 2025. That request was made to the reading teacher instead of the special education staff resulting in confusion on behalf of the reading teacher who clarified how reading progress was reported. After additional requests in May the district responded by email on May 9, 2025, saying that the data had been destroyed and was not available to provide to the parent.

This May 9 response was well within the 45 day timeline. It was the only response the district could possibly make because the request data no longer existed in the "raw" form requested by the parent. The district is not required to maintain raw data for any length of time, unless there is an existing parent request for such data. The evidence presented shows that when the parent requested the raw data on April 14, the raw data had already been recorded and then destroyed, pursuant to the district's ordinary procedures

Based on the foregoing, it is found that the district did respond to the parent's request for the raw data by informing the parent that it no longer existed. Therefore, the *district is IN of compliance* and no corrective action is required.

Issue Two

USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures when the student failed to make progress towards meeting IEP goals during the 2024-25 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.324(b)(ii)(A) and Kansas state statutes at K.S.A. 72-3429(f)(2)(A) states that the IEP should be reviewed and revision considered for any lack of expected progress toward the annual goals.

Parent Position

The complaint alleged that the student's reading progress, per the IEP is based on being read to, not an ability to read. The ability to read has not improved and the student lacks the basic skills to read street signs, restaurant menus and it is causing safety and life skill issues. Listening to passages is impacting the student's ability to spell and write, furthering dysgraphia which is continually ignored by the district and per the reading instruction learning and grades. Meaningful progress is not being made. The parent further stated that the occupational therapist has repeatedly refused occupational therapy and medical necessity for dysgraphia.

District Position

During the 2024-2025 school year the IEP team met numerous times to discuss parent concerns and review and revise the student's IEP.

Analysis: Findings of Fact

The findings of Issue One are incorporated herein by reference.

1. On Sunday, September 8, 2024, at 9:00 PM, the parent sent an email about the upcoming September 9, 2024 planned IEP meeting, expressing several concerns and requested service logs and minutes from related service providers.
2. Meeting Notes dated September 9, 2024, summarize the IEP team's discussion regarding reading (Power Up) and changes to the speech/language goal..
3. To ensure the IEP team addressed all parent concerns, the IEP team also met on September 17, 2025. Meeting notes dated September 17, 2024, summarize staff involved in modifying the student's curriculum, adding consultative resource minutes, and cognitive abilities. The mother's email did not expressly request the team review the student's progress toward goals. Regardless, the IEP team did review progress as documented in the IEP team meeting notes dated September 9, 2024, and September 17, 2024. Meeting notes detail the Student's progress in reading from the 1st to the 10th percentile, how the student had tested into level one for grammar and word study and that the student tested out for comprehension, starting at level seven. At the time, the student was at a 3rd grade instructional level. The progress monitoring method for the student's speech/language goal was adjusted from a rubric to a percentage to allow for a simpler and clearer method of measuring growth.
4. On December 12, 2024, the IEP team met again and discussed the student's progress toward goals. At that meeting the IEP team proposed to update the student's math goal based on the student's improved math skills. The IEP team determined the student's

goal should be advanced, introducing new and more challenging skills. The team also updated the reading comprehension goal and continued the social goal.

5. Progress Monitoring reports for the 2024-2025 regular school year show the student made progress on the language goal for Quarters 1, 2, 3, and 4 going from a 2nd-4th grade reading level to a 4th grade reading level. The student also made overall gains on the social skills goal and math goal. Following the adjustment made in December 2024, the student progressed in the reading goal, moving from the 3rd to the 4th grade reading level. Listening comprehension continued to be monitored though the student's language goal.

Conclusion

IDEA requires that the student's IEP should be reviewed and revised for any lack of expected progress toward the annual goals. In this case gains in reading grade levels were reported. As well, the progress reports showed gains for IEP goals. It is further found that the IEP team met several times during the school year to review progress, and some changes were made based on student changes in learning.

Based on the foregoing, it is found that the district met with the mother several times during the school year to review student progress and discuss changes. It was further found that the student was making progress on the IEP goals as written and had no obligation to meet the IEP due to lack of progress. Therefore, the ***district is IN compliance*** and no corrective action is required.

Issue Three

USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with appropriate prior written notice, specifically when making changes to the student's transportation as a related service for the 2025-26 school year.

Applicable Law

Federal regulations at 34 C.F.R. §§300.503(a)(1)(2) and Kansas statutes at K.S.A. 72-3430(b)(2)(A)(B) states that written notice must be given to the parents of a child with a disability a reasonable time before the district proposes or refused to initiate or change the educational placement of the child or the provision of FAPE to the child.

Parent Position

The parent complaint stated that the district changed the student's transportation from a contracted company with a 1:1 aide, door to door pick up and drop up to a school bus between the 2024-2025 and 2025-2026 school year without addressing it in the March 14, 2025 IEP draft or providing a prior written notice describing and justifying the change. When the parent contacted the contracted transportation service to arrange transportation for the

2025-2026 school year the parent learned that this contracted transportation company would not be providing the service, and the student would not be receiving a 1:1 aid or door to door transportation this year.

District Position

The District did not provide the student's mother with a PWN discussing transportation because transportation was already listed on the student's IEP. When the parent reached out to the district in July to arrange transportation for the 2025-2026 school year the mother did not request the IEP team meet to discuss a specific mode of transportation only the transportation service. Both the contracted company and the district transportation meet the IEP transportation service specified in the IEP. Even if the parent had requested a meeting, the mode of transportation or company providing the IEP transportation service is at the discretion of the district.

Analysis: Findings of Fact

The findings of previous issues are incorporated herein by reference.

1. An April 19, 2024, 8:55 p.m. email to the district outlining IEP concerns for the upcoming IEP meeting in May 2024 indicated that the student needs bus transportation for middle school.
2. The three IEPs in effect during the 2024-2025 school year dated May 16, 2024 and amended on September 27, 2024 and December 12, 2024 state that the student is eligible to receive transportation each day that school is in session (including ESY), on a special education vehicle, from the time the student boards the vehicle from the departure point until arrival at the destination and from the time the student boards the vehicle until arrival at the returning destination. Further, the student has significant needs in the area of deaf/hard of hearing and needs a bus monitor.
3. On February 21, 2026, a transportation request was made for the student to receive special education transportation to and from school in response to the mother's request. It started on February 26, 2025 and continued for the duration of the 2024-2025 school year. It was provided by a contracted transportation company.
4. On July 17, 2025 in an email from the special services coordinator to the mother at 9:24 p.m. following a parent request to meet about the change in mode of transportation the district explained, "I reached out to our Transportation Department to determine why the contracted transportation company was used last year rather than a bus as I know [student] is eligible for transportation to and from school. Transportation let me know that we did not have a SPED bus route at [middle school] due to lack of need at the beginning of the school year. Two SPED students began utilizing in late October/early November and we established a route with [contracted transportation company] at that time. When [student] began the transition from [outside school] to [middle school], we utilized [contracted transportation company] due to resource availability. As of now, we have four students requesting SPED transportation to [middle school] not including

[student], and anticipate a yellow SPED bus to be utilized. The bus will provide curb to curb service just like [contracted transportation company] did last year. The bus is not a general education bus that all students can ride to school. It is a bus specifically for students that require transportation as indicated on their IEP. The bus will have a driver and a monitor.”

5. In an email from the special services coordinator to the mother on July 23, 2025 at 2:33 p.m. it was stated that “there is no communication in [student’s] paperwork to indicate a change to transportation was made. [Student’s] IEP states [student] is eligible for transportation due to being deaf/hard of hearing and a bus monitor should be on the bus. I have read through [student’s] IEPs from August 2015 forward to the current draft and see no documentation stating [student] needs individual transportation with a 1:1 aide.” This email was in response to the parent requesting a signed PWN for the change of mode of transportation.
6. The assistant director of special services stated during the August 14, 2025 interview that assignment to the student’s mode of transportation, as long as it meets the IEP requirements is at the discretion of the district. She stated that the student accessed IEP transportation services specified in the IEP through a contracted transportation company last school year due to the student transferring from the outside school to the district school mid-year. As the student was enrolled at the beginning of the 2025-2026 school year the bus schedule could be arranged with the student’s transportation needs.

Conclusion

Prior Written Notice is provided to the parent when the school initiates or changes the educational placement of the child, or to make a change to the provision of special education and related services (FAPE) to the child (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.503(a)(2)). According to IDEA, transportation is a nonacademic service (34 C.F.R. 300.117) and any change to the transportation service from a less to more restrictive setting would require a PWN. If the change is a material change in services the district would need to obtain consent from the parent.

In this case each of the student’s IEPs included the nonacademic service of transportation. The transportation service was listed in each IEP as a special education vehicle with a bus monitor, from the time the student boards the vehicle from the departure point until arrival at the destination and from the time the student boards the vehicle until arrival at the returning destination. During the 2024-2025 school year that nonacademic service of transportation was met with a contracted transportation company and during the 2025-2026 school year the district will provide that nonacademic service with a district bus service. The district has discretion of how transportation is provided as long as the IEP transportation related service is implemented.

It is found that the district implemented the transportation related service of the IEP and *is in compliance*. As such a prior written notice was not required since a change in transportation

service was not made by the district between the 2024-2025 school year to the 2025-2026 school year.

Issue Four

USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a free appropriate public education (FAPE) for the student, specifically by not providing access to hearing aids and glasses at the Claire Learning Center during the 2024-25 school year.

Applicable Law

Federal regulations at 34 C.F.R. §300.17 states that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. Further, 34 C.F.R. § 300.17 defines FAPE as special education and related services that: 1) Are provided at public expense, under public supervision, and without charge; 2) Meet the standards of the state education agency (SEA), including IDEA requirements; 3) Include appropriate preschool, elementary, or secondary education; and 4) Are provided in conformity with an Individualized Education Program (IEP).

Federal regulations at 34 C.F.R. §300.325 and K.A.R. 91-40-22 describe that in the case when a public school places a child with a disability in, or refers a child to, a private school or facility as a means of providing FAPE to the child, the agency even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

Parent Position

The parent stated that the student was denied hearing aids and eyeglasses for the duration of time at the residential facility and school the student attended while at the residential facility. The mother stated that the denial of the hearing aids and glasses absolutely impacted learning and progress.

District Position

The District stated they did not deny the student access to the required hearing aids or glasses while attending the middle school within the district and that during the time the student was at the residential facility and school associated with the residential facility they were not charged with implementing the IEP. They stated that the student was unilaterally placed there between October 29, 2024 through December 2, 2024. They state that while at this school the district attempted to meet with the staff at the residential facility to share their strategies, however the mother withdrew the student from the residential facility and reenrolled the student at the middle school before the meeting could occur.

Analysis: Findings of Fact

The findings of previous issues are incorporated herein by reference.

1. The meeting notes from September 9, 2025 state that the student leaves hearing aids at home and that an incentive system was created to help the student remember to bring them to school.
2. The special considerations section of the September 26, 2024 IEP amendment (in effect at the time the student attended the residential school) states, the student wears glasses full-time and has a history of multiple eye surgeries related to amblyopia, astigmatism, anisometropia, and nasolacrimal duct obstruction. Further the mother reports that without glasses the student is legally blind in the right eye. In regard to hearing, the student has a mild conductive hearing loss in both ears, with hearing thresholds stable. The student wears bilateral hearing aids and has an FM system for the classroom. The student has a history of frequent ear infections and tympanostomy tubes. The student has IHP related to the hearing loss. The Assistive Technology section indicates "hearing assistance technology (HAT/FM System) and Closed Captioning."
3. The September 27, 2024 IEP amendment includes the following accommodations related to hearing and vision stating, 1) An incentive system will be utilized to encourage consistent hearing aid usage." The rationale states that the student struggles to consistently wear hearing aids to school and an incentive will be provided daily until the student consistently wears his hearing aids daily; 2) device(s) must remain at school, and in a set location for student to pick up hearing device and iPad or student computer; 3) Monitoring of hearing aid and HAT using Ling 6 sounds 2022 in the nurse's office to verify functionality of hearing aid/HAT for appropriate auditory input.
4. The September 26, 2024 Prior Written Notice documented the addition of the incentive program for hearing aid use to the IEP. It was later signed by the mother on September 27, 2024.
5. The October 3, 2024 Functional Listening Evaluation outlined the student's necessity for hearing aids. The report also recommended the following accommodations/modifications within classroom and other instructional contexts to include: 1) continued and consistent use of personal amplification; 2) continued and consistent use of remote microphone technology; 3) proximal seating with line of sight to speaker; 4) verbal prompting to remind the student to listen and watch the speaker; 5) front loading of information, including vocabulary, to increase familiarity of material prior to instruction; and frequent checks of understanding using open-ended questions.
6. Emails exchanged between the parent and principal at the middle school document excused absences due to addressing the issues that led to the medical placement of the student at the residential school.
7. On October 29, 2024, the advocate for the family emailed the parent stating, "...[Student's] IEP will be served by residential facility's school, once [student] settled in at residential facility. [Student] admission is scheduled on October 31st." The parent then emailed the middle school principal stating, "Attached is the letter for medical

necessity absences as we transition to [residential facility] admission tomorrow morning. [Residential facility] has been provided all school information and will be reaching out. I will be by Monday to pick up all work samples, art projects etc.....for [student]. Please be advised I will have limited email access this week as we are focusing on our transition and appointments prior to admission."

8. The parent and district agree the student attended the school affiliated with the residential school between October 29, 2025 through December 2, 2025.
9. On November 20, 2024, the school psychologist with the residential facility's school emailed the parent about an amendment for the student's move to the residential facility's school.
10. On November 21, 2024, the mother requested an IEP meeting with the residential facility's school expressing concern about the student not wearing hearing aids or glasses, stating, "I have been continually requesting nursing & unit staff to provide [student] with access to [student's] glasses & hearing aids. Per the unit staff and therapist [residential facility] does not want the liability for [student's] glasses or hearing aids, both of which are medically necessary. There are provisions in [student's] IEP for the necessity of both medical devices, documentation without them [student's] intellectual disability significantly increases, along with [student's] social maturity level decreasing, all impacting [student's] ability to receive appropriate education & [student's] safety."
11. On November 22, 2024, the parent rights and the notice of meeting form confirming Friday, December 6th at 2:30pm for the IEP amendment meeting was sent by the school psychologist from the school associated with the residential facility.
12. On December 5, 2024 at 8:52 a.m. the mother contacted the district to request an IEP meeting to discuss and determine appropriate placement for the student.
13. The website for the residential facility links to the school associated with the residential facility and states, "[school associated with residential facility] is the educational day school provided by [district] for children receiving treatment through [residential facility]."
14. The email address for the school psychologist coordinating the IEP in November 2025 identifies with the district email.
15. Interview with the assistant director of special services clarified the relationship among the district, residential facility and school associated with the residential facility. They are all located in the same city. The residential facility is a medical decision and the assistant director of special services said that placement in a residential facility is not an IEP team decision. The practice with the residential facility is that when a school aged student is in the residential facility the educational and special educational services are provided by the school associated with the residential facility. In the situation in which a child is placed at the residential facility the student is considered unilaterally placed at the school associated with the residential facility and is responsible for implementing the IEP.

Conclusion

Kansas defines elementary schools as follows: (1) “elementary school” means any nonprofit institutional day or residential school that offers instruction in any or all of the grades kindergarten through nine. In this case the student was medically placed in a residential facility located in the county and city the student attended public school. Following the residential placement, the student’s education was provided by the school associated with the residential school, but operated by the district through a contractual arrangement. The website for the residential facility links to the school associated with the residential facility and states, it is the educational day school provided by district for children receiving treatment through the residential facility. Therefore, although the student was medically placed in the residential facility and the student’s educational placement was changed as a result of the medical placement, the relationship between the district and the school associated with the district obligate the district to continue to assume the education of the student and ensure the special education services are provided to the student. It is established that the student’s services addressed the medical necessity for hearing aids and glasses and therefore the district did fail to provide a free appropriate public education (FAPE) for the student, specifically by not providing access to hearing aids and glasses for the 18 days the student was attending the school associated with the residential facility during the 2024-25 school year.

There appears to be some argument about who is responsible for providing the hearing aids and glasses this student needs in order to be successful in school. The Office of Special Education Programs (OSEP) offered guidance in its comments to the 2006 federal regulations, saying:

As a general matter, public agencies are not responsible for providing personal devices, such as eyeglasses or hearing aids that a child with a disability requires, regardless of whether the child is attending school. However, it is not a surgically implanted device and a child’s IEP Team determines that the child requires a personal device (e.g., eyeglasses) in order to receive FAPE, the public agency must ensure that the device is provided at no cost to the child’s parents. Federal Register: August 14, 2006, p. 46581

When a public school agrees to, and is, providing education for a child with a disability under contract, or otherwise, it assumes the FAPE responsibility owed to the children it is serving. Allowing this student to attend school for an extended time without the assistive devices the student clearly needs in order to be successful, for whatever reason, is a failure to meet the FAPE responsibility the district assumed when it agreed to provide the educational services to the children at the school associated with the residential facility.

Therefore, the *district is OUT of compliance* and corrective action is required.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 CFR §300.613(a)(b)(1) was not found. Corrective action is not required.
2. **ISSUE TWO:** A violation of 34 C.F.R. §300.324(b)(ii)(A) and Kansas state statutes at K.S.A. 72-3429(f)(2)(A) was not found. Corrective action is not required.
3. **ISSUE THREE:** A violation of 34 C.F.R. §§300.503(a)(1)(2) and Kansas statutes at K.S.A. 72-3430(b)(2)(A)(B) was not found. Corrective action is not required.
4. **ISSUE FOUR:** A violation of 34 C.F.R. §34 C.F.R. §300.17 was found. Corrective action is as follows:
 - a. Submit to Special Education and Title Services (SETS) by no later than November 1, 2025, a written statement of assurance stating that it will comply with 34 CFR §34 C.F.R. §300.17 by accepting responsibility for the student IEPs of students who attend the school associated the residential facility where students are medically placed.
 - b. USD #233 shall reconvene the student's IEP team and offer a maximum of 18 days of the special education services as outlined in the September 26, 2024 IEP as compensatory services for failing to implement the student's IEP between October 29, 2025 through December 2, 2025 while attending the district school associated with the residential facility during the 2024-2025 school year. USD #233 shall provide SETS with a copy of the written plan for providing the compensatory services offered and the parents' decision on whether to accept the offer, in whole or in part, no later than 10 days from the date of the IEP team meeting.

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)