

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #260
ON MARCH 18, 2024

DATE OF REPORT APRIL 18, 2024

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

The Complaint is against USD # 260, Derby Public Schools. In the remainder of the report, the “School,” the “District,” and the “local education agency (LEA)” shall refer to USD #260.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. A complaint is considered to be filed on the date it is delivered to both the KSDE and the school district. In this case, the KSDE initially received the complaint on March 18, 2024, and the 30-day timeline ended on April 18, 2024.

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video call on April 8, 2024. On April 8, 2024, five classroom teachers, the Special Education Case Manager, the Assistant Principal, the Principal, and the Special Education Director were interviewed by the Complaint Investigator.

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

From the Parent:

1. Letter, re: 504 Process, no date
2. 504 Accommodation Plan, 04/26/22
3. Section 504-Student Accommodation/Service Plan, 11/20/19
4. Email, re: [Student] 505/IEP, 11/18/22
5. Email, re: [Student] data, 04/20/23
6. Email, re: [Student] Counseling, 05/11/23
7. Email, re: [Student] 504, 9/12/23
8. Email, re: MDR Meeting, 02/13/24

9. Email, re: Positive Referral, 02/07/24
10. Email, re: Hearing Results for [Student], 02/13/24
11. Email, re: IEP Amendment, 02/15/24
12. Email, re: Manifestation Determination Appeal, 02/27/24
13. Email, re: Welcome To After Hours, 02/29/24

From the District:

1. Letter, re: District Response, 03/26/24
2. IEP, 10/19/23
3. Eligibility Determination Documentation, 10/19/23
4. Section 504 Rights, 10/19/23
5. PWN, re: Change in Services, 10/24/23
6. Evaluation/Eligibility Team Report, re: Initial Evaluation, 10/24/22
7. Manifestation Determination Review, 02/27/24
8. Email, re: MDR Meeting Dr. Gresham, 2/12/24
9. PWN, re: Evaluation or Reevaluation And Request for Consent, 12/08/23
10. PWN, re: Evaluation or Reevaluation And Request for Consent, 02/12/24
11. PWN, re: Identification, Special Education Services, Educational Placement, Change in Services & Place, And/Or Request for Consent, 02/15/24
12. IEP, re: Amendment IEP, 02/15/24
13. Team Members Participation, 02/15/24
14. Manifestation Determination Review, 02/15/24

Background Information

This investigation involved an eighth-grade student enrolled at Derby Public Schools in USD #260. The Student currently receives special education under the exceptionality of Giftedness under Kansas State regulations. Before living in Kansas, The student skipped half of the fifth grade and half of the sixth grade, completing one semester of each grade, and then moved on to seventh grade. The Student entered the School District on August 17, 2022. "The Student moved into the District from another state without evidence of an IEP, but instead garnered a Section 504 accommodation plan." The District "immediately opened a 504 for [them]. We adopted the accommodations as written from Washington."

According to the Kansas Process Handbook (Out of State, p.89), "A student who has a current IEP in another state transfers to Kansas, the new school district, in consultation with the parents, must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous school district until Kansas school district either adopts the current IEP, or conducts an initial evaluation of the child, if deemed necessary, and develops and implements a new IEP for the child." Furthermore, K.A.R. 91-40.21 Educational Placement

(c) (2) states, "In determining the educational placement of a gifted child, each agency shall ensure that the placement decision is made by a group of persons, including the child's parent and other persons who are knowledgeable about the child, the meaning of the evaluation data and appropriate placement options for gifted." We were not provided an IEP from Wyoming, South Carolina, or Washington state."

On August 17, 2022, the School Psychologist received consent to evaluate the Student. "At the time, it was noted in the Health Section of the Present Levels that [the Student] had a diagnosis of ADHD ... No accommodations were added to the IEP to support the diagnosis of ADHD, as we had the 504 still in place and protecting the child's rights." The Parents agreed to the provisions of FAPE.

The District indicated, "With accommodations of the 504 in place, we had no data to show that the ADHD impacted [the Student's] educational performance, nor was specially designed instruction necessary to support the diagnosis of ADHD." The Parents signed the Prior Written Notice (PWN) agreeing to the proposed provision of FAPE.

According to the Wechsler Intelligence Scale for Children, Fifth Edition, the Student's full [-] scale IQ was 123, well above average. The Interpretation indicated, "Due to the fact that [the Student] is a student with ADHD the confidence interval is being used to determine cognitive ability ... [The Student's] full[-]scale IQ confidence interval is 116-128. This would be considered to meet the 97th percentile threshold cognitively. [The Student] was allowed to take short breaks during the testing sessions." When using age norms the Student achieved a score at the 97th percentile for Math problem[-]solving. Teachers noted that "[the Student] comes to class on time and participates in class discussion. [The Student] does struggle with completing work in class and turning work in on time." The primary exceptionality is Gifted.

Issue One

USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to find the Student eligible for special education services and an IEP based on disability when the District did not recognize the Attention Deficit Hyperactivity Disorder (ADHD) or Oppositional Defiant Disorder (ODD) in the Student's IEP.

Positions of the Parties

The Parent alleged that the District refused to acknowledge that the Student had disability even though the School received copies of an evaluation report that indicated the Student had ADHD/ODD.

The District acknowledged that on November 21, 2023, the "Parents agreed with the offer of FAPE and signed consent on or about November 21, 2023." The District "recognized and provided first an accommodation plan through the 504 beginning on 9.7.2022 ... At the

[P]arents request, the accommodations were added to the IEP on 10.19.2023 ... The 504 was discontinued at the Parent's request. And the [P] arents signed the PWN accepting the 100% change in service when adding the accommodations related explicitly to ADHD into the IEP ... The [P]arents did not notice anyone on the team of the ODD diagnosis until February 1, 2024."

On December 7, 2023, the team offered a Prior Written Notice of Evaluation (PWN-E) to Parents for a Functional Behavior Assessment (FBA). On December 8, 2023, the team sent home the PWN-E. The Parents never signed the PWN-E. "If the Student met the eligibility criteria, this would have been an opportunity for the team to add OHI as a secondary exceptionality."

In February 2024, the District tried "to garner permission for an educational evaluation for [the Student] when [their] behaviors quickly escalated from disruptive behavior to bringing a blade to school and vandalism of school property "

Findings of the Investigation

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

1. On December 4, 2022, the Parent sent a response email to the School Psychologist, which stated the Student was "2 years younger than [their] peers ... Severe ADHD is a huge issue in [their] learning, places [them] in the arena of twice ... exceptionality, sounds like unnecessary work. I can assure you on our end, as parents, we are reinforcing everything the teachers are trying to instill upon [the Student]. All or most of you were in [their] IEP meeting and you heard the same thing from all of [their] teachers. [The Student] is easily distracted. Let's move forward so that we can have [the Student] make progress, which is the whole concept behind an IEP." The Parents disagreed with the IEP, not including the disabilities background information.
2. On May 11, 2023, the Principal sent an email to Parent 2 in response to the Parents' May 10, 2023 email regarding the amendment status, which stated, "I talked to the Social Worker ... and the School Psychologist ... they are ready to move forward with an amendment. They propose putting [them] on aconsult (sic) until we meet in the fall for [the Student's] formal IEP and then we can assess how everything is going and determine how much time we want to formally put into the IEP... if you are okay with this plan, [they] can send you the amendment paperwork so we can get this going by the end of school and in place for the start of next year."
3. On September 9, 2023, Parent 2 sent an email to the Social Worker, which stated, "My [spouse] and I received your envelope recording, [The Student's] 504. However, [the Student's] 504 was supposed to be condensed into [their] IEP as of last year when it was requested when my [spouse] and I had a meeting with [the Principal]. We will be more than happy to relook at [their] [W]eb [K]idds paperwork regarding [their] IEP when that is sent out to us and we will also be sitting (sic) up [their] meeting for [their] IEP."

4. According to an IEP dated October 19, 2023, the Legal Education Decision Maker (LEDM 1 and LEDM 2) statement was not signed. The Parents/LEDM participated in the IEP meeting in person. The LEDM received a copy of the IEP developed by the team at the IEP meeting on October 19, 2023.
5. According to the IEP dated October 19, 2023, the Student had “a diagnosis of ADHD.” According to the IEP, the Student did not have behavior that impeded the learning of themselves or others.
6. On October 24, 2023, a Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent indicated, “We met to review the evaluation/assessment data on this [S]tudent, including any evaluations or information you provided, current classroom based-assessments and observations, and teacher or other staff observations with your input: Any additions, changes or modifications to the special education and related services or educational placement that are needed to enable the student to meet the measurable annual goals set in the IEP and to participate, as appropriate, in the general curriculum ... Material change in services, As explained ... we are proposing a change that results in a decrease or increase of 25% or more of the duration or frequency of a special education service, a related service, or a supplementary aid or a service specified on this [S]tudent’s IEP.” “Other changes to the IEP not involving services or Placement (Consent not required.”
7. On November 21, 2023, the Parent signed A Progress Report Distribution Form acknowledging they had been informed of the disclosures and provided a copy of the IEP. The Parents were made aware of the information contained in the IEP in the disclosure statements.
8. On November 21, 2023, the “Parents agreed with the offer of FAPE and signed consent on or about November 21, 2023.”
9. During an interview with the Complaint Investigator, the Assistant Principal shared the Student’s increased behaviors occurred around November or December 2023. This was evident from the increase in the Student earning discipline points at school. The school had a point system where students who accumulated too many points faced a manifestation hearing and potentially a disciplinary hearing. To address this issue, the school proposed an FBA to understand the motivation behind the Student’s increased behaviors and find a way to meet the Student’s needs without causing disruption at school. The Student’s Parent expressed interest in this assessment.
10. On December 7, 2023, the team offered a PWN-E to Parents for an FBA. On December 8, 2023, the team sent home a PWN for Evaluation. The Parents never signed the PWN. During interviews with the Complaint investigator, the Parent reported that the consent for the FBA was not signed in December 2023 because it had fallen into the Parent’s spam mailbox. After alerting the other party about this in January, the Parent signed the consent, but additional technical issues arose with the electronic signing program. The Parent signed a second consent for the FBA in February 2024.

11. On April 12, 2023, Parent 2 sent an email to the Principal asking about “amending [the Student’s] IEP to add counseling. [The Student] is struggling with many things mentally [The Student] has been sending many emails to peers and teachers. Anything regarding games to peer to anger issues to memes. Many peers have asked [the Student] to stop but [the Student] will not.”
12. The Student's Parent first mentioned ODD on February 1, 2024, during a phone conversation with the Assistant Principal. The Assistant Principal did not have a strong suspicion of ODD based on their observations and was waiting for a formal diagnosis from a medical professional. The Assistant Principal also noted that the Student had previously seen several doctors without a clear diagnosis and that the school team had not suspected ODD at that time.
13. On February 13, 2024, the Director of Special Services sent an email to the Parents, with attachments, indicating, “The IEP states [the Student is] receiving gifted services. Our IEPs do not disclose the exceptionality.”
14. On February 15, 2024, the Director of Special Services emailed the IEP Team, “We will also expedite the evaluation beginning at After Hours. [School Psychologist] please begin the evaluation as soon as next week. Parent concerns include twice exceptionality and potential OHI or Autism. When I say temporarily, it is for the change in placement to After Hours pending the appeals process.”
15. During interviews with the Complaint Investigator, the Parent reported they were not aware of the discrepancy between the accommodations. The disabilities listed on the Student's IEP was not identified until the Parent requested an MDR hearing.
16. During an interview with the Complaint Investigator, the Special Education Director recalled the Parent had requested that the 504 and IEP documents be combined. There seemed to be a misunderstanding that combining the documents would automatically grant an exceptionality. Further, the IEP Team did not evaluate for these disabilities.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.111 and K.A.R. 91-40-7(a)(3), the District is required to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction, including children with exceptionalities who are suspected of being children with disabilities even though they are advancing from grade to grade.

The Parent requested that the Student’s 504 plan be “condensed” into the IEP for giftedness. The October 2023 IEP indicated that the Student had a diagnosis of ADHD, and the Student’s behavior did not impede their learning or the learning of others. The Parent signed an acknowledgment of disclosures, consented to the IEP, and agreed with the offer of a FAPE on November 21, 2023. In December 2023, when the Student’s behavior escalated, and the Student was earning more discipline points, the District requested that the Parent provide written consent for an FBA. This consent was not provided until February 2024. The District

made multiple attempts to secure the written consent. The winter break and technical issues with the electronic submission and signature caused delays.

On February 1, 2024, the Assistant Principal learned that the Parents were seeking a medical assessment for possible ODD. At the time, there was no indication that this was a viable diagnosis, and all District staff indicated they were not previously aware of this information. There is no record that the Parents made the District aware of ODD prior to February 2024. Once the Parent shared at the discipline proceedings that the Student may have ODD, the District offered an evaluation.

Before the evaluation could be conducted, the Student was withdrawn from the School and moved out of state.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the District failed to complete a comprehensive special education evaluation for a child with a suspected disability within timelines.

Issue Two

USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the accommodations for the Student's ADHD/ODD as described in the IEP for the Student's giftedness.

Positions of the Parties

The Parent alleged that the District failed to implement the accommodations for the Student's impulsive behaviors, which resulted in the Student being expelled from school.

The District responded that "each accommodation was offered to the [S]tudent from when the 504 was written in September 2022 until and following [the Student's] expulsion in February 2024."

Findings of the Investigation

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

1. On November 20, 2019, a Section 504 Student Accommodation/Service Plan from Wyoming indicated the Student was disabled under Section 504, and the Student had a physical or mental impairment that substantially limited one or more of their major life activities. The Student qualified for Section 504 because of inattentiveness and impulsivity which interfered with the Student's learning.
2. The School Social Worker sent a survey to the Parents asking for feedback on the Student's 504 plan. The School Social Worker indicated that the survey should be returned by September 30, [2022], and if there were major changes recommended for the the 504, a team meeting would be required. The Parent acknowledged that they

had received the 504 Accommodation Plan and that the 504 Plan was effective as it was written.

3. A Section 504 Accommodation Plan, dated April 26, 2022, explained the Major Life Activity Impacted and specific accommodations that were necessary for the Student to have an opportunity commensurate with non-disabled students with a date range of 4/27/2022 to 4/27/2023.
4. On October 19, 2023, the IEP LEDM input/concerns indicated, "Parents want to ensure that [the Student] continues to be challenged and reaches [their] full potential academically and socially. The [P]arents' concerns reflect those of the IEP team as a whole." This was addressed in the IEP Goals.
5. The IEP dated October 19, 2023, indicated the impact of exceptionality on progress in the general education curriculum stated under "Higher Level Thinking Skills," "According to the Wechsler Intelligence Scale for Children, Fifth Edition, the Student's overall cognitive processing abilities performance fell within the "Well Above Average" range (SS=123, PR=94) "Based upon the most recent evaluation and ongoing data collection does the [S]tudent have needs in this area that require special education or related services?" The IEP indicated "Yes," in this area.
6. The IEP dated October 19, 2023, stated in the area of "Identify impact of exceptionality on progress in general education curriculum," that "[The Student] demonstrates a need to be challenged in the area of higher-level thinking." The IEP stated that in the areas of Reading, Math, and Written Language the Student did not have needs in these areas that required special education or related services.
7. Student strengths on the IEP dated October 19, 2023, indicated, "[The Student] demonstrates strong higher-level thinking skills. [The Student] needs to continue to strengthen the various areas of higher-level thinking, including the application of researched information, the analysis of such, and the strengthening of [their] ability to synthesize information and relay it to [their] peers in a way that demonstrates unique and self-expression and an ability to evaluate information and data on cognitive and effective levels."
8. IEP Goal 1 from the October 19, 2023 IEP indicated, "By October 2024, [the Student] will complete at least two academic projects presented in [the] gifted class that extend [their] grade-level curriculum and require higher-level thinking skills. [Their] goal is to score a minimum of 70% on an appropriate, project-based rubric."
9. The October 19, 2023, IEP Goal 2 indicated, "[The Student] will demonstrate initiative in pursuing knowledge and exploring ideas in 8th grade by maintaining a minimum average of 70% in each academic class."
10. Special Education and Related Services on the October 19, 2023 IEP indicated:
 - a. "Record :1 [The Student] will receive gifted services, 5 times per week, Frequency- daily, during 1 class period, starting on October 19, 2023."
 - b. "Record:2 [The Student] will receive gifted consult services, 1 time per week, Frequency-1 time per week, [for] 5 minutes starting 10/19/2023." and

- c. "Record:3 [The Student] will receive gifted services, in the special education classroom, Frequency-5 times every two weeks, for the length of a class period, starting 8/14/27 and ending 10/18/24."
11. Accommodations/Mods/Supp Aids for the October 19, 2023 IEP indicated:
 - a. "Record:1 Access to [a] standing desk or writing surface, daily, in all general education classes, for the length of a class period, Start Date: 10/19/23, End Date: 10/18/23";
 - b. "Record: 2 Allow speech to text, daily, in all general education classes, for the length of the class period, Start Date: 10/19/2023, End Date: 10/18/2024";
 - c. "Record: 3 Extend time on tests and assessments, 1.5 times, in all general education classes, for the length of the class period, Start Date: 10/19/2023, End Date: 10/18/2024";
 - d. "Record: 4 Option to type notes on [a] [C]hromebook, daily, in all general education classes, for the length of the class period, Start Date: 10/19/2023, End Date: 10/18/2024";
 - e. "Record: 5 Provide structured/movement breaks, as needed, in all general education classes, for a maximum of two minutes during a class period, Start Date: 10/19/2023, End Date: 10/18/2024"; and
 - f. "Record: 6 Oral assessments may be provided in lieu of written assignments at the discretion of the teacher, tests and assessments, in all general education classes, for the length of the class period, Start Date: 10/19/2023, End Date: 10/18/2024."
12. The October 19, 2023 IEP also included, "Under Special Considerations, "[The Student] will meet the [S]chool [G]uidance [C]ounselor for 20 minutes once per week."
13. On October 19, 2023, a Section 504 of the Rehabilitation Act Eligibility Determination Documentation indicated, "Does the [S]tudent need Section 504 services in order for his/her educational needs to be met as adequately as those of non-disabled peers? NO." The 504 indicated the Student was getting dismissed and adding accommodations onto the IEP." The 504 Eligibility Team Signatures form indicated that both Parents had signed in agreement. The Parents received the Section 504 Rights.
14. The PWN dated October 24, 2023, indicated accommodations from [the Student's] 504 had been added to [their] IEP. They had "Access to a standing desk or writing surface, allowing speech to text, extended time on tests and assessments, the option to type notes on Chromebook, provide structured/movement breaks, structured breaks dor (sic) assessments/tests, and small groups for assessments."The Parent signed consent for the PWN.
15. The October 24, 2023 PWN indicated a description of the action proposed or refused, "In accordance with the school calendar, the following services will be provided for [the Student]. From 10/20/2023 to 5/23/2024, [the Student] will receive gifted services in a special education classroom within a regular education building for one class period, 5 times per week. From 10/20/2023 to 5/23/2023 (sic) [the Student] will receive gifted

consult services 5 minutes per day, one day a week. The purpose of consult services in this setting is to provide support to [the Student] and the regular education teacher in best meeting the needs of the fifted (sic) learner. Beginning 8/13/2024 to 10/19/2024. [The Student] will receive gifted services to a special education classroom within a regular education building a minimum of one class period, 5 times every other week ... the team has determined that the related services are not required for the [S]tudent to access the general curriculum and/or to benefit from the educational experience."

16. An IEP Amendment dated February 15, 2024, indicated special education services would occur in a "Public Off-site location, 4 days per week, and a duration of 2 hours per day, starting February 15, 2024 through April 1, 2024." The Student required transportation on a special education bus.
17. During interviews with the Complaint Investigator, the Parent reported that the Student's behavior changes in September 2023 may have been attributed to relationship issues with the Sibling during visits to the Other Parent's house, difficulty readjusting to the Student's regular routine after spending time with the Sibling, and the cumulative effect of these issues over time.
18. During interviews with the Complaint Investigator, the Band Teacher reported that the Student had a tendency to walk around, get distracted easily, and had difficulty staying focused. The Student often forgot or misplaced things. As a percussionist, the Student was allowed to move around and fidget with the sticks, mallets, or instruments. The Student was also able to test in person or online.
19. During interviews with the Complaint Investigator, the Social Studies Teacher described the difficulty the Student had completing assignments during class. He also shared that the Student fidget with an object in their hands, wandered, and lacked focus. Accommodations provided included a standing desk, breaks, and extended time as needed. Observations of the Social Studies Teacher included that the Student rarely completed assignments in class, fidgeted, wandered, and did not consistently use the standing desk.
20. During an interview with the Complaint Investigator, the Gifted Special Education Case Manager described the Student's ADHD as attention-seeking behaviors, speaking out loud during class, and disrupting classroom activities. According to the Gifted Special Education Case Manager, the Student received accommodations, which included digitally submitting notes and assignments, using a standing desk, taking frequent breaks, reducing the amount of work on an assignment, and allowing extra time for assignments. The Student also received check-ins on missing assignments and progress in classes.
21. In an interview with the Complaint Investigator, the Science Teacher described the Student as easily distracted in the classroom by things like their computer, emails, and physical items. The Science Teacher accommodated the Student by allowing credit for assignments with partial completion if engaged in discussion. The Science Teacher ignored minor distractions, quietly redirected the Student during distractions, and held informal conferences.

22. During interviews with the Complaint Investigator, the Math Teacher shared that the Student exhibited a lack of focus and attention as evidenced by their easily distracted behavior. The Student infrequently engaged in classroom activities, tended to work on personal projects or talk to neighbors during class, played with tape during class, required frequent reminders to stay focused, chose not to work during class, and completed most of their work outside of class. The Student was provided with the following accommodations to reduce distractions and assess focus and attention: preferential seating, the option to test in another room, and frequent check-ins.
23. The English Teacher described, during interviews with the Complaint Investigator, that the Student was provided accommodations such as going out of the classroom for assignments, extra time, and voice text speech. However, there were disciplinary issues. On one occasion, the Student came to class with tape wrapped around their hand, causing a spectacle and disrupting the class. After talking to the Student in the hallway, the Student was sent to the office to address the situation.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.323(a)(d) and K.A.R. 72-3429(a) each agency shall have an IEP in effect for each exceptional child at the beginning of each school year.

The Student's October 2023 IEP included accommodations such as access to a standing desk, speech-to-text, extended time, electronic note-taking, structured movement and breaks, and oral assessments. All of the teachers interviewed were able to describe in detail how these accommodations were provided to the Student.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the district failed to provide the Student with accommodations as described in the IEP.

Issue Three

USD #260 failed to conduct a manifestation determination review (MDR) before expelling the student from the school, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA).

Positions of the Parties

The Parent alleged that the District refused to hold an MDR because the Student's IEP was for giftedness only.

The District responded that according to the Director of Special Services, "On several occasions, [the Parent] stated that the 504 was combined with the IEP, automatically making the [S]tudent twice exceptional under the disability category of OHI. I explained each time that the [S]tudent was not evaluated for OHI and offered to evaluate the [S]tudent. [The Parent] refused the evaluation when I called [them] on March 8th, 2024. [They] stated, 'The kid has

been tested enough.' The [Parents] also did not sign the previous attempt by the [D]istrict to evaluate for an FBA in December of 2023."

On February 9, 2024, "the Student reached 60 points, the threshold outlined in our Board of Education approved student handbook for long-term suspension or expulsion. Because [the Student] had an IEP under the exceptionality category of Gifted, the special education department initially determined that [the Student] was not eligible for a manifestation determination hearing. However, upon further investigation, I discovered that the school-based team had provided the [P]arents with the aforementioned prior written notice for evaluation to conduct an FBA ... putting us on notice of another potential disability. Therefore, the [D]istrict agreed to the manifestation hearing held on 2.15.2024."

The Parents disagreed with the results of the MDR and appealed the decision. The Assistant Director of Special Services "conducted a second manifestation hearing with each person individually to ensure no bias in the parties' interactions." The Assistant Director of Special Services upheld the original manifestation determination.

Findings of the Investigation

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

1. On December 8, 2023, a PWN indicated a request to conduct a reevaluation in the area of Social/Emotional Status/Behavioral Status that "may include a functional behavioral assessment or evaluation to determine appropriate positive behavioral supports." Records indicated that the District made two delivery attempts to gain permission from the Parent/LEDM.
2. The Principal emailed the Parent on February 12, 2024, and shared that [they] had reached out to the Director of Special Services and [they] verified that students with exceptionalities (gifted) do not have the disciplinary protections of students with disabilities. Because of this, a hearing could proceed without an MDR. The Principal stated that they base an MDR on any disability that is suspected or known at the time of the behavior. "So if a parent provides documentation of a disability after the behavior and the school did not suspect it, we do not consider it." The Principal stated that the Special Education Teacher sent home paperwork that needed to be completed for an FBA on 12/8/2023 in response to concerning behaviors. When it wasn't returned, the Special Education Teacher sent it through Webkids on January 5, 2024. The Principal also stated that the Special Education Teacher had no knowledge or documentation of a new diagnosis.
3. On February 12, 2024, the Parent wrote, "ODD and ADHD has been on [their] IEP. If it's not, then it was ignored half of the IEP meeting. We even discussed whether or not a BIP should be done. [The Student] has accommodations listed specifically for that. Even if it was never combined as outlined in IDEA from [their] 504, [they still have] a 504 for

it, which STILL entitles them to an MDR." A new meeting was requested since the Student did not have an FBA or BIP.

4. On February 12, 2024, the Parent emailed the Director of Special Services, indicating, "I have been advised to not attend an expulsion hearing considering [the Student's] qualification for an MDR. If you choose to still hold it, we nor [the Student] will be in attendance ... [They] were already diagnosed with ADHD/ODD. You don't get to add the accommodations and not the diagnosis. Even having had the 504, that demonstrates knowledge of the diagnosis, qualifying [them] for an MDR. This is not something I pulled out of thin air. [Parent 2] and I are both SPED teachers. We ran this by all 3 school psychologists and our own SPED [D]irector. They said we are doing the right thing by providing you an opportunity to do the right thing. We will bring in paperwork showing [they are also] on the Autism Spectrum as well. I have offered to be there tomorrow at 3PM to amend [their] IEP and/or have an MDR."
5. On February 12, 2024, the Principal wrote, "As a building admin, I have no control over whether or not a student is offered an MDR, but I do want to point out that per [P]arent request, [their] 504 was dismissed and compound (sic) with [their] IEP so [they] no longer [have] a 504."
6. On February 15, 2024, the Parent emailed the Director of Special Services, "I do want to go ahead with the formal appeal process...[The Student's] IEP does not address [their] disorder.[their] disability (ADHD/ODD) did impair [their] ability to understand the impact and consequences of [their] behavior. Lastly, [their] disability did impair [their] ability to control the behavior."
7. On February 15, 2024, the Director of Special Services sent an email to the Team, "We will also expedite the evaluation beginning at After Hours. [School Psychologist] please begin the evaluation as soon as next week. Parent concerns include twice exceptionality and potential OHI or Autism. When I say temporarily, it is for the change in placement to After Hours pending the appeals process."
8. On February 15, 2024, the Special Education Teacher sent an email to the Parent, "Here is a copy of the amendment paperwork for the temporary placement that you had discussed and agreed to ... Transportation will be provided to the after-hours (sic) placement for the duration [they attend]."
9. On February 15, 2024, for the first Manifestation Determination Review the team reviewed the information from the MDR. The Team also reviewed the implementation of the IEP, and it was noted, "[The Student] does not have a BIP. However, a request by the school-based team for a Functional Behavior Assessment was submitted to the [P]arents in December of 2023. The [P]rior [W]ritten [N]otice for the evaluation was not signed by the [P]arents until 2/12/24."
10. On February 15, 2024, the first MDR indicated in the Social Studies class, "most days [the Student] is off task, not doing assignment[s], doing something else. Getting things done often after school turning in assignment[s] completed at home. Important (sic) to note. Over a year younger than classmates ... Someone who is not ready for 8th grade. Has academic gaps that are cocmingout (sic) in the form of behavior."

11. On February 15, 2024, the Band Teacher stated, "Most of redirections are because [the Student] si (sic) when not supposed to be distracting other people. [The Student] did not turn in any assignments. According to the Special Education Teacher, the Student "is almost never on task. Spends most of [their] time attempting to entertain the class rather than do the work. Disruptive in class." According to the Science Teacher, "Hard time to get [them] to do any of the work. Occasionally [they] will. A lot of times it is work avoidance [they are] doing."
12. On February 15, 2024, the first MDR indicated in the area of Math, the Math Teacher stated, "I do notice some of the impulsivity with ADHD but it comes out in the form of destruction or building of something ... Interactions with others, crawling on floor, moving around alot. [The Teacher does] not see that as ADHD [but] as [a] choice so it is very difficult to ga[u]ge what is ADHD and what is [the Student's] will."
13. During the first MDR on February 15, 2024, the Parent shared, "same way at home. Teacher reports indicate ADHD symptoms. Inconsistent, withdrawn, concentration, poor study habits, poor use of time ... disrespectful. Emotional difficulty. [The Parent] mentioned Autism and ODD." The LEA Representative stated, "There are a lot of behaviors that they overlook and redirect. They are not sending [the Student] to the office for typical ADHD behaviors. Everything that [they're] appearing in the class that is not distraction to the class [they] will stay. [The Student] is one of many with ADHD in the classroom, these are the big things that are distracting others from learning." The Team decided the conduct in question was not caused by or had a direct and substantial relationship to the Student's disability, and the conduct was not a result of the School's failure to implement the IEP. The Team determined the conduct was not a manifestation of the disability.
14. On February 15, 2024, the Parent signed the MDR signature page.
15. On February 20, 2024, the Director of Special Services emailed the Parent, "I am happy to meet to explain to you the eligibility criteria in the state of Kansas and the process for evaluation. We are tasked to consider outside evaluations, yes. Again, it does not unilaterally provide for prong one or two. We are happy to consider your psych's evaluation report once received."
16. On February 27, 2024, a MDR indicated:
 - a. Disruptive behaviors that occurred from 9/7/23 through 2/9/24 included:
 - i. "Didn't have music out, running index cards on percussion instruments," 2 points;
 - ii. "Off task and distracted other students," 1 point;
 - iii. "Disruption of class, refusal to follow basic directions, eating in class," no points noted;
 - iv. "Disruption in ISS room, broken Chromebook, arguing with staff, disrupting the function of the front office," 10 points; and

- v. "Some yellow cards and things, teachers tried to give [the Student] a chance to finish the hour in the office and be successful. Didn't count for points but of note."
- b. Insubordination occurred from 10/16/23 through 2/8/24 and included:
 - i. "Lied about putting test in Mastery Connect. An agreement was made to come back during the 8th hour to complete it ... never showed up." 1 point;
 - ii. "Again, using a non-mallet object on a percussion instrument." 1 point; and
 - iii. "Refused to follow directions, defiance, disrespect during group pictures." 2 points.
- c. Other behaviors that occurred from 10/25/23 through 2/9/24 and included:
 - i. "Disrespect of Staff ... Yelling at Staff, arguing, punching desk," 5 points;
 - ii. "Lying, Blade brought to school, lied about it to [S]taff," 15 points;
 - iii. "Skipping Class ... snuck out of PE without permission," 1 point;
 - iv. "Vandalism: opened and disassembled a soap dispenser and pried open a metal door bending it so it wouldn't close"; and
 - v. "Disrespect of [S]taff: iPad not putting it away when asked. Messing with chains on the walking track, disobeying the request of the teacher." 5 points.

In December of 2023, the School District team "requested consent for reevaluation to conduct a Functional Behavior Assessment Parents granted consent for that evaluation, 2/14/2024."

17. According to the MDR dated February 27, 2024, teacher observation of the Student included:
- a. General Education Teacher 1: "[The Teacher] requested to add that [the Student's] behavior seems less like a manifestation of [their] exceptionality and more of an exercise of [their] free will."
 - b. General Education Teacher 2: "Reported that the behaviors [they see] appear to be attention seeking, are disruptive, and cause a disturbance in class. Noted that [they give] frequent reminders of expectations[They] also offer accommodations frequently such as extra time, speech to text, a quiet and separate location, but that [the Student] sometimes refuses accommodations."
 - c. General Education Teacher 3: "[The Student] is often fidgeting or distracted. [They] accommodate this by giving [the Student] the opportunity to stand, do tests online, and work in a different location."
 - d. The Special Education Teacher: "IEP says [the Student] should be given higher order thinking projects, but [the Student] cannot or will not work on them at all. [They] stated that [the Student's Parent] says the reason [they don't] want to do

[their] work is that [they are] bored, but [the Student] is refusing work no matter the level of work. [The Student] was given choices in topic and outcome of [their] project and still didn't do the work."

- e. General Education Teacher 4: "Added that [the Student] misses class due to behaviors that happen outside of [their] classroom, such as when [they are] pulled from class to conference with administrators about [their] behavior. When [the Teacher] redirects [the Student] for minor behaviors, [the Student] usually responds."
18. According to an FBA dated February 27, 2024, relevant information included, "[The Parent] confirmed that they have an outside diagnosis of ADHD and ODD and that [they have] 300 pages of emails which would show that the [School District] was notified of that ... [The Parent] stated that [they] did not really look over the PWN when the 504 and IEP were combined."
19. On February 27, 2024, the Assistant Director of Special Services emailed the Parent, "I have completed a review of the Manifestation Determination Review (MDR) for [the Student]. This included interviewing all parties, reviewing the original MDR, the current IEP and supporting documents. Based on that information, I have determined that the findings of the Manifestation Determination Review of 02/15/2024 stand as written."

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.530(e) and K.S.A. 72-3433, within 10 school days of the date on which the decision to take disciplinary action is made, a review shall be conducted to determine the relationship between the child's disability and the conduct that is subject to disciplinary action. The review shall be conducted by the agency, the parent, and relevant members of the child's IEP team as determined by the parent and the agency. In carrying out the review, that group shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent.

Based upon its review of all the relevant information, the group shall determine if the conduct in question was caused by or had a direct and substantial relationship to the child's disability or was the direct result of the agency's failure to implement the child's IEP. If it is determined that the conduct of the student is a manifestation of the child's disability, the IEP team shall conduct a functional behavioral assessment and implement a behavioral intervention plan for such child, provided that the agency has not conducted such an assessment prior to the behavior that resulted in a change in placement. If the child already had a behavioral intervention plan, review and modify it, as necessary, to address the behavior; and return the child to the placement from which the child was removed, unless the parent and the agency agree to a change of placement as part of the modification of the behavioral intervention plan.

The Student was eligible for a 504 Plan due to ADHD and an IEP due to giftedness. When the Student's behavior began to escalate, the District initiated a request to conduct an FBA to determine "appropriate positive behavioral supports." This evaluation was not conducted due

to delays in obtaining written consent. In February 2024, the District was considering expulsion for the Student primarily due to behaviors that included theft, lying, vandalism, and having unsafe objects at School. At the expulsion hearing, the Parent divulged that they had information related to the Student's ODD and Autism diagnoses and disagreed that the Student's IEP should not have included discipline protections for students with disabilities.

As a Student with a 504 plan and an IEP for giftedness only, the Student was not entitled to an MDR. Based on the District's previous attempts to conduct an FBA and the Parent's assertion that the Student had additional disabilities, the District conducted an MDR and concluded that the behaviors that resulted in the recommendation of expulsion were not due to the Student's disabilities that were in the Student's record at the time the decision was made. The Parent appealed this decision, and the District conducted a second MDR with the same outcome. The District also initiated an evaluation of the Student once the District was made aware that the Student may have additional disabilities.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the District failed to meet its obligations to conduct an MDR for the Student.

Issue Four

USD #260 expelled the student from the school based on disability-related behavior in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA).

Positions of the Parties

The Parent alleged that the District did not recognize ODD as a disability and expelled the Student even after it was determined that the Student's behaviors were tied to ADHD/ODD.

The District responded, "a notice of a potential disability, we held a manifestation for [the Student] on February 15, 2024. [The Student] was expelled from [S]chool based on a team decision at a manifestation determination meeting where the team all agreed there was a lack of evidence to support a direct and substantial relationship between the behaviors and ADHD."

According to the Director of Special Services, "The assertion that the [D]istrict had knowledge of ODD or Autism is unsubstantiated. I have asked each person on the team and none of them recall a time when those diagnoses were brought up by [P]arents until February 2024. In such, the [P]arents also never requested an evaluation for a secondary exceptionality, rather, they assumed a secondary exceptionality would be added when the 504 was dismissed. We attempted to garner permission to evaluate the [S]tudent in December and again in February." According to the Director of Special Services, "the [Parent] signed consent for an evaluation in February following the manifestation determination, and then failed to produce the [S]tudent for the evaluation."

The Director of Special Services reported that a manifestation determination team concluded the Student's behaviors did not have a direct, substantial relationship to their disability. These behaviors included vandalism, destruction of school property (intentionally breaking a Chromebook), disrespecting staff, being disruptive, insubordination, skipping class, creating replica weapons, lying, bringing a blade to school and concealing it, and theft. The team acknowledged that impulsivity might have contributed to some of the described behaviors. However, they determined that others, such as stealing a blade, showing it off, and hiding it, as well as the continued destruction of their Chromebook, demonstrated planning and wilful intent.

Findings of Fact

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

1. The Assistant Principal recalled a significant incident occurred in January 2024, when the Student brought a leather-working tool with a blade to school and lied about its whereabouts. This incident resulted in 15 discipline points. Another major incident occurred in early February 2024, where the Student skipped class and was involved in vandalism. The vandalism resulted in 10 discipline points. Several smaller incidents in February 2024 resulted in the Student acquiring additional discipline points. The final incident occurred on February 9, 2024, when the Student was disruptive and destructive in the intervention room and received 10 discipline points. This act pushed the Student over the 60-point threshold.
2. The Director of Special Services indicated, "The behaviors brought forth for manifestation were determined by the team to not have a direct and substantial relationship to the disability. Those behaviors include:"
 - a. "Vandalism";
 - b. "[D]estruction of property (purposefully) broke a school Chromebook";
 - c. "[D]isrespect of staff";
 - d. "[D]isruptive behaviors";
 - e. "[I]nsubordination";
 - f. "[S]kipping class";
 - g. "[M]aking replicas of weapons/rubber band guns";
 - h. "[L]ying";
 - i. "[B]ringing a blade to [S]chool and hiding it in the bathroom ceiling following showing it to peers"; and
 - j. "[T]heft and insubordination."
3. The Director of Special Services reported, "Having only known the [S]tudent to have a diagnosis of ADHD at the time of MOST of the behaviors during the 2023-2024 school year, providing the agreed upon accommodations in the IEP, plus additional general

education interventions to the [S]tudent, and separating the ADHD behaviors from the willful violations of the [S]chool's code of conduct, the team determined that the behaviors in question were NOT a manifestation of [their] disability, including the disabilities we were just noticed of by the [P]arents following disciplinary action. Therefore disciplinary removal may occur."

4. On February 7, 2024, the Principal emailed the Parent, "[The Student] and I met today and discussed strategies to not earn more discipline points and a goal for [them] to also be able to earn a point back each week. We then made a points contract from the discussion."
5. On February 12, 2024, the Director of Special Services sent an email to the Parent and the IEP Team that indicated, "If the hearing committee determines that [the Student] is, in fact expelled, if an evaluation is agreed to, we will offer [the Student] our After Hours Program."
6. On February 12, 2024, a PWN to conduct a reevaluation was requested. Evaluations requested were for social/emotional status/behavior, general intelligence, academic performance, communicative status, and transition skills. The Parent "believes the [S]tudent is twice exceptional. Currently, the [S]tudent's IEP is for the exceptionality of gifted only. The team is offering an evaluation to determine if [the Student] meets the criteria for special education and specially designed instruction under any of the other eligibility categories." The Parent signed consent on February 13, 2024.
7. On February 12, 2024, the Director of Special Services emailed the Parent in response to a Parent's email, "The addition of accommodations from a 504 to an IEP does not constitute a change in exceptionality. Nor does it imply [a] special education determination. In this case, your [S]tudent remains a [S]tudent with a gifted IEP that does not have protections for disciplinary measures under state statute. However, because you have brought forth your concerns with another potential exceptionality, I will offer and encourage a comprehensive evaluation to be conducted. If the hearing committee determines that [the Student is], in fact, expelled, if an evaluation is agreed to, we will offer [the Student] our After Hours program."
8. On February 13, 2024, the HR Generalist/Classified, Executive Admin. Asst. to the Supt. of HR emailed Parent 2, "[Parent 2], Attached please find the hearing results for [the Student] from [the Asst. Superintendent of Human Resources]."
9. On February 15, 2024, the Director of Special Services emailed the Parent, "assigned [the Assistant Director of Special Education] to appeal process ... In the interim, we stand ready, willing, and able to provide [the Student] services via After Hours. We will provide transportation to and from the program, which is 4-6 M-Th at the [Learning Center]. This is an online program with special education teachers there to facilitate. We can start this as early as Tuesday afternoon. After reviewing [their] decision, if you are in disagreement with the [D]istrict's position, you may appeal to the [District Board of Education]."
10. On February 15, 2024, a PWN indicated a "Material Change in Services" and a "Substantial Change in Placement." "Beginning 2/15/2024 After Hours services added

temporarily as the appeals process to the manifestation hearing take place ... Direct Gifted services for this school year a (sic) ceased on 2/15/2024 and will resume at the end of [their] current long[-]term suspension date which is the first day of the 2024-2025 school year. This could change depending on the results of the appeal process." The request for consent was not signed by the Parents at that time.

11. On February 29, 2024, the Parents emailed the Assistant Director of Special Services and stated, "[The Student] is currently staying with [their] [Other Parent] in Washington State since they are acknowledging [their] OHI since it was in previous records. You can stop the transportation as well as remove [them] from after school. We still need to finish [their] IEP, which I have not heard anything back from [their] IEP manager after telling [them] I didn't agree with how [they] wrote out the PWN."
12. During interviews with the Complaint Investigator, the Parent shared the Student's behavior issues were relatively recent. Prior to that, the main concern was the Student's failure to complete assignments. It wasn't until recently that the Student started experiencing difficulties with teachers and engaging in outbursts. In eighth grade, the Student's behavior deteriorated after returning from visitations with the Parent 2 despite changes in medication and counseling. The Parent described the disability-related behaviors that were a manifestation of the Student's disabilities to include:
 - a. Spontaneous decisions with no clear purpose or reason;
 - b. Lack of memory of actions;
 - c. Difficulty with authority figures;
 - d. Standoffish behavior when tested in front of others; and
 - e. Attention-seeking behavior, both positive and negative.
13. The Parent believed the reasons for the expulsion were the "collection of discipline points as a whole."
14. During an interview with the Complaint Investigator, the Special Education Director reported the Student was expelled from school because the Student engaged in several inappropriate and deliberate behaviors. The Student brought a weapon to school, stole from teachers, hid the weapon in the ceiling of the boy's bathroom, vandalized the bathroom, and made poor decisions. These actions resulted in the Student reaching 60 points on the District's discipline point system, triggering an expulsion hearing.
15. The Social Studies Teacher reported during an interview with the Complaint investigator that the Student was expelled because of getting into a teacher's belongings, hiding a knife in a bathroom, being tardy, being off-task, being disrespectful to teachers, and having large outbursts in the office.
16. According to the Gifted Special Education Case Manager, the Student was expelled due to a series of behaviors that resulted in the Student accumulating discipline points that met the expulsion threshold. The final actions that contributed to the Student's expulsion included skipping classes and vandalizing a bathroom. Additional behaviors, such as stealing from teachers, were also noted. Overall, the Gifted Special Education

Case Manager acknowledged that the Student's ADHD contributed to some of their disruptive behaviors but emphasized that other behaviors, such as vandalizing a bathroom and stealing, were not related to ADHD. The Gifted Special Education Case Manager mentioned that not all teachers assigned points for the Student's classroom disruptions because they were due to ADHD and that the Student's expulsion was due to a series of non-ADHD behaviors that resulted in accumulating discipline points and reaching the expulsion threshold.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.534 and K.S.A. 72-3436, a child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated any rule or code of conduct of the school district may assert any of the protections provided for in this act if the school district had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. A school district shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred, the parent of the child has expressed concern, in writing, to supervisory or administrative personnel of the appropriate educational agency or to a teacher of the child that the child is in need of special education and related services. Additionally, if the parent of the child previously has requested an evaluation of the child, or the teacher of the child, or other personnel of the school district previously expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of such school district or to other supervisory personnel of the district.

A school district shall not be deemed to have knowledge that a child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused services under this law, or the child has been evaluated but it was determined that the child was not a child with a disability. If a school district does not have knowledge that a child is a child with a disability prior to taking disciplinary action against the child, the child may be subjected to the same disciplinary action as is applied to children without disabilities who engage in comparable behaviors. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary action described by this act, an evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the school district shall provide special education and related services in accordance with the provisions of this act, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities, which may be long-term suspension or expulsion from school.

The impact of the Student's ADHD included being easily distracted, completing and turning work in on time, exhibiting attention-seeking behaviors, disrupting class activities, and being

disrespectful. The primary reasons for the expulsion recommendation included vandalism, lying, theft, and bringing a “blade” to school. The statements from District staff consistently indicated that the “ADHD -] like” behaviors were frequently addressed in the classroom and the Student did not receive discipline or behavior points for those particular behaviors. The more significant behaviors were not consistent with the Student’s disability-related behaviors of ADHD. The District determined that the behaviors under examination for expulsion were not related to the disabilities that the District was aware of at the time the behaviors occurred, which resulted in a recommendation for expulsion.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the District expelled the Student from school behaviors that were a manifestation of the Student’s IDEA [-] eligible disability.

Investigator

Tania Tong, Licensed Complaint Investigator

Right to Appeal

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