

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #458

ON FEBRUARY 26, 2024

DATE OF REPORT MARCH 27, 2024

This report is in response to a complaint filed with our office by ----- on behalf of her son, -----.
For the remainder of this report, ----- will be referred to as "the student." ----- will be referred to as "the complainant," or "the parent."

Investigation of Complaint

On March 11, 2024, Laura Jurgensen, complaint investigator, spoke with the parent via Zoom. On March 20, 2024, the investigator spoke, via Zoom, with Jennifer Martin, Director of Special Education; Bailey Edgar, School Psychologist; and Jill Koertner, District Behavior Coach. The complaint investigator also exchanged multiple emails with the parents and Ms. Martin. For the remainder of this report, Ms. Martin will be referred to as "Director of Special Education," Ms. Edgar will be referred to as "School Psychologist," and Ms. Koertner will be referred to as "District Behavior Coach."

In completing this investigation, the complaint investigator reviewed the following:

- Student's i-Ready Reading Data, Aug. 25, 2023–Mar. 21, 2024.
- Student's i-Ready Math Data, Aug. 24, 2023–Mar. 20, 2024.
- Student Behavior Intervention Plan (BIP) Goal Progress Data, Aug. 15, 2023–Mar. 6, 2024.
- Student Progress Reports 1st, 2nd, and 3rd Quarters 2023-2024.
- Parent Issues and Timeline with [school and district], Mar. 1, 2024.
- Email from Director of Special Education to Student's IEP Team Providing Progress Report Data, Feb. 2, 2024.
- Email from Parent to Student's IEP Team with Data Request, Feb. 1, 2024.
- Email from School Psychologist to Parents with Prior Written Notice (PWN), Notice of Meeting (NOM), and draft Individualized Education Program (IEP), Jan. 29, 2024.
- Proposed IEP Amendment, Jan. 24, 2024.
- Jan. 24, 2024, IEP Team Meeting Paperwork: NOMs for Jan. 12 & 24, 2024, IEP Team Meeting Notes, PWN.
- Slides from IEP Team Meeting, Jan. 24, 2024.
- U.S. Dep't of Educ. Office of Special Educ. Programs (OSEP) Letter to Lipsitt, Apr. 19, 2018, IEP Team Discussed at Jan. 24, 2024, IEP Team Meeting.

- Email from Director of Special Education to Student's IEP Team with Agenda for Jan. 24, 2024, IEP Team Meeting, Jan. 11, 2024.
- Student Otolaryngology Office Visits Notes, Nov. 9, and Dec. 9, 2023.
- IEP Goal 8.1 Progress Data, Oct. 24–Dec. 7, 2023.
- Letter from Director of Special Education to Parents Regarding Missed Services, Dec. 7, 2023.
- Dec. 6, 2023, IEP Team Meeting Paperwork: PWN and Request for Consent for Reevaluation, Parent Consent for Release of Information and Medicaid Reimbursement, NOM, IEP Team Meeting Notes.
- NOM and IEP Team Meeting Notes, Nov. 10, 2023.
- Student's Day at School Worksheets from School to Parent, Nov. 27, 30, Dec. 4, and 5.
- Email Exchange between School Psychologist, Parent, & Principal regarding Parent's Request for Increased Time in the Regular Education Environment, Oct. 30, 2023.
- Student IEP, May 1, 2023.
- May 1, 2023, IEP Team Meeting Paperwork: IEP Team Meeting Notes, Behavior Intervention Plan, Extended School Year Transportation, Extended School Year Justification, School Year Transportation, Parent Rights Receipt, Electronic Communication Consent, Parent Consent for Release of Information and Medicaid Reimbursement, First–Third Quarter 2022-2023 Progress Report, PWN, NOM.
- Behavior Intervention Plan, Apr. 30, 2023.
- Student Behavior Data Collection Sheet, Versions 1, 2, 3, and 4.
- Facebook Comment Exchange between District and Parent regarding IEP Compliance and Special Education Funding.
- Text Messages between Substitute Special Education Teacher and Parent regarding Student's Behavior.
- Cooperative Progress Report Guidance.
- Cooperative's Written Procedures for Creating Progress Reports for Students with IEPs, Sept. 2023.
- Cooperative's Written Procedures for Creating Progress Reports for Students with IEPs, Nov. 2023.
- Screencast of Cooperative's Instructions for Creating Progress Reports for Students with IEPs.
- IEP pages, including amendments, for 38 students with IEPs attending student's school, from the first day of school through the filing of this complaint showing the student's name and the special education services in the regular education environment required for the student.
- Student's school provider schedules with anticipated student services times.
- Twelve letters from the Cooperative to parents whose children the Cooperative determined did not receive required special education services, Dec. 7, 2023.

Background Information

The district against which this complaint is filed provides special education services through a cooperative. The student is enrolled in the first grade in an elementary school within the cooperative that is not in the student's resident district, based on an IEP Team decision before the student enrolled in kindergarten. (Parent Interview, Mar. 11, 2024; Student IEP, May 1, 2023.) The student's strengths are being social and imaginative, working well in a structured environment, and completing many tasks independently. (Student IEP, May 1, 2023.) The student's exceptionality impacts his ability to access and progress in the general curriculum through his visual and fine motor delays and sensory needs that inhibit him from participating in classroom activities as compared to same age peers. (Student IEP, May 1, 2023.) The student's language delays impact his ability to verbally demonstrate knowledge and impede his social success with staff and peers as others often have a difficult time understanding his wants and needs. (Student IEP, May 1, 2023.) The student's exceptionality impacts his ability to work on grade level curriculum and he accesses the general curriculum with modifications. (District Interview, Mar. 20, 2024.)

Issues

In the written complaint, the parent presented two issues.

Issue One: From the first day of school through the filing of this complaint did USD 458 ensure that to the maximum extent appropriate, the student was educated with children who are nondisabled and was only removed from the regular educational environment if the nature or severity of the student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily? 34 C.F.R. § 300.114(a)(2); K.S.A. § 72-3420(a).

Issue Two: From the first day of school through the filing of this complaint did USD 458 ensure that as soon as possible following development of the student's IEP, USD 458 made available all special education and related services to the student that the student's IEP states will be provided in a regular education classroom? 34 C.F.R. § 300.323(c)(2); K.S.A. § 72-3429(a)(1).

During the investigation, the investigator came across information that raised a credible allegation regarding a special education practice that raised a potential compliance issue. The December 6, 2023, IEP Team meeting notes indicate that multiple students with IEPs had not received the special education services in the regular class as stated in their IEP. The December 6, 2023, IEP Team meeting notes states, "families will be receiving a letter from the special education director" and "families may be offered compensatory services." When a State becomes aware of a credible allegation it must conduct proper due diligence in a timely manner. (U.S. Dep't of Educ. Office of Special Educ. & Rehabilitative Services, State General Supervision Responsibilities Under Parts B and C of the IDEA, Monitoring, Technical Assistance, and Enforcement, OSEP QA 23-01, July 24, 2023.) Due to the closeness between this concern

and Issue Two and learning of this credible allegation early enough in the investigation to give the district the opportunity to respond and provide evidence, the State will conduct its proper due diligence by resolving this issue in this complaint investigation.

Issue Three: From the first day of school through the filing of this complaint did USD 458 ensure that as soon as possible following development of the IEPs of all students with IEPs enrolled in student's school, USD 458 made available all special education services to all students with IEPs enrolled in student's school that each student's IEP states will be provided in the regular class? 34 C.F.R. § 300.323(c)(2); K.S.A. § 72-3429(a)(1).

Issue One

From the first day of school through the filing of this complaint did USD 458 ensure that to the maximum extent appropriate, the student was educated with children who are nondisabled and was only removed from the regular educational environment if the nature or severity of the student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily? 34 C.F.R. § 300.114(a)(2); K.S.A. § 72-3420(a).

Applicable Law

The regulations implementing the Individuals with Disabilities Education Act (IDEA) and Kansas statute require, to the maximum extent appropriate, that a child with an IEP must be educated with children who are not disabled and only removed from the regular education environment if the nature and severity of the child's disability, even with the use of supplementary aids and services, causes the child to not receive a satisfactory education. (34 C.F.R. § 300.114(a)(2); K.S.A. § 72-3420(a).) The decision to remove a child from the regular education environment and to consider the use of supplementary aids and services necessary to keep the child in the regular education environment to the maximum extent appropriate must be "made by made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options" (34 C.F.R. § 300.116(a)(1).) OSEP indicates in its comments to the regulations implementing IDEA that the "regular educational environment" referenced in 34 C.F.R. § 300.114(a) includes regular classrooms and other school settings, like the cafeteria and recess, where children without disabilities participate. (71 Fed. Reg. 46,585 (2006).) The placement decision is documented in the child's IEP and must include "[a]n explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in" participating in the child's special education and related services, supplementary aids and services, program modifications, and supports for school personnel that enable the child to make appropriate progress on their annual goals, be involved in and progress in the general curriculum, participate in extracurricular and nonacademic activities, and be educated and participate with other children with disabilities and nondisabled children. (34 C.F.R. § 300.320(a)(5); K.S.A. § 72-

3429(c)(5).) Districts must communicate decisions regarding proposed changes to placement or refusing a parent's request to change placement through a Prior Written Notice. (34 C.F.R. § 300.503(a); K.S.A. § 72-3430(b)(2).)

Analysis: Findings of Fact

When the student's IEP Team met on May 1, 2023, the IEP Team determined the student's placement and documented the placement decision for the student in the IEP. (Student IEP, May 1, 2023.) The parent's written complaint does not allege a violation of law as to the IEP Team's May 1 placement decision and the district maintains this decision met special education legal requirements. (Parent Interview, Mar. 11, 2024; District Interview, Mar. 20, 2024.) The allegation for this issue is that the district did not ensure that the student's placement was maintained from the first day of school through the filing of this complaint as the student's IEP required.

The student's May 1, 2023, IEP indicates the IEP Team selected the student's placement to be "Special Education Direct Services in a General Education Classroom in a Elementary or Secondary Building" and "Special Education Classroom in General Education Elementary or Secondary Building." District staff indicate that the student spends most of the school day in a special education classroom that the student's school calls the "structured learning classroom" or SLC. (District Interview, Mar. 20, 2024.) In considering whether the nature and severity of the student's disability, even with the use of supplementary aids and services, would enable the student to receive a satisfactory education in the regular educational environment, the IEP Team determined that the student, "would most greatly benefit from placement within a specialized program that would meet his social/behavioral needs more directly than a regular education environments [sic] with supplementary aids and services only. He will be included in his general education classroom as often as possible." (Student IEP, May 1, 2023.) To be clear, this is a statement of placement, with the IEP Team attempting to document its decision under 34 C.F.R. § 300.114(a)(2)(ii) and not a statement of special education services.

Despite the parent not alleging a violation of special education law as to the IEP Team's May 1, 2023, decision on the student's placement, the written description in the student's IEP, is clearly defective in explaining the "the extent, if any, to which the child will not participate with nondisabled children in the regular class" (34 C.F.R. § 300.320(a)(5).) To explain is "to make plain or understandable." (Explain, Merriam- Webster Dictionary.) Indicating that the student will "be included in his general education classroom as often as possible" does not provide the needed specificity for IEP Team members to understand when the student will not participate with nondisabled children in the regular class. (Student IEP, May 1, 2023.) The IEP must clearly document the team's explanation of the extent, if any, to which the student will not participate with nondisabled children in the regular class. The team could document this in the IEP in a variety of ways, the clearest likely being to describe the classes, subjects, and/or portions of the student's day when the student will not participate in the regular class and other school

settings, like the cafeteria and recess, where children without disabilities participate. The December 6, 2023, IEP Team meeting minutes indicate that district staff provided the parent with a copy of the student's daily schedule and discussed the portions of the student's day that he spent in the SLC and the regular class, in relation to his special education services. (Dec. 6, 2023, IEP Team Meeting Paperwork.) Talking through the student's daily schedule and discussing the portions of the student's day that he will spend in and removed from the regular class, in relation to his special education services, is a conversation for the group of persons knowledgeable about the child, including the parents, and this conversation and decision must be documented in the child's IEP, clearly explaining "the extent, if any, to which the child will not participate with nondisabled children in the regular class " (34 C.F.R. § 300.320(a)(5).)

At the end of September 2023, the student's special education teacher from the SLC classroom went on parental leave. (Parent Interview, Mar. 11, 2024; District Interview, Mar. 20, 2024.) In October 2023, the parent attended a parent teacher conference with the student's general education teacher where the general education teacher indicated that the student was doing well in the regular class, but that the student was not there much. (Parent Interview, Mar. 11, 2024.) Following the parent teacher conference the parent contacted the School Psychologist and requested to increase the student's time in the regular class and to amend the student's IEP without a meeting to reflect the increased time. (Parent Interview, Mar. 11, 2024.) The parent and School Psychologist then exchanged emails and established a November 10, 2023, IEP Team meeting. (Email Exchange between School Psychologist, Parent, & Principal regarding Parent's Request for Increased Time in the Regular Education Environment, Oct. 30, 2023.)

The parent indicated that on November 3, 2023, the secretary from the student's school called the parent and asked the parent to come to the school as the student was exhibiting aggressive behavior, either to help staff calm the student or to pick the student up. (Parent Interview, Mar. 11, 2024.) The parent was able to assist school staff in calming the student and the student remained at school. (Parent Interview, Mar. 11, 2024.) The student's IEP Team spent most of the November 10, 2023, IEP Team meeting discussing the November 3 situation. (NOM and IEP Team Meeting Notes, Nov. 10, 2023.) The parent raised her request for increased time in the regular class and the School Psychologist discussed the student's behavior inconsistencies and lack of foundational academic knowledge and skills that would prevent the student from being successful in increased time in the regular class. (NOM and IEP Team Meeting Notes, Nov. 10, 2023.) The IEP Team identified reading group as a good time to increase the student's time daily by 15–20 minutes in the regular class and collect data to determine the student's success with this change. (NOM and IEP Team Meeting Notes, Nov. 10, 2023.) The IEP Team decided to meet again on December 6, 2023, to review the collected data and further discuss increasing the student's time in the regular class. (NOM and IEP Team Meeting Notes, Nov. 10, 2023.) The district did not provide the investigator with a Prior Written

Notice documenting the IEP Team's decision on the parent's request to increase the student's time in the regular class.

On November 16, 2023, the parent was again called to the student's school to help staff calm the student. (Parent Interview, Mar. 11, 2024.) The parent provided the investigator with "Day at School" sheets for the student for November 27 and 30 and December 4 and 5 that she asserts is evidence that the special education teacher was not permitting the student to go to the regular class unless he exhibited good behavior. On their face, these sheets do not seem to indicate this, but with the student's IEP providing an unclear description of the student's participation in the regular class it is understandable that the parent wondered whether staff were not permitting the student to participate in the regular class due to his behavior. At the December 6, 2023, IEP Team meeting, the IEP Team discussed data on the student's progress toward meeting the annual goals and data on the student's challenging behavior, including times of the day the student more often exhibited "vocal disruption, property disruption, elopement, and aggression." (Dec. 6, 2023, IEP Team Meeting Paperwork.) District staff provided the parent with a copy of the student's daily schedule and discussed the portions of the student's day that he spent in the SLC and the regular class, in relation to his special education services. (Dec. 6, 2023, IEP Team Meeting Paperwork.) District staff explained to the parent that the student's time in the regular class had been cut short each day, as well as for other students, "and families will be receiving a letter from the special education director" and that "families may be offered compensatory services." (Dec. 6, 2023, IEP Team Meeting Paperwork.) District staff indicate that it was not until at or shortly after the November 10, 2023, IEP Team meeting that they realized the student was not participating in the regular class to the extent they believed his IEP to require. (District Interview, Mar. 20, 2024.) The IEP Team decided that the student should receive a functional behavior assessment (FBA), so the district requested parent consent, which the parent provided on December 8, 2023. (Dec. 6, 2023, IEP Team Meeting Paperwork.) The December 6 IEP Team meeting notes do not indicate that the IEP Team discussed the parent's request to increase the student's time in the regular class and the data district staff were scheduled to collect, rather the focus was more on the time the student had missed in the regular class. (Dec. 6, 2023, IEP Team Meeting Paperwork.)

In the interview with district staff, they explained that school staff create schoolwide schedules based on the amount of time students with IEPs are to spend in the regular class, updating those schedules as student's IEPs are amended throughout the school year. (District Interview, Mar. 20, 2024.) The Director of Special Education explained that staff are not required to document when a student with an IEP spends all required time in the regular class and likewise are not required to document when a student with an IEP does not spend all required time in the regular class. (District Interview, Mar. 20, 2024.) District staff indicated that it is expected that all students with IEPs will spend all minutes in the regular class their IEPs require unless the student is sick and so the schedules plus attendance data represent the evidence that students with IEPs spent the required time in the regular class. (District Interview, Mar. 20,

2024.) But in this situation, the evidence does not support the district's conclusion. The schedule shows the school's plan to ensure that students with IEPs spend the time their IEPs require in the regular class, but the student at the focus of this investigation did not spend the time the schedule indicates in the regular class, as district staff indicated to the parent at the December 6 IEP Team meeting. (Dec. 6, 2023, IEP Team Meeting Paperwork.)

District staff stated that there were many staffing changes in the SLC during the time on which this investigation is focused: the SLC special education teacher went on parental leave, there were multiple paraprofessional changes, the Cooperative hired a new special education teacher for the SLC, and the student's special education teacher returned from parental leave. (District Interview, Mar. 20, 2024.) District staff indicate this led to lack of clarity around whether and when the student was spending the time required in the regular class. (District Interview, Mar. 20, 2024.) District staff stated there is not a method to alert relevant school staff or Cooperative staff when students do not spend the time their IEPs require in the regular class. (District Interview, Mar. 20, 2024.)

Conclusion

Both the district and the parent were clear that the student did not spend the time in the regular class his IEP required. (Parent Interview, Mar. 11, 2024; District Interview, Mar. 20, 2024.) Federal and state special education legal requirements indicate that a student may only be removed from the regular educational environment if the nature or severity of the student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 C.F.R. § 300.114(a)(2); K.S.A. § 72-3420(a).) As the student began to miss daily, required time in the regular class, a group of persons, knowledgeable about the child, including the parents, did not make this decision. Rather, the student was removed from the regular class due to a failure of the system to have a mechanism in place that would alert school and Cooperative leadership that this student was not spending the required time in the regular class. Federal and state special education legal requirements do not necessarily require that a district must document each minute a child with an IEP spends in and outside the regular class, but as part of its obligation to ensure that the student was only removed from the regular educational environment if the nature or severity of the student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, the district must have a mechanism to make relevant school and Cooperative staff aware within a reasonable amount of time when this is not occurring. Based on the foregoing, this investigation concludes that USD 458 violated its obligation to ensure that to the maximum extent appropriate, the student was educated with children who are nondisabled and was only removed from the regular educational environment if the nature or severity of the student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily under 34 C.F.R. § 300.114(a)(2) and K.S.A. § 72-3420(a). Further,

investigation into this issue led to evidence that supports the conclusion that USD 458 violated its obligation to ensure that the written description in the student's IEP explains "the extent, if any, to which the child will not participate with nondisabled children in the regular class . . ." under 34 C.F.R. § 300.320(a)(5) and K.S.A. § 72-3429(c)(5). Finally, investigation into this issue led to evidence that supports the conclusion that USD 458 violated its obligation to provide the parent with a Prior Written Notice documenting the IEP Team's decision on the parent's request to increase the student's time in the regular class under 34 C.F.R. § 300.503(a) and K.S.A. § 72-3430(b)(2).

Issue Two

From the first day of school through the filing of this complaint did USD 458 ensure that as soon as possible following development of the student's IEP, USD 458 made available all special education and related services to the student that the student's IEP states will be provided in a regular education classroom? (34 C.F.R. § 300.323(c)(2); K.S.A. § 72-3429(a)(1).)

Applicable Law

The regulations implementing the IDEA require that a district must ensure that special education services are made available to the child in accordance with the child's IEP. 34 C.F.R. § 300.323(c)(2).) Each child's IEP must include a statement of special education services:

based on peer-reviewed research to the extent practicable, . . . that will be provided to enable the child . . . [t]o advance appropriately toward attaining the [child's] annual goals, . . . [t]o be involved in and make progress in the general education curriculum, . . . to participate in extracurricular and other nonacademic activities, . . . and [t]o be educated and participate with other children with disabilities and nondisabled children.

(34 C.F.R. § 300.320(a)(4); K.S.A. § 72-3429(c)(1).) The regulations implementing the IDEA and Kansas special education regulations go on to further define special education as:

specially designed instruction . . . to meet the unique needs of a child with a disability . . . adapting, as appropriate to the needs of [the] child . . . , the content, methodology, or delivery of instruction [t]o address the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the [district].

(34 C.F.R. § 300.39(a)(1), (b)(3); K.A.R. § 91-40-1(III).) Each special education service is required to be accompanied by the projected date for the beginning of the service and the anticipated frequency, location, and duration of the service. (34 C.F.R. § 300.320(a)(7).)

Analysis: Findings of Fact

The student’s IEP provides a chart to indicate the special education services the student is to receive. (Student IEP, May 1, 2023.) This table duplicates the header row of this chart and the row of this chart at issue in this complaint investigation:

Service	From	To	Amount	Setting	Freq
Special Education Services	05/01/2023	04/30/2024	125 minutes	C - Special Ed Direct Services in a Regular Ed Classroom in an Elementary or Secondary Building:	5 days per week

Both the district and the parent were clear that the student did not receive the special education services in the regular class his IEP required. (Parent Interview, Mar. 11, 2024; District Interview, Mar. 20, 2024.) Because the district admits that the student did not receive the special education services in the regular class his IEP required, this analysis will focus on whether the district had a sufficient method to ensure the student received the special education services in the regular class the student’s IEP required, whether the student’s IEP includes a statement of special education services, based on peer-reviewed research to the extent practicable, that will be provided to enable the student to advance appropriately toward attaining the student’s annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children, and the appropriateness of the district’s response when it discovered the student had not received the required special education services in the regular class.

As with time spent in the regular class, the district likewise does not document whether students receive the special education services indicated on their IEP. (District Interview, Mar. 20, 2024.) Just as with time spent in the regular class, district staff build a schoolwide schedule based on the special education services minutes each IEP requires. (District Interview, Mar. 20, 2024.) District staff maintain that the schedules ensure that all students with IEPs will receive the special education services in the regular class their IEPs require unless the student is sick and so the schedules plus attendance data represent the evidence that students with IEPs received the special education services their IEPs require. (District Interview, Mar. 20, 2024.) As in Issue One, the evidence does not support the district’s conclusion. The schedule shows the school’s plan to ensure that students with IEPs receive the special education services their IEPs require in the regular class, but the student at the focus of this investigation did not receive the special education services his IEP required in the regular class, as district staff indicated to the parent at the December 6 IEP Team meeting. (Dec. 6, 2023, IEP Team Meeting Paperwork.) District staff stated there is not a method to alert relevant school or Cooperative staff when students do not receive the special education services their IEPs require in the regular class. (District Interview, Mar. 20, 2024.)

The student's IEP only references the special education services the student will receive in the regular class in the chart reproduced above. There is no other statement that describes these special education services. The district uses the web-based tool Bright SPED™ to create student's IEPs. (Email from Special Education Director to Complaint Investigator, Mar. 22, 2024.) During the district interview, district staff indicated that how these services were determined was to consider the student's strengths and needs, along with the student's annual goals and how the student accessed the general curriculum to determine the special education services the student needed. But the chart does not contain the results of this discussion and decision and simply states "Special Education Services," and does not provide a statement that explains the services that will be provided to enable the student to advance appropriately toward attaining the student's annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities. From the term "Special Education Services" it is not possible to determine whether these services are based on peer-reviewed research, to the extent practicable. A state complaint decision from the Colorado Department of Education explains that the statement of special education services translates into practice as a "service delivery statement" and that it must be "must be sufficiently detailed for parents to understand what specific services and supports the school district is offering to provide." (Adams 12 Five Star Schs., 75 IDELR 86 (SEA CO 2019)). In the comments to the regulations implementing IDEA, OSEP provides guidance on 34 C.F.R. § 300.320(a)(7) that is applicable to the vagueness we see in this student's statement of special education services. (Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg., 46,540, 46,667 (Aug. 14, 2006).) In responding to a recommendation about the term "duration" OSEP commented:

What is required is that the IEP include information about the amount of services that will be provided to the child, so that the level of the agency's commitment of resources will be clear to parents and other IEP Team members. The amount of time to be committed to each of the various services to be provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP.

(Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg., 46,540, 46,667 (Aug. 14, 2006).) Despite OSEP responding to a recommendation about duration of a service, the regulation cited is clearly focused on clarity for all involved with the child and should be applied when drafting the statement of special education services and the frequency, duration, and location of those services.

As stated in Issue One, district staff learned the student was not receiving the special education services in the regular class his IEP required at or shortly after the November 10,

2023, IEP Team meeting. (District Interview, Mar. 20, 2024.) Once district staff learned this, the School Psychologist then took the schoolwide schedule to the student's general education teacher and asked the general education teacher to recall from memory the dates the student did not come to the regular class for his special education services. (District Interview, Mar. 20, 2024.) The District Behavior Coach then created a schedule from the relevant period that showed the dates and times the student came to the regular class for his special education services and asked the student's general education teacher to verify its accuracy. (District Interview, Mar. 20, 2024.) On December 7, 2023, the Director of Special Education Services sent the parents a letter letting them know the student had not received some of the special education services indicated in his IEP due to a staffing shortage, provided the parents with information on the district's efforts to recruit staff and on hired new staff, and invited them to contact the student's school to schedule an IEP Team meeting to "discuss the specific services missed and a possible plan to deliver compensatory services for those not provided." In determining the services that the district would offer to the student; district staff reviewed the student's progress data on annual goals and compiled this for the IEP Team to discuss. (Slides from IEP Team Meeting, Jan. 24, 2024.) This investigator reviewed the student progress data district staff reviewed and prepared for the January IEP Team meeting. (Student Behavior Intervention Plan (BIP) Goal Progress Data, Aug. 15, 2023–Mar. 6, 2024; Student Progress Reports 1st, 2nd, and 3rd Quarters 2023-2024.) This investigator also reviewed the Cooperative's guidance on creating progress reports and the student's progress reports appear to have been accurately created, following Cooperative guidance. (Cooperative Progress Report Guidance; Cooperative's Written Procedures for Creating Progress Reports for Students with IEPs, Sept. 2023; Cooperative's Written Procedures for Creating Progress Reports for Students with IEPs, Nov. 2023; Screencast of Cooperative's Instructions for Creating Progress Reports for Students with IEPs.)

On January 11, 2024, the Director of Special Education emailed the student's IEP Team with an agenda for the January 12 IEP Team meeting, the two options district staff had come up with for making up the missed services, and invited the parents to bring any other options to the meeting they would like to contribute. District staff determined that the student had made sufficient progress on his annual goals despite not receiving the required special education services in the regular class and the student continued to have access to the general education curriculum in the SLC. (District Interview, Mar. 20, 2024.) USD 458 canceled school on January 12 due to inclement weather and the IEP Team rescheduled its meeting for January 24. (District Interview, Mar. 20, 2024.) At the January 24 IEP Team meeting, the IEP Team reviewed the student's progress data. (Slides from IEP Team Meeting, Jan. 24, 2024.) The Director of Special Education does not recall disagreement amongst the IEP Team as to whether student had made progress on his IEP goals. (District Interview, Mar. 20, 2024.) In the parent interview, the parent expressed surprise that the student had made the progress he had considering the data from this previous progress report, the disruptions the student experienced due to

behavior and staffing changes, and absences from school in December. The School Psychologist did not believe that the IEP Team reached consensus on whether the student's missed services impacted his progress on his annual goals and access to the general education curriculum. (District Interview, Mar. 20, 2024.)

The Director of Special Education indicated that she explained that the standard the IEP Team would use to determine whether to provide the student with compensatory services is the standard that OSEP sets in its Letter to Lipsitt. (District Interview, Mar. 20, 2024; U.S. Dep't of Educ. OSEP Letter to Lipsitt, Apr. 19, 2018.) The Director of Special Education indicates this standard required the IEP Team to consider whether the missed services impeded the student's progress on annual goals and as district staff concluded the student's progress was not impeded, district staff then determined that the student missed the opportunities to interact with peers in the regular class. (District Interview, Mar. 20, 2024.) District staff indicated this is what motivated the option presented to the parents to make up missed services through a before or after school club to provide an opportunity to interact with peers and work on his annual goals related to speech through a curriculum resource the student's speech therapist would provide. (District Interview, Mar. 20, 2024.) District staff also provided parents with the option to provide more time in the regular class and reduce the student's time in the special education classroom (SLC) but expressed to the parent that may not be the best option. (Jan. 24, 2024, IEP Team Meeting Paperwork.) The parent disagreed with district staff that a before or after school club was sufficient to make up the services the student missed. (Parent Interview, Mar. 11, 2024; Jan. 24, 2024, IEP Team Meeting Paperwork.) The IEP Team did not come to agreement on how to make up special education services the student missed in the regular class and the parent requested more data, such as reading and math work samples from the student's time in the SLC, to make this decision. (Jan. 24, 2024, IEP Team Meeting Paperwork.) The Director of Special Education indicated in an email to the investigator that she is unsure whether district staff sent the parent the requested data. (Email from Director of Special Education to Complaint Investigator, Mar. 21, 2024.) The Director of Special Education provided the data to the complaint investigator that should have been provided to the parent. (Student's i-Ready Reading Data, Aug. 25, 2023–Mar. 21, 2024; Student's i-Ready Math Data, Aug. 24, 2023–Mar. 20, 2024.)

The Director of Special Education articulated the correct standard the IEP Team must use to determine whether the student needs compensatory services, but not the correct OSEP letter. In *Letter to Lipsitt*, OSEP indicates that in a state complaint investigation, the state education agency has broad discretion to determine a suitable remedy when a public agency has failed to provide a child with appropriate services, and that can include compensatory services, but *Letter to Lipsitt* does not speak to the standard IEP Teams must use to determine whether and what compensatory services are required when a student misses services. (U.S. Dep't of Educ. OSEP Letter to Lipsitt, Apr. 19, 2018.) OSEP has articulated this standard in a few letters, most notably in *Letter to Clarke* and most recently in *Letter to Wolfram*. (U.S. Dep't of Educ. OSEP

Letter to Clarke, Apr. 19, 2018; U.S. Dep't of Educ. OSEP *Letter to Wolfram*, January 10, 2022.) OSEP writes *Letter to Wolfram* in the context of guidance it issued due to the COVID-19 pandemic, but OSEP summarizes its missed services guidance across multiple documents in stating:

the decision to provide 'make up' or compensatory education when there is a disruption in the provision of educational services, and the nature and amount of the special education and related services that are to be provided as compensatory education, is an individualized determination made by the [IEP] Team in accordance with the requirements in 34 CFR §§300.320-300.324. That is, the IEP Team must determine whether the child was denied educational benefit because of the disruption in educational services and whether compensatory education is needed to 'make up' for the denial including addressing any skills that may have been lost.

District staff articulated its basis for offering a before or after school club as providing an opportunity for the student to interact with peers and work on his annual goals related to speech. (District Interview, Mar. 20, 2024.) It is also reasonable that the parent would request additional data on what the student completed in the SLC, including math and reading work samples, to help her consider whether the missed services denied the student educational benefit and the type of services that may be needed to address any skills the student may have lost.

Conclusion

The district admits it violated 34 C.F.R. § 300.323(c)(2) and K.S.A. § 72-3429(a)(1) by not providing all special education services to the student that the student's IEP states will be provided in the regular class. The district does not have a mechanism in place that would alert school and Cooperative leadership that this student was missing the special education services the student's IEP required in the regular class. Federal and state special education requirements do not necessarily require that a district document each minute of special education services a child with an IEP receives, but as part of its obligation to ensure that the student received the special education services the student's IEP required in the regular class, the district must have a mechanism to make relevant school and Cooperative staff aware within a reasonable amount of time when this is not occurring.

Additionally, the chart to indicate the special education services the student is to receive does not meet the special education legal requirement for the IEP to include a statement of special education services, based on peer-reviewed research to the extent practicable, that will be provided to enable the student to advance appropriately toward attaining the student's annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children. This chart is likely appropriate to

report special education data to the Kansas State Department of Education (KSDE), but does not include the clarity required for the team supporting the student, including the parents, to understand the special education services that the district will provide to enable the student to advance appropriately toward attaining the student's annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children. Districts must meet KSDE's data reporting requirements but are not required to include this chart within a student's IEP to do that. Based on the foregoing, this investigation concludes that USD 458 violated its obligation to ensure that the student's IEP include a statement of special education services as 34 C.F.R. § 300.320(a)(4) and K.S.A. § 72-3429(c)(1) require.

Issue Three

From the first day of school through the filing of this complaint did USD 458 ensure that as soon as possible following development of the IEPs of all students with IEPs enrolled in student's school, USD 458 made available all special education services to all students with IEPs enrolled in student's school that each student's IEP states will be provided in a regular education classroom? 34 C.F.R. § 300.323(c)(2); K.S.A. § 72-3429(a)(1).

Applicable Law

The regulations implementing the IDEA require that a district must ensure that special education services are made available to the child in accordance with the child's IEP. (34 C.F.R. § 300.323(c)(2).) Each child's IEP must include a statement of special education services:

based on peer-reviewed research to the extent practicable, . . . that will be provided to enable the child . . . [t]o advance appropriately toward attaining the [child's] annual goals, . . . [t]o be involved in and make progress in the general education curriculum, . . . to participate in extracurricular and other nonacademic activities, . . . and [t]o be educated and participate with other children with disabilities and nondisabled children.

(34 C.F.R. § 300.320(a)(4); K.S.A. § 72-3429(c)(1).) The regulations implementing the IDEA and Kansas special education regulations go on to further define special education as:

specially designed instruction . . . to meet the unique needs of a child with a disability . . . adapting, as appropriate to the needs of [the] child . . . , the content, methodology, or delivery of instruction [t]o address the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the [district].

(34 C.F.R. § 300.39(a)(1), (b)(3); K.A.R. § 91-40-1(III).)

Analysis: Findings of Fact

In analyzing this issue, the complaint investigator reviewed IEP pages, including amendments, for all students with IEPs attending student's school whose IEP requires special education services in the regular class, from the first day of school through the filing of this complaint, student's school provider schedules with anticipated student services times, and 12 letters from the Cooperative to parents whose children the Cooperative determined did not receive required special education services. Because the student's Dec. 6, 2023, IEP Team minutes were not clear about the number of students not receiving required special education services in the regular class, the investigator reviewed IEP pages for all students with IEPs showing the special education services in the regular class the student was to receive. District staff indicated in the interview that they determined that only students attending the SLC missed special education services in the regular class due to the staff changes and shortage, and not every student in the SLC. The Director of Special Education said that the complainant is the only parent that contacted the school and requested an IEP Team meeting to discuss compensatory services from the 12 letters the Cooperative sent to parents on December 7. (District Interview, Mar. 20, 2024.)

As stated in Issue Two, the district does not document whether students receive the special education services indicated on their IEP. (District Interview, Mar. 20, 2024.) District staff maintain that the schoolwide schedule ensures that all students with IEPs will receive the special education services in the regular class their IEPs require unless the student is sick and so the schedules plus attendance data represent the evidence that students with IEPs received the special education services their IEPs require. (District Interview, Mar. 20, 2024.) District staff stated there is not a method to alert relevant school or Cooperative staff when students do not receive the special education services their IEPs require in the regular class. (District Interview, Mar. 20, 2024.)

The Cooperative determined which students missed special education services in the regular class using the same method described in Issue Two. (District Interview, Mar. 20, 2024.) The Cooperative followed KSDE guidance when it learned that students were not receiving all special education services in the regular class their IEPs required by sending a letter to all relevant parents to inform them of the situation, the Cooperative's efforts, and an offer to convene the student's IEP Team to discuss compensatory services. (Kan. State Dep't of Educ., *An Update on Kansas Due Process Hearings, State Complaints, Recent Court Decisions, and Federal Guidance*, 2016 Summer Leadership Conference for Administrators, July 27, 2016, https://drive.google.com/file/d/0B8GP-%20ByRgj_TdEVvdEhWcWNjN1U/view?resourcekey=0-U4zN8bF71BxH0WtS6SX-ug)

Through review of 38 other student IEPs, it is clear that the special education services chart from the district's web-based tool, Bright SPED,[™] is the only IEP documentation of the required statement of special education services. The chart simply states, "Special Education Services,"

and does not provide a statement that explains the services that will be provided to enable the student to advance appropriately toward attaining the student's annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities. From the term "Special Education Services" it is not possible to determine whether these services are based on peer-reviewed research, to the extent practicable.

Conclusion

Based on the foregoing, this investigation concludes USD 458 violated 34 C.F.R. § 300.323(c)(2) and K.S.A. § 72-3429(a)(1) systemically by not having a mechanism in place that would alert school and Cooperative leadership that students were missing the special education services the student's IEPs required in a regular class. Federal and state special education requirements do not necessarily require that a district must document each minute of special education services a child with an IEP receives, but as part of its obligation to ensure that students received the special education services the student's IEPs required in a regular class, the district must have a mechanism to make relevant school and Cooperative staff aware within a reasonable amount of time when this is not occurring.

Based on the analysis and conclusion in Issue Two, and additional analysis in Issue Three, this investigation concludes that USD 458 violated 34 C.F.R. § 300.320(a)(4) and K.S.A. § 72-3429(c)(1) systemically through its special education services chart from the district's web-based tool, Bright SPED,™ that does not provide the required statement of special education services, based on peer-reviewed research to the extent practicable, that will be provided to enable the student to advance appropriately toward attaining the student's annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children.

Summary of Conclusions/Corrective Action

Issue One

The district violated 34 C.F.R. § 300.114(a)(2), K.S.A. § 72-3420(a), 34 C.F.R. § 300.320(a)(5), K.S.A. § 72-3429(c)(5), 34 C.F.R. § 300.503(a), and K.S.A. § 72-3430(b)(2), based on the findings of fact listed above. Corrective action is required, as follows:

1. Within 20 calendar days of the date of this report, USD 458 must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with:
 - a. Federal and state legal requirements at 34 C.F.R. § 300.114(a)(2) and K.S.A. § 72-3420(a) which require the district to ensure that to the maximum extent appropriate, students are educated with children who are nondisabled and only removed from the regular educational environment if the nature or severity of a student's disability is such that education in regular classes with

the use of supplementary aids and services cannot be achieved satisfactorily;

- b. Federal and state legal requirements at 34 C.F.R. § 300.320(a)(5) and K.S.A. § 72-3429(c)(5) which require the district to ensure that the written description in a child's IEP explains the extent, if any, to which the child will not participate with nondisabled children in the regular class; and
 - c. Federal and state legal requirements at 34 C.F.R. § 300.503(a) and K.S.A. § 72-3430(b)(2) which require the district to ensure it provides parents with a Prior Written Notice with the district's decision on the parent's request regarding their child's placement.
- 2.
- a. Within 20 calendar days of the date of this report, the district must draft a written procedure by which school leadership will be responsible for tracking when a child with an IEP does not receive time in the regular class as the student's IEP requires and, if this happens for a time specified within the procedure, school leadership must contact Cooperative leadership to create a plan to ensure time in the regular class is provided as required. The district must submit this draft written procedure to SETS for its review and approval.
 - b. Once SETS approves of the written procedure, the district must implement this written procedure by communicating it to all relevant staff and providing staff with any templates for tracking the procedure would require within five school days, and sending to SETS the district communication, including templates for tracking the procedure within the same amount of time.
3. Within 20 calendar days of the date of this report, the district must convene the student's IEP Team to respond to the IEP prompt, "Is the nature or severity of the student's disability such that placement in the regular education environment with supplementary aids and services cannot be achieved satisfactorily?" with a response that clearly explains the extent, if any, to which the child will not participate with nondisabled children in the regular class. The IEP Team can complete this at an IEP Team meeting that was scheduled prior to KSDE issuing this report. After completing this corrective action, the district must provide the IEP page with this response to SETS.
- 4.
- a. Within five school days of the date of this report, the district must issue a Prior Written Notice to the parent with the district's decision on the parent's request for the student to have increased time in the regular class.
 - b. At the student's next IEP Team meeting, Cooperative leadership must attend the meeting and review the Prior Written Notice section of Chapter 1 of the Kansas Special Education Process Handbook with the IEP Team, so district staff are clear on when a Prior Written Notice is required, and the parents are clear on when to expect one. After completing this corrective action, the

district must provide a copy of the Prior Written Notice and the IEP Team meeting minutes to SETS.

5. Due Dates:

- a. April 3, 2024: 4.a.;
- b. April 16, 2024: 1., 2.a., 3., and 4.b.; and
- c. Within five school days of SETS approval of the written procedure: 2.b.

Issue Two

The district violated 34 C.F.R. § 300.323(c)(2), K.S.A. § 72-3429(a)(1), 34 C.F.R. § 300.320(a)(4), and K.S.A. § 72-3429(c)(1), based on the findings of fact listed above. Corrective action is required, as follows:

1. Within 20 calendar days of the date of this report, USD 458 must submit a written statement to KSDE Special Education and Title Services (SETS) that it will comply with:
 - a. Federal and state legal requirements at 34 C.F.R. § 300.323(c)(2) and K.S.A. § 72-3429(a)(1) which require the district to ensure that special education services are made available to each child with an IEP in accordance with the child's IEP; and
 - b. Federal and state legal requirements at 34 C.F.R. § 300.320(a)(4) and K.S.A. § 72-3429(c)(1) which require the district to ensure that each child's IEP includes a statement of special education services, based on peer-reviewed research to the extent practicable, that will be provided to enable the child to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children.
2.
 - a. Within 20 calendar days of the date of this report, the district must draft a written procedure by which school leadership will be responsible for tracking when a child with an IEP does not receive special education services as the student's IEP requires and, if this happens for a time specified within the procedure, school leadership must contact Cooperative leadership to create a plan to ensure time in the regular class is provided as required. The district may integrate this procedure with the procedure required in corrective action for issue one. The district must submit this draft written procedure to SETS for its review and approval.
 - b. Once SETS approves of the written procedure, the district must implement this written procedure by communicating it to all relevant staff and providing staff with any templates for tracking the procedure would require within five school days, and sending to SETS the district communication, including templates for tracking the procedure within the same amount of time.
- 3.

- a. Within three school days of the date of this report, the district must contact the parent and ask the parent what additional data it can provide to the parent to assist with a decision on educational benefit and compensatory services. The district is not required to create data that does not exist to respond to the parent's request.
 - b. The district must provide the data the parent requests within three school days of the parent's request, copying SETS on this email to the parent.
 - c. Within 20 calendar days of the date of this report, the district must convene the student's IEP Team to determine whether the child was denied educational benefit because of the disruption in educational services and whether compensatory education is needed to make up for the denial including addressing any skills that may have been lost. If the IEP Team cannot come to consensus on this decision, the district representative on the IEP Team must make the decision, and the district must issue the parent a Prior Written Notice with its decision and the basis for its decision. The parent can then choose whether to exercise their dispute resolution rights regarding that decision. The IEP Team can complete this at an IEP Team meeting that was scheduled prior to KSDE issuing this report. After completing this corrective action, the district must provide the IEP Team meeting minutes to SETS and the Prior Written Notice, if the IEP Team did not come to consensus.
- 4.
- a. Within five school days of the date of this report, the Cooperative must contact its Bright SPED™ representative and inform them that the district's web-based IEP tool must include a prompt to require IEP Teams to provide a statement of special education services. The Cooperative may provide a redacted version of this report to Bright SPED™ as part of its request to add this prompt.
 - b. The Cooperative must confirm to SETS that it completed this portion of the corrective action within one school day.
 - c. The Cooperative must obtain a date from its Bright SPED™ representative in writing as to when this prompt will be added to the district's web-based IEP tool and the district must provide this information to SETS within one business day of receiving it.
 - d. Once Bright SPED™ adds the prompt to the district's web-based IEP tool, SETS must submit this IEP page to SETS within one business day for its review and approval.
 - e. Once SETS approves of the prompt, the student's IEP Team must add a statement of special education services that meets special education legal requirements either using the IEP amendment process described in K.S.A. 72-3429(b)(4) or in an IEP Team meeting within 30 school days.

5. Due Dates:

- a. April 1, 2024: 3.a.
- b. April 3, 2024: 4.a.
- c. Within one school day of contacting its Bright SPED™ representative: 4.b.
- d. Within three school days of the parent's request for data: 3.b.;
- e. April 16, 2024: 1., 2.a., 3.c.;
- f. Within five school days of SETS approval of the written procedure: 2.b.;
- g. Within one business day of receiving the date of when the prompt will be added: 4.c.;
- h. Within one business day of receiving the prompt: 4.d.; and
- i. Within 30 school days of SETS approval of the IEP prompt: 4.e.

Issue Three

The district violated 34 C.F.R. § 300.323(c)(2), K.S.A. § 72-3429(a)(1), 34 C.F.R. § 300.320(a)(4), and K.S.A. § 72-3429(c)(1), based on the findings of fact listed above. Corrective action is required, as follows:

1. Issue Two, corrective actions 1., 2., and 4.a.-d. are designed to address Issue Three as well as Issue Two.
2. Once the district receives SETS approval as indicated in Issue Two, corrective action 4.d., district IEP Teams must add statements of special education services that meet special education legal requirements to all IEPs either using the IEP amendment process described in K.S.A. 72-3429(b)(4) or in an IEP Team meeting within 30 school days.
3. Due Date: Within 30 school days of SETS approval as indicated in Issue Two, corrective action 4.d.

Investigator

Laura N. Jurgensen

Laura N. Jurgensen 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)