

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #473
ON MAY 7, 2024

DATE OF REPORT JUNE 6, 2024

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of -----, -----, and Jacob Hopkins by their parent, ----- . In the remainder of the report, ----- will be referred to as "Student A," ----- will be referred to as "Student B" and Jacob Hopkins will be referred to as "Student C." ----- will be referred to as "the complainant" or "parent", or "the mother."

The complaint is against USD #473 (Chapman Public Schools). In the remainder of the report, USD #473 will be referred to as "the district", "the local education agency (LEA)", or "the school". It is noted that Central Kansas Cooperative in Education (CKCIE) provides special education services for USD #473 Chapman Public Schools. In the remainder of the report, "the school," the "district", "the cooperative" and the "local education agency (LEA) shall refer only to USD #473.

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 May 7, 2024 and the 30-day timeline ends on June 6, 2024

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 staff from USD 473 or CKCIE were interviewed on May 28, 2023: Casey Bell, CKCIE Special Education Coordinator; Ashley Stearns, Chapman Elementary, Principal; Sara Merritt, School Psychologist, Chrissy Collins, K-2 Special Education Teacher. The parent was interviewed on May 9, 2024. The following documentation and information were used in consideration of the issue(s):

For Student A:

1. Evaluation for Student A dated January 31, 2022, signed by the parent with agreement on the same date
2. Individualized Education Program (IEP) for Student A dated January 17, 2023

3. IEP Conference Summary IEP Team Considerations for Student A dated January 17, 2023
4. Prior Written Notice for special education services, substantial change in placement and material change to the IEP for Student A dated January 17, 2023 signed by the parent giving consent on the same date
5. Prior Written Notice for change of the IEP - substantial change in placement dated September 11, 2023 for a meeting on September 11, 2023, signed by the parent giving consent on September 14, 2023
6. IEP Amendment between IEP Meetings dated September 14, 2023 signed by the parent giving consent to amend the IEP without a meeting on the same date
7. Notice of Meeting dated December 11, 2023 for a meeting about Student A's IEP on January 10, 2024 and signed by the parent on December 14, 2023
8. Consent to excuse required member of the IEP Team for the General Education Teacher dated January 10, 2024 and signed by the parent giving consent on the same date
9. Individualized Education Program (IEP) for Student A dated January 10, 2024
10. Prior Written Notice for change in the IEP - material change in services, substantial change in placement and other changes for Student A dated January 10, 2024 and signed by the parent giving consent on the same date
11. Emails between Cristine Collins (Special Educator) and Megan Keller beginning January 8, 2024 at 10:16 a.m. and ending January 10, 2024 at 12:55 p.m.
12. Email from Megan Keller to Casey Bell with "January 2024 statement" dated May 13, 2024 at 8:49 p.m.
13. School nurse documentation for Student A, undated, with 5 entries dated September 11, 2023, September 14, 2023, December 12, 2023, February 13, 2024 and April 18, 2024.
14. Progress report for Student A dated December 8, 2023 with entries dated in March, May and October, 2023.
15. Progress report for Student A dated May 21, 2024 with entries in March and May, 2024
16. Prior Written Notice for change in the IEP - material change in services and other changes for Student A dated May 15, 2024 and unsigned by the parent
17. Additional information requested by the investigator, including student attendance, dated May 28, 2024.
18. USD 473 School Calendar

For Student B:

19. Evaluation for Student B dated January 31, 2022, signed by the parent with agreement on the same date

20. Progress report for Student A dated December 8, 2023 with entries dated in March, May and October, 2023.
21. Notice of Meeting dated December 11, 2023 for a meeting on January 10, 2024 about Student B's IEP and signed by the parent on December 14, 2023
22. Consent to excuse required member of the IEP Team for the General Education Teacher dated January 10, 2024 and signed by the parent giving consent on the same date
23. Individualized Education Program (IEP) for Student B dated January 10, 2024
24. Prior Written Notice for change in the IEP - material change in services, substantial change in placement and other changes for Student B dated January 10, 2024 and signed by the parent giving consent on the same date
25. Email exchange between Cristine Collins (Special Educator) and Connie Suther on January 8, 2024
26. Text exchange between parent and Ms. Suther (Kindergarten Teacher) dated April 17, 2024
27. Undated statement by S. Merritt (Speech Language Pathologist) regarding March 4, 2024 Parent Teacher Conference attendance
28. Conference Summary IEP Team Considerations for Student B dated May 14, 2024
29. Prior Written Notice for change in the IEP - material change in services for Student B dated May 15, 2024 and unsigned by parent
30. Progress report for Student B dated May 21, 2024 with entries in March and May, 2024

For Student C:

31. Undated emailed statement by Amanda Zook (School Nurse) regarding snacks for Student C
32. Emails from Katherine Wieters (Student Services Coordinator, USD 473) to Casey Bell dated May 10, 2024 at 3:19 p.m. and at 3:48 pm.
33. Undated email from Skye Roberts (Fifth Grade Teacher) to Casey Bell at 4:31 p.m.
34. Undated Notice of Meeting for Student C on September 27, 2023 signed by the parent on September 14, 2023
35. Individualized Education Program for Student C dated September 27, 2023

Pertaining to all students:

36. Email from parents to investigator dated May X
37. Letter from Sarah Loquist, KCIE General Counsel to Crista Grimwood, KSDE, dated May 21, 2024 regarding proposed resolution

Background Information

Student A is a 5 year old student receiving special education services as a student with developmental disability, who attended kindergarten in USD #473 in the same grade and school as his twin, Student B. At 41 months of age, Student A was evaluated for special education. The evaluation determined delays in pre-academic/readiness development, communication, and social emotional skills.

Student B is a 5 year old student receiving special education services as a student with developmental disability, who attended kindergarten in USD #473 in the same grade and school as his twin, Student A. At 41 months of age, Student B was evaluated for special education. The evaluation determined delays in pre-academic/readiness development, communication, and social emotional skills. His IEP stated that he experienced delayed skills in reading and communication that required special education.

Student C is a 10 year old and attends the fifth grade in USD #473, receiving special education services in the category of Other Health Impairment with a secondary disability in speech and language, according to his evaluation dated October 5, 2022. His current IEP dated September 23, 2023 focuses on his academic needs in reading and mathematics and provides special education in both general and special education settings.

Issues Investigated

For Student A

1. ISSUE ONE: The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student A's IEP, specifically by failing to address the student's disabilities (autism and ADHD), providing needed special education services (such as paraprofessional support) and providing needed accommodations.
2. ISSUE TWO: The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a full day of school, specifically by shortening Student A's school day due to behavior problems or mistaken illness (Concerns A4 and A8)

For Student B

3. ISSUE THREE: The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to notify and acquire parental consent for special education assessments, specifically those used to recommend the parent seek a medical diagnosis for ADHD for Student B
4. ISSUE FOUR: The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student B's IEP, specifically by failing to address the student's disability

(ADHD) after the medical diagnosis, by removing him from speech therapy, and by failing to provide accommodations

For Student C

5. ISSUE FIVE: The USD #473, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student C's IEP, specifically by providing needed accommodations (extra snacks for weight) (Concern C2).
6. ISSUE SIX: The USD #473, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly implement Student C's IEP by removing the child from class to address sibling's needs (Concerns C1 and C3).

Issue One

The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student A's IEP, specifically by failing to address the student's disabilities (autism and ADHD), providing needed special education services (such as paraprofessional support) and providing needed accommodations.

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.

Additionally, the IEP must be revised at least annually and to address any lack of progress toward meeting goals, results of special education comprehensive evaluation, information provided by the parent, the child's anticipated needs, or other matters (34 CFR 300.324(b)(1)).

The revision of the IEP requires the review of special considerations in 34 CFR 300.324(a)(2) which specify the consideration of positive behavior supports for a child whose behavior impedes their learning or that of others, language needs for those with limited English proficiency, braille if visual impairments are present, and communication needs. In Kansas, a reasonable time to respond to parental requests such as the request for an evaluation or for an IEP meeting is three weeks, or 15 school days.

Analysis: Findings of Fact

In the written complaint, the parent alleged that the district had not written an IEP that addressed the student's known disabilities of autism and ADHD, failing to have enough paraprofessional help in the classroom and requiring the parent to come to school to act as his para in the classroom, failing to use accommodations such as fidgets, and sending the child home because of failure to manage his behavior or to consider him ill when he was not sick.

The district responded that the student came into kindergarten with an IEP calling for special education support in the general education setting for 60 minutes, 5 times per week, beginning in August 2023; and 30 minutes of special education service in the special education setting for 30 minutes, 5 times per week, beginning in August 2023.

The student had behavior issues after starting kindergarten and the parents agreed to a shortened school day via IEP Amendment on September 14, 2024. As indicated in the IEP amendment and PWN, the district gradually increased the student's time until he was again attending a full day. The district further stated that the student was doing so well at the time of the IEP dated January 10, 2024 that the team determined that consultative services only were required. Shortly before the complaint was filed in this matter, the principal inaccurately informed the parents that the student would need to move back to a shortened school day. This should not have occurred. To remedy this error, the IEP team met with the parents to address all of the concerns set forth in the complaint on May 14, 2024.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #473

The student's evaluation dated January 31, 2022 determined that the student had a developmental disability and required special education. The student was evaluated by a team that included an early childhood special educator, school psychologist, speech pathologist, occupational therapist and physical therapist, using the Assessment Evaluation and Programming System and the Carolina Curriculum for Infants and Toddlers' Preschoolers with Special Needs, comparing the student to the 32 to 47 months of age range. The evaluation determined that the student performed at levels below the expectations for a child of his age in fine motor skills, cognitive/adaptive skills, and preacademic readiness, which may have been affected by his language ability; the evaluation determined that he needed special education to assist him in pre-academic skills. The evaluation determined that the student performed at

levels below expectations in communication (grammatical structure, imitation, and verbal comprehension, along with articulation) and social emotional skills. The evaluation provided descriptive information on each topic from which educational needs and programming could be determined.

The student's IEP dated January 17, 2023, which was in place when he entered kindergarten during the 2023-24 school year, was developed by an IEP team that included his parent, special educator, general educator, occupational therapist and a person to interpret assessment results (SLP). The IEP stated that the student had needs and presented current performance in OT/fine motor skills, pre-academic skills, and communication. IEP goals were written in each of these areas: in brief, to improve visual motor skills, to use age appropriate grammar, and to follow the preschool/kindergarten curriculum. The IEP stated that the student did not have needs in the following areas: health, adapted physical education, adaptive behavior/daily living, reading, math, written language, and social emotional. Services required for the 2023-24 school year were 60 minutes of special education 5 days a week in the general education setting, 30 minutes 5 days a week of special education in the special education setting, 15 minutes of speech language 5 days a week in the special education setting, and transportation. At the IEP meeting, as reflected on the IEP and the conference summary, the parent provided input on her concerns about the student's behavior at home and reported his community speech therapy, health and upcoming behavioral screening.

Progress reports for the January 17, 2023 IEP noted adequate progress for each of the three IEP goals, rated in March, May and October, 2023.

The IEP was amended without a meeting on September 14, 2023, stating that between August 29, 2023 and October 6, 2023 the student's days would be shortened to half days, with the student leaving school after lunch and after 6 weeks the team would reconvene to determine the extension of his day. Between September 12, 2023 and January 17, 2024 the student would receive 165 minutes of special education in a special education setting 5 days a week, and 30 minutes of special education in a special education setting 5 days a week.

The district provided a Prior Written Notice dated September 11, 2023 for changes to the IEP including substantial change in placement requiring parental consent, which the parent signed giving consent on September 14, 2023. As in the IEP amendment above, between August 29, 2023 and October 6, 2023 the student's days would be shortened to half days with the student leaving school after lunch and from September 12, 2023 and January 17, 2024 the student would receive 165 minutes of special education in a special education setting 5 days a week, and 30 minutes of special education in a special education setting 5 days a week. In elementary schools, the school day begins at 7:55 a.m. and ends at 3:30 p.m. (7 hours 35 minutes, or 455 minutes).

As part of the evidence submitted to the investigation, the district provided an outside community psychological report dated December 2, 2023 to the investigator. The student had

been referred by his physician and taken by his parent to a licensed clinical psychologist for an autism evaluation. The report noted that the parent reported daily tantrums at home, among other difficulties. Besides the clinical interview with the parent and observations of the child, the psychologist completed the following: BASC-3 Parent Rating Scale (mother), Vineland-3 Parent/Caregiver Rating Form (mother), Social Responsiveness Scale (mother only, the student's teacher did not return the assessment) and Autism Diagnostic Observation Schedule, Module 2. The evaluation established a DSM-5 TR diagnosis of Autism Spectrum Disorder and made several recommendations, including further assessment for ADHD, treatment for sleep disorder, Applied Behavior Analysis (ABA) therapy and education for the parent, meeting with the IEP team to revise the IEP given the diagnosis, and parent and teacher educational materials.

The IEP dated January 10, 2024 reported marked progress at school, requiring only consultative services to support one IEP goal (to complete grade level assignments without special education support) and eliminating the speech/language and occupational therapy services due to the student's progress and meeting previous IEP goals. The IEP stated that the student failed his hearing screening. The IEP stated that the student did not have needs in the following areas: health, motor, pre-academic skills, communication, adaptive behavior/daily living, math, written language, and social emotional. The IEP stated he had needs in reading for which the special education goal was written. The parent attended the IEP meeting and gave permission for the general education teacher to be excused from the meeting. Other team members present were the special educator, Local Education Agency representative, speech language pathologist, occupational therapist. The district provided Prior Written Notice dated January 10, 2024, signed by the parent giving consent for a material change in services and a substantial change in placement. Progress reports for this IEP rated progress on the IEP goal as "adequate" in March and May 2024, although the May progress report showed that the student was unable to complete his work independently and the teacher reported regression in his behavior.

According to interviews, the district stated that the student's behavior changed suddenly after spring break. No IEP meeting was reported at this time. According to interviews with the school team, as a practice the school called the parent to calm the student, and the parent voluntarily stayed at the school for the remainder of the student's day or took the child home early after she had been called there. The school principal suggested a return to shortened school days and the student was placed on shortened school days May 6 - May 9, 2024 (a period of 4 days) at the end of the school year.

The IEP team including the parents met on May 15, 2024 according to the proposed resolution letter submitted by the district to KSDE. At that meeting, according to the district, the following actions were planned: (a) amend the IEP to add the medical diagnosis of autism to the health section without changing services or placement based on the diagnosis (b) changing the

practice of calling the parent to assist with student behaviors, relying on school staff instead, (c) seeking parental consent to complete a functional behavior analysis to create a behavior intervention plan (d) offering compensatory time for the 21 hours of school missed this spring prior to first grade, (e) trying interventions such as visual schedule, if/then visuals, visuals to be used as non-verbal communication, a weighted lap buddy or blanket prior to adding them as accommodations to the IEP through team agreement and (f) resuming para support at 300 minutes per week in the general educational setting to help address the increase in behaviors.

Prior Written Notice (PWN) dated May 15, 2024 was provided by the district to the investigator and reported to be mailed to the parents and included no parent signature. The PWN included three of the above suggestions (a) amend the IEP to add the medical diagnosis of autism to the health section without changing services or placement based on the diagnosis, (b) offering compensatory time for the 21 hours of school missed this spring prior to first grade, and (c) resuming para support at 300 minutes per week in the general educational setting.

Summary and Conclusion

In this case, the young student, who was receiving special education services as a child with developmental disabilities, demonstrated such concerning behavior upon entry into kindergarten in August, 2023 that the school team, with parental consent, shortened the student's school day. Upon the improvement of the student over the course of the fall semester, the school placed the student on a consultation only IEP, materially reducing services and substantially changing placement (IEP dated January 10, 2024). The IEP stated that the student had no further special education needs in social emotional, communication, or pre-academic development and included only one (reading) goal to complete his school work independently. The IEP dated January 10, 2024 eliminated both speech language and occupational therapy services, and changed the placement from special education in a special education setting (required during the shortened school day IEP amendment and PWN of September 14, 2023) and the 60 minutes of special education in general education, 30 minutes of special education in special education and 15 minutes of pull out speech therapy (required by the January 17, 2023 IEP) to general education with no special education support and consultation services.

During the same period of time, a licensed community psychologist diagnosed the student with autism and made several significant recommendations for the student's education and treatment, including a revision of the IEP based on the new diagnosis. The school was in possession of this report and could have considered it or the new diagnosis reported by the parent, if not at the January 10, 2024 meeting, then certainly when the student's behavior subsequently escalated and the school required a return to shortened school days in May, 2024. Further, the school did not meet with the IEP team to revise the IEP as required by 34 C.F.R. 300.324(b) to consider, in this instance, the information provided by the parent

regarding the child's diagnosis and needs (including the community psychologist's evaluation and recommendations), the student's then evident anticipated needs, the student's lack of progress on the consultation only IEP, the student's behavior which interfered with learning, or his possible communication needs due to his delayed communication (documented in the student evaluation dated January 21, 2022).

Based on the foregoing, *it is substantiated* that USD #473 failed to properly develop Student A's IEP, specifically by failing to address the student's disabilities (autism and ADHD), providing needed special education services (such as paraprofessional support) and providing needed accommodations.

Issue Two

The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a full day of school, specifically by shortening Student A's school day due to behavior problems or mistaken illness

Applicable Law

Free appropriate public education is provided for children with disabilities and defined as special education and related service, provided at the public expense and under public supervision that meet the standards of the state board, include appropriate preschool, elementary or secondary school education and provided in conformity with an individualized education program (KAR 91-40-1). 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. According to 34 C.F.R. 300.101, FAPE must be available to all children between the ages of 3 and 21, including children with disabilities who have been suspended or expelled from school as provided for in 300.530(d).

The Kansas special education statutes (K.S.A. 72-3403 to-3439) require parents to see that their child with a disability attends school so that their child can receive the special education and related services on the child's IEP. This means that for a child with a disability who has an IEP compulsory attendance may begin as early as age 3 (K.S.A. 72-3421) and continues through high school graduation or when the student ages out of special education.

The IEP Team of a child with a disability has authority to reduce the school day of the child when that is necessary in order to provide a free appropriate public education, see, Sierra Vista (AZ) Unified School District, 54 IDELR 35 (OCR 2009). That was a case where the Office for Civil Rights (OCR) said shorting the school day of a child with a disability administratively, instead of using a decision by an IEP team, was improper because it was not made on an individual basis with regard to whether the shortened school day was appropriate for the student with a

disability. The message from OCR in this case was that when an IEP team determines, on an individual basis, that a shortened school day is appropriate for a student, the IEP team may change the IEP to specify the extent to which the school day will be shortened. In Kansas, even if an IEP team makes such a decision it must also obtain written parental consent if the shortened school day constitutes a material change in services.

If a decision to shorten the school day is not made by the IEP team at an IEP meeting and no parent consent is obtained, shortening the school day based on the student's behavior must be viewed through the authority of the school district to remove a student for disciplinary reasons. School officials have the authority to remove students with disabilities from school for code of conduct violations and to determine if a disciplinary change of placement has occurred. Children with disabilities can be removed for short term suspensions for up to 10 days in a school year, or more if the behavior is not determined to be a manifestation of the child's disability (34 C.F.R. 300.530 (c)) or a disciplinary change of placement (34 C.F.R. 300.530(b)(1)).

At the 11th day and every day of suspension after that in a school year, special education and related services that are needed to enable the child participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP must be provided (34 C.F.R. 300.530(b)(2)). Additionally, school officials must determine if a pattern has developed by considering whether a disciplinary change of placement has occurred. To determine if a disciplinary change of placement occurred, school officials examine whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals and other factors such as: the length of each removal; the total amount of time the child has been removed; the proximity of the removals to one another; and any other unique circumstances on a case-by-case basis (34 C.F.R. 300.536(a) and (b); K.A.R. 91-40-33).

The Kansas Special Education Process Handbook includes a flow chart that states when a removal that cumulates to more than 10 school days, and shows a pattern of removal constituting a change of placement (34 C.F.R. 300.536(a)(1)(2) and 34 C.F.R. 300.530(c)), an IEP meeting is required to (1) make a manifestation determination (Notice of action and Parent Rights immediately, and meeting within 10 school days. 34 C.F.R. 300.530(e), (h); and (2) If the behavior is a manifestation of the disability, develop a FBA and BIP, or review existing BIP, and make any changes needed to address behavior (34 C.F.R. 300.530(f)).

Federal/state statutes and regulations at 34 C.F.R. 300.11(c) and K.A.R. 91-40-1(eee) state that a school day under IDEA means any day, including a partial day, that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities. Given this definition, if a child is suspended for part of a school day, the partial day counts as a full day for purposes of determining if a change of placement has occurred, or if educational services are required

during the period of suspension. Early dismissals for behavioral violations of the code of conduct are partial days of attendance.

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.

Analysis: Findings of Fact

In the written complaint, the parent alleged that the district had inappropriately shortened the student's school days for months at a time due to his behavior problems or saying the child was ill when he was not sick.

The district responded that the parents agreed to the shortened school day on September 14, 2023 via an IEP Amendment and PWN and denied the allegation regarding the school nurse. The district responded that the parents were informed in error that the student would need to be placed back on shortened school days, and this was corrected in a meeting held with the parents on May 14, 2024. The district responded that the PWN has been mailed to parents and as part of that PWN, the parents were offered 21 hours of compensatory education for the student.

The findings of Issue One are incorporated herein by reference. The following findings are based upon a review of documentation and interviews with the parent and staff in USD #473.

As noted in Issue One, the parent signed consent to change the IEP without a meeting on September 14, 2023. The associated PWN dated September 11, 2023 and signed on September 14, 2023 shortened school days from the period August 29, 2023 through January 17, 2024. In an interview and additional documentation provided to the investigator, the district reported that, upon the student's improved behavior, the school intentionally worked to improve adult-student relationships and systematically inserted full days into the student's schedule, allowing the student to return to full days following Thanksgiving break on November 27, 2023.

The following student attendance was provided by the district. The student began half days September 1, 2023. The week of October 30, 2023, the student attended one full day; the week of November 6, 2023 the student attended two full days, and the week of November 13, 2023 the student attended three full days. The following week was the week of Thanksgiving break when all students attended two days, and the student returned to a full day schedule beginning November 27, 2023. Two days were early dismissal for all students and the student stayed for the full schedule (October 23 and October 26, 2023). The student was sick and

absent on three days, October 6, 24, and 25, 2023). The student was sent home because of illness on September 14 and 15, 2023 and April 18 and 19, 2024.

The school nurse provided a statement showing the following dates and ailments: September 13 and 14, 2023 (fever, earache, headache, sleepiness and 24 hour symptom free requirement), December 12, 2023 (vomiting), February 13, 2024 (vomiting and headache), and April 18, 2024 (stomach ache, falling asleep).

The district reported that on April 24, 2024 the parent was called due to the student's behavior, and the parent asked a neighbor to pick the student up from school. The district reported that on May 1 and 3, 2024, the parent was called due to behavioral concerns and chose to take the student home early. From May 6 to May 9, 2024, the student was again placed on half days, and May 17, 2024 was the last day of school.

Comparing the attendance (above) to the USD 470 school calendar, the student attended school for half days on the following: September 1, 5, 6, 7, 8, 11, 12, 15, 18, 19, 20, 21, 22, 26, 27, 28, and 29, 2023; October 2, 3, 4, 5, 10, 11, 12, 13, 16, 17, 18, 19, 20, 30 and 31, 2023; November 1, 2, 6, 7, 13, and 14, 2023; and May 6, 7, 8, and 9, 2024. The parent was called for behavior problems and the student was taken home early on April 24, May 1 and May 3, 2024. No attendance information was reported by the district for the remaining days of the school year, May 10, 13, 14 and 15.

Summary and Conclusion

In this case, the IEP was amended to provide a shortened school day to the student who was exhibiting challenging behavior at school in his kindergarten year. The school asked for and received parental consent to shorten the school day in an IEP amendment, with an associated PWN provided and signed giving consent on September 14, 2023. Although the PWN dates the permission for the shortened day from August 29, 2023, according to Kansas regulations, parental consent must be given before a substantial change in placement or material change in services, as occurred in this case. Therefore, seven shortened days occurred prior to giving notice and obtaining parental consent to change the student's IEP (September 1, 5, 6, 7, 8, 11, and 12, 2023).

It is noted that the school team developed and implemented a systematic plan to return the student to a full day schedule prior to the end date (January 17, 2024) noted in the PWN dated September 11, 2023. However, the additional shortened school days directed by the school principal (four days, May 5-9, 2024) and resulting from calls to the parent (three days, April 24, May 1 and 3, 2024) were not included in a change of placement in the student's IEP amendment. In total, the student experienced 14 days of shortened school days due to behavioral concerns not addressed by the IEP.

School officials have the authority to remove a student for disciplinary violations for up to 10 days and to determine if a disciplinary change of placement has occurred. At the 11th day and

every day of suspension after that in a school year, special education and related services that are needed to enable the child participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP must be provided (34 C.F.R. 300.530(b)(2)). In this case, the school exceeded its authority to remove the student for disciplinary purposes without meeting with the IEP team to determine if the student's behavior could be addressed through revisions of the IEP, to determine if a change of placement had occurred when more than 10 days of removal had occurred, or to determine if the behavior was a manifestation of the disability and to respond accordingly.

Based on the foregoing, *it is substantiated* that USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a full day of school, specifically by shortening Student A's school day due to behavior problems or mistaken illness.

Issue Three

The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to notify and acquire parental consent for special education assessments, specifically those used to recommend the parent seek a medical diagnosis for ADHD for Student B

Applicable Law

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. Federal regulations at 34 C.F.R. 300.300(a) require that parental consent is sought for an initial evaluation to determine special education eligibility. In addition, 34 C.F.R. 300.300(c) requires parental consent before a reevaluation except when reviewing existing data as part of an evaluation or reevaluation or when administering a test administered to all children, unless that test requires parental consent (34 C.F.R. 300.300(d)(1)).

Analysis: Findings of Fact

In the written complaint, the parent alleged that Student B was tested at the school without the parent's knowledge or consent. The parent alleged that the teacher discussed testing information with her when she attended parent teacher conferences.

In the District's response to the complaint, the district denied assessing the student without parental consent. The district explained that the student's teacher asked the school psychologist to sit in on a parent teacher conference due to concern regarding attention. The district responded that at the conference the parent indicated her awareness of the problem

and was seeking medical advice. The district reported that the teacher later asked the parent about the medical advice received.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #473.

In an interview with the school psychologist, the psychologist stated that she did not do any individual testing for the purposes of special education evaluation or reevaluation. The school psychologist stated that she regularly uses an observational guide similar to a behavior checklist as a screening instrument in response to a teacher's concern about attention problems in children as a way to guide a conversation with parents and to determine if further psychological assessment is warranted. The school psychologist was present at the parent teacher conference when the teacher discussed this checklist with the parent who stated at the time that she was aware that the student had attention problems.

In a statement provided to the investigator along with the district evidence, the school psychologist explained: "[The parent] said she was planning on taking him to the doctor to discuss her concerns and that she already had a Vanderbilt to fill out on [Student A] so she was going to fill one out on [Student B] as well. She asked if I had an extra Vanderbilt [Vanderbilt ADHD Diagnostic Rating Scale] to fill out and I replied that yes, I did. I sent one to [the parent] and one to [the teacher]. Before I received either of them back, [the parent] had already obtained new copies from her doctor and had given them to the school principal [name] and she had already handed them out. I did not pull [Student B] for any direct testing."

The teacher reported that she texted with the mother about the doctor's evaluation. In a text exchange dated April 17, 2024, the parent said "also I should know something about the paperwork for [Student B] and his possible ADHD." The teacher replied, "Did you take him to the Dr? Or did you turn in the paperwork? How does that work?" and the parent replied, "dropped off paperwork today."

Summary and Conclusion

In this case, the teacher noted attentional difficulties in the classroom and sought assistance from the school psychologist, who provided a behavior checklist to guide the teacher's observation and which was subsequently shared with the parent at a parent teacher conference. No evidence that individual student testing occurred at school, despite some unclear communication about school personnel's participation in medical diagnostics directed by the student's doctor and family.

Based on the foregoing, *it is not substantiated* that USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to notify and acquire parental consent for special education assessments, specifically those used to recommend the parent seek a medical diagnosis for ADHD for Student B

Issue Four

The USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student B's IEP, specifically by failing to address the student's disability (ADHD) after the medical diagnosis, by removing him from speech therapy, and by failing to provide accommodations.

Applicable Law

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.A.R. 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.

Additionally, the IEP must be revised at least annually and to address any lack of progress toward meeting goals, results of special education comprehensive evaluation, information provided by the parent, the child's anticipated needs, or other matters (34 CFR 300.324(b)(1)). The revision of the IEP requires the review of special considerations in 34 CFR 300.324(a)(2) which specify the consideration of positive behavior supports for a child whose behavior impedes their learning or that of others, language needs for those with limited English proficiency, braille if visual impairments are present, and communication needs.

Analysis: Findings of Fact

The parent alleged that the school removed the student from speech services over the objections of his teacher and that the IEP failed to address the student's disability after his diagnosis of ADHD. The parent alleged that the student needed accommodations which were not provided at school.

In the district's response to the complaint the district stated that Student B does not have an ADHD diagnosis. The district responded that Student B was also placed on a consultation only IEP on January 10, 2024 based on his progress in completing assignments, which was confirmed by his general education teacher. The district pointed to [Student B's] current IEP [dated January 10, 2024], PWN, and other related documentation to show that the parents gave consent to change special education services to consultation and to change speech services to consultation. The district reported that during the meeting on May 14, 2024 held to

discuss the concerns raised in the formal complaint, the parties agreed to resume special education services of 300 minutes per week in the general education setting for [Student B].

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #473. The findings of Issue Three are incorporated herein by reference.

Progress report on the goals of the IEP dated January 17, 2023 showed quarterly ratings of adequate progress on communication and pre-academic goals.

Consent to excuse a required IEP team member from meeting was signed by the parent giving consent on January 10, 2024.

The IEP team who developed the IEP dated January 10, 2024 included the parent, the principal as LEA representative, the special education teacher, the speech language pathologist, and the occupational therapist. The IEP listed the student's strengths and that he had no needs in health, motor, adaptive behavior, pre academic skills, math, written language and social emotional development. The IEP stated that the student had needs in reading and one goal was written, to complete grade level assignments without in class support, and provided consultation 10 minutes every nine weeks. The IEP provided a summary of the student's needs in communication and provided related services consultation in speech language 10 minutes every nine weeks.

The IEP dated January 10, 2024 listed no accommodations.

Prior Written Notice (PWN) dated January 10, 2024 for a change of the IEP (material change of services and substantial change of placement) exited the student from occupational therapy and changed the services to the consultation services listed in the IEP. Progress reports in March and May, 2024 on the IEP goal rated progress as adequate, noting on May 6, 2024: "After speaking with [the teacher], [Student B] is capable of completing his classwork with 80% accuracy with someone keeping him on task but is not reaching his goal of doing so without para support. He is having a very hard time staying focused which in turn is causing a bit of a struggle with classwork and frustration levels. He does struggle during writing block."

According to the proposed resolution dated May 21, 2024, the district believed that there was a miscommunication about whether the teacher was in accord with dismissing Student B from speech. The teacher was not present at the IEP meeting and she told the SLP that she was in agreement with dismissing Student B] from speech, because his goals were grammar and that can be achieved through the general education teacher modeling proper grammar in the classroom. In support of this statement, the district submitted a text message from the teacher which stated that she agreed with the speech language pathologist's proposal to decrease speech language services to consultation.

In a PWN to change the IEP (material change in services) dated May 15, 2024, the district stated that [Student B] will receive special education services for 300 mins per week in the general

educational setting at the beginning August 15, 2024 for the remainder of the current IEP period. This PWN was unsigned by parents.

The Conference Summary IEP Team Considerations dated May 14, 2024 stated that Student B did not yet have an ADHD diagnosis and although the parent had spoken with the doctor by phone, an appointment will occur after the school year to determine a diagnosis. According to the Conference summary, the school invited the parent to share the diagnosis with the school if it occurred.

Summary and Conclusion

In this case, the parent was concerned that the school had initiated discussions of ADHD in her child and at the same time had not developed an IEP that reflected that condition by revising the IEP and providing accommodations like fidgets in the classroom. This is a reasonable concern. However, in this case, the student had not been assessed by a medical practitioner for this medical condition, and the district did not complete additional testing to include in or to revise the student's comprehensive evaluation for special education, required every three years. The student's IEP dated January 10, 2024 did not include the requirement for fidgets or in class support, and the changes proposed in the PWN dated May 15, 2024 address the need for in-class attentional support by adding a paraprofessional support for the upcoming year. It is recommended that the district hold an IEP meeting for the student to complete the IEP addressing these needs before the student enters first grade in the 2024-25 school year.

The parent was also concerned that the child's speech therapy was removed prematurely over the objections of the teacher. The district provided evidence that the teacher did not object and accepted the responsibility of in class teaching of grammar. The parent is advised to address this and other concerns with the IEP team if the child does not progress in his speech and language development in the general classroom.

This student's comprehensive evaluation was completed in January, 2022 and due again in January, 2025. Based on the concerns raised by the parent, including her attention to receiving community professional care for her child, the consideration of attentional difficulties and the need for accommodations in the classroom, the parent can reasonably expect that the reevaluation will be thorough in all areas related to the child's disability so that the student's IEP can be developed to meet the student's educational needs, as required by 34 C.F.R 300.304(b)(c).

Based on the foregoing, *it is not substantiated* that USD #473 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student B's IEP, specifically by failing to address the student's disability (ADHD) after the medical diagnosis, by removing him from speech therapy, and by failing to provide accommodations.

Issue Five

The USD #473, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student C's IEP, specifically by providing needed accommodations (extra snacks for weight)

Applicable Law

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.

Additionally, the IEP must be revised at least annually and to address any lack of progress toward meeting goals, results of special education comprehensive evaluation, information provided by the parent, the child's anticipated needs, or other matters (34 CFR 300.324(b)(1)). The revision of the IEP requires the review of special considerations in 34 CFR 300.324(a)(2) which specify the consideration of positive behavior supports for a child whose behavior impedes their learning or that of others, language needs for those with limited English proficiency, braille if visual impairments are present, and communication needs.

Analysis: Findings of Fact

In the written complaint, the parent expressed concern that the student was not being allowed to receive the extra food he needed at school because the school required doctor's permission for him.

The district responded that a doctor's note was never required in order for [Student C] to receive extra snacks, that the student provided notes without being asked by the school nurse, and that any student would be permitted to have snacks in this way.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #473.

The student's IEP dated September 27, 2023 stated that the student took medication for ADHD and the student did not require a health plan. The IEP required 30 minutes of special education in a special education setting, 30 minutes of special education in general education for reading and 30 minutes of special education in general education for math. The IEP showed that the student was testing in the high risk category academically and that he had

goals in reading and math. Quarterly progress reports show that the student's progress was rated as adequate, except for one quarter on one math goal.

In its evidence, the district provided a statement from the school nurse, who stated that she had not asked Student C for doctor's notes. Student C brought two notes from medical personnel (dated January 16, 2024 and March 13, 2024) pertaining to the student's need for extra snacks due to his medical needs. The school nurse stated that the child brought supplies and can access the snacks freely during the day.

In an interview, the school principal stated that the student was permitted to access snacks in the same way as any student in the school would, and there was no need to write this as a unique health need in the student's IEP.

Summary and Conclusion

In this situation, there was no requirement for the student to have an accommodation or health plan for extra snacks at school as this is available for any student at the school. Based on the foregoing, *it is not substantiated* that USD #473, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop Student C's IEP, specifically by providing needed accommodations (extra snacks for weight).

Issue Six

The USD #473, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly implement Student C's IEP by removing the child from class to address sibling's needs.

Applicable Law

Federal regulations at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

Analysis: Findings of Fact

In the written complaint, the parent expressed a concern that the student was being pulled out of class to attend to his brother's behavior and being asked to assist the school with his sibling's management.

In the district response, the district replied that the student was never removed from class to address his sibling's needs. The district stated that upon one occasion he was asked by the custodian in the hallway to speak to his younger brother who was experiencing "difficulty." After briefly speaking to his younger brother, Student C returned to his classroom.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #473. The findings of Issue Five are incorporated herein by reference.

In the evidence submitted by the district, the counselor provided statements dated May 10, stating that she met with Student C at his request 22 times during the school year and upon four occasions the student expressed worry about his siblings' health or behavior. The counselor denied that she had pulled the student from his class to discuss his siblings and stated that she did not know of anyone else doing so.

In the evidence submitted by the district, the fifth grade teacher provided the following summary of her interaction with the student when he returned to the classroom after speaking with his sibling at the custodian's request. The student stated that he might be pulled from class by the special educator to help handle his brother again, and that he had been pulled from the resource room to help with his brother who was having a rough day. The fifth grade teacher immediately went to inquire, and finding the special education coordinator, special education teacher, principal and custodian in the hallway, she asked them directly why Student C had been pulled from testing in the resource room. The others assured the fifth grade teacher that the student had completed his testing, that he had been asked to console his brother as he was walking back to class. The student did so, and then returned to class. Later in the day, the fifth grade teacher discussed the incident with the student, who stated that he had been in the hallway and not pulled from testing and that the special education teacher had not said she would pull him from class to help manage the student. The fifth grade teacher cautioned the student to be accurate in the way he reported things that happen.

Summary and Conclusion

The issue in this situation is whether Student C was being pulled from his own services and education in order to provide behavior management support to his sibling. No evidence supports this as occurring, and the student's services were not interrupted by the isolated incident described above.

Based on the foregoing, *it is not substantiated* that USD #473, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly implement Student C's IEP by removing the child from class to address sibling's needs

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of 34 C.F.R.300.324(a) and 34 C.F.R.300.324(b)(1) was found based on the facts that the district failed to develop and revise the student's IEP as required to consider concerns and information provided by the parent along with the student's lack of progress and needs including the student's behavioral challenges. Corrective action is required (as follows):
 - a. **CORRECTIVE ACTION:**

- i. **By July 8, 2024** USD #473 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.300.324(a) and 34 C.F.R.300.324(b)(1) which require that the district develop and revise the IEP as required in the regulations.
 - ii. **By July 8, 2024** USD #473 shall initiate scheduling an IEP team meeting and the IEP team meeting must consider, at a minimum, the following topics: outside information provided by the parent regarding autism and ADHD to the child's IEP, explanation of and consent for an FBA, increased special education services to address student disability and behavioral concerns, and consideration of additional supplementary aids, services or modifications. In addition, the IEP team shall consider whether the student's comprehensive evaluation should be concurrently conducted along with the proposed FBA in order to properly address the student's disability, behavior problems, and educational needs. Finally, the IEP team will add consideration of specific goals in communication/language and social emotional development to the IEP team agenda.
 - iii. **By July 8, 2024** USD #473 shall arrange for KSDE approved professional development for the student's school and related district personnel on the obligations to hold IEP meetings based on parent concerns and student needs, to revise IEPs taking into account special considerations such as challenging behavior, to consider outside psychological reports and medical diagnoses provided by the parent, and to create goals and use accommodations recommended for students with autism, ADHD, and concomitantly occurring autism and ADHD.
 - iv. **By September 15, 2024**, USD #473 shall conduct the professional development described above and submit the agenda and participants to SETS.
2. **ISSUE TWO:** A violation of 34 C.F.R.300.530(b), 34 C.F.R.300.536(a), 34 C.F.R.300.503(a) and K.A.R.91-41-27(a)(3) was found based on facts listed above. Corrective action is required (as follows):
 - a. **CORRECTIVE ACTION:**
 - i. **By July 8, 2024** USD #473 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.300.530(b), 34 C.F.R.300.536(a) which require the district to provide protections and follow procedures regarding discipline and children with disabilities.
 - ii. **By July 8, 2024**, USD#473 shall make an offer of at least 53 hours compensatory education to the family following the revision of IEP resulting from Corrective Action 2(a)(ii) if possible and if not, based on the student's disability related needs in anticipation of his first grade year. Compensatory education was determined by the length of the

school day multiplied by the number of days in violation rounded to the nearest hour. In this case, the school day of 455 minutes X 7 days is 53.08 hours. The district shall consult with the parent on the format and content of the compensatory education before making the offer. The parent may accept all, some, or none of the compensatory education offer, within 20 days of the school's written offer.

- iii. **By August 15, 2024**, USD#473 shall provide the PWN showing the parental response to SETS as evidence of the district's compensatory offer and the parent's acceptance of all, some, or none of the compensatory education offered.
 - iv. **By July 8, 2024** USD #473 shall arrange for KSDE approved professional development on IDEA discipline requirements for relevant district personnel, to include the student's principal and other administrators who use suspensions or shortened school days.
 - v. **By October 30, 2024** USD#473 shall have conducted the professional development described above and submit the agenda and participants to SETS.
 - vi. **By July 8, 2024** USD #473 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.300.503(a) and K.A.R.91-41-27(a)(3) which require prior written notice and consent (when consent is required) to occur before a change in services is implemented.
 - vii. **By September 15, 2024** USE #473 shall review its policy on providing prior written notice, revise if necessary, and disseminate it to all administrators and special education providers. The district shall provide the policy and the nature of the dissemination to SETS as evidence of its completion.
2. **ISSUE THREE:** A violation of 34 C.F.R. 300.503(a) was not found, based on facts listed above. Corrective action is not required.
 3. **ISSUE FOUR:** A violation of 34 CFR 300.324(a), 34 CFR 300.324(b)(1), 34 CFR 300.327 and K.A.R. 91-40-25 was not found, based on facts listed above. Corrective action is not required
 4. **ISSUE FIVE:** A violation of [applicable law] was not found, based on facts listed above. Corrective action is not required
 5. **ISSUE SIX:** A violation of [applicable law] was not found, based on facts listed 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)