

5. To the extent Plaintiff is attempting to assert a tort claim against the District, Plaintiff's claims are barred because he failed to provide proper notice to the District under the Kansas Tort Claims Act. The Court lacks jurisdiction over any such claims.

6. Plaintiff's claims for relief are barred, in whole or in part, because Plaintiff failed to mitigate or otherwise avoid the damages that he allegedly suffered.

7. To the extent Plaintiff is asserting Section 1983 claims for civil rights violations/personal injuries, those claims are barred in whole or in part because many of the allegations were not filed before the applicable two-year statute of limitation ran out.

8. The District reserves the right to add further affirmative defenses as they become evident if the litigation progresses.

WHEREFORE, the District asks that Plaintiff take nothing by this suit, that the Court dismiss the claims with prejudice as to future actions, at Plaintiff's costs, and for any further relief as the Court deems just and proper, including an award to the District for costs and fees.

### **COUNTERCLAIM**

Counterclaimant Blue Valley U.S.D 229 (the District), for its claim against Counterclaim Defendants Tolga Ulusemre and Xiaolei Xu, states and alleges as follows:

1. The parents of D.U. and A.U., Tolga Ulusemre and Xiaolei Xu (the Parents), filed two due process complaints with the Kansas State Department of Education, Case Nos. 24DP229-001 and 25DP229-001.

2. This Counterclaim is filed following the Hearing Officer's dismissal of both of the Parents' due process complaints with prejudice.

### **Jurisdiction and Venue**

3. This Court has original jurisdiction over the federal claims within this counterclaim pursuant to 28 U.S.C. § 1331, in that it arises under the Individuals with

Disabilities Education Act, 20 U.S.C. § 1400 et seq. (the IDEA). Moreover, this court has jurisdiction under and by virtue of 42 U.S.C. § 1983; 34 C.F.R. § 300 et seq.; and 20 U.S.C. Section 1415(i).

4. The District is a Kansas public school district and local educational agency pursuant to the provisions of IDEA.

5. Counterclaim Defendant Tolga Ulusemre is an individual who resides in the state of Kansas.

6. Counterclaim Defendant Xiaolei Xu is an individual who resides in the state of Kansas.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all the events that are at issue in this dispute took place within the District of Kansas.

#### **School Transfer**

8. Students D.U. and A.U transferred to the District at the beginning the 2022-2023 school year.

9. Based on the family's residence at the time of enrollment, the students' home school was Cedar Hills Elementary.

10. At the time of enrollment, at the request of their Parents, D.U. and A.U. were allowed to attend Wolf Springs Elementary.

11. However, in February 2023, D.U. was not allowed to attend school for two days on an emergency basis due to concerns regarding safety and disruption to the education environment arising out of multiple student and parent reports about D.U.'s behavior. The Parents regularly refer to this incident as a "murder list hoax."

12. The District revoked D.U. and A.U.'s school transfer to Wolf Springs Elementary School and assigned D.U. and A.U. back to their homeschool, Cedar Hills Elementary School.

13. D.U. and A.U. later moved residences so that their home school changed to another school in the District.

14. During D.U. and A.U.'s time at the District, the Parents have repeatedly made unsubstantiated claims against various staff members and reiterated frustration with the fact that the students' transfer to Wolf Springs was revoked.

15. Since the transfer, the Parents have been intently focused on "clearing their family's name," so to speak.

16. For example, Mr. Ulusemre emailed the District in February of this year, "Note that we will challenge and accuse any Blue Valley personnel who conducts an investigation into an issue involving [D.U.] until the defamation campaign against him is stopped and his name is cleared."

17. Since then, the Parents have continued to baselessly accuse individuals and agencies of wrongdoing. So far, this has included multiple proceedings against the District with KSDE; a state lawsuit against multiple parents of other students in D.U.'s class; a malpractice lawsuit against the attorney Mr. Ulusemre retained for D.U. at the time of the "murder list hoax;" upon information and belief, a report regarding D.U.'s therapist; and this suit, originally against KSDE, its employees, and an investigator, and now against KSDE, the District, and multiple current or former District employees.

#### **KSDE Complaints - Procedural History**

18. Under the IDEA, a parent may present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(6).

19. The Kansas law implementing IDEA is in accord; it provides that a parent may “initiate a due process hearing regarding any problem arising in regard to any matter governed by this act [the Special Education for Exceptional Children Act].” K.S.A. 72-3415(a)(1).

20. As KSDE explains in its Special Education Process Handbook, “The Kansas State Department of Education does not have authority to consider complaints regarding other legal requirements that do not allege a violation of special education law or regulation.” Kan. Spec. Ed. Process Handbook Chap. 12, p. 190 (emphasis added) (citing 34 C.F.R. 300.153).

21. Despite this, Mr. Ulusemre filed a complaint against the District with KSDE on behalf of his son D.U.

22. The complaint was investigated by Diana Durkin.<sup>2</sup>

23. A report was issued on February 5, 2024.

24. The report states, “[i]n his letter to the investigator, the parent also referenced issues related to the referral of the student for a Section 504 evaluation . . . However, pursuant to federal regulations . . . , a state department of education may only investigate allegations of a violation of special education laws and regulations. This investigator does not have the authority to investigate allegations related to Section 504.”

25. The report also states, “In his written complaint and attached letter to the investigator, during a subsequent phone call with the investigator, and in additional emails to the investigator . . . the parent asserted that building staff are biased in their treatment of the student and are unfairly targeting the student for disciplinary consequences because the parent filed this complaint. . . . the investigative actions of the principal and the determination of disciplinary

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<sup>22</sup> Plaintiff originally named this investigator as a Defendant in this action. He appears to have dismissed her when filing the Amended Complaint. *Compare* Doc. 1 and Doc. 4.

consequences for a general education student are not issues properly addressed through a formal special education complaint.”

26. In addition, with respect to Mr. Ulusemre’s allegations regarding his communication ban, the report states, “Districts are [] not limited in their ability to establish guidelines regarding communication between parents and staff so long as those guidelines do not keep the parent of a child with a disability from participating in education decision-making on behalf of the child. . . .Documents provided by the [D]istrict and the parent show that there has been ongoing email communication between the parties. While the parent’s email access to district staff has been limited . . . there is no evidence that these restrictions have deprived the parent of his right to any special education notice or limited participation in educational decision-making regarding the comprehensive evaluation.”

27. Finally, the report states, “Information gathered in the course of this investigation **has not substantiated any violation of special education statutes or regulations.**” (emphasis in original).

28. The Parents then submitted a request for a Special Education Due Process hearing to the KSDE dated May 9, 2024, Case No. 24DP229-001 (First Due Process Complaint).

29. A special education due process proceeding must, by law, be paid for by the school district.

30. The First Due Process Complaint covered substantially the same allegations that the investigator already determined were not substantiated and were not within the scope of special education laws and regulations.

31. On May 23, 2024, the District filed a partial motion to dismiss that explained that special education due process hearings are administrative adjudications of alleged violations of

special education laws and regulations, and noting however, that the First Due Process Complaint in that matter included a multitude of factual allegations and purported issues that do not relate to special education.

32. For example, the First Due Process Complaint included allegations of mistreatment by staff, “character assassination” or attempts to undermine the Parents’ credibility to outside agencies, and communication and access restrictions placed on Mr. Ulusemre.

33. The District’s motion explained, “[t]hese proceedings do not—and cannot—adjudicate any other alleged violations of law. Nor is it appropriate for a due process hearing to involve evidence and issues that do not relate to the provision of special education; doing so is a waste of valuable time and public resources where the Hearing Officer has no authority to adjudicate any other matters.”

34. Nonetheless, the Parents continued to push claims and issues that were not appropriate for a due process hearing.

35. The Hearing Officer repeatedly told the Parents both orally at hearings and in orders that the accuracy and fairness of the “murder list” investigation was outside the scope of matters to be determined in the due process proceeding.

36. Despite this, Parents made multiple requests for a subpoena to the Overland Park, Kansas Police Department for a report on the murder list incident. In her July 16, 2023 order, the Hearing Officer stated, “The undersigned overruled the request, finding the subject matter of the investigation (i.e. whether the District’s accusations/findings regarding the murder list were warranted and/or truthful) is outside the scope of matters to be determined in the due process proceeding.”

37. On August 6, 2024, the Hearing Officer denied Parents’ request to issue twelve other subpoenas, mostly to parents of other students, finding that Parents were continuing to seek information that was not relevant to special education issues.

38. On August 20, the Hearing Officer denied as overly broad Parents’ request for documents regarding concerns about Mr. Ulusemre’s communications with staff at three different District schools and ordered the Parents to propose relevant search terms for requests pertaining to email communications.

39. When the Parents became dissatisfied with the Hearing Officer’s rulings which limited discovery to matters appropriately within the due process proceeding, the Parents stopped participating.

40. Instead of continuing to prosecute the First Due Process Complaint, on September 1, 2024, the Parents filed another one, Case No. 25DP229-001 (Second Due Process Complaint).

41. The District requested consolidation of the First and Second Due Process Complaint proceedings.

42. On September 10, 2024, the Hearing Officer entered an order consolidating the Parents’ two complaints, Case Nos. 24DP229-001 and 25DP229-001, into a single proceeding. The Hearing Officer found “that the new complaint raises issues and claims that substantially overlap and are inextricably intertwined with the issues and claims to be determined in the ongoing proceedings regarding matters raised in the initial complaint[.]” and therefore, consolidated the proceedings.

43. After that order, the Parents stopped meaningfully participating in the proceedings and ignored orders issued by the Hearing Officer.

44. On September 12, the Parents declined to provide any availability to participate in a status conference to discuss the consolidated cases.

45. The Hearing Officer set the status conference for September 19 via Zoom. The Parents reiterated in an email on September 18 that they would not attend the status conference.

46. The status conference proceeded without the Parents' participation.

47. Following the status conference, the Hearing Officer entered a supplemental scheduling order entitled, "Supplemental Order Regarding Discovery And Schedule In Consolidated Proceedings."

48. The Order required the Parents to submit their supplemental factual contentions, legal claims, and requested relief relating to Case No. 25DP229-001 for the pre-hearing order by September 25. The Order also ordered both parties to make supplemental initial disclosures by October 4.

49. The Parents ignored both deadlines; they submitted no supplements for the pre-hearing order and they did not serve any supplemental initial disclosures.

50. On October 4, the Hearing Officer issued a "show cause" order requiring the Parents to show cause why their second due process complaint, Case No. 25DP229-001, should not be dismissed. The show cause order set forth a schedule for the Parents to articulate good cause and required them to provide their proposed submissions for the pre-hearing order by October 9.

51. The Parents ignored the show cause order and did not submit any response to the show cause order, nor did they submit any submissions for the pre-hearing order.



52. Despite ignoring the Hearing Officer’s orders and deadlines, the Parents did (1) file a motion asking yet again for discovery of District internal email, and (2) to file a motion seeking disqualification of the Hearing Officer.

53. Rather than adhering to the actual deadlines and obligations in the case, the Parents tried to re-hash issues that had already been decided and, without any valid basis, made a long-shot attempt to get a new Hearing Officer to allow them to pursue discovery they had been properly denied.

54. In the meantime, however, the District had to continue to comply with the applicable deadlines and orders—continuing to consume significant staff and attorney time and ongoing expense. During the same period—from September 11 to mid-October 2024—the District did the following to comply with the Hearing Officer’s orders: participated in a status conference (September 19); served supplemental initial disclosures relating to case 25DP229-001 (October 4); served a production of internal email (October 4); and served a privilege log related to the internal email production (October 11).

55. On October 16, 2024, the Hearing Officer dismissed the Second Due Process Complaint with prejudice for failure to prosecute and to adhere to the Hearing Officer’s orders.

56. On October 18, the Hearing Officer ordered that, “in light of [Parents’] recent lack of engagement and failure to follow the tribunal’s orders . . . Petitioners shall provide a response stating whether they intend to move forward with prosecuting the problems/claims” asserted in the First Due Process Complaint.

57. On October 21, the Parents submitted a motion to dismiss the First Due Process Complaint.

58. On October 22, the Hearing Officer dismissed the problems/claims asserted in the First Due Process Complaint with prejudice.

**Counterclaim I**  
**Request for Attorneys' Fees Pursuant to 20 U.S.C. §§ 1415(i)**

59. The District incorporates here Paragraphs 1-58 of its Counterclaim.

60. The District brings this Counterclaim seeking judgment for recovery of its attorneys' fees pursuant to the IDEA, 20 U.S.C. §§ 1415(i)(3)(B)(i)(III).

61. The District seeks to recover its attorneys' fees incurred in both the underlying proceedings pertaining to the Parents' First and Second Due Process Complaints, and this counterclaim proceeding against the Parents.

62. The District is a prevailing local educational agency against the Parents with respect to the Parents' First and Second Due Process Complaints.

63. The Parents instigated the First and Second Due Process Complaints for the improper purpose of harassing the District, its employees, and other witnesses, as well as, attempting to gather evidence pertaining to matters outside the scope of the due process hearing, in part to "clear their family's name" pertaining to the "murder list hoax."

64. Moreover, the Parents continued the proceedings despite being told numerous times that the relief they wanted and issues they sought to address were outside the scope of the due process hearing – which is limited to special education concerns.

65. However, the extraneous issues were the only ones of importance to the Parents. When the Parents finally accepted they couldn't accomplish their true goals in the due process proceedings, they abandoned the proceedings without pursuing the actual special education issues through hearing and without notifying the District or the Hearing Officer that they were abandoning the proceedings.

66. In addition, the Parents' Second Due Process claim falsely alleged that the District had denied a request for an IEP meeting. Rather, the District had multiple communications with Parents to determine if they were requesting an IEP meeting or a separate meeting for non-special education issues, which is what Parents appeared to be requesting. Once the Parents finally confirmed they were seeking a meeting to discuss D.U.'s IEP, they filed the Second Due Process claim before the District's was able to respond to the meeting request.

67. The District, the party required by law to fund the due process proceeding, wasted valuable time and public resources defending against Parents' claims in the special education proceedings.

68. The District also incurred substantial costs and attorney fees to defend against Parents' due process proceedings.

69. Moreover, rather than timely dismiss the action, the Parents just stopped participating which left the District in limbo. This required the District to continue to expend resources and incur fees after the Parents had abandoned their claims.

WHEREFORE, Counterclaim Plaintiff Blue Valley U.S.D. 229 requests that the Court enter judgment in its favor against Counterclaim Defendants Tolga Ulusemre and Xiaolei Xu, jointly and severally, and award the District its reasonable attorneys' fees, costs of suit, and such other and further relief as the Court deems just and proper.

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ATTORNEYS FOR

BLUE VALLEY U.S.D. 229

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 21<sup>st</sup> day of November, 2024, a copy of the foregoing was filed utilizing this Court's electronic filing system, which will automatically transmit a copy of the foregoing to all CMECF users, and a copy was mailed electronically to:

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/s/ Madison A. Perry

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