KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #500
ON JULY 16, 2026

DATE OF REPORT: AUGUST 15, 2026

This report is in response to a Complaint filed with our office on behalf of a student, -------, by the Complainant, -------. In the remainder of the report, the student will be referred to as "the Student" and the complainant as "the Complainant."

The Complaint is against USD #500, Kansas City Public Schools. In the remainder of the report, "the School" and the "local education agency (LEA)" shall refer to USD #500.

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 "local education agency (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 LEA. In this case, the KSDE initially received the Complaint on July 16, 2026, and the 30-day timeline will end on August 15, 2026.

Allegations

The following issues will be investigated:

Issue One: Whether USD #500, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), properly determined the Student's eligibility for special education and related services. Specifically, by:

1. Failing to consider the Student's behavior and its relationship to the Student's academic functioning;
2. Failing to draw upon information from a variety of sources, including teacher input and an Independent Educational Evaluation (IEE); and
3. Relying primarily on exclusionary factors to determine the Student was not eligible for special education and related services. K.A.R. 91-40-8(a)(c), K.A.R. 91-40-10(a)(1)(C)(D)(c)(d), K.A.R. 91-40-12(e); K.S.A. 72-3428(b)(1)(2)(f)(i); 34 C.F.R. §§ 300. 304, 300.305(a)(2)(i)(A)(iii)(A)(c)(d), 300.306(b)(c).

Issue Two: Whether USD #500, in accordance with state and federal regulations implementing the IDEA, determined whether the Student met the eligibility criteria for Autism and Specific Learning Disability (SLD) and whether the team appropriately determined additional data was unnecessary to determine exceptionality. K.A.R. 91-40-1(f)(mmm), K.A.R. 91-40-11, K.A.R. 91-40-8(e)(2), K.A.R. 91-40-10(a)(1)(F)(e); K.S.A. 72-3428(b)(4)(k); 34 C.F.R. §§ 300.305(d), 300.307 through 311, 300.8.

Issue Three: Whether USD #500, in accordance with state and federal regulations implementing the IDEA, provided accurate information on a Prior Written Notice (PWN) when the Student was found not eligible for special education or related services. K.A.R. 91-40-26; 34 C.F.R. § 503(b).

Investigation of Complaint

The Complaint Investigator interviewed the Parent and the Complainant on August 5, 2026. The following LEA staff were interviewed on August 5, 2026: Special Education Coordinator 1 and Special Education Coordinator 2.

In completing this Investigation, the Complaint Investigator reviewed documentation provided by the Complainant and 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. Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent, 05/15/26
2. Prior Written Notice for Evaluation or Reevaluation and Request for Consent, 03/13/26, 03/26/26, 04/02/26
3. Evaluation/Eligibility Report - Initial Evaluation, 05/15/[26]
4. Individualized Education Program (IEP) Meeting Notes and Summary, 05/15/26
5. District Special Education Policies and Procedures, updated 01/16/26
6. KSDE Eligibility Indicators Handbook, 07/2025
7. Student Period Attendance Detail, 2025-26 School Year
8. Credit Summary Report, 07/20/26
9. Emails between parties, 03/02/26-05/12/26

Background Information

This Investigation involved a tenth-grade student enrolled at a high school in USD #500. The Student is not currently receiving special education or related services as a child with a disability per the IDEA.

Findings of the Investigation

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

1. On March 2, 2026, the Executive Director of Special Education emailed the Parent to provide an update regarding the Parent's request for a special education evaluation and wrote, "Thank you for letting us know that [the Student] was recently evaluated and has received a diagnosis. Once you have that report, it will be very helpful to share it as part of this process. As [the Vice Principal] shared, [the Student] will still go through the [Student Intervention Team] SIT process; however, this will not delay our response to your request for a special education evaluation." (D165)
2. On March 6, 2026, the School Psychologist emailed the Parent regarding three ways the School would support the Student through the SIT process to meet the Student's social/emotional and academic needs. The email included April 15, 2026 as a meeting date to review the Student's progress. (D167)
3. On March 13, 2026, the Parent reiterated via email "… their previous request that the [Individualized Education Program] IEP evaluation be conducted concurrently with the SIT process." (D168) The School Psychologist responded on the same day and indicated a new PWN would be drafted indicating the evaluation process would begin, and a Parent signature was needed. (D168)
4. PWN, dated March 13, 2026, indicated:
    a. The LEA proposed to conduct an initial evaluation for special education that would include new data in the following areas:
        i. Social/Emotional/Behavioral Status;
        ii. General Intelligence;
        iii. Academic Performance; and
        iv. Other: Including observation and information from an outside evaluation.
    b. Explanation: To determine eligibility.
    c. Options considered: "The team considered not conducting an evaluation and providing added classroom support. The team rejected this option as a disability is suspected[,] and additional data is needed in order to determine continued eligibility or to determine the extent the learner's behavior is impacting [their] ability to make educational progress."
    d. Data used: "Information from a recent evaluation ([P]arent provided summary and reported that [the Parent] will provide a copy of the evaluation[)], teacher input, classroom, testing, and attendance data."
    e. No other relevant factors were noted.
    f. The School Psychologist emailed the PWN on March 13, 2026.
    g. Consent was granted via check mark beside the "I give consent for the evaluation" box, but was neither signed nor dated. (D6-D9)

5. Between March 13, 2026 and March 23, 2026, the School Psychologist and the Parent exchanged emails on various topics including the Parent's confusion around the March 13, 2026 PWN and the signing thereof. An additional area of concern regarding the Student's communication was also noted. (D169-D172)
6. On March 26, 2026, the Parent emailed the LEA indicating the Student would be absent as they had been admitted to the hospital "following a crisis" and attached a doctor's note and an updated safety plan. (D169) On the same day, the School Psychologist emailed the Parent, the Special Education Coordinator, and the Vice Principal to share, "I spoke with [the Parent] about the current evaluation plan[,] and we agreed to discontinue the current evaluation process to allow the family [to] focus on establishing stability and adjusting to new medication changes." (D173)
7. PWN, dated March 26, 2026, indicated:
    a. Proposal: The LEA refused to conduct an initial evaluation.
    b. Explanation: "The Individual Education Plan Team determined that assessments were not warranted at this time to allow the [S]tudent to stabilize after a hospitalization and medication change. Therefore, the [S]tudent will be referred to the Student Intervention Team at [the School] to support the [S]tudent through the safe transition back to school." (D19)
    c. Options considered: "Consideration was given to conducting the evaluation. This option was considered and rejected as not being the most educationally appropriate option available to [the Student] at this time. The team agrees to proceed with collecting additional data and supporting the [S]tudent's safe return to school."
    d. Data used: A review of existing data, Parent and teacher input, current classroom performance, attendance, and behavioral reports.
    e. Other factors: "The [Parent's] request for evaluation will be reconsidered if additional information [is] gathered, [the Student] demonstrates safety and stability, and the team continues to suspect a disability."
    f. The School Psychologist delivered PWN via email on March 26, 2026.
    g. Neither consent nor non-consent was noted. (D18-D21)
8. PWN, dated April 2, 2026, indicated:
    a. Proposal: The LEA proposed to conduct an initial evaluation for special education that would include new data in the following areas:
        i. Social/Emotional/Behavioral Status - inclusion of a social work evaluation;
        ii. General Intelligence;
        iii. Academic Performance;
        iv. Communicative Status - language assessment; and
        v. Other: Classroom observations.
    b. Explanation: The team proposed an initial evaluation and noted they "determined to move forward with the evaluation but acknowledge the learner

was recently admitted to the hospital within the last month and possible medication changes that may have [an] impact on [their] participation in the evaluation, testing, validity, and interpreting evaluation results."

c. Options considered were noted.

d. Data used: Information from a recent evaluation of which the Parent provided a summary and that the evaluation would be forthcoming, and "teacher input, classroom, educational testing, and attendance data." (D42)

e. Other relevant factors indicated, "The child has no know[n] history of participating in multi-tiered behavioral or classroom supports."

f. The School Psychologist emailed PWN to the Parent on April 2, 2026.

g. Neither consent nor non-consent was noted. (D12-D15)

9. The following emails were exchanged on May 1, 2026 between the Parent and the LEA:

a. The Parent emailed the LEA to share the Student's diagnostic summary while they awaited the full report. (D174)

b. The School Psychologist replied and indicated teachers were reporting the Student was not attending and not participating in class. (D175)

c. The Parent replied, listing the diagnoses from the diagnostic summary letter and wrote, "These conditions directly affect [the Student's] ability to focus, remain organized, maintain consistent attendance, and participate in the school environment as expected." Additionally, the Parent listed a timeline of events beginning with their request for an evaluation and asked for a status update regarding the Student's evaluation. (D174-D175)

d. The Special Education Coordinator responded, describing the LEA had 60 school days from the date PWN was signed to complete an initial evaluation and indicated the team was "… having difficulty gathering the data" due to the Student's attendance. Additionally, the Special Education Coordinator wrote, "We do appreciate the medical diagnosis documentation you have provided, and we absolutely take that information into consideration during the evaluation process. However, eligibility determinations cannot be based solely on outside medical documentation. Our district serves many students with [Attention-deficit Hyperactivity Disorder] ADHD, Autism, and other diagnoses who do not require special education services because those diagnoses do not necessarily prevent them from successfully accessing the general education curriculum. At this time, we do not yet have enough information to determine whether [the Student's] diagnoses are impacting [their] educational access. I understand this process can feel frustrating, but I want to reassure you that these procedures are in place to protect [the Student] and ensure we are making the best educational decision for [them]. The district must ensure students are educated in the Least Restrictive Environment (LRE), meaning students should be educated alongside nondisabled peers to the maximum extent appropriate,

with supports and interventions considered before moving to more restrictive settings." (D175-D176)

10. An Evaluation/Eligibility Report for an initial evaluation, dated May 15, 2026, included:
    a. Background Information: The Student was referred for evaluation by the Parent, "who had expressed concerns in the areas of academic, social/emotional, and difficulties with attention and focus." It was noted the Student received an outside evaluation that described multiple diagnoses. According to the report, the Parent agreed to allow the School to gather more information through the intervention process, but "later requested to move forward and conduct the evaluation concurrently." It was noted the team determined to gather more information on the Student's cognition, achievement, social/emotional needs, and language, and perform a classroom observation. (D24)
    b. Evaluation Data Summary:
        i. Review of Existing Data:
            1. February 19, 2026: The Parent referred the Student for an initial evaluation. It was determined the Student would participate in the intervention process.
            2. March 2, 2026: The Parent requested concurrent evaluation and intervention processes.
            3. March 13, 2026: PWN was sent to the Parent to begin the evaluation process; additionally, the Parent requested multiple areas be added to the "areas to be assessed."
            4. March 26, 2026: PWN was sent to the Parent but was not signed "due to [P]arent questions about section C of the PWN."
            5. April 2, 2026: PWN was sent to the Parent, and they signed on April 8, 2026.
            6. May 4, 2026: The Parent submitted the Student's diagnostic summary from an agency. The full report was not available. The diagnostic summary noted the following diagnoses:
                a. Attention-deficit Hyperactive Disorder - inattentive type (ADHD), Autism Spectrum Disorder - level 2 (ASD); Alcohol Use Disorder - severe; Cannabis Use Disorder - severe; Generalized Anxiety Disorder, Major Depressive Disorder - recurrent episode - moderate; Persistent Depressive Disorder - early onset - moderate; Oppositional Defiant Disorder (ODD); and Specific Learning Disorder - reading, writing, and math (SLD).
            7. The Student was hospitalized on one occasion during the previous two months for "expressing harm to [them]self or others." (D24)

8. Observations included two teacher reports and a report from the Social Worker:
    a. One teacher report described the Student "skipping" class, and "[The Student] puts very little effort in [their] schoolwork. [The Student] tries to put on makeup during class and is disruptive most of the time. I am not sure what has happened recently. [The Student] was much better 1st semester, and I was told [the Student] was a good student last year … . It seems to be a motivation situation or external factors." (D25)
    b. Another teacher report indicated "[The Student] has turned in 11 of 14 assignments. Not always, but often [the Student] is on [their] phone during work time or direct instruction. At this point (having not seen much completed work)[,] I cannot speak to [the Student's] full comprehension, but it appears that [the Student] does understand, [the Student] just isn't putting [their] distractions away long enough to receive points or finalize assignments."
    c. A report from the Social Worker noted the Student checked in with them approximately once per week, usually to process feelings of overwhelm in their classes. Additionally, "[The Student] struggles to understand at times and feels behind. [The Student] has also come in to talk through some issues with friends. It can be hard for [the Student] to understand peers and likes to talk through those feelings. I met with [the Student] last Thursday and today[,] and [the Student] is at baseline. [The Student] is functioning well in [their] classes and has a positive affect." (D25)
        i. "Based on a review of existing data, the team determines that … [n]ew information is in the areas specified on the Notice for Evaluation/Reevaluation and Request for Consent." (D25)

ii. Social/Emotional data was collected by observations and tests and included the Behavior Assessment System for Children-Third Edition (BASC-III). A general education teacher and the Parent completed the checklists. Both the Parent and teacher BASC-III ratings identified clinically significant concerns regarding the Student's attention problems and adaptive skills. The teacher reported no scales in the "clinically significant" range, rating ADHD, autism, Emotional Behavior Disorder (EBD) Probability, and Functional Impairment as "at risk." The Parent's

ratings fell into the "clinically significant" range across all categories. The Parent reported EBD as the Student's highest overall score (94). Both raters' results were deemed acceptable for interpretation overall, however, the Parent's F-Index flagged a need for caution due to potential overly negative reporting. (D27)

iii. Adaptive behavior data was collected with tests, including the Autism Spectrum Rating Scales (6-18) (ASRS). Both Parent and teacher evaluations indicated the Student exhibited symptoms and features consistent with ASD under DSM-5 criteria, though the Parent observed slightly higher overall severity, rating the student in the "very elevated" range (score 73) compared to the teacher's rating in the "elevated" range (score 66). Both raters consistently identified the Student's difficulties in adult socialization, atypical language, sensory sensitivity, and attention/self-regulation, as well as secondary concerns involving unusual behaviors, stereotypy, and behavioral rigidity.

iv. Cognition data included tests and indicated the Student experienced an overall "low average" level of intellectual ability when compared to same-age peers. The Student's scores on the verbal comprehension, fluid reasoning, and processing speed indices noted abilities within the "low average" range. The Student's scores on the visual-spatial and working memory indices fell into the "average" range. (D30)

v. Academic performance data included observation and tests. The Student's results from the WIAT-4 indicated the Student's Total Achievement Composite fell into the "very low" range, placing the Student in the third percentile when compared to same-aged peers. The Total Achievement Composite included the following scores:

1. Reading Core, low average range, 16th percentile.
2. Written Expression Core, very low range, 3rd percentile.
3. Mathematics Core, extremely low range, 1st percentile.
4. Testing observation comments noted, "[The Student] worked hard throughout the testing session and put forth excellent effort. [They] appeared at ease and comfortable in the testing environment. … [The Student] tried hard on all of the subtests and the examiner feels this is an accurate representation of [their] current academic performance."

vi. Conclusion: The Student exhibited relative strengths in the areas of basic reading, reading comprehension, and spelling, and relative weaknesses in written expression, math problem-solving, and numerical operations. (D32)

vii. Communication data was collected from a record review, an interview, an observation, and tests, and resulted in the following:

1. Listening Comprehension Index, below average.
2. Reading Comprehension Index, below average.
3. Voice and fluency were consistent with age expectations, and speech intelligibility was 100% with both familiar and unfamiliar listeners.
4. Survey results from teachers indicated the Student understood verbal and multi-step directions, could express their ideas clearly with age-appropriate vocabulary and was able to remain on topic.
5. The language assessment scores did not indicate a "significant language delay," nor did the Student demonstrate a significant speech or language disorder that required speech/language therapy. (D34)

viii. An observation conducted by the Evaluation Facilitator during the Student's science class included a soft skills inventory, time-on-task comparison, and observational notes. During the observation, the Student demonstrated one of the eight observed soft skills. The Student was on-task 0% of the time when compared to a same-class peer who was on-task 85% of the time, and showed "no signs of class participation or interactions with teachers or peers." Additionally, "At the conclusion of the classroom observation [the Student] remained off[-]task, showing no interest or effort in classroom learning. [The Student] remained quiet, listening to [their] earbuds, scrolling pictures unrelated to [their] classwork when the observer exited the classroom." (D35)

c. Eligibility Determination: "No" was checked for the eligibility determination questions, indicating the Student did not meet the definition of a child with exceptionality as outlined by the law, nor did they need special education and related services. (D36)

d. Exclusionary Criteria: According to the evaluation document, a student "must NOT be determined to be a child with an exceptionality if … any of the determinant factors are marked YES …."

i. The following determinant factors were checkmarked "yes":

1. For All Disabilities:

a. "Lack of appropriate instruction in reading, including the essential components of reading instruction or a lack of appropriate instruction in mathematics."

b. "The [S]tudent does not otherwise meet the eligibility as a child with an exceptionality. Evidence shows that the [S]tudent's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA[,] such as frequent moves, incarceration, substance abuse, chronic absenteeism, etc."

c. It was noted, "Student speaks fluent English, but was considered chronically absent according to the school attendance records, missed classes throughout the day, demonstrates difficulty completing [their] assignments, and was reported to be using drugs and alcohol during the school day."

2. For Learning Disability Only:
    a. "No" was checkmarked indicating that the Student's lack of achievement or progress toward grade-level standards, or exhibited pattern of strengths and weaknesses, was not primarily the result of a visual, hearing, or motor impairment, an emotional disturbance [ED], cultural factors, environmental or economic disadvantage, or an intellectual disability. It was noted, "Child has adequate cognitive abilities, no noted concerns with hearing, vision, or motor impairment, demonstrates maladaptive behavioral difficulties and does not have any existing significant other factors that may be contributing to [their] difficulties in school."
3. For Autism Only:
    a. "Yes" was checkmarked, indicating the Student's achievement was the result of lack "of appropriate instruction in reading, including the essential components of reading instruction" and the lack "of appropriate instruction in math."
    b. "No" was checkmarked, indicating the Student's achievement was not a result of limited English proficiency, and that the Student did not meet the eligibility criteria as a child with an exceptionality, nor was their educational performance adversely impacted primarily due to an emotional disturbance. (D36)
    c. It was noted the Student demonstrated some characteristics of autism, had a diagnosis of autism from an outside provider, "but has not [sic] difficulty making adequate progress after participating in progress monitoring, modifications of instruction, curriculum, and environment."
4. For Emotional Disturbance Only:
    a. "No" was checkmarked, indicating the Student was not socially maladjusted nor did the Student also experience an emotional disturbance.

b. It was noted, "[The Student] demonstrates significant recent change in overall mental health status, has begun using drugs and alcohol at school, recently started treatments of psychotropic medications due [to] decompensation in mental health stability and recently received [a] new mental health diagnosis."

5. For Multiple Disabilities Only: "No" was checkmarked, indicating there was no evidence of co-existing impairments determined by a records review and interviews, and there was no evidence that an "educational program for solely one impairment is insufficient."
    a. It was noted, "Measures of educational performance indicate that the combination of which causes such severe educational needs that those needs cannot be accommodated in special education programs solely for one of the impairments. Other Supporting Information: Records contain medical information which provides evidence of multiple disabilities."
    b. "Child has multiple impairments but are not considered directly impacting [their] ability to make progress in the classroom. Student's drug and alcohol usage as well as lack of motivation to complete work and participate in the classroom activities are having significant impact on [their] ability to make academic progress."(D37)

e. Evaluation Summary: Summaries were provided in the aforementioned assessment areas. Additionally, three teachers provided summaries of the Student's progress and shared concerns about work completion, engagement, and attendance. It was noted, "[The Student] is considered chronically absent as [they] had 84% school attendance as of the 5/5/2026 evaluation. Very little information was present as to progress monitoring, modifications of instruction, curriculum, and environment to address the [S]tudent's difficulties." The Overall Summary indicated, "… it was the determination of the multidisciplinary team that [the Student] does not meet initial criteria for special education services at this time as the team is unable to determine if the learner displays an educational disability or [their] lack of instruction, recent changes in mental health status, changes in [their] medication treatments, drug and alcohol use at school, or chronic absenteeism is contributing to [their] difficulties in the classroom."

f. The School Psychologist mailed and emailed the Evaluation/Eligibility Report to the Parent on May 19, 2026.

g. Three of the ten team members, including the School Psychologist, the Vice Principal, and the Special Education Coordinator, checkmarked "agree," indicating the evaluation addressed all areas of concern. Seven of ten team

members, including the Parent, the General Education Teacher, the Special Education Teacher, the Complainant, the Social Worker, the Speech Language Pathologist, and the Mental Health Worker did not check either the "agree" or "disagree" options. (D20-D40)

11. Meeting Notes, dated May 15, 2026, included:
    a. The team discussed and determined the Student was not eligible for special education. (D66)
    b. The summary of data, teacher reports, the classroom observation, and language testing were discussed. It was noted that the School Psychologist "went over the outside evaluation that was not yet complete and thus has not been submitted for review. The provider submitted a scripted note listing all of … the diagnos[e]s." The Parent indicated the Student "… has been using alcohol and marijuana while at school." (D70) Results in the following areas were discussed: cognition, academic, social-emotional, and autism. It was noted the team discussed eligibility and the School Psychologist reviewed the criteria for Other Health Impairment (OHI), ED, SLD, and autism, and the following was noted for each category:
        i. Autism: "Prong two requirements indicated a need for progress monitoring data indicate[d] intense or sustained resources [were] needed in order for [the] child to demonstrate adequate progress [sic]. Also, despite modifications of instruction, curriculum, and environment, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. Data for this was not present at the time."
        ii. OHI: "Also discussed prong 2 with the team not being able to provide data for modifications in instruction, curriculum, and environment and the [S]tudent's lack of participa[tion], chronic absenteeism (84%)[,] and skills class makes it difficult to quantify where [the Student's] abilities are."
        iii. ED: "Child has been through a transient time of increase[d] mental health instability and this has not been established as evidence that characteristics have been exhibited over a long period of time."
        iv. SLD: "[The School Psychologist] noted a pattern of strengths and weaknesses in [the Student's] writing and math scores but the impact of [the Student's] ability to be in class and receive an appropriate education was affected by [the Student's] chronic absenteeism, skipping, and missing class time."
    c. Notes indicated the Complainant believed the Student met the eligibility criteria due to the Student's inability to "… sustain in [their] math class and trouble advocating for [them]self [sic]." The Social Worker indicated they believed an IEP would address the Student's behaviors more than a 504. The Special Education Coordinator "… stated that the data indicated that [the Student] does not

demonstrate a need for specialized instruction at this time due to other contributing factors that may be contributing to [their] difficulties in school including skipping class, not participating in class, completing homework, and engaging in classroom assignments." The Vice Principal indicated there were general education supports that would "likely be more effective than an IEP at this time." The Parent indicated that general education supports had not been effective for the Student. The Social Worker advocated for an IEP to provide a smaller classroom and daily support, and the Special Education Coordinator noted the Student would likely not qualify for that setting. The School Psychologist acknowledged potential disagreement with the decision, referred the team to building staff for follow-up, and recommended exploring a 504 plan while continuing behavioral supports and accommodations. (D66-D70)

12. PWN, dated May 15, 2026, indicated:
    a. The team met on May 15, 2026 to review the following: evaluation/assessment data, evaluations or information provided by the family, classroom assessments, and teacher and staff observations to determine whether the Student was eligible for special education.
    b. In the Identification/Eligibility section of the PWN, the following boxes were checked:
        i. "Your child is not eligible for special education."
        ii. "Your child does not meet the criteria as a child with an exceptionality."
        iii. "Special education services are not necessary to enable your child to receive educational benefits in accordance with [their] abilities or capabilities." (D1)
    c. Proposal: "After completing an evaluation to determine eligibility in the areas of Specific Learning Disability, Autism, Other Health [I]mpaired, and Emotional Disability, the IEP Team determined" the Student did "… not meet initial eligibility for any of these criteria for special education services at this time."
    d. Explanation: "Based on the criteria for exclusionary factors and drug and alcohol use at school, chronic absenteeism, and lack of consistent educational engagement and opportunities due to tardiness and chronic absenteeism (based on federal definition of chronic absenteeism) and the information/data provided in the initial evaluation report and discussion and the eligibility meeting on 5/15/2026." (D2)
    e. Options considered: The team considered qualifying the Student in the aforementioned areas, but determined the Student did not meet "educational criteria based on significant factors contributing to [their] difficulty to make progress and exclusionary factors including drug and alcohol use at school, chronic absenteeism, and lack of consistent educational engagement and opportunities due to tardiness and absenteeism. Progress monitoring data was difficult to obtain due to lack of participation in [the] classroom[,] and

implementation of intensive interventions were [sic] difficult to obtain due to attendance and issues with skipping class."

f. Data: Information used to make the decision included the "… comprehensive evaluation 5/15/26 including student reports, teacher reports, evaluation data including [t]he Wechsler Intelligence Scale for Children, Fifth Edition [WISC], Wechsler Individual Achievement Test, Fourth Edition [WIAT-4], ASRS, Behavior Assessment Scale for Children, Third Edition, [l]anguage assessments, and the discussion at the 5/15/26 eligibility meeting."

g. Relevant Factors: "Based on the [S]tate … Exclusionary Factors[,] it is indicated that a student must not be qualified for special education services if … there is a lack of appropriate instruction in math or reading, presence of substance abuse, o[r] chronic absenteeism. Data from [the Student Information System] indicates [the Student] is considered chronically absent and missed significant periods of instruction due to being late to [their] math class according to [their] math teacher. [The Parent] indicated that [the Student] is using drug[s] and alcohol at school." (D3)

h. The School Psychologist mailed and emailed PWN to the Parent on May 19, 2026. (D4)

13. The LEA Special Education Handbook, updated January 16, 2026, included the information regarding evaluations, the use of IEE's, the examination of exclusionary factors, the eligibility process and exceptionality categories, and eligibility for SLD. (D74-D89)

14. The State Eligibility Indicators, revised July 2025, defined "lack of appropriate instruction" under an SLD eligibility as:

    a. In reading: "Evidence shows that the child's previous reading instruction and curriculum included explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills and reading comprehension strategies. This evidence may come from; (a) an evaluation of the school's ELA core/tier 1 curriculum and supplemental materials [The Reading League Curriculum Evaluation Guidelines], (b) that the child actually received instruction provided by highly qualified teachers using appropriate ELA core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data."

    b. In math: "Evidence shows that the child's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from; (a) an evaluation of the school's core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data." (D114)

15. The Student Period Attendance Detail described the Student's attendance for the 2025-26 school year:
    a. Quarter 1: 2 class period absences, 10 tardies;
    b. Quarter 2: 62 class period absences, 19 tardies;
    c. Quarter 3: 68 class period absences, 25 tardies; and
    d. Quarter 4: 87 class period absences, 20 tardies. (D151)
16. The Student's Credit Summary Report (transcript) indicated the Student earned 6 credits in 9th grade and 5.5 credits in 10th grade. (D152)
17. On July 16, 2026, the Complainant, an educational advocate, filed this Complaint. (Formal Complaint, July 16, 2026)

Parent and Complainant Interview

18. During an interview with the Complaint Investigator, the Parent stated the Student's behavior, as it related to their academics, was brought to the LEA's attention by the Social Worker and the math teacher, who indicated the Student struggled in the classroom and had difficulties maintaining their focus. The Parent indicated the Social Worker stated the Student could not advocate for themself. The Parent perceived the LEA did not listen to the statements made by the Social Worker or the math teacher. According to the Parent, the LEA's evaluation found the Student had traits of autism and ADHD. The Parent said, "… [the LEA] said … because [the Student] would rather not be in class, that … [the Student] doesn't qualify for an IEP or any special services because [the Student] doesn't engage enough … because [they] would avoid classrooms." The Parent stated the LEA said they did not have enough data to qualify the Student for services. (P1, 01:33; P1-P2, 04:09)
    a. The Complainant added that the math teacher observed the Student was copying and not learning. The Complainant indicated the Student was overstimulated by the classroom setting and wanted to remove themself from it. (P2, 04:23)
    b. Regarding determining eligibility, the Parent believed the LEA should have considered why the Student did not like staying in the classroom. (P2, 05:54)
19. The Complainant explained an outside diagnosis indicated the Student had a specific learning disability in reading, writing, and math. They added that when the LEA conducted the evaluation, the Student scored low in those subjects, but the LEA indicated if the Student "tried harder, [they] would be average." The Complainant also shared the Student did not have the capability to take notes and then apply it, and it was "too overwhelming" for the Student to understand. (P2, 07:44; P3, 08:38, 08:51, 09:43)
20. The Parent stated it appeared the LEA did not want to consider the diagnosis report from the outside agency, and that the LEA had to "prove" those things themselves. The Parent shared that they requested speech and language, and transition to be included in the evaluation, but was told by the School Psychologist that it did not apply to the

Student because they were verbal. The Parent indicated the LEA "reluctantly" agreed to include those requests as part of the evaluation. The Parent perceived the testing was "quick" and only involved "one or two teachers," and then the LEA concluded they did not have enough data to observe the Student in the classroom. (P3, 10:07; P4, 12:05, 13:09) The Parent felt they were dismissed in the eligibility meeting by the LEA, which they described as the LEA "would just shrug it off and move on." (P4, 13:55)

a. The Complainant added, "I felt like they were very close-minded with it and they came in knowing what they were going to say. And it did not feel like an open conversation as a team. And I pointed out what the math teacher said in the meeting … and they're like, 'oh, [they] didn't say that." (P4, 14:35)

21. The Complainant recalled only one observation was conducted during the eligibility process and they did not perceive it created a full picture of the Student's capabilities. (P5, 15:28) The Parent and the Complainant recalled the Student did not qualify for services due to lack of engagement, absenteeism, and substance use. (P5, 16:32, 17:35; P6, 21:29)
22. The Parent shared the Student's substance problem only occurred at school, and the root cause was related to peer pressure and as a way for the Student to "calm [their] nerves" when they were stressed about school. The Parent perceived the School used the Student's substance use as a reason to exclude the Student from services. (P6, 19:50)
23. The Parent shared the Student masked at School due to their autism. They indicated the LEA did not consider the Student's masking behavior during the eligibility process or as a reason why the Student did not like being in class. (P6, 22:07) The Complainant perceived the LEA was "fixated" on the engagement piece and did not put forth effort in understanding the underlying causes of the Student's behavior. (P6, 23:25; P13, 48:27)
24. The Parent stated the LEA did not talk much about the Student's autism eligibility during the meeting, other than a teacher's test results showed some elevation. They indicated the main focus was on the Student's lack of engagement, attendance, and participation. (P7, 24:02) The Complainant added the LEA stated they needed to try interventions through a 504 plan before moving forward with an IEP. (P7, 26:10)
25. The Parent stated the Student's eligibility for SLD was not discussed at the meeting, and the LEA said they had to follow the guidelines, which the LEA stated the Student did not fit. The Parent indicated the Social Worker advocated for the Student during the meeting because they knew the Student was struggling. (P7, 26:57)
26. The Parent indicated the LEA did not consider or seek out any additional data to determine the Student's eligibility. (P8, 29:22)
27. According to the Parent and the Complainant, the LEA did not have the full outside evaluation report at the time of the eligibility decision-making meeting. (P9, 33:11) The Parent believed they provided the report to the LEA after the evaluation meeting, due to delays in the outside provider completing it. (P9, 33:12) The Parent stated they did not request for the eligibility meeting to be delayed, but was in "constant contact" with the LEA about the delay in receiving the report. (P9, 34:13)

28. The Parent believed the outside evaluation report would not have made much of an impact on the outcome of the eligibility meeting. (P9, 35:06) The Complainant disagreed and said, "I think this report would give a whole new perspective also on, especially the autism and the learning disabilities, of what that looks like, the rating scales … and it'd have a better understanding where [the Student] [is] coming from as a student." (P10, 36:07)
29. The Parent shared the Student's grades were always "really low," even prior to the 2025-26 school year. They indicated the Student was "just passing" in middle school. (P10, 39:11)
30. The Parent explained they wanted "speech and therapy, speech and language," and transition information to be included on the May 15, 2026 PWN. They also indicated the PWN incorrectly described the Student was hospitalized for longer than they actually were, which the LEA corrected upon request. (P10, 40:20; P11, 42:07)
31. The Parent stated the LEA told them during the evaluation meeting that because of the Student's avoidance and skipping class, an IEP would not help. (P12, 45:09)

Special Education Coordinator 1 Interview

32. During an interview with the Complaint Investigator, Special Education Coordinator 1 stated chronic absenteeism was the team's main concern, and it was difficult to test the Student because they were not in class. (P2, 02:39)
33. Regarding how the Student's behavior impacted their academics, Special Education Coordinator 1 said, "… we had the drugs and alcohol that were pervasively used. I just believe not being in class, you're not going to get the content and that's going to affect if you're learning the curriculum. So that was … a concern, something we always look at." (P2, 03:10)
34. Special Education Coordinator 1 indicated there were certain behaviors that if a student exhibited, that student could not be qualified for special education. (P2, 03:47) In the case of the Student, Special Education Coordinator 1 explained substance abuse and chronic absenteeism were not "qualifications for special education." They also indicated if a student was not regulated during the testing, it was difficult to know if the data was valid, which impacted the team's ability to determine if a student had an exceptionality. (P3, 05:12) They stated the LEA received information about the Student's drug and alcohol use from the Parent, the Complainant, and an outside report. (P3, 06:58)
35. Special Education Coordinator 1 explained the Student was not eligible for special education under the category of autism due to changes in their mental health status, changes in their medication, substance abuse, and chronic absenteeism. They indicated the team could not determine if the Student was not accessing the general education curriculum under the exceptionality of autism. (P4-P4, 07:28, 08:37) They indicated the team followed the same process for determining the Student was not eligible under the exceptionality of a specific learning disability. (P4, 10:09)

36. Special Education Coordinator 1 stated they did not need any additional data to make eligibility determinations, but needed the Student to be regulated so they knew the testing was valid. (P4, 10:44)
37. Special Education Coordinator 1 explained different aspects of the Student's credit summary report. They indicated it showed the credits earned for each class. They explained students needed 25 credits to graduate and could receive up to 8 credits per school year. They described the Student had earned 6 out of 8 credits by the end of their ninth grade year, and 5.5. credits by the end of tenth grade. They stated the Student was neither "on track" or "off track" to graduate because they could earn enough credits in the last two years of high school. (P5, 12:23, 13:09, 14:38; P6, 14:54, 15:10)

Special Education Coordinator 2 Interview

38. During an interview with the Complaint Investigator, Special Education Coordinator 2 explained the LEA looked at what the Student's academic need was, which was assessed through academic testing. (P1-P2, 01:32) They shared the LEA requested independent evaluations from outside providers regarding the Student's social-emotional issues. They indicated the team also reviewed the factors for autism. The team noted the Student had had little school-based interventions, and many absences due to multiple hospitalizations. (P2, 03:44) They said, "… what we were finding was … that chemical dependency, maladjustedness, all of the exclusionary factors for certain disabilities were very present. The other issue was that based on MTSS [multi-tiered systems of support], which is part of our requirement to eliminate a lot of the exclusionary factors … at the time there was no MTSS interventions." (P2, 04:55)
39. Special Education Coordinator 2 stated that in regards to autism, the team reviewed the Student's mental health diagnoses and their medications. They described there were issues because the medications could have side effects which mimicked autism. (P3, 07:12)
40. Special Education Coordinator 2 described the Student's as "… more of a severe 504 mental health case situation with chemical dependencies and maladjustments than it was, for instance, schizophrenia, bipolar … ." (P3, 08:24) They indicated the team could not exclude that missing "substantial" amounts of school was not an issue, and that extended periods of hospitalizations had not limited the Student's instruction. (P3, 09:50)
41. Special Education Coordinator 2 indicated the Student had not been considered for a 504 plan. They stated the LEA was "inundated with all of this data" that the Student needed intervention, but the problem was the LEA needed to have other interventions in place for the Student. (P3-P4, 13:06)
42. Special Education Coordinator 2 stated they learned the Student was chemically dependent from independent educational evaluations and a chemical dependency report. (P6, 22:28) They stated those reports were used in the evaluation process. (P7, 24:05)

43. According to Special Education Coordinator 2, the Student was not eligible for services under the category of SLD because the Student had not received the instruction required for their grade level work due to their absences. They said, "… between [the Student's] absences, [their] extended hospitalizations … [they] would not have received sufficient nor congruent instruction for us to determine that [they] had even received the instruction that [they] needed to adequately score on any of the tests. … And an exclusionary factor for learning disabilities is that you have to have been exposed to that instruction." (P7, 24:27)
44. Regarding the Student's transcript, Special Education Coordinator 2 stated that in ninth and tenth grade, the Student did not have sufficient credit accumulation to have been able to make the "grade level transfers almost from one grade to another." (P8, 26:44) They confirmed the Student earned 6 out of 8 credits during ninth grade, and 5.5 out of 8 credits during their tenth grade year. (P8, 28:12)
45. Special Education Coordinator 2 stated they reviewed the required information for all of the eligibility criteria that was being evaluated. (P9, 31:27) They indicated the Parent had stated they had new information to include as part of the evaluation, but when the LEA received it, it was information they already had. (P11, 36:08)

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #500, in accordance with state and federal regulations implementing the IDEA, properly determined the Student's eligibility for special education and related services. Specifically, by:

1. Failing to consider the Student's behavior and its relationship to the Student's academic functioning;
2. Failing to draw upon information from a variety of sources, including teacher input and an IEE; and
3. Relying primarily on exclusionary factors to determine the Student was not eligible for special education and related services. K.A.R. 91-40-8(a)(c), K.A.R. 91-40-10(a)(1)(C)(D)(c)(d), K.A.R. 91-40-12(e); K.S.A. 72-3428(b)(1)(2)(f)(i); 34 C.F.R. §§ 300.304, 300.305(a)(2)(i)(A)(iii)(A)(c)(d), 300.306(b)(c).

According to K.A.R. 91-40-8(a)(c), each agency shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services. Each evaluation shall include procedures to determine the following: whether the child is an exceptional child; and what the educational needs of the child are. As a part of an initial evaluation, if appropriate, each agency shall ensure members of an appropriate IEP team for the child and other qualified professionals, as appropriate, comply with the following requirements: the evaluation team shall review existing evaluation data on the child, including evaluations and information provided by the parent or parents of the child; current classroom-based, local, and state assessments and classroom-based observations; and observations by

teachers and related services providers. On the basis of that review and input from the child's parent or parents, the evaluation team shall identify what additional data, if any, is needed to determine the following matters: whether the child has a particular category of exceptionality; what the present levels of academic achievement and educational and related developmental needs of the child are; and whether the child needs special education and related services.

According to K.A.R. 91-40-10(a)(1)(C)(D)(c)(d), after completion of appropriate evaluation procedures, a team of qualified professionals and the parent of the child who has been evaluated shall prepare a written evaluation report that includes a statement regarding each of the following matters: the relevant behavior noted during the observation of the child, and the relationship of that behavior to the child's academic functioning. An evaluation team shall not determine a child to be an exceptional child if the determining factor for that eligibility determination is the child's lack of appropriate instruction in reading or mathematics or limited English proficiency, and if the child does not otherwise qualify as a child with an exceptionality. Each evaluation team, in determining whether a child is an exceptional child and what the educational needs of the child are, shall meet the following requirements: the evaluation team shall draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. In addition, the evaluation team shall ensure that the information obtained from all of the sources specified is documented and considered.

According to K.A.R. 91-40-12(e), if the parent obtains an IEE at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the agency, if it meets agency criteria, in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child.

According to K.S.A. 72-3428(b)(1)(2)(f)(i), 34 C.F.R. §§ 300.305(a)(2)(i)(A)(iii)(A)(c)(d) and 300.306(b)(c), an agency shall provide notice to the parents of a child that describes any evaluation procedures such agency proposes to conduct. In conducting the evaluation, the agency shall: use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is an exceptional child and the content of the child's individualized education program, including information related to enabling the child to be involved, and progress, in the general education curriculum, and not use any single measure or assessment as the sole criterion for determining whether a child is an exceptional child or determining an appropriate educational program for the child. In making a determination of eligibility under this section, a child shall not be determined to be an exceptional child if the determining factor for such determination is lack of instruction in reading, including instruction using the essential components of reading instruction, math, or limited English proficiency. As part of an initial evaluation, if appropriate, the IEP team and other qualified professionals, as appropriate, shall: review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers'

observations; and on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine the following factors. These are: whether the child is an exceptional child and the educational needs of the child, the present levels of academic and related needs of the child; and whether the child needs special education and related services.

According to 34 C.F.R. § 300.304, the public agency must provide notice to the parents of a child with a disability that describes any evaluation procedures the agency proposes to conduct. In conducting the evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum. In conducting the evaluation, the public agency must not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. The public agency must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

Each public agency must ensure that assessments and other evaluation materials used to assess a child are selected and administered so as not to be discriminatory on a racial or cultural basis; are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer; are used for the purposes for which the assessments or measures are valid and reliable; are administered by trained and knowledgeable personnel; and are administered in accordance with any instructions provided by the producer of the assessments. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure). The child must be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. Also, in evaluating each child with a disability, the public agency must ensure the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child must be provided.

The Parent alleged the LEA failed to properly determine eligibility by relying on exclusionary factors without sufficient evidence that those factors—not the Student's disabilities—were the primary cause of the Student's educational needs. Further, the Parent maintained the eligibility determination improperly discounted disability-related behaviors by attributing them to motivation, attendance, and substance use without adequately considering whether those behaviors were manifestations of the Student's disabilities.

The LEA stated the multidisciplinary team considered multiple sources of data and did not utilize any single assessment or exclusionary factor as the sole basis for determining eligibility.

Regarding the variety of assessments administered and considered, the evidence supported a sufficient number of tests and observations were reviewed. While the full IEE report was not available at the time of the eligibility determination, a summary was considered. The Parent indicated they chose to hold the eligibility meeting as scheduled, even though the LEA did not have the full IEE report.

Regarding the Student's behavior, the evidence supported that the Student's substance abuse during school hours and on school premises was a known issue by both the LEA and the Parent. The Parent and the Complainant reported the Student's substance abuse was due to peer pressure, and only occurred at the School. While an SIT plan was proposed, the evidence did not indicate it was enacted. Despite assurance from the Executive Director of Special Education that the processes could occur at the same time, correspondence between the LEA and the Parent indicated the LEA would implement SIT and an evaluation when the Parent requested a special education evaluation. Special Education Coordinator 2 acknowledged the LEA did not follow procedure regarding MTSS interventions for the Student. The Complainant, the Parent, and the Social Worker indicated the Student displayed behavior concerns due to "overwhelm" from "masking."

Additionally, the LEA contradicted itself on whether the Student presented as "maladjusted." The eligibility report described the Student as both demonstrating "maladaptive behavioral difficulties" and "not socially maladjusted." Similarly, within the eligibility report, it was noted the Student experienced mental health struggles, along with interpersonal difficulties, while also denying the possibility the Student had an emotional disturbance, due to the Student not displaying these difficulties for a significant amount of time. With the IEE report summary listing mental and emotional health disorders, and the IDEA's requirement to assess, review, and discuss all possible disabilities, the eligibility report needed more clarity from the LEA around the exceptionality of emotional disturbance.

In Springer v. Fairfax County School Board, 134 F.3d 659 (4th Cir. 1998), the Court determined that when a student's struggles resulted from voluntary choices (such as truancy, drug use, etc.), it did not qualify them for special education services, but also did not preclude the existence of other contributing factors. Rather, the Court cautioned LEAs that finding a student socially maladjusted should not end the inquiry, because a student might be suffering an independent emotional disturbance. Here, the LEA cited substance abuse and absenteeism as

"contributing factors" to the denial of eligibility. While the IDEA does not include substance abuse or absenteeism as exclusionary factors, it does refer to lack of instruction as one.

As identified in the State eligibility identifiers, "lack of appropriate instruction" in reading or math is intended to ensure a student is not misidentified with a disability if the school failed to provide quality Tier 1 core curriculum, qualified teachers, or evidence-based interventions. However, the LEA inverted this standard by applying it to the Student's attendance rather than the LEA's instructional delivery. Special Education Coordinator 2 acknowledged the Student's absences occurred because of both medical reasons and truancy. As mentioned above, they also acknowledged the LEA did not follow standard intervention procedures, beginning in March 2026, when the Student was first suspected of having a disability.

Transcripts indicated the Student was making minimally adequate educational progress. Assessment data showed significant deficiencies in math and written expression. The eligibility report indicated the Student had no exclusionary factors for SLD. Special Education Coordinator 1 suggested the Student was not "regulated" during their assessments, therefore rendering the testing data "invalid." Testing observation comments contradicted this assertion, noting the Student was on task with the examiner.

Special Education Coordinator 1 and Special Education Coordinator 2 both explained in their interviews that the LEA believed the Student's substance abuse and absenteeism automatically made them ineligible for special education. However, as the IDEA does not specify either as exclusionary factors for autism or SLD, more analysis was warranted by the LEA.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is substantiated*** that the LEA failed to properly determine the Student's eligibility for special education and related services by failing to consider the Student's behavior and its relationship to the Student's academic functioning, and by relying primarily on exclusionary factors to determine the Student was not eligible for special education and related services. It is not substantiated that the LEA failed to draw upon information from a variety of sources, including teacher input and an IEE.

Issue Two

> Whether USD #500, in accordance with state and federal regulations implementing the IDEA, determined whether the Student met the eligibility criteria for Autism and SLD and whether the team appropriately determined additional data was unnecessary to determine exceptionality. K.A.R. 91-40-1(f)(mmm), K.A.R. 91-40-11, K.A.R. 91-40-8(e)(2), K.A.R. 91-40-10(a)(1)(F)(e); K.S.A. 72-3428(b)(4)(k); 34 C.F.R. §§ 300.305(d), 300.307 through 311, 300.8.

According to K.A.R. 91-40-1(f)(mmm), "autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three but not necessarily so, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and

stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term shall not include learning problems that are primarily the result of any of the following: visual, hearing, or motor disabilities; mental retardation; emotional disturbance; or environmental, cultural, or economic disadvantage.

According to K.A.R. 91-40-11, 34 C.F.R. §§ 300.308, 300.309, and 300.310, if a child is suspected of having a specific learning disability and believed to need special education services because of that disability, the agency shall ensure that the evaluation of the child is made by the child's parent and a group of qualified professionals, including the following individuals: the child's regular education teacher or, if the child does not have a regular education teacher, a regular classroom teacher qualified to teach a child of the child's age; and at least one person qualified to conduct individual diagnostic examinations of children, including a school psychologist, speech-language pathologist, or remedial reading teacher.

A group evaluating a child for a specific learning disability may determine that the child has that disability only if the following conditions are met: the child does not achieve adequately for the child's age or meet state-approved grade-level standards, if any, in one or more of the following areas, when the child is provided with learning experiences and instruction appropriate for the child's age and grade level: oral expression; listening comprehension; written expression; basic reading skill; reading fluency skills; reading comprehension; mathematics calculation; and mathematics problem-solving; and the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level standards, or intellectual development that is determined by the group conducting the evaluation to be relevant to the identification of a specific learning disability, using appropriate assessments.

A child shall not be determined to be a child with a specific learning disability unless the group evaluating the child determines that its findings are not primarily the result of any of the following: a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency. The group evaluating the child shall ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty. In conducting the observation, the group may employ either of the following procedures: use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the

child was referred for an evaluation; or have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.

According K.A.R. 91-40-8(e)(2), if the team determines that additional data is required to make any of the determinations specified in this rule, the agency, after giving proper written notice to the parent and obtaining parental consent, shall administer those tests and evaluations that are appropriate to produce the needed data. If the team determines that no additional data is needed to make any of the determinations specified in this rule, the agency shall give written notice to the child's parent of the following information: the determination that no additional data is needed and the reasons for this determination; and the right of the parent to request an assessment.

According to K.A.R. 91-40-10(a)(1)(F)(e) and 34 C.F.R. § 300.311, after completion of appropriate evaluation procedures, a team of qualified professionals and the parent of the child who has been evaluated shall prepare a written evaluation report that includes a statement regarding if the child was evaluated for a specific learning disability. If the evaluation team and the parent determine the parent's child to be a child with a specific learning disability, the evaluation team and the parent shall prepare a written evaluation report that includes a statement regarding each of the following matters: an indication of whether the child has a specific learning disability; the basis for making the determination, including an assurance that the determination has been made in accordance with applicable laws and regulations; the relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning; and educationally relevant medical findings. It should also include an indication of whether the child meets the following criteria: does not achieve adequately for the child's age or meet state-approved grade-level standards; and does not make sufficient progress to meet age standards or state-approved grade-level standards; or exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development; and the determination of the team concerning the effect of the following factors on the child's achievement level: visual, hearing, or motor skills disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; and limited English proficiency.

According to K.S.A. 72-3428(b)(4)(k), 34 C.F.R. §§ 300.305(d) and 300.307, an agency shall provide notice to the parents of a child that describes any evaluation procedures such agency proposes to conduct. In conducting the evaluation, the agency shall, in determining whether a child has a specific learning disability, not be required to consider whether the child has a severe discrepancy between achievement and intellectual ability, and may use a process that determines if the child responds to scientific, research-based intervention as part of the child's evaluation. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be an exceptional child and the child's educational needs, the agency: shall notify the child's parents of that determination and the reasons for it; and the rights of such parents to request an assessment

to determine whether the child continues to be an exceptional child and the child's educational needs; and shall not be required to conduct such an assessment unless requested by the child's parents.

The Parent alleged the LEA failed to adequately evaluate whether the Student met eligibility criteria for autism and SLD using all available evaluation data, and relied on the absence of intervention data after acknowledging that it failed to obtain sufficient intervention data.

The LEA responded that, consistent with K.A.R. 91-40-11 and the KSDE Evaluation/Eligibility Checklist, the evaluation addressed all suspected areas of disability and relied upon multiple assessment procedures rather than any single measure.

Autism Rating Scales showed “very elevated” levels from the Parent and “elevated” levels from an unspecified teacher. While an outside medical provider submitted an autism diagnosis for the Student, the LEA maintained the Student’s truancy resulted in the inability to sufficiently assess the Student on an educational basis. Therefore, according to the LEA, the Student did not meet the two-prong test for eligibility under the exceptionality of autism. However, the eligibility report acknowledged no data had been collected regarding the effectiveness of “modifications of instruction, curriculum, and environment” for the Student.

Academic testing by the LEA showed clinically significant deficiency in math and written expression and the IEE report summary recommended academic intervention. Evidence provided and interviews indicated the Math Teacher expressed concern to the LEA regarding the Student’s ability to understand the concepts being taught. Documented comments from the Social Worker and the Complainant suggested the Student’s struggles in math, specifically, went beyond behavioral issues, and indicated a possibility that the Student’s truancy was a manifestation of these struggles.

While emotional disturbance is an exclusionary factor for SLD under the IDEA, the LEA indicated the Student did not present with an emotional disturbance, nor any other exclusionary factors for SLD. The evidence indicated proposed interventions were not administered, therefore, progress monitoring was ineffective. As mentioned above, the LEA did not follow their MTSS procedure as needed to determine whether the Student’s deficiencies in math were related to a disability.

As evidenced by both LEA and outside assessment data, the Student presented with a possibility of autism and an SLD, exacerbated by mental health concerns. Therefore, under the IDEA, additional educational testing data, including state assessments, should have been considered by the team, or the Student should have been reassessed at a reasonable interval after interventions had been implemented. There was no evidence historical testing data was reviewed, and the evidence stated no interventions were provided.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is substantiated*** that the LEA failed to appropriately determine whether the Student met the eligibility criteria for Autism and SLD and whether additional data was unnecessary to determine exceptionality.

Issue Three

Whether USD #500, in accordance with state and federal regulations implementing the IDEA, provided accurate information on a PWN when the Student was found not eligible for special education or related services. K.A.R. 91-40-26; 34 C.F.R. § 503(b).

According to K.A.R. 91-40-26, in providing any notice to the parent or parents of an exceptional child in accordance with K.S.A. 72-990 and amendments thereto regarding any action proposed or refused by an agency, each agency shall ensure that the notice includes the following information: a description of other options that the agency considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal or refusal. The notice shall be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of a parent is not a written language, the agency shall take steps to ensure all of the following; the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication, the parent understands the content of the notice, there is written evidence that the requirements have been met. The agency shall be required to provide a parent with a copy of the procedural safeguards available to parents only one time during each school year, except that a copy shall also be provided to the parent in the following circumstances: upon initial referral of the child for an evaluation or upon parental request for an evaluation, upon receipt by the state Department of Education of the first complaint filed with it by the parent, upon receipt by an agency of the first due process complaint filed against it by the parent, upon the parent's child being subjected to disciplinary removal from the child's current placement, and at any time, upon request of the parent. Also, the agency shall inform the parent of any free or low-cost legal or other relevant services available in the agency's area if the parent requests the information or the parent or agency initiates a due process complaint involving the parent's child.

According to 34 C.F.R. § 503(b), the notice must include a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action. The notice must include a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, how a copy of a description of the procedural safeguards can be obtained; sources for parents to contact to obtain assistance in understanding the provisions of this part; a description of other options that the IEP team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal or refusal.

The Parent alleged PWN sent after the Student's eligibility meeting contained legally inaccurate statements regarding Kansas exclusionary criteria.

The LEA maintained PWN accurately documented the multidisciplinary team's eligibility decision, summarized the data considered, explained the basis for the refusal of eligibility, and complied with the procedural requirements established by federal and state regulations.

Four PWN were submitted into evidence. All four contained all the information elements required by law. The regulations do not specify the information must be accurate or how to identify whether or not accuracy is present. The LEA's interpretation of state and federal regulations does not fall within the bounds of the regulations defining the contents of PWN. Additionally, the Parent and the LEA have the ability to modify PWN upon mutual agreement. It was noted during the Parent's interview that the LEA did revise the May 15, 2026 PWN upon request to more accurately reflect the Student's medical history.

Based on the foregoing, according to IDEA and Kansas special education regulations, ***it is not substantiated*** that the LEA failed to provide accurate information on a PWN when the Student was found not eligible for special education or related services.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following area:

A. Federal regulations at 34 C.F.R. 300.306(b)(c) and K.A.R. 91-40-10(a)(1)(C)(D)(c)(d) specify that the LEA must consider all educational needs.
   In this case, the evidence supports the finding that USD #500 did not appropriately consider behavior and primarily relied on exclusionary factors to determine eligibility.

B. Federal regulations at 34 C.F.R. §§ 300.308, 300.309, and 300.310 and K.A.R. 91-40-11, specify that a process based on the child's response to scientific, research-based intervention; or a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level standards, or intellectual development that is determined by using appropriate assessments may be used to determine eligibility. Federal regulations at 34 C.F.R. § 300.311 and K.A.R. 91-40-10(a)(1)(F)(e) specify the eligibility determination must been made in accordance with applicable laws and regulations; include relevant behavior and the relationship of that behavior to the child's academic functioning; and educationally relevant medical findings. It should also include an indication of whether the child does not achieve adequately for the child's age or meet state-approved grade-level standards; and does not make sufficient progress to meet age standards or state-approved grade-level standards; or exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development; and the determination of the team concerning the effect of the following factors on the child's achievement level: visual, hearing, or motor skills disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; and limited English proficiency.
   In this case, the evidence supports the finding that USD #500 did not appropriately determine eligibility for autism and/or SLD.

Based on the foregoing, USD #500 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #500 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. §§ 300.306(b)(c) and 300.306 thru 300.11 and K.A.R. 91-40-10(a)(1)(C)(D)(c)(d), K.A.R. 91-40-11, and K.A.R. 91-40-10(a)(1)(F)(e).
2. No later than September 30, 2026 USD #500 will submit a written statement of assurance to Special Education and Title Services (SETS) that the LEA's practices and procedures for determining exclusionary factors have been reviewed and revised as appropriate to be responsive and compliant with evaluation procedures of the IDEA and the Kansas Special Education for Exceptional Children Act; and the LEA will hold a staff training on how to incorporate state and federal exclusionary factors into the eligibility process.
3. Within 15 school days after this decision, USD #500 shall hold an evaluation planning meeting for the Student to determine further assessments.

Tania Tong, Licensed Complaint Investigator

Destruction of Records

In compliance with federal regulations, at 34 C.F.R. 300.624, notice is provided to both parties that, within 60 days of the date of a final decision, any personally identifiable information of any student obtained by the investigator in this investigation will be considered no longer needed to provide educational services to any such student and may be destroyed by the investigator. Any personally identifiable information regarding this complaint held by the Kansas State Department of Education will be deemed no longer needed to provide educational services to the above-named student six years after the date of the final decision and may be destroyed by the department at that time. After expiration of these timelines, a parent may request destruction of the information obtained in this complaint. If such a request is made, the information will be destroyed.

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)