

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #231
ON SEPTEMBER 9, 2025

DATE OF REPORT: OCTOBER 8, 2025

This report is in response to a complaint filed with our office on behalf of a student, ----- by their parent, ----- . In the remainder of the report, the student will be referred to as “the Student” and the parent as “the Parent.”

The Complaint is against USD #231, Gardner/Edgerton Public Schools. In the remainder of the report, the “District” and the “local education agency (LEA)” shall refer to USD #231.

When a special education complaint is filed against a school district that is a member of a special education cooperative or interlocal, or that uses any other state recognized public agency to serve children with disabilities, the term “LEA” in this report will include the school district, the special education cooperative or interlocal, and any other agency that is recognized by the state as an administrative agency for public elementary or secondary schools and is serving the educational needs of this student.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. A complaint is considered to be filed on the date it is delivered to both the KSDE and the school district. In this case, the KSDE initially received the complaint on September 9, 2025, and the 30-day timeline ended on October 9, 2025.

Allegations

The following issues will be investigated:

ISSUE ONE: Whether USD #231, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), “wrongfully expelled” the Student for behaviors that were directly and substantially related to their disability. K.S.A. 72-3433, K.A.R. 91-40-33(a)(b), K.A.R. 91-40-35; 34 CFR §300.530.

ISSUE TWO: Whether USD #231, in accordance with state and federal regulations implementing the IDEA, provided the Student with a free and appropriate public education (FAPE), after the Student was expelled due to behaviors related to their disability. K.A.R. 91-40-1(z), K.A.R. 91-40-36(a); 34 C.F.R. §§ 300.101, 300.17.

Investigation of Complaint

The Parent did not respond to the Complaint Investigator's request to interview. The LEA staff were interviewed on September 23 and 25, 2025.

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

1. Individualized Education Plan (IEP), 10/09/24
2. Emails dated: 12/19/24, 01/30/25, 02/10/25, 03/10/25, 01/22/25-04/03/25, 05/01/25-08/26/25, 08/19/25-08/26/25
3. Prior Written Notice for Placement, Change in Services/Placement and Request for Consent, 03/05/25
4. Manifestation Determination Review, 03/05/25
5. Prior Written Notice for Initial Services, Placement, Change in Services/Placement and Request for Consent, 05/01/25
6. Attendance Profile, 08/14/24-05/24/25
7. Student Incident Profile Report, 08/14/24-05/23/25
8. Letter, re: Complaint, 08/24/25
9. Letter, re: [the LEA/The Student] (26FC231-001), 09/16/25
10. Functional Behavior Assessment (FBA), no date
11. Parent Notices of Emergency Safety Intervention dated: 10/24/24, 09/25/24, 10/09/24, 10/30/24, 10/31/24, 11/01/24, 11/01/24, 11/13/24 (3), 11/05/24, 01/14/25, 01/15/25, 01/16/25, 01/22/25, 01/23/25, 01/29/25
12. Logs for Emergency Safety Interventions (ESI) Restraint dated: 10/24/24, 01/16/25, 01/23/25, 01/29/25
13. Student Attendance, no date
14. Emergency Safety Intervention Documentation Forms dated: 09/25/24, 10/09/24, 10/30/24, 10/31/24, 11/01/24 (3), 11/13/24, 11/05/24, 11/13/24, 01/14/25, 01/15/25, 01/16/25, 01/22/25, 01/23/25, 01/29/25
15. Email: [the Student] Student Referral, 04/17/25
16. Email: [the Student] OSS, 02/27/25
17. Email: Employee Injuries, 02/26/25
18. Email: [the Student] and Bit Staff, 10/31/24-11/04/24
19. Email: CPI Restraint, 10/30/24
20. Email: (no subject), 11/04/24
21. Email: [the Student] Update, 11/13/24
22. Email: [the Student], 11/13/24
23. Email: Trophy Cabinets, 12/04/24-12/16/24
24. Email: Post Meeting Action Items, 12/05/24

25. Email: [the Student], 12/13/24
26. Email [the Student] OSS, 01/17/25-01/21/25
27. Email: [the Student] @ TRMS, 01/23/25-01/24/25
28. Email Invitation: [the Student] Team Meeting @ Tue Jan 28, 2025 1pm - 2pm (CST), 01/27/25
29. Email: [the Student], 01/27/25-01/30/25
30. Email: [the Student], 01/29/25-01/31/25
31. Email: [the Student] IEP Meeting, 02/03/25
32. Meeting Notes, 02/03/25
33. Email: [the Student], 02/04/25
34. Email: Follow-Up [the Student] Wrap Around Meeting, 02/05/25-02/24/25
35. Aggression, Property Destruction, Elopement and SIB Data, 10/07/25-01/30/25
36. ABC Data Sheets dated: 11/08[24], 11/14[24], 11/20[24], 11/22[24], 11/13[24], 11/15[24]-11/19[24], 12/04[24], 12/05[24], 12/06[24]-12/10/[24], 12/13[24]-12/17/[24], 12/17[24]-12/18/[24], 12/18[24]-12/19/[24], 12/19[24]-12/20/[24], 01/09[25]-01/14/[25], 01/15[25]-01/16/[25], 01/16[25], 01/22[25], 01/22[25], 01/13[25]-01/29/[25], 01/29[25], 01/29[25]-01/30/[25], 01/30[25], 02/05[25], 02/06/[25]
37. ABC Data Sheet, illegible date
38. Bus Referral for Student Misconduct, 02/26/25
39. Notice of Short-Term Suspension, 02/27/25
40. Attendance, 2024-25 School Year
41. Student Incident Profile Report, 02/06/25-05/23/25

Background Information

This investigation involved a fifth-grade student enrolled at a middle school in USD #231. The Student is currently receiving special education or related services as a child with a disability per the IDEA under the eligibility category of Autism. The Student is described as “sweet, energetic, and self-determined.” (D1)

Findings of the Investigation

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

1. The Student’s attendance during the 2024-25 school year was marked as out-of-school suspended (OSS) for the following dates and frequencies:
 - a. January 17, 2025 (1 day),
 - b. January 21, 2025 (1 day),
 - c. January 24-28, 2025 (3 days),
 - d. January 30-February 4, 2025 (3.5 days),

- e. February 27-March 5, 2025 (4.5 days), for
- f. A total of 13 days. (D49-D51)
- 2. An August 14, 2024 through February 27, 2025 Incident Profile Report for the Student cited 35 incidents. Of those incidents, 27 resulted in "conference with student and parent," 4 resulted in "out of school suspension," for a total of thirteen days, and five incidents did not list an "attribute." (D56-D62; D382-D383)
- 3. From September 9, 2024 through January 29, 2025, Emergency Safety Intervention Documentation Forms indicated there were 20 instances of restraint and one instance of seclusion for the Student, ranging from one minute to 10 minutes. Harm to others was cited as the reason for 12 of the incidents and self-injurious behavior was cited as the reason for nine of the incidents. Minimally, the Parent or Parent 2 was contacted on the same day for each incident. (D73-D152)
- 4. A data chart for behavior with a date range of October 7, 2024 through January 30, 2025 included the following incident counts (total incident count for all dates listed, with some dates having multiple incidents within and among the four categories):
 - a. Aggression- 81
 - b. Property destruction- 101
 - c. Elopement- 7
 - d. Self-injurious behaviors- 57 (D350)
- 5. The Student's October 9, 2024 IEP listed an "exceptionality" of "Autism (Primary)" (D1) and included the following relevant items:
 - a. Present Levels
 - i. The Student is diagnosed with "Autism, ADD/ADHD, Anxiety, and Unspecified, Disruptive, Impulse-Control and Conduct Disorder."
 - ii. The Student is "sweet, energetic, and self-determined" and "enjoys listening to music, dancing, swinging, and food."
 - iii. "Daily behaviors have been a barrier to participation in activities and lessons in the general education homeroom classroom, special education classroom, and elective classes."
 - iv. Primary behavior concerns are "physical violence" and "emotional outbursts," and include hitting, kicking, and punching people and furniture, reciting inappropriate profanities, and self-harming behaviors. (D3-D4)
 - b. Measurable Annual Finals
 - i. Five goals were listed and the following three relevant goals include specific benchmarks:
 - 1. Appropriately greeting adults and engaging in a "small talk conversation while utilizing manners."

2. "When emotions are elevated within a special education setting, [the Student] will be able to expressively state how [they are] feeling and why."
 3. When participating in structured tasks, the Student will be able to express personal information ([their] name, [their] parents' names, [their] age, birthday, [their] address, and [their] parents' phone number)." (D5-D6)
- c. Services Summary indicated the following:
- i. The following services were in the "Special Ed[ucation] Direct Services outside Regular Ed[ucation] Classroom" setting and were to occur weekly from October 9, 2024 through May 25, 2025 and August 13, 2025 through October 8, 2025:
 1. Speech and Language as a Related Service for 2 days, 20 minutes per day.
 2. Special Education Services (Pre-Academics) for 2 days, 395 minutes per day.
 3. Special Education Services (Pre-Academics) for 3 days, 375 minutes per day.
 4. Attendant Care for 5 days, 30 minutes per day.
 5. Music Therapy (Communication) for 1 day, 20 minutes.
 - ii. The following Accommodations/Modification/Supplementary Aids and Services with start and end dates of October 9, 2024- October 8, 2025:
 1. Two adults/supporting staff members present, daily, throughout the school day, in general and special education classrooms.
 2. Visuals to "support structure for communication, routines, and academic activities," daily, throughout the duration of the school day, in the special education classroom.
 3. Allow dictation/scribe, anytime a writing assignment is given that involves more than one sentence, for the length of the assignment, in general and special education classrooms.
 4. Positive Behavior Supports System, throughout the school day, for the duration of the IEP, in general and special education classrooms.
 5. Alert the Student to transitions, anytime a transition occurs, for the duration of the IEP, in general and special education classrooms.
 6. Access to fidget toys, anytime the Student is in a general education classroom, library/computer class, or assemblies, for the duration of the IEP, in general education classrooms.

7. "Other front row seating, closest to the door," throughout the Student's day, for the duration of the IEP, in general and special education classrooms.
 8. Access to a padded helmet, throughout the school day, for the duration of the IEP, in general and special education classrooms.
 9. Use a harness on the bus, when on the bus, for the duration of the bus ride to and from home/school, during special education transportation.
 - iii. Relevant supports for School Personnel were "Classroom support staff who work with [the Student] on a daily basis will be trained on Crisis Prevention Institute (CPI) Nonviolent Crisis Intervention Training" once per year for the duration of the IEP year. The rationale listed was "[The Student's] behavior requires supporting staff to be familiar with CPI in case of emergency." (D7-D9)
6. The Student's Behavior Intervention Plan (BIP) was included in the October 9, 2024 IEP and listed the following relevant items:
 - a. "Behavior Descriptions" were:
 - i. "Elopement," described as "Any instance in which [the Student] attempts, or successfully moves further than 5 feet away from [their] designated spot without expressed permission."
 - ii. "Non-Compliance," described as "Anytime [the Student] refuses to follow a direction within one minute of the direction being given."
 - b. "Behavioral Data" did not include information.
 - c. "Predictors of Behavior" were:
 - i. "Description of when the behavior is likely or least likely to occur:"
 1. "When [the Student] is asked to complete Non-preferred tasks."
 - ii. "Description of individuals with which the behavior is likely or least likely to occur" did not include information.
 - iii. "Description of where the behavior is likely or least likely to occur" did not include information.
 - iv. "Description of other relevant factors such as setting events that increase or decrease the likelihood of the behavior occurring (Identify Circumstances that appear to come before the behavior or make the problem behavior more likely)":
 1. "The problem behavior is more likely to occur if the Student is not given access to [their] preferred adult/someone new is asked to work with [them]."
 2. "Schedule and routine being different."
 3. "Overworking without being given frequent breaks."

4. "Getting too long of a break (allowing [the Student] the chance to become 'bored')."
- d. "Hypothesized Behavioral Function(s) as Identified by the Functional Behavior Assessment (FBA)" had Escape marked with "2" and Sensory marked with "Q."
- e. "Summary Statement of Function" was listed as "to avoid working" and "wanting something but not being able to communicate effectively."
- f. "Behavior goals and teaching steps" did not include any information.
- g. "Antecedent Strategies" did not include any information.
- h. "Reinforcement" listed the following:
 - i. What should staff do to prevent the problem behavior?
 1. "Provide a timer for transitions."
 2. "Provide multiple opportunities for positive praise and breaks throughout the day."
 3. "Utilize a first, then board."
 4. "Allow [the Student] the opportunity to request more time before a transition (verbally or with the use of visuals)."
 5. "Honor appropriate requests."
 6. "Prompt functional communication if [the Student's] motivation is clear."
 7. "Adult should position their body between [the Student] and whatever it is [they are] trying to obtain while prompting [them] through appropriately making the request."
- i. "Reactive Plan" included the following steps:
 - i. "Redirect behavior/Prompting [the Student] to appropriately make [their] request."
 - ii. "When [the Student] makes [their] request, repeat the initial direction (utilizing [their] first, then board)."
 - iii. "If [the Student] successfully elopes from [their] designated area, the adult working with [them] will yell 'BLOCK.' Any available adult within the room will step in front of [them] to block [their] access."
 - iv. "If [the Student] is successfully blocked, the adult working with [them] will redirect [the Student] by giving [them] the option of returning to [their] work station or taking a break on the crash pad. A 1-minute timer will be used to allow [the Student] wait time to make [their] choice. If the timer goes off and [they have] not made a choice, the teacher will direct [the Student] to [their] crash pad. Directions will be repeated using first, then statements and visuals until [the Student] is able to independently to walk to the crash pad."

- v. "If [the Student] willingly walks to [their] crashpad, de-escalation strategies may begin; however, if [the Student] refuses to comply and begins to demonstrate Self-injurious Behavior or aggression towards adults, peers, or [themselves], an assistance call will be made."
 - vi. "Once assistance arrives, [the Student] will be escorted to the chill room/safe room area."
 - vii. "When in the chill room, [the Student] must sit in a designated safe spot, displaying a calm body for 2 minutes (a timer must be used). If [the Student] is unable to sit calmly for the 2-minute timer, provide [them] with space, limit your communication with [them] and utilize behavior expectation visuals to reinforce expectations. Directions may be verbally repeated to [the Student] every 2 minutes. Positive praise and reinforcement will not be given until [the Student] is able to display a safe body and remain in the designated area assigned by the adult. Requests for food/sensory room will not be immediately honored."
 - viii. "If [the Student] is able to display a calm body throughout the 2-minute timer, the adult supervising must praise [them] for demonstrating a safe and calm body and offer [them] a blanket and additional time for space. An additional 2 minutes may be given during this time."
 - ix. "Once [the Student's] 2nd timer goes off and [they are] displaying the ability to remain regulated, [they] will be required to complete a minimum of 3 work tasks for tokens. Teacher will state, 'It's time to do some work.' Or if the motivation is clear, the teacher will state, 'We are going to work for three tokens so we can get [blank].' Teacher can give [the Student] the choice between working on the floor or at a table."
 - x. "If [the Student] begins to show precursor behaviors during [their] compliance work, the adult working with [them] should provide [the Student] with functional communication to escape the demand (ex: "break", "I'm not ready," etc.). If [the Student] imitates the request, it should always be honored. The adult should only prompt the functional communication for escape twice. If [the Student] does not respond to the phrase provided, the adult will model the language and provide space and a 2-minute timer for [the Student] to sit on [their] crash pad."
 - xi. "If [the Student] becomes dysregulated further, repeat steps 7-9."
 - xii. "If [the Student] is able to complete [their] 3 work tasks (earning a token with each task completion), [they] will be given access to a break of [their] choice (sensory room, take a walk, snack, etc.)."
 - xiii. "Once [the Student] has [their] break, [they] may return to the classroom." (D10-D11)
7. In an undated FBA, four target behaviors were listed: physical aggression, self-injurious behavior, property destruction, and elopement. All target behaviors noted

- “attention” as a hypothesized function of behavior and “sensory” as a secondary hypothesized function, except for elopement, which did not have a noted secondary function. (D70-D72)
8. In an October 30, 2024 email to Coordinator 1, the Case Manager, the School Psychologist, and the Assistant Principal, the Principal stated, “We did choose [out of school suspension] OSS for the remainder of the day after additional conflict at 12:03 [p.m.].” (D197) The Principal emailed the same group later in the day and stated, “Just a heads up. I am meeting [Parent 2] at 3 [p.m.] today. [They] brought up out-of-district placement. Obviously, this is not my decision[,] but [I] wanted to keep you in the loop.” (D198) The Principal sent a third email to this group a few minutes later and stated, “I did remove OSS as it is an early release day and [the] Parents were unable to pick [the Student] up. [The Student] will be back at [the School] tomorrow.” (D200)
 9. In a November 4, 2024 email to the Principal, the Case Manager, the School Psychologist, the Director of Special Education, and the Assistant Principal, Coordinator 1 indicated there would be a new FBA conducted for the Student and posed the question “whether a [Psychiatric Residential Treatment Facility] PRTF placement would be something the family would consider.” (D173)
 10. In a November 4, 2024 email to Coordinator 1, the Mental Health Liaison stated, “[The Parent] alleges the school is considering transferring [the Student] to a different school; perhaps a therapeutic day school? [The Parent] advised there was to be an in-house meeting last Friday [November 1, 2024]. I am following up. ...” Coordinator 1 included the Principal in the reply and indicated they were unaware of this meeting. The Principal replied this was “part two of a prior meeting” and paperwork of “options” would be provided to the Parent. (D213) Replies included an inquiry about an “[Intellectual/Developmental Disability] IDD” or “[Serious Emotional Disturbance] SED” waiver for the Student, along with the Mental Health Liaison stating, “I believe the IDD waiver would be most appropriate. I’m following up to obtain [the Parent’s] written permission to determine current waiver status/eligibility. ...” (D214, D216)
 11. Behavior tracking sheets ranging from November 8, 2024 through February 6, 2025 described three behaviors the Student engaged in: physical aggression, self-injurious behavior, and property destruction. Each sheet included the date, the staff involved, the setting events, the antecedent, a notation of the behavior, the consequence, and notes. The data from these sheets included the following behavior totals as marked by staff members:
 - a. Physical Aggression- 48;
 - b. Self-Injurious Behavior- 53; and
 - c. Property Destruction- 30. (D351-D379)
 12. In a November 13, 2024 email to the Principal, Coordinator 1 indicated they would have the Behavior Specialist “put eyes on [the Student] to see if an alternative location for services is needed.” (D220)

13. In a November 13, 2024 email to the Principal and the Case Manager, the Parent inquired, "Is there a new plan in place moving forward with [the Student]? I was told [they] had charges filed against [them] today for criminal damage to property. Should we be in touch with our local law enforcement? This all seems so bizarre." The Case Manager replied and explained the supports in place for the Student and their optimism for the Student's progress. They also noted they would be updating the Student's behavior plan. (D227)
14. In a December 3, 2024 email to an unknown employee, the Principal wrote, "Please see that all trophy cabinets have locks installed. This is a safety measure related to [the Student]." (D243)
15. In a December 5, 2025 email to the Assistant Principal and the Director of Secondary Education, the Principal forwarded an email from the School Nurse who stated, "We have had a total of 19 reported employee injuries this year. Of those injuries, 14 involved a student. Of those 14 injuries involving a student, 13 of them involved [the Student]. Of these 13 injuries, 3 of them went to [occupational and urgent care]. A fourth should have gone, but the employee was already being treated with antibiotics from the previous injury. Two of these were lost-time accidents." (D246)
16. In a December 13, 2024 email to the Principal, the Behavior Specialist clarified the "upcoming meeting is not to discuss the FBA results." They indicated data was still being collected for the FBA, and a "separate" meeting would be scheduled to review the FBA and discuss updating the BIP. (D258)
17. In a December 19, 2024 email to the Parents, Coordinator 1 indicated the Parents would receive an email from "Doc-u-Sign" that would "provide the District with consent to send [the Student] paperwork for outside school placement, which might be able to serve [the Student] if the IEP team deems it appropriate." The Parents replied on the same day, "I think we signed everything." (D13)
18. In a January 17, 2025 email to the Case Manager, Coordinator 1, the Behavior Specialist, the School Psychologist, and the Assistant Principal, the Principal stated, "Be aware I did OSS for 2 days [for the Student]. [They] will return on Wednesday, January 22, 2025." (D273)
The School Psychologist replied asking how many days the Student had OSS for the school year and "are we close to 10?" The Principal replied, "[The Student] is two days OSS total. This is not a norm and I do not expect continued concerns." (D274)
19. In a January 22, 2025 email to Alternative Placement 1, Coordinator 2 asked for the Student's records to be reviewed to see if they would be a "fit for Alternative Placement 1," and if so, to let them know the next steps and a potential start date. On February 25, 2025, Alternative Placement 1 responded "the Student was "a great fit" "and was placed on the waiting list. They also requested a "doctor's note for the helmet [they] use during the school day" and the Student's approximate height and weight. On April 3, 2025, Alternative Placement 1 responded again apologizing for "the major delay" and noted their enrollment is not first-come, first-served, rather,

- "we take time to make thoughtful decisions based on the unique needs of each child and the support we're able to offer at the time." Coordinator 2 replied the same day and stated, "Please let us know what our next steps are[,] at this point we will do whatever we need to." (D31-D34)
20. In a January 23, 2025 email to the Case Manager, the Principal, Coordinator 1, and the Assistant Principal, the Behavior Specialist stated, "After talking to some of [the Student's] team members today regarding [their] self-injurious behavior, I think we should set up a meeting with [the Parents] to discuss the significant increase in these behaviors. Not only have we observed an increase in these behaviors[,] there are new self-injurious behaviors occurring. The last bus incident that I read indicates [the Student] is also engaging in these new self-injurious behaviors on the bus." (D276)
- The Principal replied with a time they could meet and added, "I do have insight from [Parent 2] that I can share. It is basically that we cannot keep [the Student] safe and [they] need a different facility. [The Student] returns on Wednesday [January 29, 2025]." (D278)
21. On January 27, 2025 at 8:53 a.m., the Behavior Specialist sent a meeting invite for 1:00 - 2:00 p.m. on January 28, 2025 to the Case Manager, the Principal, Coordinator 1, and the School Psychologist, titled "[The Student] team meeting." (D281)
22. On January 27, 2025 at 1:26 p.m., the Parent sent an email to the Principal, the Case Manager, and Coordinator 1 requesting a meeting to "brainstorm strategies and learn more about how you plan to help [the Student] transition back, address [their] behaviors, and ensure [their] safety." The Parent noted they understood this would not be an IEP meeting. The Case Manager replied suggesting a 2:00 p.m. meeting on January 28, 2025. (D282)
23. In a January 30, 2025 email to the Parent, the Director of Special Education, the Family Resource Specialist, the Mental Health Liaison, the Case Manager, and Coordinator 1, the Principal addressed the Parent and thanked them for "meeting yesterday. I did see paperwork completion this morning. There were several 'action items' as a result of the meeting. Please alert me by Friday if you are getting these issues resolved." (D283)
24. In a January 30, 2025 email to Coordinator 1, the School Psychologist, the Assistant Principal, the Case Manager, and the Behavior Specialist, the Principal stated, "[the Student] is OSS for three days. [They are] targeting staff in the classroom and also inside the safe room. ... We do have an IEP tentatively for Monday at 10[:00 a.m.]. Self-harm continues to be an ongoing issue." (D15)
25. On January 31, 2025 the Case Manager emailed the Parent and Parent 2 based on a request for "specific scripting [the Student] is using that is obscene" and cited some of the "inappropriate phrases [the Student] used at school yesterday." The Principal forwarded this email to Coordinator 1, the Director of Special Education, and the Assistant Principal and stated, "Just another new observational change over the last

few weeks. [The Parent] took offense to this when we made a call earlier this week with [them]." (D297)

26. In a February 3, 2025 email to the Case Manager, the Principal, and Coordinator 1, the Parent stated, "I still haven't heard anything about the status of [the Student] starting at another school." The Case Manager replied the same day, "We can discuss at our 9:00 a.m. IEP meeting this morning." (D304)
27. The February 3, 2025 IEP Meeting Notes indicated those in attendance were the Director of Special Education, Coordinator 2, the Behavior Specialist, the Parent, Parent 2, the Case Manager, and the Family Resource Specialist. The following relevant items were noted:
 - a. The search continues for an out-of-district placement and options are limited.
 - b. The Director of Special Education proposed "Administrative Homebound at this time."
 - c. The Behavior Specialist explained the current situation in a school setting and talked about "the safe room and use of restraint as needed to prevent [the Student's] escalating self-injurious behavior."
 - d. The Family Resource Specialist noted that IEP goals were important, but "following directions and staying safe are of the greatest importance right now."
 - e. The Parent noted the Student has to be restrained at home as well, but is likely calmer at home due to getting 1:1 attention and not having the same "stressors and expectations as [they] would in the school setting."
 - f. The Director of Special Education asked the Parent about a reduced day schedule and it was noted the Parent did not have the ability to watch the Student during the school day.
 - g. The Family Resource Specialist suggested keeping the Student at school, rather than doing administrative homebound.
 - h. The School Psychologist asked "What the family wants [the Student's] day to look like in the interim."
 - i. The Family Resource Specialist noted during the last suspension, the Parent had to bring family in from out of town to assist with care for the Student and this was no longer an option.
 - j. The Director of Special Education indicated they were doing what they could to facilitate an out-of-district placement, but the timeline for this could be extended and is unknown.
 - k. The Family Resource Specialist asked about Alternative Placement 3 and Coordinator 2 explained the placement requires a dual diagnosis. The Parent thought it should be considered, so

Coordinator 2 indicated they would look into it and get back to the team.

- I. The Parent inquired when they would know about the placement and Coordinator 2 explained they had to wait for an opening and then an offer of a spot. The Director of Special Education explained that it could be one week or six months and Coordinator 2 reiterated they would contact Alternative Placement 3 that day.
 - m. The Family Resource Specialist then explained to the Parent “out-of-district placements is to assist the child with areas of need and then get them back to the school district.” The Director of Special Education agreed with this. (D305-D306)
28. In a February 4, 2025 email to the Principal and the Case Manager, the Parent asked for clarification of when the Student was allowed to come back to school after their suspension and the Principal stated the Student “does return to school tomorrow.” (D310)
29. In a February 5, 2025 email to the School Psychologist, the Director of Special Education, the Principal, and Coordinator 1, the Case Manager notified them a person from the County Mental Health Center would be observing the Student the same morning. (D311)
30. In a February 5, 2025 email to the Parents and the Family Resource Specialist titled “Follow-up [the Student] Wrap Around Meeting,” Coordinator 1 noted the following:
 - a. They did not have all the paperwork necessary to “confirm a dual diagnosis of IDD/ASD. Given [the Student’s] behavior, it would be difficult to complete testing and deem the results valid. However, this doesn’t mean we can’t attempt it.”
 - b. They indicated at “Tuesday’s outside wrap-around meeting,” it was mentioned the Student was on an “IDD waiver, which means [they] have a medical diagnosis of intellectual disabilities.”
 - c. They requested the Parent provide the IDD waiver documentation in order to submit it to Alternative Placement 3 so the Student could meet the “consideration requirements.”
 - d. “We have no new updates regarding the acceptance status for special day school from [Alternative Placement 2] and [Alternative Placement 4]. We will contact you to determine the next steps once we hear back from either of these schools. Once [the Student] is accepted, there could be a period till that spot opens up for [the Student] to attend.” (D312)
31. In a February 10, 2025 email to the Parents, the School Nurse indicated they were asked to “see” the Student and they had “10-15 linear welts across [their] right shoulder blade.” When they asked the Student how they hurt their back, the Student said they had thrown themselves on the ground. (D333)

32. In a February 10, 2025 email to the LEA, the Parents indicated the Student was “let off the bus without supervision on Thursday.” They reported this was a safety issue because the Student should be “supervised at all times.” The Parents also questioned the status of the “outside placement referrals” and whether “any of them responded indicating [the Student] is eligible for their services.” The Director of Special Education replied on the same day, including the Principal, the Case Manager, Coordinator 1, and the Family Resource Specialist, and stated, “I have asked the bus company to pull the video on Thursday’s dismissal. I will view and get back to you. On Friday, we followed up with Alternative Placement 1. They had requested additional behavior data and that was submitted Friday. Alternative Placement 2 responded that they were consulting with their [Board Certified Behavior Analyst] BCBA and would get back to us. They have a waiting list of six, so if accepted [the Student] would be number nine.” They added that a test with the Student would be completed the next day and that “may provide the additional data we need to send Alternative Placement 3 a request.” (D16)
33. In a February 21, 2021 email to the Parent, with the Family Resource Specialist, the Principal, the Director of Special Education, Coordinator 2, the School Psychologist, the Case Manager, and the Behavior Specialist included, Coordinator 1 provided an outside placement update. “[Coordinator 3] sent an email last Thursday and again this morning. We are hoping to hear back from them soon. The snow days have delayed getting information back to these schools.” (D314) Coordinator 1 replied to this email the same day including everyone except the Parent and the Family Resource Specialist and stated they spoke with the Parent and were “going to draw up a new [prior written notice] PWN for Reevaluation on existing data and get that to parents for signatures. We can then consider the data we currently have and make any recommendations the team feels is appropriate for continued eligibility / exceptionalities.” (D316)
34. In a February 26, 2025 email to the Case Manager and the Principal, the School Nurse stated, “We are at 16 employee injuries in [the Case Manager’s] room this year. Of these 16 Injuries, four required visits to [occupational and urgent care]. ... Of these four visits, two were lost time accidents.” (D160)
35. In a February 27, 2025 email to the Case Manager, the Director of Special Education, the School Psychologist, Coordinator 1, the Director of Secondary Education, and the Assistant Principal, the Principal stated, “We are currently at 8 OSS for the year. Based on prior behavior, I would extend the OSS through next Thursday [March 6, 2025]. Five days.” The School Psychologist replied, “We will need to hold a Manifestation meeting as [the Student] will be at ten days as of Monday.” (D158)
36. A February 27, 2025 Notice of Short Term Suspension indicated the Student would be suspended from that day through March 5, 2025 for “inappropriate behavior.” The notice was signed by the Principal and indicated the Student was “reinstated effective” March 6, 2025. (D380)

37. A March 5, 2025 Manifestation Determination Review (MDR) summarized the Student's behavior on February 27, 2025 as "[The Student] climbed on a chair. Poured Gatorade on self. Grabbed and head butted [staff member's] gut. Attempted to kick [staff member]; CPI transport." The document also noted that "previous incidents are on attached form."
- a. Input and observations and relevant information were as follows:
 - i. The Case Manager stated, "Incidents listed are an accurate representation of the struggles that [the Student] exhibits in the school setting."
 - ii. The Parents asked if there was a new BIP in place at the time of the incident and were told there was, and "the new intervention strategies were being followed." The Parents also inquired about the status of the sensory evaluation and Coordinator 1 explained the evaluation has not been completed due to the Student's behaviors "impeding completion," along with snow days and suspensions causing a "substantial disruption." It was noted the Parents were frustrated with the lack of progress on "assisting [the Student] with [their] self-injurious behavior," and Coordinator 1 responded with accommodations to assist in protecting the Student.
 - iii. An FBA was completed on February 26, 2025 and the "corresponding BIP has been implemented."
 - b. "The IEP team has explored alternative educational settings as a potential intervention. The district is currently evaluating outside placement options to determine if such a setting represents the LRE for [the Student]."
 - c. The question "Was the conduct in question caused by or have a direct and substantial relationship to the child's disability?" was answered "Yes."
 - d. The question "Was the conduct in question a direct result of the school's failure to implement the IEP?" was answered "No."
 - e. The determination was "The behavior is a manifestation of the disability" and "the student will be returned to the placement specified in his/her IEP, unless: (a) the school and parent(s) agree to a change of placement through the IEP process; or (b) the student is assigned to an alternative educational setting for possession of a weapon or illegal drugs or for infliction of serious bodily injury on another person."
 - f. The document included signatures for the Director of Special Education, Coordinator 1, the Principal, the Case Manager, the Parent, Parent 2, Attorney for the Parents, the Family Resource

Specialist, Attorney for the LEA, and two other LEA employees.
(D26-D28)

38. A March 5, 2025 PWN proposed a change in services and a change in placement for the Student.
- a. Description of the Action Proposed or Refused: “[The Student] will receive special education services at [the School] during a 45-day [Interim Alternative Educational Setting] IAES, while school is in session. The services will be provided at [the School]. The setting will be U-Under Suspension.” It was noted the Student was eligible for special education transportation and all the listed services would be provided in the special education setting.
 - i. From March 10, 2025 to March 14, 2025
 - 1. 60 minutes of special education services, 2 days per week;
 - 2. 45 minutes of special education services, 1 day per week;
 - 3. 15 minutes of speech language services, 1 day per week; and
 - 4. 15 minutes of music therapy, 1 day per week.
 - ii. From March 17, 2025 to May 15, 2025
 - 1. 45 minutes of special education services, 2 days per week;
 - 2. 30 minutes of special education services, 1 day per week;
 - 3. 15 minutes of speech language services, 1 day per week; and
 - 4. 15 minutes of music therapy, 1 day per week.
 - iii. From May 16, 2025, for the duration of the IEP, while school is in session:
 - 1. 395 minutes of special education services, 2 days per week;
 - 2. 375 minutes of special education services, 1 day per week;
 - 3. 20 minutes of speech language services, 1 day per week;
 - 4. 20 minutes of music therapy, 1 day per week; and
 - 5. 30 minutes of attendant care, 5 days per week.
 - iv. “The IEP team[,] including parents, agree that an outside placement in a special day school is [the Student's] least restrictive environment at this time. However, a space at a special [sic] days school has not opened, once a spot [sic] become available [sic], [the Student] will be enrolled in that special day school.”
 - b. Explanation of the reason the action was proposed or refused stated the proposal was “due to [the Student's] manifestation determination” and noted “Services will be provided in person after school at [the School].” An explanation was provided for the additional 15 minutes per day for the first 3 days of service as

- “compensatory services” due to the Student not receiving services beyond “10 days” where the Student was not in school. It was also indicated the team met in December to begin seeking an outside placement, “pending data from the open FBA/BIP.” Also noted, “With updated behavior data, the team determined a special day school is the Student’s Least Restrictive Environment [LRE].”
- c. Options considered and the reasons the options were rejected included: the team considered virtual services and determined these services were not in the best interest for the Student. They also considered maintaining the Student in the current special education setting and rejected this “as an outside placement at a special day school will meet [the Student’s] behavioral and academic needs.”
 - d. Data used as a basis for the actions were team input, parent input, manifestation determination, and behavioral data collected during the 2024-25 school year.
 - e. The “Delivery” section listed Coordinator 2 as sending the PWN to the Parents on March 3, 2025 and this PWN was signed by the Parents on May 4, 2025 with the box to “give consent” checked. (D21-D23)
39. In a March 10, 2025 email to a state trainer, Coordinator 1 stated, “Right now, [the] Parents have declined all services. We are working with the family to determine an alternative plan. If we get something in place, I will communicate if something changes.” (D29)
40. A 2024-25 school year service log for the Student indicated the following:
- a. August- the Student received services 3 days;
 - b. September- the Student received services 6 days, therapist was absent 2 days;
 - c. October- the Student received services 5 days, therapist was absent 1 day;
 - d. November- the Student received services 6 days, therapist was absent 1 day;
 - e. December- the Student received services 5 days;
 - f. January- the Student was absent for 4 days of attempted service, there was one day of inclement weather, therapist was absent 1 day;
 - g. February- the Student received services 1 day, the Student was absent for 5 days of attempted service, therapist was absent 1 day;
 - h. March- the Student was absent for 3 days of attempted service; and

- i. There is no recorded service for the rest of the school year.

Two items noted at the bottom: "lots of OSS sem[ester] 2" and "change in placement/service execution beg[inning] 3/11[25]." (D381)

- 41. In a March 12, 2025 Adapted PE Evaluation Report, it was noted the evaluator made three unsuccessful attempts to meet with the Student. One time the Student was dysregulated, and the other two were due to the Student being suspended out of school at the start of second semester in January, 2025 and then again on March 4th, 2025. (D156)
- 42. In an April 17, 2025 email to Coordinator 1 and 3, a representative from Alternative Placement 3 stated, "It was determined that we cannot accept [the Student] due to the teeth pulling and lack of medication management. These are both disqualifications in our residential and school setting." Coordinator 3 replied the same day, "Thank you for letting us know." (D154-D155)
- 43. A May 1, 2025 PWN for Initial Services, Placement, Change in Services/Placement and Request for Consent outlined a meeting on April 30, 2025 to review evaluation and assessment data regarding "special education and related services needed by your child; the appropriate educational placement to provide special education and related services identified in your child's IEP," and "any additions, changes or modifications to the special education and related services or educational placement that are needed to enable your child to meet the measurable annual goals set in the IEP and to participate, as appropriate, in the general curriculum."
 - a. Description of the action proposed or refused indicated from May 16, 2025 to May 23, 2025, the Student "will receive special education services at [the School]." It was noted the Student was eligible for special education transportation and services were to be provided in the special education setting.
 - i. 45 minutes of special education services, 2 days per week;
 - ii. 30 minutes of special education services, 1 day per week;
 - iii. 15 minutes of speech language services, 1 day per week; and
 - iv. 15 minutes of music therapy, 1 day per week.
 - b. Explanation of the reasons the action was proposed or refused indicated, "The above services are proposed to continue through the end of the school year. [The Student] is currently on a wait list for a Special Day School as a seat has not become available. The above was agreed upon by both the District and the [Parent] in a phone call on 4/30/2025."
 - c. Options considered and the reasons the options were rejected stated, "For [the Student] to return full day to [their] center based program in the district [was] rejected as both the district and parent agreed it is in the best interest of [the Student] to continue

to receive the modified services above for the duration of the 24-25 School year after the 45 day IAES has concluded.”

- d. Description of the data used as the basis for the proposed or refused action listed a “phone call between the District ([the Director]) and [one of the Parents] on 4/30/2025.”
- e. Other relevant factors considered included: the Student missing time with peers and “may not make the same rate of progress as being in school full time from 5/16/2025-5/23/2025. The district and [the Parents] have determined the benefits outweigh the potentially harmful effects.”
- f. The “Delivery” section listed the Director as emailing the PWN to the Parents on May 1, 2025 and the document was signed illegibly on the “Parent/Legal Education Decision Maker” line, with no boxes for consent checked, on May 4, 2025. (D36-D38)

44. In a May 1, 2025 email to the Parent and Parent 2 the Director of Special Education thanked them for their time on the phone “earlier this week” and recapped the conversation. “I emailed you the PWN this morning ... with the extension of [the Student’s] current placement through May 23, 2025; as we agreed returning to [the School] for six days was not in the best interest of [the Student]. We also discussed that [the Student] is at the top of the list for Alternative Placement 2 and Alternative Placement 2 requires an observation. You agreed on the phone to do a home observation.” The Director provided details and invited them to reach out with questions. (D39)

45. An August 19, 2025 PWN for placement and request for consent outlined a meeting on August 19, 2025 to review evaluation and assessment data regarding “the appropriate placement to provide special education and related services identified in your child’s IEP.”

- a. A description of the action proposed or refused stated “Starting 8/19/25 till a special day school setting has been obtained, [the Student] will receive the following special education services at [the School].” Services were within the special education setting.
 - i. 60 minutes of special education services 2 days per week;
 - ii. 45 minutes of special education services 1 day per week; and
 - iii. 15 minutes of speech language services 1 day per week.

Also noted was “The IEP team, including parents, agrees that an outside placement in a special day school is [the Student’s] LRE at this time. However, a space at a special day school has not opened. Once a seat becomes available, [the Student] will be enrolled in that special day school.”

- b. The explanation of the reasons the action was proposed or refused indicated the Student was on a waitlist for a special day school and

a seat had not become available and the services proposed were to allow the Student access to special education services until a seat became available. It was also noted this process started in December 2024 2024.

- c. Options considered and the reasons the options were rejected stated, "For [the Student] to return to [their] center-based program in the district was rejected due to the safety concerns of both [the Student] and special education staff;" and "Maintain [the Student] in the special education setting and not an outside placement [was] rejected as an outside placement at a Special Day School will meet [the Student's] behavioral and [sic] academic needs."
- d. Description of the data used as the basis for the proposed or refused action listed "team input, parent input, manifestation determination, behavioral data collected during the [20]24-25 school year."
- e. Other relevant factors considered were "[The Student] will not receive access to grade-level peers within general education or special education settings. This could be harmful regarding making adequate progress on IEP goals and the general education curriculum."
- f. The "Delivery" section did not have information and the document was not signed. (D41-D43)

46. In an August 19, 2025 email to the Parent and Parent 2, the Director of Special Education informed them of a new LEA employee who reached out to schedule a meeting to review results of a re-evaluation and stated, "I understand you informed [new employee] that you do not wish to meet at this time." The Director of Special Education provided the Parents with the meeting date and time, told them they would receive a notice of meeting and continued, "as parents you have a right to attend this meeting, though your participation is not required." The Director of Special Education then outlined the out-of-district placement options for the Student and noted, "We are continuing to explore all viable options."

- a. "Alternative Placement 3, which requires a student to have the eligibility classification of Intellectual Disability (ID) in order to be considered for admission. This requirement was the primary reason for initiating the re-evaluation this past spring. Without an ID eligibility, we are unable to submit [the Student's] application"
- b. "[The Student] remains on Alternative Placement 2's waiting list; however, they have been unable to provide us with a start date."
- c. "[The Student] is also currently on the waitlist for [Alternative Placement 1]."

The Director of Special Education recalled an August 11th conversation where they spoke with Parent 2 and it was shared the Student “has begun a new medication and is showing improvement. I reviewed our proposed services with [Parent 2] while we await an out-of-district placement.” Parent 2 indicated the offer was “unacceptable” and said they would follow up with the Director of Special Education, who noted “I have not received any further communication.” This email included an attachment of the August 19, 2025 PWN. The Director of Special Education assured the Parent and Parent 2 that “our goal remains to support [the Student] in [their] LRE. The IEP team has determined that an out-of-district placement is currently the most appropriate setting for [the Student]. While we continue to work diligently to secure that placement, we are offering interim services to ensure [the Student] continues to receive support.” (D47)

47. In the August 24, 2025 complaint letter, the Parent wrote, “[The LEA] cited a statute that expels student[s] after causing severe bodily harm or using drugs or alcohol on school property. [The Student] did not cause severe bodily harm, use drugs or alcohol on school property, and there was never evidence proposed to support any of those allegations.” They indicated removing the Student from the School was to “evade [the Student’s] behaviors.” (D65)
48. In the August 24, 2025 complaint letter, the Parent indicated staff from the School “filed baseless reports” to the Department of Children and Families (DCF) “against [the Parent] in an effort to harass and deter parents from sending [the Student] back to school.” The Parents also stated the School “told [them] they are sending referrals, but the alternative schools are telling the Parents the referrals are being denied because of [the] behaviors [the School] is describing to them ... which are false.” (D65)
49. The September 16, 2025 LEA response stated, “On February 25, 2025, [the Student] had 11 behavioral incidents, three (3) of which were aggressive behaviors. As of the morning of February 26, 2025, [they] had been involved in 16 incidents in which district employees were injured. Four of these incidents required staff to seek medical attention. [The Student] had been suspended for a total of eight (8) days during the 2024-2025 school year. They noted that the February 27, 2025 incident put the Student suspended out of school for five days, which “caused [the Student] to exceed 10 cumulative days for the school year.” (D67)
50. In an interview with the Investigator, the Case Manager noted the FBA “took a very long time for us to complete” because of the quantity of ABC data and the “medication changes that took place while we were collecting data.” They noted the FBA took “the full 60 days” to complete and the “BIP was finalized in February [2025].” (P2-P3, 04:31)
51. When asked if they were implementing the prior BIP while awaiting for the new FBA, the Case Manager stated they were “implementing the FBA” and “learning and working towards new strategies to find what would best support [the Student]

- because the behaviors that were listed on [their] previous FBA were not consistent with what we were seeing.” (P3, 06:36)
52. The Case Manager stated, “At the manifestation determination meeting, we discussed and determined that [the Student’s] behaviors are a manifestation of [their] disability and that [the Student] would be placed on IAES and we offered services and there was no response. The family did sign the paperwork, but there was no verbal discussion.” (P7, 19:00)
53. When asked about injuries sustained from the Student, the Case Manager stated, “I have been to the dentist because my tooth was knocked loose. I have been bitten multiple times. I do have a little lump of tissue on my leg because I was bit, it’s still there from last year. I’ve been bit multiple times, but I just still have some permanent damage there from it-o-one of my bites. . I’ve had two concussions. Another staff member received a concussion.” (P8, 20:56)
54. During the Case Manager’s interview, the Director of Special Education clarified February 28, 2025 was the 11th day of OSS for the Student. When asked about services for days prior to the 11th, they stated, “We had not reached our 10th [sic], our 11th day, so we do not, we’re not required to provide any services until we hit the 11th day of suspension.” (P5, 16:27) They added that after the MDR, the LEA offered services “knowing that we had [sic][gone] over. ... The 11th day did not occur until [March 10, 2025] because we offer[ed] an increase in services at that time, compared to what we start[ed] on [March 17, 2025], because we knew we owed some services for compensatory reasons. [We owed services] because we went over our 10 days. So instead of 45 minutes, [the Student] received 60 minutes for that period of time, to make up the services that we needed to provide. That is why you see the difference on the PWN from [March 10, 2025] to [March 14, 2025], [and] [March 17, 2025] to [May 15, 2025].” The Director of Special Education added the Student never received any of these services “because the Parents did not make [the] child available.” (P6, 17:33)
55. During the Case Manager’s interview, the Director of Special Education stated, “The Parent won’t communicate with us, but we assume that [the Student] has a placement starting October 2nd, [2025]. All the enrollment paperwork was submitted and [they are] ready to go.” (P8, 22:03)
56. In an interview with the Investigator, the Principal clarified that February 28, 2025 was the 10th cumulative day of suspension for the school year, “then [day] 11 would’ve been on March 4th [2025] and [the] 12th [day] would’ve been on March 5th [2025].” (P3, 06:12)
57. When asked why the MDR was not held on February 28, 2025 or earlier, the Principal stated, “We generally start planning those once we get into [the] eight and nine [day] range. You can’t predict that there’s going to be another out-of-school suspension, but I can’t tell you that it automatically occurs the day of. But I know the planning starts with the IEP team that, hey, we’re approaching that line and we’re going to get close to 10. We need to get a meeting scheduled. (P4, 07:26) The

- Principal confirmed the suspension on February 27, 2025 was a five day suspension. (P4, 09:26)
58. The Principal noted communication challenges with the Parent and stated, "I wish we had a more cooperative spirit with [both Parents]." (P5, 11:34)
59. In an interview with the Complaint Investigator, the Director of Special Education explained the 45 day IAES, "We held the manifestation. It was found to be a manifestation of [the Student's] disability. However, serious bodily injury was taken into consideration. I had staff members with concussions, a tooth knocked loose, scratches, cuts, everything; and taking into consideration the self-harm that the Student was [doing]. We were trying to balance being able to provide for the Student [their] least restrictive environment, as well as protect our staff. So due to the level of [the Student's] behaviors, we determined that [they were] going to be given a 45-day IAES." (P7, 13:38)
60. The Director of Special Education indicated, "The Parents were given prior written notice on May 5th, [2025], [and the] Parents did not sign [it]." They noted the Parent did sign "the agreement" on May 1, 2025, where they offered "20 minutes two days a week of speech and language and one day a week of music therapy." This agreement was from March 2025 [2025]. (P7, 15:31)
61. The Director of Special Education stated the reason for the Parent not signing the PWN was, "[The] Parents did not see that [the Student] was as dangerous as what we were seeing [them] being. Even though [the Parent] has expressed to us that [they are] scared of [the Student], they wanted [them] at school and it was not the appropriate placement at the time." (P8, 16:37)
62. When asked what happened for services between March and May, 2025, the Director of Special Education stated, "Our obligation is to offer services, and we made an offer. [The] Parents did not agree or disagree. ... We continued to offer services. They did not accept services. We tried to get the family to visit [Alternative Placement 4] ... to do a visit, because it was time for [the Student] to return. I had called [Parent 2] prior ... it was in [the Student's] best interest to return ... to school, and [Parent 2] said no. So I once again sent the document, and [the] Parents at that time did sign for the services. ... There was no disagreement to any of the services offered, but they did not access the services at all." (P8, 17:10)
63. The Director of Special Education clarified they continued pursuing an out-of-district placement while the Student was on the 45 day IAES. (P8, 18:48) They also clarified that they have offered the same services offered during the 45-day placement from May 1, 2025 through the end of the school year and from the beginning of the 2025-26 school year through now. Those services are located at the School and the Parents "have not accepted any of our services throughout the process." (P9, 23:15; P10, 23:48)
64. In an interview with the Complaint Investigator, Coordinator 1 attempted to account for the incidents noted in the LEA Response, "There is data documentation

- throughout the classroom that is conducted every day. And so those 11 incidents, I would assume would be documented within those behavior logs.” (P2, 02:47)
65. Coordinator 1 clarified, “I can say that we offered services based on a conversation that we were going to pursue an IAES and we outlined a PWN that would provide services during that time and that was provided to the family electronically through email, as well as DocuSign. And they gave information, I think through lawyers, that they would not be signing the document and then they did not sign that document until May of 2025. And at that point they did give consent for services.” (P3, 06:15) In relation to the August PWN, “As of right now, there is no signatures whether denying that PWN or consenting to those services. They were a continuation of the same services that were being offered during the 45-day IAES, two sessions a week, I believe, with music therapy and SLP therapy as well as special education services.” (P3, 07:34)
66. Coordinator 1 explained the barriers to getting an out-of-district placement for the Student, “Many of our out-of-districts have anywhere from a three to a 12-month wait list. And so [the Student] has been on a wait list for two out-of-district placements since December of 2024. We have continuously attempted to work on getting a dual eligibility for [the Student] to add a third outside placement to be able to refer [them] to see if [they] could start there. We still do not have consent to [add] a dual diagnosis of autism and intellectual disability, so we could send that information out for a third outside placement, but right now we are just waiting on those placements to have a spot available. Currently, [the Student] does have a spot open at one of our outside placements and will begin there October 2nd, 2025.” (P4, 08:13)

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #231, in accordance with state and federal regulations implementing the IDEA, “wrongfully expelled” the Student for behaviors that were directly and substantially related to their disability. K.S.A. 72-3433, K.A.R. 91-40-33(a)(b), K.A.R. 91-40-35, K.A.R. 91-40-36(a); 34 CFR §300.530.

The law regarding the suspension of children with a disability is complicated because of the varieties of behaviors subject to discipline, the varying length of suspensions, and whether behavior is a manifestation of the student’s disability. For that reason, the conclusion on this issue in this report focuses only on the specific facts and law that apply to this case.

A student with a disability may be suspended for a violation of a school code of conduct for up to 10 school days in a school year without any educational services. Beginning on the 11 th day of suspension in a school year, the school district must provide the services the student needs in order to: (1) continue to participate in the general curriculum and (2) continue to make

appropriate progress toward IEP goals. 34 C.F.R.300.530(b)(2). At some point (as described in 34 C.F.R. 300.530(e)) when there are a series of additional suspensions beyond the 10 th school day in a school year, a manifestation determination review (MDR) may be required to determine whether the behavior subject to suspension is a manifestation of the student's disability. When the behavior subject to suspension is a manifestation of the student's disability the district must return the student to the placement (educational setting) described in the student's IEP, unless there is an exception to this requirement in the law.

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In short, the LEA did not expel the Student. Instead, the LEA placed the Student in an IAES for 45 days due to serious bodily injury. The LEA's action was a legally permissible change of placement under the IDEA, not a wrongful expulsion. Based on the aforementioned, according to IDEA and Kansas special education regulations, *it is unsubstantiated* that the LEA "wrongfully expelled" the Student. The LEA followed the procedural requirements and used a permissible disciplinary removal based on serious bodily injury, as permitted by K.S.A. 72-3433, K.A.R. 91-40-33(a)(b), K.A.R. 91-40-35; 34 CFR §300.530.

Issue Two

Whether USD #231, in accordance with state and federal regulations implementing the IDEA, provided the Student with a free and appropriate public education (FAPE), after the Student was expelled due to behaviors related to their disability. K.A.R. 91-40-1(z); K.A.R. 91-40-36(a); 34 C.F.R. §§ 300.101; 300.17.

According to K.A.R. 91-40-1(z), a FAPE means special education and related services that meet the following criteria: are provided at public expense, under public supervision and direction, without charge, meet the standards of the state board, include an appropriate preschool, elementary, or secondary school education, and are provided in conformity with an individualized education program.

According to K.A.R. 91-40 -36(a), the determination of services for children with disabilities suspended from school or placed in interim alternative educational settings if a child with a

disability is properly suspended from school for more than 10 cumulative school days in any school year, the special education and related services to be provided to the child during any period of suspension shall be determined by school officials of the agency responsible for the education of the child.

The Parent alleged the Student was provided “no alternative to a free appropriate public education ” after their expulsion from the Middle School.

The LEA claims the Student was not accessing their FAPE due to the Parents unilaterally withholding the Student from accessing services during the IAES.

The Student accumulated over 10 cumulative days of OSS by March 3, 2025, which triggered the requirement for the LEA to begin providing FAPE services immediately on the 11th day of removal. The evidence shows the LEA failed to provide these mandated services from March 3, 2025, until the start of the IAES services on March 6, 2025, for a total of three instructional days. The March 5, 2025 PWN offered compensatory services, which was intended to mitigate the LEA lapse in service.

The LEA's subsequent actions following the March 5, 2025, MDR complied with the IDEA. The MDR determined the behavior (which resulted in serious bodily injury to staff) was a manifestation of the disability, but due to the severity, the team appropriately placed the Student in a 45-day IAES. Services, including compensatory hours, were proposed to begin on March 6, 2025, and were continually offered via subsequent PWNs through May and August 2025, proposing modified part-time services while pursuing an out-of-district placement.

However, according to the Director of Special Education and Coordinator 1, the Student never received any of the offered services during the IAES or subsequent periods because the Parents either declined the services via email or made the Student unavailable. Since an LEA's obligation is to make a FAPE available, and the LEA documented multiple offers of service through PWNs, which were either unsigned or refused, the LEA met its requirement to offer a FAPE for the extended period. Furthermore, the LEA demonstrated good faith in pursuing the IEP team's agreed-upon LRE placement, an outside special day school, by placing the Student on multiple waitlists starting in December 2024, ultimately securing a spot for the Student to begin on October 2, 2025.

Based on the foregoing, according to IDEA and Kansas special education regulations *it is not substantiated* that the LEA denied the Student a FAPE.

Tania Tong, Licensed Complaint Investigator

Right to Appeal

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

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

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

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

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

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

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