KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #458 AND THE TONGANOXIE/BASEHOR-LINWOOD SPECIAL EDUCATION COOPERATIVE (TBLSEC) #726
ON AUGUST 21, 2026

DATE OF REPORT: SEPTEMBER 28, 2026

This report is in response to a complaint filed with our office on behalf of -------, by his parent, ---------. For the remainder of this report ------- will be referred to as "the Student" and ------- will be referred to as "the Mother," "the Parent" or "the Complainant."

The complaint is against USD 458 (Basehor-Linwood Public Schools). In the remainder of the report, USD #458 will be referred to as "the Local Education " or "LEA". 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 to serve children with disabilities, the term " local education (LEA)" in this report will include the school district, the special education cooperative or interlocal, and any other that is recognized by the state as an administrative for public elementary or secondary schools and is serving the educational needs of this student." In this case USD #458 contracts with the Tonganoxie, Basehor, Linwood Special Education Cooperative (TBLSEC - #726) and therefore "the Local Education " or "LEA" will be inclusive of USD #458 and TBLSEC - #726).

It is noted that an outside agency, Lakemary Center was selected by the LEA following the IEP team decision that the Student needed an outside agency to implement the Student's IEP in the Least Restrictive Environment. In the remainder of this report, the Lakemary Center will be referred to as "the outside agency." The Parent asked the LEA to consider a different outside agency , Limitless ABA to be considered instead of Lakemary Center. In the remainder of this report, Limitless ABA will be referred to as "the Parent-preferred outside agency ".

Investigation of Complaint

K.A.R. § 91-40-5(c)(5) requires that the complaint investigation include "[a] discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded." On August 25, 2026, Dr. Donna Wickham, complaint investigator, held this discussion with the Complainant, clarifying and verifying the allegations and coming to agreement on the issues to be investigated. The complaint investigator provided the specific allegations to be investigated to the complainant via email on August 25, 2026 for agreement and then provided those issues to the LEA on August 25, 2026 as well.

During the course of the investigation the Complainant provided documentation for the complaint investigator to consider as part of the investigation and the complainant and investigator exchanged multiple emails. The LEA special education director and the investigator had a call on August 25 and 26, 2026 and the LEA provided the investigator with a response to the issues the investigator identified, as well as all documentation and data the investigator requested throughout the investigation.

During the investigation, the complaint investigator reviewed all evidence and documentation provided by the LEA and the Complainant. The following materials were used as the basis of the findings and conclusions of the investigation:

- Student's Individualized Educational Program, dated April 13, 2026.
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent, dated April 13, 2026, parent signed consent on April 20, 2026.
- Email exchange from Complainant to LEA staff dated between May 21, 2026 at 12:47 p.m. and June 11, 2026 at 1:21 p.m. discussing placement options and updates.
- Complaint, dated August 21, 2026.
- Letter from [the outside agency] dated May 14, 2026.
- Email exchange between the Complainant and Superintendent dated between August 3, 2026 at 8:59 a.m. and August 4, 2026 at 8:22 a.m.
- Email exchange among Complainant, Superintendent, and Staff at Parent-preferred outside agency dated between August 3, 2026 at 8:59 p.m. and August 5, 2026 at 11:45 a.m.
- August 5, 2026 notes from meeting among Complainant, Special Education Director and Assistant Special Education Director at 3:00 p.m.
- Notice of Meeting with an IEP team meeting date of August 7, 2026.
- IEP team meeting minutes from August 7, 2026.
- Email from [the Parent-preferred outside agency] and Special Education Director dated August 9, 2026 at 11:50 a.m.
- The Contract for Special Services between the LEA and [the outside agency] showing the contract dates inclusive of August 10, 2026 and June 30, 2027.
- Email from the Special Education Director to the Complainant dated August 11, 2026 at 10:54 a.m.
- Email from Complainant to Special Education Director, Assistant Special Education Director and Superintendent dated September 11, 2026 at 1:44 p.m.
- Email from the Special Education Director to the Parent dated August 18, 2026 at 4:20 p.m.
- Email exchange between the Special Education Director and Parent dated August 19, 2026 between 3:36 p.m. and 8:10 p.m.

- Email from Special Education Director to the Complainant dated August 25, 2026 at 12:05 p.m.
- Email exchange between Student's IEP and Superintendent and Complainant dated between August 25, 2026 at 7:58 p.m. and August 26, 2026 at 9:13 p.m.
- Email exchange between the Special Education Director and Complainant dated between August 28, 2026 at 4:25 p.m. and August 31, 2026 at 10:35 a.m.
- Email from Special Education Director to Complainant dated August 28, 2026 at 8:28 p.m.
- IEP Team Meeting Minutes dated September 1, 2026.
- Email exchange between Complainant and Student's IEP Team dated between September 2, 2026 at 5:45 p.m. and September 8, 2026 at 7:05 a.m.
- Email exchange between Complainant and Attorney at KSDE dated between September 2, 2026 at 5:51 p.m. and September 4, 2026 at 9:38 a.m.
- LEA Response to the Complaint, September 9, 2026.
- Email exchange between the Special Education Director and Director of [the Parent-preferred outside agency] dated between September 9, 2026 at 6:38 a.m. and September 11, 2026 at 3:12 p.m.
- Email from Complainant to Complaint Investigator dated September 10, 2026 at 9:18 a.m.
- Email from Complainant to Admissions Director at [the outside agency] dated September 10, 2026 at 7:21 p.m.
- Email from Complainant to Complaint Investigator dated September 11, 2026 at 4:25 p.m.
- Email from Complainant to Complaint Investigator dated September 11, 2026 at 4:43 p.m.
- Email from Complainant to Complaint Investigator dated September 12, 2026 at 8:16 a.m.
- Email from the Assistant Special Education Director to the Complaint Investigator dated September 13, 2026 at 11:46 a.m.
- Email from Complainant to Student's IEP team and Superintendent dated September 17, 2026 at 7:10 p.m.
- Email from Complainant to Complaint Investigator dated September 21, 2026 at 12:39 p.m.
- Email from Complainant to Complaint Investigator dated September 22, 2026 at 8:03 a.m.
- Email from Special Education Director to Complaint Investigator dated September 23, 2026 at 7:45 p.m.
- 27FC458-001 Appeal Decision, dated September 24, 2026.

Background Information

The subject of this complaint is a nine-year-old, entering third grade during the 2026-27 school year who qualifies for special education and related services under the primary eligibility category of autism and continues to need specialized instruction for functional skills and the related services of speech and language, occupational therapy, and special transportation according to the reevaluation dated April 13, 2026.

The April 13, 2026 IEP team determined the Student's least restrictive environment to be a special day school when returning from a homeschooling setting. On May 14, 2026 [the outside agency] accepted the Student and the LEA commenced their district procedures to finalize the enrollment. On May 21, 2026, the Parent requested the LEA consider the agency that had been providing the Student ABA therapy as the special day school. After consideration, the LEA refused this, providing a PWN on July 21, 2026. Subsequently, the Parent filed a Child Complaint (27FC485-001) with the KSDE alleging the LEA did not follow IDEA and Kansas legal requirements in reaching their decision of the special day school and holding a parent requested IEP meeting. The findings of this investigation were provided to both parties on August 26, 2026, with the LEA appealing the decision. The appeal decision was published on September 24, 2026 finding overturning one finding and finding the LEA in compliance on all issues.

Issues

In the written complaint and the complaint investigator's discussion with the complainant, the parent's allegations resulted in three issues upon which this investigation will focus:

1. Did the LEA make a FAPE available to the Student during the 2026-27 school year?
2. Did the LEA implement the Student's April 13, 2026 IEP during the 2026-27 school year?
3. Did the LEA provide services to an IDEA-eligible Student during the 2026-27 school year?

Issue One:

Did the LEA make a FAPE available to the Student during the 2026-27 school year?

Applicable Law

Federal regulations at 34 C.F.R. §300.17 defines Free Appropriate Public Education (FAPE) as special education and related services that (a) are provided at public expense, under public supervision and direction; (b) meet the standards of the SEA; (c) include an appropriate school in the State involved; and (d) are provided in conformity with an individualized education program (IEP).

Federal regulations at 34 C.F.R. § 300.101 and Kansas administrative regulations at K.A.R. 91-40-2 require that a free appropriate public education must be available to all children residing in the State between the ages of 3 and 21.

Parent Position

The Mother alleged in the Complaint dated August 21, 2026 that the Student "has not received educational instruction, specially designed instruction, or the related services required by [Student's] IEP since the beginning of the 2026-2027 school year." She additionally stated that since the LEA continued to meet with [the Parent-preferred outside agency] it signaled that the LEA may not believe [the outside agency] was appropriate for the Student; as evidenced by their continued meetings with the [Parent-preferred outside agency] and discussion with the Parent about other agencies located within 45 minutes. Additionally, the Parent spoke with the admissions director with [the outside agency] and determined it was not an appropriate offer of FAPE for the "Student" stating from the "September 1 IEP meeting, my understanding from the Team's responses was that [LEA] had not previously obtained specific information from [the outside agency] regarding potential changes to [Student's] existing service minutes, transportation arrangements, or restraint/seclusion practices as they would apply to [Student]."

Local Education Position

The LEA responded that they selected [the outside agency] as the Student's special day school following the IEP team decision on April 13, 2026 that the Student's LRE was a special day school. The Student was accepted after [the outside agency] reviewed the IEP and observed the student receiving ABA therapy. The LEA then proceeded to arrange an onsite tour with the Parent, but it was cancelled. After that the Parent requested that her preferred be considered as the special day school and declined to participate in a tour at [the outside agency]. In spite of the LEA providing a PWN refusing [the Parent-preferred outside agency] as the special day school the Parent has continued to insist that [the Parent-preferred outside agency] be the Student's special day school to implement the Student's IEP and refused the LEA's offer of FAPE. While the LEA has continued to try to accommodate the Parent's ongoing concerns with the LEA's selection of [the outside agency] by discussing alternative offers of FAPE, the LEA's offer of FAPE is [the outside agency] and they are ready, willing and able to provide their offer of FAPE when the Parent makes the Student available.

Analysis: Findings of Fact

The following findings of fact are based on interviews, clarifications, and a review of documentation.

1. An email from the Mother to the Complainant, beginning in January 2026 the Parent indicated to the LEA that she wanted the Student to return to the LEA for services. According to the Reevaluation report and IEP dated April 13, 2026 during the 2025-26

school year the Student was homeschooled and received indirect special education services and the related services for speech and language and occupational therapy during the 2025-26 school year. Additionally the Student privately received ABA therapy. A reevaluation was conducted and discussed as part of the April 13, 2026 annual IEP meeting.

2. The April 13, 2026 IEP and subsequent PWN, signed with Parent consent on April 16, 2026 documents the Student's FAPE as attendance at a full day special day school setting to meet the Student's current level of need and receive the following services: 1) Attendant care services in the general education setting for 50 minutes, 5 days every week; 2) Special education services in the special education setting for 370 minutes, 2 days every week and 350 minutes, 3 days every week; 3) direct speech/language services in the special education setting for 20 minutes 2 days every week; 4) indirect speech/language therapy services one time per month for 20 minutes; 5) direct occupational therapy services in the special education setting for 20 minutes, one day per week; 6) indirect occupational therapy services 20 minutes, one day every 4th week;, and 7) support for school personnel 20 minutes, 1 day every 4th week to provide staff training for sensory needs. The IEP includes seven IEP goals and thirteen accommodations, a Behavior Intervention Plan and extended school year services.
3. The LEA explained that their procedure for selecting an outside agency to serve as the special day school entails 1) obtaining consent from Parent to share the Student's IEP and any documentation containing PII with possible agencies; 2) providing the IEP and an observation of the Student to the to ensure that the can implement the IEP and is accepting students (it is noted that this step may occur prior to the final selection of the); 3) arranging a tour for the Parent onsite; 4) arranging an IEP meeting, inviting a representative from the outside agency to answer questions, discuss implementation of the Student's IEP, discuss logistics and transition, start date; 5) signing a contract with the outside agency ; and 6) arranging logistics such as transportation, document sharing, scheduling communications, etc. for start date.
4. The Parent and LEA agreed that the LEA had responsibility for selecting the outside agency that would serve as the special day school. The PWN dated April 13, 2026 outlined the procedures for determining the selection. This selection process was investigated through Child Complaint 27FC458-001 with a report date of August 26, 2026. The September 24, 2026 Appeal Report determined the LEA followed IDEA and Kansas regulations in determining [the outside agency] as their offer of FAPE.
5. The letter from [the outside agency] dated May 14, 2026 shows that the Student was accepted into the program and confirmed a scheduled tour with the Mother on May 20, 2026, however it was cancelled by the Mother on May 20, 2026 due to a last-minute family emergency. Four additional tour dates were offered during June. The Assistant Special Education Director clarified to the Complaint Investigation in an email on September 13, 2026 that on June 12, 2026, "Mom informed me by phone that she did not wish to reschedule a tour of [the outside agency]." Between July 2, 2026 and July 17, 2026 the Assistant Special Education Director and [the outside agency] admissions

exchanged emails confirming the Student's attendance and requesting the Contract. The Contract for Special Services between the LEA and the [the outside agency] shows the contract dates inclusive of August 10, 2026 and June 30, 2027.

6. On May 21, 2026 the Parent made a request for the LEA to consider an additional outside agency [the Parent-preferred outside agency] that was familiar with the Student On July 21, 2026 the LEA provided a PWN refusing [the Parent-preferred outside agency] explaining that [the Parent-preferred outside agency] "does not have structures in place to implement the IEP and transition [Student] back to a less restrictive school setting when appropriate."
7. The Parent responded to the July 21, 2026, PWN on July 23, 2026 in an email writing, "Given that the 2026–2027 school year begins on August 13, 2026, the Parents are concerned that the District's focus remained on promoting [the outside agency] as the proposed location while the IEP Team was not provided an opportunity to collectively review the complete [Parent-preferred outside agency] proposal before the placement decision was finalized. After reviewing the Prior Written Notice, I respectfully disagree with the District's determination. Further, the Parent writes, "Unfortunately, we are now operating under a critical timeline. The 2026–2027 school year begins on August 13, 2026, and [Student] must have access to educational services before that date. Due to [Student's] age, [Parent-preferred outside agency] cannot continue serving as [student's] full-time educational program without District approval. At the same time, the District's proposed location at [the outside agency] requires transportation exceeding one hour each way, creating a substantial daily transportation commitment for [Student] and our family. As [Student's] parent, I cannot allow [student] to begin the school year without access to educational services while this disagreement remains unresolved. Accordingly, unless the District changes its determination before the beginning of the school year, I intend to enroll [Student] at [local elementary school] solely to ensure that [student] has uninterrupted access to educational services beginning August 13, 2026. This interim enrollment should not be interpreted as agreement that [local elementary school] is an appropriate placement, acceptance of the District's refusal to approve [Parent-preferred outside agency], or a waiver of any procedural or substantive rights available to [Student] or our family under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), or applicable Kansas law. This decision is being made solely to prevent an interruption in [Student's] access to educational services while the placement disagreement remains unresolved. The Parents continue to maintain that [Parent-preferred outside agency] is the location best suited to implement [Student's] individualized educational program. [Student] has attended [Parent-preferred outside agency] full-time for more than three years. During that time, [Student] has established trusting relationships with staff, developed consistent routines, and demonstrated meaningful educational, behavioral, communication, adaptive, and functional progress within an environment that understands [student's] disability related needs." The email concludes with the Parent requesting an IEP meeting (occurring on August 7, 2026) to "meaningfully review and discuss the

complete [Parent-preferred outside agency] proposal before [Student's] placement is implemented."

8. A meeting among the Parent, Special Education Director and Assistant Special Education Director was held August 5, 2026 prior to the August 7, 2026 IEP meeting. At the end of that meeting the Parent requested that the [Parent-preferred outside agency] serve as the special day school. The Special Education Director indicated that the LEA would continue to investigate the parent's preferred and its appropriateness to be a special day school location but maintain that [the Parent-preferred outside agency] does not have the capacity to implement the Student's IEP and therefore offer the Student FAPE. Therefore, [the outside agency] continues to be the location of the Student's day school.
9. The meeting minutes from the August 7, 2026 IEP team meeting stated, "[Special Education Director] shared that the current offer of FAPE at the special day school location of [the outside agency] still stands, however, the team is willing to collaborate on additional options to address [Parent's] concerns." The meeting notes recorded that "Mom would like to know where [Student] will receive school while the decision of location is being made. She indicated that she would bring [Student] to [Elementary school] on the first day of school. The [Special Education Director] stated that the [Student's] current IEP is for a special day school placement and [Elementary school] does not have the supports of a special day school."
10. Emails from the Special Education Director to the Mother on both August 11, 2026 and August 18, 2026 at 4:20 p.m. documents that the LEA continued to communicate that [the outside agency] is available and remains the district's offer of FAPE. The August 18, 2026 email also documents, "As you note, we are working diligently to come up with additional solutions as you have indicated you do not want to access the special education day school placement location at this time."
11. The Special Education Director confirmed to the Investigator on September 13, 2026 that the Contract with [the outside agency] is not fully executed as the Parent has asserted that the Student will not attend [the outside agency]. The Special Education Director also confirmed that[the outside agency] has maintained a spot for the Student and once the Parent agrees to send the Student the contract can be executed and the Student may start soon thereafter. During the onsite September 17, tour of [the outside agency] the start date could begin September 28, 2026. The KSDE September 1, 2026 27FC458-001 Investigation Finding Appeal stated, "At this point, the parent has not made the student available for services, so the district has continued to explore additional options that would still provide the student the services and placement determined by the IEP team and ultimately FAPE." The Special Education Director explained in an email on September 13, 2026 to the Complainant Investigator "We held an IEP on August 7th before school started. We did not invite [the outside agency] and haven't invited them to any subsequent meetings because mom made it clear to us that she did not want [Student] to attend [the outside agency]. Our typical process is to have parent go on a tour and then have the IEP meeting so any questions that arose

from the tour could be addressed in an IEP before the student officially starts at the location."

12. The Mother stated her concerns with [the outside agency] to the Complaint Investigator during the September 11, 2026 interview and during the September 1, 2026 IEP team meeting. She maintains that [the outside agency] is not an appropriate offer of FAPE. In the September 1, 2026 IEP Meeting Notes "[Mother] shared that at [the outside agency] bus drivers may refuse to transport a student home if the student is escalated...Mom expressed concern that she may be required to pick [Student] up from [the outside agency] if transportation is unable to transport [student] and that transferring the transportation equipment could present an additional challenge. Mom confirmed her understanding that the district would provide transportation and any equipment necessary to safely transport [Student]. Mom indicated that she spoke by phone with [Admissions Director at the outside agency] within the last 10 days. [Mother] shared that, according to Mom's understanding of the conversation, [the outside agency] would remove [Student's] 1:1 services and would prefer to serve [Student] on a long-term basis. [Assistant Special Education Director] stated that this information was inconsistent with the conversation [Assistant Special Education Director] previously had with [Admissions Director at the outside agency]. Mom shared that, based on her prior experience as a Targeted Case Manager, she had concerns about the extent of transition planning that occurs in practice at [the outside agency]. Mom reported that she and [Admissions Director at the outside agency] discussed elopement procedures and safety risks. Mom shared that, during the previous week, seven police officers were needed to intervene with [Student] following an elopement incident at home. Mom stated that she was told [the outside agency] has a calm-down room that may be used for breaks, and that [the outside agency] is not required to notify her when the room is used for this purpose. [Assistant Special Education Director] clarified that, to her understanding, notification to Mom is not required when the room is used as a break area; however, Mom must be notified if restraint or seclusion is utilized. Mom disagreed with this statement. [Mother] stated that the information discussed during the phone conversation did not provide her with a high level of reassurance that [the outside agency] is prepared to meet [Student's] needs. Mom reiterated that she is not declining any placement or service option at this time. [Targeted Case Manager] asked whether it would be beneficial for the school team to meet with [the outside agency] to discuss [Student's] needs. [Assistant Special Education Director] shared that it had always been part of the plan for the school team to meet with the proposed special day school to discuss [Student's] needs and services prior to [Student's] start date."
13. On September 17, 2026 the Parent toured [the outside agency] and shared her impressions with the IEP team in an email dated September 17, 2026 including concerns with the physical condition of the building, the treatment of Student's the program atmosphere, answers as to how the Student's IEP might be generally implemented, features of the initial thirty day transition classroom program, and school safety. The Parent concluded her observations as, "Team, this is not what I envisioned for my [student]. I know [Student] has significant needs. I know [student] elopes. I know

[student] can become aggressive when severely dysregulated. I know supporting [student] requires substantial planning, staffing, patience, consistency, and expertise. I am not asking anyone to minimize those realities. But those behaviors are not the entirety of who [Student] is. [Student] is funny. [Student] is affectionate. [Student] seeks connection. [Student] learns. [Student] explores. [Student] communicates in [student's] own ways. [Student] has made progress when the adults around [student] understand what [student] behavior is communicating and provide the support [student] needs before [student] reaches crisis. [Student] deserves an educational program that begins by asking: "What does [Student] need in order to be successful?" Today, I tried to picture the school day that was being described for my [student]. I pictured [Student] traveling approximately an hour from home. I pictured [student] entering an unfamiliar building and spending approximately [student's] first 30 days primarily in an intake classroom. I pictured [student] eating there rather than in the cafeteria. I pictured [student] receiving group speech and OT there. I pictured [student] trying to learn while simultaneously adjusting to unfamiliar adults, peers, expectations, routines, and surroundings."

14. An email from the Special Education Director to the [Administrator at [the Parent-preferred outside agency] clarified the distinction between the LEA's offering the Student a FAPE and continuing to work with the Parent's concerns. "To be clear, I am not proposing a change in placement. Any change from the current special day school placement would be a decision for the IEP team. That being said, during our last meeting, there was discussion regarding whether, given Mom's continued concerns with the current location of the IEP team's determined placement, there may be other options that could provide [Student] with FAPE while also addressing those concerns. One option discussed was whether a specialized program could potentially be developed within an elementary school setting, with the school contracting with an outside agency to provide behavioral support, such as RBT and BCBA services, within the school environment. In addition, we continue to meet with outside agencies regarding the possibility of having a District provided teacher deliver educational services at [Parent-preferred outside agency]. Such an arrangement would require further consideration and discussion by the IEP team, including consideration of whether a change in placement would be appropriate. At this point, however, the intent is to continue exploring any and all potential options that could provide [Student] with FAPE while also meaningfully addressing Mom's concerns.

Conclusion

To document that a Free Appropriate Public Education (FAPE) has been offered under IDEA, a Local Education (LEA) must "pass" a two-pronged test established in Board of Education v. Rowley (458 U.S. 176), 1) follow the procedural steps of IDEA and 2) ensure the IEP was reasonably calculated to enable the child to progress appropriately in light of their circumstances (Endrew F. v. Douglas County School District (580 U.S. 386).

In this case the LEA followed all procedural steps of the IDEA process and their district procedures as well. The Parent was a member of the IEP Team and participated in the decision-making process. The Parent did not share any concerns with the appropriateness of the most recent revaluation, receipt of written notice of the IEP meeting, receipt of procedural safeguards, IEP team composition, or with the services, goals, accommodations and placement in a special day school in the April 13, 2026 IEP. The Parent was provided with PWN describing the significant change of placement and material change in services proposed in the April 13, 2026 IEP and provided written consent for these changes on April 16, 2026.

In regard to the second prong that the IEP was reasonably calculated to enable the child progress appropriately in light of their circumstances the IEP document, meeting notes and PWN related to the April 13, 2026 IEP show that the IEP team members agreed with the IEP present levels, services, goals, and placement, and the Parent signed consent.

It is found that the IEP was reasonably calculated for the Student and that the LEA followed IDEA and Kansas regulations in selecting [the outside agency] as their offer of FAPE for the Student. Both the Parent and LEA agree that the LEA has the authority to select the outside agency to implement the IEP at the special day school and the LEA selected [the outside agency]. The findings on appeal of 27FC458-001 determined that the LEA correctly followed procedures in making the selection.

The Parent's allegation related to this issue truly focuses on the Parent's belief that 1) [the outside agency] is incompatible with the Student's needs] and 2) that because the LEA continues to meet with [the Parent-preferred outside agency] the final selection has not been made or that the LEA and that interim measures can be used while the LEA assists [the Parent preferred-outside agency] build capacity to provide FAPE.

Evidence reviewed, interviews and email exchanges consistently document that the LEA's offer of FAPE remained with [the outside agency] all the while discussing alternatives since the Parent had indicated that the Student would not attend [the outside agency]. The offer to continue to meet with the Parent did not indicate that a selection of outside agency was not made. It is further noted that it is not the LEA's responsibility to make the Parent's preferred complaint.

In this case it is found that an LEA can make FAPE available even if the services are not delivered. An offer of services at a site designated by the LEA, in this case, the [outside agency] satisfied the school district's FAPE obligations, when the Parent stated ongoing refusal of services at that specific site.

Therefore, it is found that the LEA offered the Student a FAPE and there is no documentation to indicate that the IEP was not reasonably calculated to enable the child progress appropriately in light of their circumstances. Both parties agree that the LEA held ultimate

decision making for selecting the special day school and both parties agree that [the outside agency] was the LEA's consistent offer of FAPE.

Therefore, it is found that the ***LEA is in compliance*** with making a FAPE available to the Student beginning on August 13, 2026, as required by 34 C.F.R. § 300.101 and Kansas administrative regulations at K.A.R. 91-40-2.

Issue Two:

Did the LEA implement the Student's April 13, 2026 IEP during the 2026-27 school year?

Applicable Law

Federal regulations at 34 C.F.R. §300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Parent Position

The Mother alleged in the Complaint dated August 21, 2026 and during her initial phone conversation with the Investigator on August 25, 2026 that the Student's IEP has not been implemented since the start of the 2026-27 school year on August 13, 2026. She further alleges that while she disagrees with the special day school no final arrangements have been made for the Student to attend the special day school such as providing an enrollment packet, scheduling transportation and meeting to discuss the logistics of implementing the IEP.

Local Education Position

The LEA acknowledged that the Students' IEP is not being implemented during the Parent's disagreement with selection of the LEA-offered outside agency serving as the Student's placement at a special day school. They respond that [the outside agency] has accepted the Student, has a space for him at the school and is awaiting the Parent's agreement to proceed with arranging the logistics to start. They respond that since the Parent has indicated that she will not send the Student they will not arrange transportation or proceed with the logistics to implement the IEP. They have consistently indicated that the IEP can and will be implemented at [the outside agency] when the Parent indicates she will make the Student available.

Analysis: Findings of Fact

The findings of Issue One are incorporated herein by reference. The following findings of fact are based on interviews, a review of documentation and clarifications.

1. The Parent and LEA agree that the Student's IEP has not been implemented since August 13, 2026, the first day of the 2026-27 school year in the LEA.
2. The Parent has expressed multiple concerns with [the outside agency 's] ability to implement the Student's IEP during IEP meetings, during interview with the Complaint Investigator and in emails exchanges with the LEA. They focus on restraint, staffing ratios, specifically attendant care minutes, related services, thirty day evaluation period, and transportation. These expressed concerns relate, in part, to whether [the outside agency] met with the Student's IEP team to be prepared to operationally implement the IEP.
3. The LEA stated to the Investigator during a phone conversation on August 26, 2026 that the Student did not start school on August 13, 2026 because the Parent failed to make the student available to receive services at [the outside agency], instead continuing to request the LEA work with [the Parent-preferred outside agency] to develop the capacity to implement the Student's IEP in part or whole.
4. The Administrator at [the Parent-preferred outside agency] stated in an email on August 6, 2026 to the Special Education Director and during the August 7, 2026 IEP meeting that it "has not purchased or maintained an educational curriculum for academic instruction, relying instead on the school district to provide academic resources, curriculum guidance, or instructional staff", "its facility/staff are not allowed to transport clients"; "it does not have an occupational therapist on staff to provide the direct OT services required by [Student's] IEP, noting that outside/school-based providers would need to deliver or consult on those services". Further, in emails to the Special Education Director on August 7, 2026 that "it would not be feasible for [special education teacher to be on site daily" at the clinic" and on August 9, 2026 that, "I want to communicate that it is not realistic for me to have [special education teacher] giving 1:1 academic instruction to [Student] on a daily basis. If that is a requirement and it cannot be tiered support, then we need to brainstorm other ideas."

Conclusion

34 C.F.R. § 300.323(c)(2) and K.A.R. § 91-40-16(b)(2) required that the LEA provide services as written in the April 13, 2026 IEP at the start of the 2026-27 school year. This did not occur and as of the date of this investigation report has not occurred. On August 5, 2026 and August 7, 2026 the Parent stated to the LEA that she would not send her student to [the outside agency] determined by the LEA as their offer of FAPE when the IEP team determined that the Student's LRE was a special day school. Under both federal IDEA regulations and Kansas special education law, a school district is not considered to have failed its implementation duties if it is actively blocked from providing services by the parent's choice to withhold the child.

It is noted that the Parent's own communications with the Admissions Director of [the outside agency] seemingly confirmed that 1:1 services may indicate that the Student's IEP could not be implemented at [the outside agency] and transportation might not be provided consistently. However, these responses did not occur within an IEP team meeting with [the outside agency]

participation. While it was indicated by the Admissions Director that a Student with 1:1 services may not be a fit at [the outside agency] the Student's IEP is for 50 minutes of attendant care daily, not 1:1 services for the entirety of the school day. Further, the explanation provided by the Admissions Director was that staffing at [the outside agency] often was greater than in a classroom setting, often rendering the 1:1 service unnecessary. Likewise, the Parent's concern with the other issues were based on information gathering from the Admissions Director rather than within an IEP team meeting planning for the Student's IEP implementation.

Based on the foregoing, it is found that the LEA was prepared to implement the IEP at [the outside agency] were it not that the Student was not made available beginning on August 13, 2026, as required by 34 C.F.R. § 300.323(c)(2) and K.A.R. § 91-40-16(b)(2) and the LEA is in compliance.

Issue Three:

Did the LEA provide services to an IDEA-eligible Student during the 2026-27 school year?

Applicable Law

Federal regulations at 34 C.F.R. §300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

Parent Position

The Mother alleged in the Complaint dated August 21, 2026 and during her initial phone conversation with the Investigator on August 25, 2026 that the Student is eligible for special education and related services and has not been provided those services since the start of the 2026-27 school year beginning August 13, 2026. She states that the LEA has continued to work with [the Parent-preferred outside agency] to provide those services there and even discussed interim services during that time while the LEA and [the Parent-preferred outside agency] can provide the IDEA-eligible student services in the IEP.

Local Education Position

The LEA acknowledges that the Student was eligible for special education and related services during the 2026-27 school year following the re-evaluation discussed during the April 13, 2026 annual IEP meeting. They respond that they agree with the services outlined and agreed to by the Parent during the April 13, 2026 IEP meeting. They further respond that they fulfilled their responsibility to select an outside agency to serve as the special day school and recognize the Parent does not agree with [the outside agency] as the special day school, but it is the LEA's

offer of FAPE and the LEA stands ready, willing and able to provide services to this Student who is determined IDEA-eligible when the Parent makes the Student available. Finally, the LEA stated that while they are under no obligation they have continued to explore the possibility of providing services to the Student at [the Parent-preferred outside agency . They bear no responsibility to make the Parent's preferred compliant and capable to provide the Student's services.

Analysis: Findings of Fact

The findings of Issues One and Two are incorporated herein by reference. The following findings of fact are based on interviews, clarifications, and a review of documentation.

1. The Parent clarified her in an email following up with the Investigator interview on September 11, 2026 "…There is important context regarding the District's knowledge before the school year began. During [Student's] January 2026 IEP meeting, I notified the Team that I would no longer be able to homeschool [Student]. I am not suggesting that this fact alone establishes a violation. I believe it is relevant because the District had months of advance notice that continued homeschooling would not be an available educational plan for [Student] during the 2026–2027 school year. During the August 7 (sic) IEP meeting, the Team asked whether [Student] would still be able to attend [student's] existing ABA program at [the Parent-preferred outside agency] after school began while discussions regarding the location of [student's] educational placement continued. I explained that [Student's] [insurance] coverage for ABA was expected to continue only until approximately October, and [the Parent-preferred outside agency] corroborated that information during the meeting. Importantly, I also told the Team that I wanted [Student] to start school on August 13. In response to the discussion about [student's] temporary continued access to ABA, the District stated, in substance, 'So [Student] has a safe place to be until we figure this out." Further, "On August 26, I again expressly stated that I was not refusing [Student's] Special Day School placement, special education services, related services, transportation, or implementation of [student's] IEP. That same day, [Special Education Director] stated that [Student's] services were presently available through [the outside agency] and that, if I was agreeable, the District could "begin setting up transportation immediately."
2. On August 25, 2026 the Special Education Director emailed the Parent stating, "As mentioned previously, the district stands, ready, willing and able to provide a location for the special day school placement determined by the IEP team"
3. The Special Education Director emailed the Complainant on August 28, 2026 that, "To answer your question, the educational programming and IEP services presently available to [Student] are services through the special day school placement determined by the IEP team. Those services can be provided at the location of [the outside agency] and if you are agreeable we could begin setting up transportation immediately. The district stands ready, willing and able to provide the special education placement of a special day school and the associated services as determined by the IEP team. I understand we have an IEP meeting scheduled for the coming week. This will be

a good time for the IEP team to discuss current services and/or changes the IEP team would like to make to those services, as well as discuss additional options that may be appropriate as the district continues to attempt to address your concerns regarding the special day school placement location."

4. An email from the Special Education Director to the Complainant on August 28, 2026 at 4:25 p.m. stated, "We can however still hold the meeting if we would like to discuss potential interim measures the IEP team might feel are appropriate as we continue to problem solve your concerns regarding the location of the special education day school placement determined by the IEP team." The Complainant responded on August 31, 2026, "I would like to proceed with [Student's] September 1 IEP meeting…I agree that the IEP team should discuss immediate interim measures. In particular, I would like the team to identify what special education, related services, supports, location, personnel, schedule, transportation, and start date the district is presently proposing for [Student] while the outside agency- location remains unresolved…Finally, I would like the team to identify the next steps and proposed date for the IEP discussion concerning the outside agency- options addressed in the KSDE report. My priority remains ensuring that [Student] has access to [student's] education and IEP services while these other matters are being resolved."

Conclusion

The investigation of this issue is linked to the investigation of Issue 2 as it also addressed implementation, however Issue 2 was specific to implementation of the Student's April 13, 2026 IEP by the LEA and Issue 3 was specific to the LEA's provision of services (as written into the April 13, 2026 IEP) to an IDEA-eligible student.

It was established that the Student was IDEA eligible for and the April 13, 2026 IEP described the Student's FAPE. Findings from Issues 1 and 2 conclude that the LEA met the IDEA and Kansas legal standards of offering a FAPE for the Student and that implementation of the April 13, 2026 IEP was not possible when the Parent stated that she would make the Student available at [the outside agency]. It is noted that the 27FC458-001 Investigation Report and subsequent Appeal Report was considered in these findings. It is also noted the LEA consistently and repeatedly that [the outside agency] was the offer of FAPE and that the LEA remains "ready, willing, and able" to fully implement the student's IEP, arrange necessary transportation, and provide all mandated services at [the outside agency] for the IDEA-eligible student.

Once the LEA had provided an offer of FAPE, the responsibility for the IDEA-eligible student's attendance shifted to the parent's choice rather than the LEA's failure.

Based on the foregoing, it is found that the LEA was prepared to provide special education and related services to an IDEA-eligible student at [the outside agency] beginning on August 13, 2026, as required by 34 C.F.R. § 300.323(c)(2) and K.A.R. § 91-40-16(b)(2).

Summary of Conclusions and Corrective Action

Issue One

This investigation found no violations by the LEA in regard to following 34 C.F.R. § 300.101 and K.A.R. 91-40-2 and there is no corrective action.

Issue Two

This investigation found no violations by the LEA in regard to following 34 C.F.R. § 300.323(c)(2) and K.A.R. § 91-40-16(b)(2) and there is no corrective action.

Issue Three

This investigation found no violations by the LEA in regard to following 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-16(b)(2) and there is no corrective action.

Donna Wickham

Donna Wickham, Ph.D., 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)