

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #437
ON NOVEMBER 2, 2023

DATE OF REPORT DECEMBER 11, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -----, by his father, ----- . In the remainder of the report, ----- ----- will be referred to as "the student." ----- will be referred to as "the complainant" or "parent." ----- is the student's mother and she will be referred to as "the mother" in the remainder of the report. Together, ----- and ----- will be referred to as "the parents." ----- is the student's stepfather and he will be referred to as "the stepfather" in the remainder of the report.

The complaint is against USD #437 Auburn Washburn Public Schools. In the remainder of the report, USD #437 will be referred to as "the district," "the local education agency (LEA)," or "the school."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on November 2, 2023 and the 30-day timeline on December 4, 2023, with a one-week extension allowed to complete the investigation.

Evidence Reviewed

During the investigation, the complaint investigator, Gwen Beegle, reviewed all evidence and documentation, which was provided by both the district and the complainant(s). The following district staff were interviewed on November 28, 2023: Tracie Bauer (Social Worker), Caroline Spaulding (PBIS-Social Skills teacher and IEP Case Manager), Howard Tush (formerly Behavior Interventionist, currently Dean of Special Programs), Brandon Dial (8th Grade Principal), Erin Bennett (Dean of Behavioral Services) and Heidi Carlson (Assistant Director of Secondary Special Education). The parent was contacted on November 7, 2023 to clarify the issues and interviewed on December 1, 2023. In addition, the investigator received emails and texts from the district and the parent through December 5, 2023, often in response to specific follow up questions sent by the investigator.

The following documentation and information were used in consideration of the issue(s):

1. Individualized Education Program (IEP) for the student dated May 5, 2022

2. Behavior Detail Report (2022-23) for the student with entries beginning October 4, 2022 through April 26, 2023
3. Prior Written Notice for Reevaluation (PWN-E) to review existing data in all areas and collect new data on social-emotional-behavior status dated October 7, 2022 and signed by the mother giving permission on October 20, 2022
4. Progress Report for the student dated October 19, 2022 with reading goal update dated October 19, 2022
5. IEP Amendment including Behavior Intervention Plan (BIP) dated October 19, 2022 and signed by the mother giving consent on October 31, 2022
6. Prior Written Notice (PWN) for material change of service and substantial change in placement dated October 19, 2022 for a meeting on October 19, 2022 signed by the mother giving consent on October 31, 2022.
7. Email exchange among Caroline Spalding (PBIS-Social Skills Teacher), the parents, Howard Tush (Behavior Interventionist; Dean of Special Programs), Phillip Chesmore (7th Grade Principal), Tracie Bauer (Social Worker) and Justin Tizman (School Psychologist) beginning November 4, 2022 and ending November 8, 2022 at 7:51 a.m.
8. Progress Report for the student dated December 9, 2022 with math and behavior goal updates dated October 19, 2022 and December 9, 2022
9. Email from Erin Bennett (Dean of Behavioral Services) to the father dated December 16, 2022 at 2:56 p.m.
10. Reevaluation for the student including Functional Behavior Assessment (FBA) dated February 6, 2023
11. IEP for the student including BIP dated February 6, 2023
12. Prior Written Notice (PWN) for continued eligibility, material change of service and substantial change in placement dated February 9, 2023 for a meeting on February 6, 2023 signed by the parents giving consent on February 9, 2023
13. Email chain between Caroline Spalding and the mother dated March 24, 2023, 11:35 a.m. to March 24, 2023 at 2:51 p.m.
14. Email chain among Caroline Spalding and the parents dated March 31, 2023 at 3:03 p.m. to March 31, 2023 at 3:26 p.m.
15. Email chain among Caroline Spalding, Tracie Bauer, Justin Tizman, Phillip Chesmore and Howard Tush dated May 4, 2023 at 1:34 p.m. and ending May 4, 2023 at 1:55 p.m.
16. Reinforcement Inventory for the student dated May 11, 2023
17. Zones of Regulation workbook pages, undated
18. IEP Amendment dated May 11, 2023 signed by the stepfather giving consent on June 14, 2023
19. Data Collection Report (2022-23) with entries dated May 15, 2023 to May 23, 2023
20. PWN for material change of service and substantial change in placement dated May 31, 2023 for a meeting on May 11, 2023 and signed by the parents giving permission on June 6, 2023.

21. Student Schedule (2022-23)
22. Period Attendance Detail Report (2022-23)
23. Student Schedule (2023-24)
24. Data Collection Report (2023-24) with entries dated August 15, 2023 to November 16, 2023
25. Period Attendance Detail Report (2023-24) August 22, 2023 to November 17, 2023
26. Personal notes by the father of conversation with Brandon Dial (8th Grade Principal) dated August 25, 2023
27. Email from Erin Bennett to the parents dated August 30, 2023 at 4:26 p.m.
28. Email from Erin Bennett to the parents dated September 13, 2023 at 8:18 a.m.
29. Email from the father to Erin Bennett dated September 13, 2023 at 11:33 a.m.
30. IEP Amendment dated September 13, 2023 and signed by the mother on September 13, 2023 giving consent
31. PWN for material change of service and substantial change in placement dated September 13, 2023 signed by the mother giving consent on September 13, 2023
32. Email from Erin Bennett to the parents dated September 13, 2023 at 11:06 a.m.
33. Family Report dated September 13, 2023
34. Agenda for IEP meeting dated September 13, 2023
35. IEP Amendment dated September 15, 2023 signed by the mother giving consent on September 15, 2023
36. PWN for change of service dated September 15, 2023 signed by the mother giving consent on September 15, 2023
37. Email from Brandon Dial to Andrew Weese (Special Education Math Teacher), Patrick Cook (Special Education ELA Teacher), Caroline Spalding and Erin Bennett dated September 28, 2023 at 8:59 a.m.
38. Email chain with subject "[Student name]-homework?" among Caroline Spalding, Erin Bennett, the mother and the father dated September 29, 2023 at 2:02 p.m. and ending October 5, 2023 at 12:16 p.m.
39. Email from Caroline Spalding to the parents, Howard Tush, and Erin Bennett dated October 5, 2023 at 1:08 p.m.
40. Email from the mother to the father, Caroline Spalding, Howard Tush, and Erin Bennett dated October 5, 2023 at 2:37 p.m. and Howard Tush's reply dated October 5, 2023 at 2:56 p.m.
41. Email from the mother to the father, Caroline Spalding, Howard Tush, and Erin Bennett dated October 10, 2023 at 2:14 p.m. and Caroline Spalding's reply dated October 10, 2023 at 2:32 p.m.
42. Progress report for the student dated October 13, 2023
43. Report Card for the student 2023-24 school year, first quarter
44. Statement from Erin Bennett (Dean of Behavioral Services) dated November, 2023

45. Communication log submitted by Erin Bennett recording communication with parents and school team members
46. Grade transcript for the student generated on November 14, 2023 showing grades for the 2022-23 school year
47. Email from Tracie Bauer to Erin Bennett dated November 16, 2023 at 2:11 p.m. including service log and comments
48. Professional License for Courtney Appelhanz, 2019-2024: Art PK-12; High Incidence Special Education PK-12; Math 5-8
49. Professional License for Erin Bennett, 2020-2024: School Psychologist PK-12.
50. Behavioral Sciences Regulatory Board Licensee Details for Tracie Bauer: Licensed Specialist Clinical Social Worker (2022-24)
51. Professional License for Patrick Cook, 2022-2028: High Incidence Special Education 6-12
52. Professional License for Ollie Brandon Dial, 2019-2024: Building Leadership PK-12, Elementary K-9.
53. Health Occupations Credentialing Verification of License for Shelle Peek, 2018-2025, Speech Language Pathologist
54. Professional License for Caroline Spalding, 2022-2027; Core Content MESH, Elementary, High Incidence Special Education 6-12; Math 5-8
55. Professional License for Justin Titzman, 2019-2024: School Psychologist, PK-12.
56. Professional License for Howard Tush, 2020-2025: Adaptive Special Education K-6 and 6-12, American History 7-12, Building Leadership PK-12, Political Science Government 7-12, World History 7-12.
57. Appendix 5 dated December 5, 2023: Compilation of emails from Caroline Spalding to the parents and others dated August 21, 23, 25, and 29, 2023; September 1, 7, 19, 27 and 29, 2023; October 24 and 30, 2023; and November 2, 2023.
58. Additional questions: Emailed response to investigator questions dated December 5, 2023
59. District Response to the Allegations

Background Information

The student is a 14 year-old who attends the eighth grade in USD #437. According to his IEP, he is eligible for special education as a student with a primary disability of Specific Learning Disability and a secondary disability of Emotional Disability. During the 2022-23 and 2023-24 school years, the student had significant problems stemming from failure to attend his classes. His parents provided a neuropsychiatric examination (October, 2022) used in his most recent comprehensive re-evaluation (February 6, 2023), recording diagnostic impressions of Disruptive Mood Dysregulation Disorder, Generalized Anxiety Disorder Attention-Deficit/Hyperactivity Disorder, combined type Specific Learning Disability in Mathematics (dyscalculia). His parents are divorced and both participate in the student's education planning

along with his stepfather. He entered the district in August, 2022 with an IEP, FBA, and a BIP from another district. The IEP dated May 5, 2022 included resource support for math and social skills, special education support in his general education classes, speech language services, with bi-weekly social work services; the IEP was revised to amend the BIP on October 19, 2022.

Issues Investigated

ISSUE ONE: The USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an appropriate IEP for the student in light of his disabilities, including failing to articulate the curriculum, strategies, and interventions to be used as special education and related services [page 6]

ISSUE TWO: The USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by implementing the student's behavior intervention plan and providing academic support during the past 12 months [page 14]

ISSUE THREE: The USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately trained staff capable of implementing the student's IEP during the past 12 months [page 25]

Issue One

The USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an appropriate IEP for the student in light of his disabilities, including failing to articulate the curriculum, strategies, and interventions to be used as special education and related services

Applicable Law

The development of the IEP begins with the evaluation. Federal statutes and regulations at 34 CFR 300.304(c)(4) requires that the child be assessed in all areas related to the suspected disability, and 34 CFR 300.304(c)(6) and (7) require that the evaluation be sufficiently comprehensive to identify all the child's special education and related services needs and that tools and strategies provide relevant information to directly assist in determining the educational needs of the child are used.

Federal statutes and regulations at 34 CFR 300.324(a) require that in developing the child's IEP, the IEP team shall consider the following: the strengths of the child, the concerns of the parents, the results of the child's evaluation, the academic and functional needs of the child,

the use of positive behavior interventions and supports if the child's behavior impedes learning, the need for braille or the impact of limited English proficiency, the child's communication needs, and the need for assistive technology. Federal regulations at 34 CFR 300.327 and state regulations at K.S.A. 91-40-25(a)(1) and (2) require that the district allow the parents to participate in any meeting with respect to the identification, evaluation, or educational placement of the child, and that the agency take steps to ensure that the parents are present and afford the opportunity to participate in each meeting concerning their child.

Analysis: Findings of Fact

The parent alleged that the parents have not been informed of the methods being used in the student's IEP and in the special education classroom, such as the emotional disturbance classroom curriculum, the intervention strategies used, and the positive behavioral intervention and supports being implemented. The parent alleged the behavioral methods of the classroom and responses to the student's emotional disability need to be known in order to determine their effectiveness. The parent alleged that he cannot adequately participate and advocate for changes in the student's IEP without understanding the application of behavioral methods.

The parent alleged he cannot adequately assist his child to improve through contingencies at home for school attendance and after school implementation of missed assignments without knowledge of the classroom curriculum and behavioral methods. The parent alleged that the district should make the public aware of the district curriculum and other teaching methodologies.

The district responded that the student had transferred to the district on August 11, 2022 and the district had implemented the student's IEP from the former district, including the BIP. The district continued: ". . .in response to the inadequate [behavior] goal performance and parallel behavioral discipline reports, an amendment to the IEP from [the previous district] was proposed and consented to which included adding a Positive Behavioral Supports instructional time in a special education setting, a revised Behavior Intervention Plan, and consent to conduct a reevaluation that included a Functional Behavioral Assessment."

The district responded that it had been responsive to the parents' concerns and pointed to the new evaluation, including a Functional Behavioral Assessment (FBA), and revised IEP dated February 6, 2023, and its meetings with the parents at their request May 11, 2023 to revise the BIP and September 13, 2023 to amend the IEP as evidence of its responsiveness. The district also responded that "If and when changes are made, they are completed with parental involvement. As referenced in the IEP Accommodations as a Positive Behavior Support System and specifically the Behavior Intervention Plan, Zones of Regulation was an instructional strategy used for specialized instruction on social emotional skills."

In its response to the complaint, the district continued: "Specific to the parents' concerns of not receiving work to be sent home from teachers at [the school], USD 437 contends that this

perceived failure is not specific to a special education formal complaint process as specific methodology was not specified in the IEP. But instead [this] should be addressed through an internal USD 437 complaint process with [the school's principal] when a parent feels their concerns have gone unaddressed."

In addition, the district responded that in reviewing the case more thoroughly, that procedural errors specific to Reports of IEP Goal Progress existed (reading goal, Quarter 1; Quarter 4 Progress Report missing) and that a parent teacher conference held October 19, 2022 resulted in the need for an IEP amendment and so there is no associated Notice of Meeting for an IEP meeting. Instead, the district provided Prior Written Notice and an IEP amendment on that date. "As stated in the Prior Written Notice for the amendment, a material change in services and substantial change in placement was proposed. The IEP team agreed to add *specialized instruction in the special education setting, Positive Behavior Support classroom, to teach the student self-regulation, executive functioning, and mood regulation skills*. In addition a new Behavior Intervention Plan was added to the student's IEP. . . . Parent consent was provided by [the mother] on 10.31.22."

Finally, the district's response noted that academic programming in the building is available on the district's website, located under the *Parents and Students* drop down menu as the *Student Handbook*, and under *Board of Education* drop down menu as *Board Policy, IDA Instructional Program*. Additionally, Multi-Tiered System of Support (MTTS) information can be found as a *Quick Link Accountability* drop down menu and *Needs Assessment*; Curriculum information can be found at the *Parents and Students* drop down menu, *Curriculum*. The district responded: "Information specific to special education that a parent of a special education [student] should seek would be in the student's IEP or through requesting an IEP meeting."

The following findings are based on the review of documentation and interviews provided by the district and the parent.

The district provided PWN dated October 19, 2022 for a meeting on October 19, 2022 for a material change of services and substantial change of placement for an IEP amendment dated October 19, 2022, signed by the mother giving consent on October 31, 2022.

Through a PWN-E, the district sought and obtained parental consent to reevaluate the student on October 31, 2022. That reevaluation dated February 6, 2023 considered existing data in health, vision, hearing, social emotional behavioral status, general intelligence, academic performance, communicative status, transition skills, and new data in social emotional behavioral status; the evaluation considered the community based report provided by the parents. A new FBA was included. The mother and the stepfather participated in the reevaluation meeting, which determined that the student continued to be eligible for special education services under the categories of Specific Learning Disability and Emotional Disability. The mother and stepfather participated in the concurrent IEP meeting, which included a BIP for the student.

The IEP dated February 6, 2023 described the impact of the student's disability in this way: "[The student] struggles to complete school-related tasks with which he associates difficulty, whether real or imagined. He presents with irritability and moodiness more significantly than other children his age. He struggles to regulate and modulate his behavior. He also is diagnosed with a specific learning disability in math." The BIP stated that the problem behaviors exhibited by the student were aggression, elopement, refusal, and avoidance of expectation or task. The IEP had two goals: (a) When given a curriculum based math assessment, [the student] will be able to correctly solve problems about scale drawings with an accuracy of at least 16 out of 20 problems by end of the IEP as measured by Curriculum Based Assessment, and (b) when in school, [the student] will be able to attend at least 6 out of his 7 classes without eloping (walking out of class, walking away from staff) at 85% of the days in school bend of the IEP as measured by observation. The BIP (detailed in Issue Two) listed 8 preventive and 10 reactive strategies to be used with the student for physical aggression, refusal, and elopement. These strategies included the use of Zones of Regulation, processing with staff persons, social skills instruction and use of "toolbox" strategies. According to the February 6, 2023 IEP, "Parents will receive written reports of student progress toward meeting IEP goals in accordance with the district's established grade reporting schedule."

The IEP dated February 6, 2023 showed that the student's special education services for transition were to include resource social skills with a focus on executive functioning (regulating emotions, transitions, and social skills), discontinuing speech language services. The IEP services chart showed the following through the end of the 2022-23 school year: (a) special education services, direct services outside regular education for 3 different durations every two weeks (128 minutes-5 days, 108 minutes-1 day, and 128 minutes-4 days), (b) social work services outside regular education for 20 minutes every 2 weeks, and (c) special education services in regular education for 230 minutes, 5 days a week, every week. Beginning the 2023-24 school year, the IEP services chart showed the following beginning in August, 2023: (a) special education services, direct services outside regular education for 5 different durations every two weeks (174 minutes-5 days, 154 minutes-1 day, 174 minutes-4 days, 184 minutes-5 days, and 164 minutes-1 day), (b) social work services outside regular education for 20 minutes every 2 weeks, (c) transportation, and (d) extracurricular (40 minutes-5 days, every week). The student's schedule at the beginning of the 2023-24 school year showed that the student had seven 8th grade classes in special education settings. Additionally, the IEP included 14 accommodations, 13 focused mainly on facilitating academic learning and the fourteenth being the Positive Behavior Supports System to be in place in all locations during the school day.

The district provided PWN dated February 9, 2023 for a meeting on February 6, 2023 and signed by the parent on February 9, 2023 giving consent for material change of services and substantial change of placement in the IEP.

The Behavior Detail Report showed that the student had six discipline incidents in the 2022-23 school year: October 4, 2022 (OSS 1 day), October 16, 2023 (OSS 1 day), October 17, 2022 (Other), February 14, 2023 (OSS 1 day), April 18, 2023 (OSS 1 day), and April 26, 2023 (OSS 1 day).

The communication log showed that the complainant contacted the 7th Grade Principal with concerns on April 27, 2023 and the Executive Director of Learning Services responded to discuss the concerns, resulting in an IEP meeting being scheduled.

The IEP team including the parents met on May 11, 2023 to make changes to the student's IEP and BIP. At this time the IEP team finalized the behavior plan and added resource special education for ELA to the student's 8th grade class schedule. The district provided PWN dated May 31, 2023 for a meeting on May 11, 2023 and signed by the parents giving permission on June 6, 2023, after discussions with parents to finalize the May 11, 2023 IEP amendment changing the BIP to include specific strategies for regulation. The PWN states: "[The student]'s Behavior Intervention Plan is modified to include specific methods for helping [the student] regulate his emotions. For example, he will learn how to identify triggers and develop a "toolbox," or "choice board."

The district implemented a system for recording the student's location when he was not attending his regularly scheduled classes but was instead returning to or remaining in the PBIS Classroom, also known as Room D5. The student's absence was coded "TG" for Teacher Guided. This code first appears in the 2023-24 Attendance Detail by Period report on August 30, 2023.

The Dean of Behavioral Services reported that the father had contacted her with concerns including the methods, attendance, and curriculum in the PBS classroom and communication with parents in an email on August 24, 2023 and a phone call on August 25, 2023. In response, she reported through a communication log and statement that she observed the student, met with school team members, prepared answers to his questions and an IEP meeting was scheduled. The Dean of Behavioral Services reported that she met with district staff on September 12, 2023 to ensure that the revised attendance recording (TG for Teacher Guided when the student was in Room D5 rather than in his elective, ELA or math class) was clear and implemented by staff. The Dean of Behavioral Services reported that in response to a parental request for work to be sent home with the student, "Teachers agreed that work that could be appropriately sent home for independent completion would be" on September 13, 2023 (Communication log.)

The IEP team including the parents met on September 13, 2023 and made changes to the IEP. At the meeting, according to the IEP amendment and PWN of the same date, the IEP team addressed the student's behavioral and emotional needs by amending the IEP to provide a partial day schedule with all classes a special education environment: Special education ELA, math, PBIS/social skills, and an elective overseen by a special education teacher, resulting in 184 minutes of resource 5 days per week for Math, ELA, PBIS and an elective, with social work services continuing at 20 minutes every other week (deducted from the 184 minutes) and 40

minutes of special transportation. The mother provided consent on September 13, 2023. The district provided PWN on September 15, 2023 to add a change in transportation. After the meeting, the parent requested and the Dean of Behavioral Services emailed the family on September 15, 2023 and provided an IEP meeting agenda, the family report of academic data, the student's BIP and a summary of the student's data on movement, communication, and activity for the 2023-24 year.

The communication log showed that the Dean of Behavioral Services, who had been designated to maintain communication with the father, spoke or exchanged emails with the parent approximately 20 times during the past year and followed these conversations with meetings with staff, practice clarifications, or IEP meetings.

Conclusion

It should be noted that the publication of curriculum information by the district is not addressed by IDEA and therefore outside the scope of this investigation. Information from the district is included in this report in order to address the concern of the parent.

In this case, the district responded to parental concerns by revising an existing IEP (October 19, 2022), reevaluating the student and conducting a new FBA, writing a new IEP (February 6, 2023), creating a new BIP (finalized May 11, 2023) and amending the IEP to shorten the student's schedule (September 18, 2023). The February 6, 2023 re-evaluation was comprehensive and it included information from the parents and the community based report they provided. The BIP included preventive and reactive strategies and the district involved the parents in its development. The district showed that the IEP listed the behavioral and social skills methods that are used generally in the classroom, school and with the student. Each time the district met with the parents either to evaluate the student or to develop the IEP, the district provided the proper PWN and one or both of the parents were involved in the meetings and giving permission for the changes. The district showed that it communicated frequently with the complainant in order to respond to his concerns.

Based on the foregoing, *it is not substantiated* that USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an appropriate IEP for the student in light of his disabilities, including failing to articulate the curriculum, strategies, and interventions to be used as special education and related services.

Issue Two

The USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by implementing the student's behavior intervention plan and providing academic support during the past 12 months.

Applicable Law

Federal/State statutes and regulations at 34 CFR 300.39 defines special education as specially designed instruction at no cost to the parent to meet the unique needs of a child with a disability. Further 34 CFR 300.320(a)(4) requires that the IEP include “a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum. . . and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children. “

Federal regulations at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP. Federal regulations at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability. State regulations at K.A.R. 91-40-27(a)(3) require school districts to obtain parent consent before making a material change in services or a substantial change in placement. The *Kansas Special Education Process Handbook* clarifies a material change in services: “A change in the instructional methodology used to provide a service, even if the methodology is specified in an IEP, is not a material change in services. For example, a change to a strategy within a behavior intervention plan is a change in the instructional methodology, not a material change in services” (p.8).

Analysis: Findings of Fact

The parent alleged that the district has failed to implement the student’s BIP with rigor and fidelity during the past twelve months. The parent alleged that the district did not provide evidence of implementing the IEP by sending home completed work, implementation evidence of the students BIP (such as the toolbox of strategies), or any reports on what staff did when implementing the BIP. The parent points to the failure to generalize to other classes as inadequate application of the social skills curriculum and behavioral methods.

The parent alleged that the student stopped attending his ELA and math classes and that he was not receiving academic instruction. The parent alleged that scanning and sending the student’s work home was agreed to at the “8.30.23 IEP meeting” with the 8th grade principal and that the 8th grade principal directed the PBIS-social skills teacher to provide daily updates on attendance and behavior data to the parents. The parent alleged that these things are not

being done consistently, that the student is not expected to complete academic work during TG periods and that interventions in the BIP are not being implemented and documented.

The district responded that the district had been responsive to the student's behavior and parental concerns by meeting and revising the IEP and BIP (February, May and September 2023). The district continued, "The behavior intervention plan included in the student's transfer-in IEP, dated 5.5.22, targeted emotional regulation. Proactive strategies listed were proximity control and alerting the student to changes in the schedule, providing reminders about school appropriate conversations, and providing acknowledgement for efforts. Reactive strategies involved providing access to the Positive Behavior Support (PBS) room for regulation. These strategies were implemented through daily check-ins in the PBS room, when schedule and expectations would be reviewed each day. When dysregulated, staff would offer or suggest that he return to the PBS room."

The district response noted that the amendment dated October 19, 2022 shifted the focus of the BIP to elopement and refusal of adult requests and strategies included a daily bag check, providing reminders of expectations, and monitoring the student through daily data sheets that tracked movement (physically being in designated location), activity (working on assigned activity), and communication (expressing wants and needs without use of profanity). The district continued that content area teachers were provided the student's IEP at a glance and the accommodation in his IEP and supported by the PBS teacher. The district responded that, following the February 6, 2023 reevaluation, FBA and new IEP, the team "continued to provide relevant accommodations and implement strategies outlined in the behavior plan" along with daily data collection and ongoing troubleshooting to encourage class attendance and participation in social emotional learning. "As a result of ongoing parent concern and lack of desired level of behavioral progress [in spring, 2023], the team collaborated to amend the IEP/BIP, update data collection, and look ahead to support for his 8th grade year."

The district responded that the team met again on September 13, 2023 in response to behavior incidents and parent concerns to review the behavior plan data and revise the IEP providing a shortened day and special transportation. The district continued that parents have been informed of the student's progress through emails with data summaries included; parents requested and have been provided with unfinished when it is something that would be completed independently or out of class. The district responded: "Since the student was regularly refusing to attend his academic classes, both his math and ELA teacher would periodically visit with the student in the PBS class. At parent/teacher conferences on October 18, 2023, additional updates were provided regarding behavior data, grades, class schedule/classwork, and strategy implementation. Additional resources for social emotional learning and social work sessions were discussed as well."

The findings of Issue One are incorporated by reference. Based on the documents provided by the parent and the district, and interviews of the parent and district staff, additional findings are listed below.

The May 5, 2022 IEP amended on September 19, 2022 states: "Parents will receive written reports of student progress toward meeting IEP goals in accordance with the district's established grade reporting schedule." The February 6, 2023 IEP includes the same statement.

In its response to Issue One, the district acknowledged procedural errors in failing to provide progress reports on all goals, specifically failing to report progress on the student's reading goal on December 9, 2022 and on both the student's goals (math and reading) on May 24, 2023.

The parent and the district agreed that the student's February 6, 2023 reevaluation included an FBA and BIP, and that the BIP was amended at a May 11, 2023 meeting to include more specific regulation strategies. The parent and district agreed that the student did not make adequate progress toward meeting the behavior goal on his IEP in the first two quarters of the 2023-24 school year. The parent and district agreed that the student was chronically absent from his classes beginning in October, 2022 and that this was a focus of the behavior goal in his IEP.

Attendance and Academic Instruction

The parent reported and provided notes dated August 25, 2023 of a conversation with the 8th grade principal regarding attendance, daily data sheet, and "any behavioral information the team is tracking. Per [the 8th Grade Principal], parents will get a copy of this sheet daily." Additionally, the parent reported that the parent portal was unreliably reporting the student's attendance: "Unfortunately, parents were not aware that [the student] was not attending classes until 8/22 email from [the PBIS - social skills teacher] and upon parent investigation, multiple answers were given as to where [the student] had been." The parent's notes reported that when similar attendance issues were discussed last spring, the district assured parents that "someone would know where [the student] was at all times. School personnel would be able to reliably report attendance to parents upon request."

As noted in Issue One, the Dean of Behavioral Sciences reported in a communication log that she communicated with the parent regarding the parent's concerns about the beginning of the school year: "On August 25th, 2023, I received a call from [the parent] expressing his dissatisfaction with the way the school year had started. He shared increasing concern regarding overall programming and implementation, as well as clarity of communication. Again, I investigated his concerns and shared relevant information, as well as worked with the team to address [the parent]'s concerns and hold an IEP meeting," which was held on September 13, 2023.

In an emailed reply to a question by the investigator, the district reported that the student's attendance and grades were available to parents through the parent portal and that the TG system for reporting the student's attendance was in place.

In the communication log, the Dean of Behavioral Services reported that on September 25, 2023, the father emailed her and the PBIS-social skills teacher asking about work to send home, and "Agreement on work that could be completed independently at home was sent." In the communication log, on September 28, 2023, the 8th Grade Principal emailed ELA and math teachers to remind them to provide [the PBIS-social skills teacher] with any outstanding work so that it can be sent home. The ELA teacher said that his work was up to date and [the math teacher] responded that there were two missing assignments he would give to [the PBIS-social skills teacher].

The PBIS-social skills teacher (also the student's IEP case manager) emailed the parents on September 29, 2023 to provide a weekly update on the student's attendance. In an email to the school on October 5, 2023 at 12:16 p.m., the mother said the student told her that he had stayed in the PBIS room (Room D5) and that she believed that the student had not had any ELA or math instruction all week. The mother asked for work to be sent home, noting that she had asked several times and nothing was being sent home. On the same day, the PBIS-social skills teacher emailed the parents to provide an update on the student's behavior and attendance confirming the student's lack of attendance in ELA and math classes, stating: "When the student is not attending his math and ELA classes I am prompting him at least every 15 minutes to talk to me, or attend class, or to retrieve work from his teachers. Today I talked to [the student] while he had his head down. I tried 6 times to get him to discuss ways we could problem solve his struggles to attend class. He told me he did not care and he did not want to speak to me regarding ELA or math."

The same day, the mother emailed the Dean of Special Programs asking: "Can you ask the ELA and math teachers to have daily work available to send to [the PBIS - social skills teacher] if [the student] doesn't show up in their room so he can work on it there? Also, I have requested work be sent to me via email and that has not happened. At this point, he is not getting any math or English education." In his response, the Dean of Special Programs agreed to facilitate getting work to the student in Room D5 and to assist in problem solving the transfer between the teachers. In an email on October 10, 2023 the mother thanked the PBIS teacher for sending work home and reported the student's progress in completing it and returning it to the school. In an interview, the father reported this was the only time work was sent home with the student at the time the complaint was filed.

In an interview, the PBIS-social skills teacher reported the student was given opportunities and reminders to do work from class or work that was similar to that work and that the student frequently refused to do it. The PBIS-social skills teacher reported that she had other students to teach during the periods when the student remained in her class at unscheduled periods. The Dean of Special Programs reported that there wasn't daily acquisition work available from the classes as the instructional delivery of new content was slower than in a typical academic class. In response to an emailed question from the investigator, on December 5, 2023 the

Dean of Special Programs reported that he took work from the student's academic teachers to Room D5 three to five times each week.

The student's grade report for the first two quarters of the 2023-24 school year showed 17 total absences for second hour (elective), 30 total absences for third hour (ELA) and 27 total absences for fourth hour (math).

As noted in Issue One, the district developed a method to record the student's whereabouts when he was present but not in his assigned classroom, in addition to unexcused absences. When the student was in attendance in "D5" (the PBIS classroom) rather than the classes to which he was assigned, the absence was coded as "TG" for Teacher Guided. According to interviews, when TG appeared in the Period Attendance Detail report, the student was in Room D5 during that period. The Period Attendance Detail report (2023-24) showed the following absences for periods 2-4 from August 22, 2023 to September 20, 2023 and from October 2, 2023 to November 17, 2023:

Second hour (Elective):	27 TG	4 unexcused absences
Third hour (ELA):	28 TG	7 unexcused absences
Fourth Hour (Math):	26 TG	11 unexcused absences

Daily behavior rating of movement, defined as physically in the assign space in the expected seat for the entire time for a rating of 2, showed that the student attended the following classes, from September 18, 2023 to November 6, 2023:

First hour (Social Skills):	39/40 days, with one day of partial attendance
Second hour (Elective):	17/40 days with one day of partial attendance
Third hour (ELA):	8/40 days with two days of partial attendance and one day noted that the student did the work in Room D5
Fourth Hour (Math):	11/40 days

The daily behavior ratings available to the investigator showed that (a) the student stopped attending his math class on September 28, 2023 except for two instances on October 23, 2023 and November 15, 2023, (b) the student stopped attending his reading class on September 28, 2023 except for two partial attendances on October 2 and 3, 2023, and (c) the student stopped attending his elective on October 6, 2023, was absent for 8 days, present for the next 5, and stopped attending on October 31.

The student's grade report for the first quarter ending October 12, 2023 showed: Office-Teacher Aid (elective): A+; PBS (social skills) A+; Reading N; Math C.

The district did not provide PWN to the parents subsequent to that dated September 13, 2023.

Behavior Intervention Plan Implementation and Communication

The IEP dated February 6, 2023 showed that the BIP's methods included the following preventive and reactive strategies:

- *Preventive strategies:* (a) controlled access to phone and internet, (b) access to alternate spaces for self-regulation, (c) identifying triggers and feelings by using a researched program such as Zones of Regulation, (d) teach the student to develop a choice board or toolbox of coping strategies such as deep breathing, guided imagery and counting backwards, (e) teach the student to regulate self by navigating thoughts and feelings, for example teach him which strategies he can use to move from a yellow to a green zone, (f) Social skills instruction with social worker related to self-regulation/emotional regulation) and the opportunity to "process" with mental health team member with 3 passes per day, (g) Review schedule and choice board (toolbox) with the student (teacher, para, social worker or other staff) with a daily check in to review schedule and choice board; (h) staff using common language to remind him of expectations.
- *Reactive strategies:* (a) staff will provide an opportunity to take a short break in the classroom (b) staff will provide opportunity to utilize "safe spot"/ cool down zone and allow [the student] to utilize his self-regulation "toolbox," (c) common language can be "[Student name], it seems like you are upset. Can you use something in your "toolbox" to regulate," (d) staff will seek to provide brief de-escalation services/supports, (e) for refusal- a reminder of the expectation, (f) for elopement in the building - staff will monitor the student on the school video if available or shadow him and attempt to provide 10 minute reminders of the expectation (g) limit attention and verbally direct (h) D6 /proximity control; (i) elopement (outside of building, within bus lane and immediate walking areas around the school)- staff will notify building admin team and/or school resource officer and monitor the student, (j) elopement (past bus lane, towards roadway) -staff will notify building admin team and/or school resource officer and monitor the student and use emergency safety interventions as deemed necessary.

The data collection sheets provided by the district include some brief comments describing student's problem behavior accompanying the rating and do not include descriptions of staff responses. The Behavior Detail Report provided by the district includes descriptions of the student's problem behavior warranting administrative actions (suspension) with limited descriptions of staff responses to the behavior. The Behavior Detail Report (2022-23) does not describe strategies from the BIP other than verbal redirection and monitoring when out of the building. A similar report for the 2023-24 school year was not provided to the investigator.

The parent reported, in notes of a telephone conversation with the 8th Grade Principal and email from PBIS-social skills teacher, that the PBIS-social skills teacher redirected the student during a behavioral incident on August 18, 2023.

The school social worker provided a service log of 15 instances of working with the student from August 18, 2023 to November 9, 2023. In addition to the biweekly scheduled social work services, the social worker met with the student as part of the school's crisis team and when the student "checked in." Three instances of processing feelings or helping the student to become regulated are reported: August 18, 2023; August 22, 2023; and September 14, 2023. In her comments to the record of interactions, the social worker reported that the student had

some knowledge of feelings associated with the zones of regulation, and “He refuses to identify tools he can utilize to assist with regulating his emotions when he experiences feelings identified in each zone.” The districts provided an example of the Zones of Regulation curriculum labeled as “[the student]’s toolbox” in the form of blank worksheets. The social worker reported that the student is respectful in sessions and interactions with her. The social worker reported that the PBIS-social skills teacher also used Zones of Regulation as a practice, including having students develop a toolkit and use it schoolwide.

The PBIS-social skills teacher reported that her classroom is focused on teaching social skills focused on self-regulation and executive functioning skills. The PBIS-social skills teacher reported that to implement the BIP in her classroom, district staff discussed the zones (what does your body look like, feel like, etc.) and when “seething mad” the student did not want her to do things “that his parents make him do” so she used the strategies without labeling them as such. For instance, she gave reminders of calming, identifying his feelings, making priorities, or setting goals as skills he can use. The PBIS-social skills teacher reported that the classroom has spaces for the student to work through problems with staff in order to self-regulate. Data was collected for decision making purposes.

In response to an emailed question, the district reported: “When a student enters the PBS classroom during a class period that is not part of their schedule, there is a clear understanding of expectations of the student. The student has the opportunity to de-escalate by engaging in one or more of their specific coping strategies. For the student in question, that would be the activities referenced in [Zones of Regulation workbook]. Once the student has de-escalated, they are given the opportunity to return to the class listed on their schedule. For the student in question, the activities referenced in [Zones of Regulation workbook] align with the student’s BIP strategies.”

In response to an emailed question, the district provided “Appendix 5” that included emails from the PBIS-social skills teacher to the parents and other members of the administration or IEP team with updates on the student’s behavior and staff responses. Emails submitted as evidence by the district show that the district updated the parents via emails on the following dates during the 2023-24 school year: August 21, 23, 25, and 29, 2023; September 1, 5, 7, 19, 27 and 29, 2023; October 5, 24 and 30, 2023; and November 2, 2023. Parent teacher conferences were held with each of the parents on October 12, 2023.

In a response to an emailed question, the district responded that the academic content teachers “make an effort” to visit the student weekly to encourage him to come back to class and to offer instruction.

Conclusion

In this case, the student has extreme problems with attending classes and the district has communicated with the parents regularly to revise the IEP and the BIP. The resulting program

is found to be that the student attends the PBIS social skills class and that he does not attend his elective, ELA or math classes for instruction, nor has he done so since the end of September, 2023. Instead, the student remains in or returns to the PBIS classroom (Room D5), which is also the space designated for him to use when dysregulated.

The student's parents have repeatedly asked for unfinished work to be sent home and for assurances that academic work is being done when the student is in the D5 classroom during unscheduled (TG) periods. In this case, academic content teachers have been specifically instructed by administrators to send work that can be completed independently. The PBIS-social skills teacher in Room D5 reported that there was work available for the student from class "or similar" and she was responsible for teaching other students during the student's TG attendances. Neither the academic content teachers nor the PBIS-social skills teacher is regularly providing ELA or math instruction in Room D5. It cannot be determined the extent to which the academic content teachers sent work for the student to complete in the D5 classroom before a system to convey work was established by the district. It is clear that the student is not attending those classes or his elective, as required by the amended IEP which calls for special education services in special education settings, and described in the IEP amendment and PWN dated September 13, 2023 provided to the parents as "resource" 5 days per week for Math, ELA, PBIS, and an elective.

Parents could reasonably conclude that specialized instruction in academic content would occur in the student's scheduled special education resource and ELA and math classes. While a change of instructional methodology would not be defined as a material change in services, a change from having the work or similar work "available" without specialized instruction in either ELA or math is not in compliance with the student's IEP or the PWN provided to the parents.

The parent also expressed concerns regarding the lack of daily communication from the school about the student's behavior and the perceived lack of clarity in how the BIP strategies are applied. The parent believed he was assured that daily communication would occur due to communication with the 8th grade principal, and the district administrators were aware of the request for communication on methods and behavior on or before August 25, 2023. It is noted that the district frequently communicated with the parent and attempted to respond to his concerns. No reference to daily communication was found in the student's current IEP or amendments; only the quarterly reporting of progress on goals is required. It is noted that the district acknowledged their error in failing to provide all progress reports required by the IEP. It is recommended that when the district provides the missing progress reports that it also takes the opportunity to clarify its communication content and frequency with the parent.

With regard to implementation of the BIP, daily data was taken on the student's movement, activity and communication and staff notes were sometimes recorded. District staff and supervisors report that they implement the BIP and that they use the methods listed in the student's IEP. Daily data recording does not show what methods the staff use to prevent or

react to student problem behavior specified in the BIP. Discipline reports provided do not show how the BIP was used when the student refused, eloped, or aggressed, but the social worker's notes provide evidence of instances when de-escalation or processing methods mentioned in the BIP were used. Practices in the school and email updates on the student's behavior also mention how the BIP methods were used with the student.

Based on the foregoing, *it is not substantiated* that USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP in providing specifically by implementing the student's behavior intervention plan. *It is substantiated* that the district failed to implement the IEP by providing academic support to the student.

Issue Three

The USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately trained staff capable of implementing the student's IEP during the past 12 months.

Applicable Law

Federal regulations at 34 C.F.R. 300.156(a) require public agencies to ensure that children with disabilities are provided special education and related services by appropriately and adequately prepared and trained personnel who have the content knowledge and skills to serve children with disabilities.

Federal regulations at 34 C.F.R. 300.156(c) require that each special education teacher providing special education services has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, and holds at least a bachelor's degree.

In addition, in Kansas there is a tiered paraprofessional training requirement that describes the number of hours of professional development that must be provided to persons employed as paraprofessionals based on the number of years of experience working as a paraprofessional. Paraprofessionals with three or fewer years of experience must have a minimum of 20 hours annually while paraprofessionals with more than three years of experience must have 10 hours of professional development annually.

Analysis: Findings of Fact

The parent alleged that the persons providing the special education services in the child's program were not properly trained. The parent alleged that despite having been asked for the specific treatment approach being used in the PBIS classroom, the district did not provide

specific information on the models of positive behavior support being used or the training in that model for district staff.

The district responded that all the teachers providing specially designed instruction during the 2022-23 and 2023-24 school years were certified special education teachers. One of the 2023-24 teachers had experience working in a psychiatric facility, and another had experience in special day school. The school social worker is a licensed clinical social worker and the building administrators are licensed school administrators. The district responded that three team members who work most closely with the student are trained in Collaborative Problem Solving “a model for addressing challenging behavior focused on addressing skill deficits in students and working collaboratively to identify solutions to recurring problems,” and one of the three is a fully certified trainer in the model.

The district also responded that the certified staff participated in annual PD focused on mental health as mandated by KSDE (such as de-escalation training), a district wide professional learning community, and the social worker and school psychologist participate in additional yearly behavior-based PD. Classified staff (paraeducators) have annual PD focused on mental health as mandated by KSDE, monthly meetings with the special education teacher focused on individual student needs and PD on strategies related to working with students with emotional and behavioral challenges.

The findings of Issue One and Issue Two are incorporated by reference. Based on the documents provided by the parent and the district, and interviews of the parent and district staff, additional findings are listed below.

The student’s IEP requires staff to have: basic de-escalation training, awareness of the students BIP at least quarterly, common language, and awareness of toolbox strategies.

The district reported the following qualifications for the student’s teachers and service providers.

Staff person and role	Degree - Special Experience	Years	Professional Development
Courteny Applehantz 7th grade SPED Math Teacher	Master's High Incidence Special Education Pk-12	7	Suicide Awareness, De-escalation
Tracie Bauer, Social Worker	Master's Social Work	5	Suicide Awareness, De-escalation Coll. Prob. Solving, Level 1 Quarterly behavior-based training
Patrick Cook, 8th grade SPED ELA Teacher	Master's High Incidence Special Education 6- 12 Exp. in special day school	4	Suicide Awareness, De-escalation

Staff person and role	Degree - Special Experience	Years	Professional Development
Caroline Spalding, PBIS Social Skills Teacher	Master's Adaptive Special Education 6-12 Exp in special day school	8	Suicide Awareness, De-escalation Coll. Prob. Solving, Level 1 Quarterly behavior-based training
Howard Tush Behavior Interventionist Dean of Special Programs	Master's Adaptive Special Education 6-12, Building Leadership Exp in psychiatric facility	11	Suicide Awareness, De-escalation Coll. Prob. Solving, Level 1 & 2 Quarterly behavior-based training
Kimberly Dorr, Paraeducator	NA	2	20 hours PD: Secondary Methods Audacious Behavior Suicide Awareness, De-escalation Related Service overview
Rennesa Williams Paraeducator	CPR & CNA Certified	6	10 hours PD: Secondary Methods Suicide Awareness, De-escalation

The district provided the professional licenses of the student's special education teachers, school social worker, 8th grade principal, school psychologist, Dean of Behavioral Services, and Dean of Special Programs who provided direct services to the student. In addition to the training listed above, the 7th and 8th grade principals had basic de-escalation training.

The district reported and provided a record of the occurrence of at least three team meetings called by the Dean of Behavioral Services focused on the student's program and needs, in addition to reporting monthly meetings with classified staff who work with the student.

Conclusion

In this case, the staff at the school had proper credentials and training required by the state for their positions, which included key training included in the IEP or was related to the student's BIP. The student's school team met internally to discuss and problem solve the student's program, in addition to meeting with the parents at the previously mentioned IEP team meetings. The district provided a report of the training of each of the staff involved with the student.

Based on the foregoing, *it is not substantiated* that USD #437 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately trained staff capable of implementing the student's IEP during the past 12 months.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 CFR 300.304(c)(6) and (7), 34 CFR 300.324(a) and 34 CFR 300.327 was not found, based on the facts enumerated above. Corrective action is not required.
2. **ISSUE TWO:** A violation of 34 C.F.R. 300.323(c)(2) was found, based on the facts enumerated above. Corrective action is required (as follows):
 - a. **CORRECTIVE ACTION:**
 - i. Within 30 days of this report, USD#437 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations at 34 C.F.R. 300.323(c)(2), which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.
 - ii. The district shall immediately, within 30 days of the date of this report, take steps to ensure that the student's IEP, specifically the specialized instruction in his special education resource ELA, Math and Elective, is provided to the student.
 - iii. The district shall immediately, within 30 days of the date of this report, calculate the days of missed instruction to date and offer compensatory instruction to the parents, who may accept none, some, or all of the offered services. The offer shall be no less than 1,518 minutes of ELA instruction (33 absences for 46 minute periods) and 1,518 minutes of math instruction (33 absences for 46 minute periods), based on the attendance data provided in this investigation. The district may deduct 46 minutes for each period when it can document that the ELA teacher, the PBIS teacher, the math teacher or a properly directed paraeducator provided academic instruction to the student in the PBIS room. The district shall provide a copy of the offer to SETS as evidence of its completion.
 - iv. The parents shall have 15 days to accept none, some, or all of the compensatory education offer. The district will provide PWN to the parents resulting from the parents' response to the compensatory education offer. The district shall submit the PWN to SETS as evidence of its completion 50 days after the date of this report.
 - v. **Dates due:** Issue 2 (a)(i, ii, and iii) due on **January 10, 2024**; (a)(iv) due on **January 30, 2024**.
3. **ISSUE THREE:** A violation of 34 C.F.R. 300.156(a) was not found, based on the facts enumerated above. Corrective action is not required.

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)