

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES  
REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #229 BLUE VALLEY SCHOOLS  
ON JUNE 25, 2024  
DATE OF REPORT JULY 23, 2024

On June 25, 2024, ----- (hereafter referred to as: "the mother,") and ----- (hereafter referred to as: "the father), filed a formal complaint with the Kansas State Department of Education (KSDE) alleging that USD 229 Blue Valley Schools (hereafter referred to as "the district), is not meeting its obligations under the Individuals with Disabilities Education Act to provide special education services to their child, ----- (hereafter referred to as "the child"). When referring to both the mother and the father, they will be referred to as "the parents". Mark Ward served as investigator for the complaint.

\* The complaint was delivered to the KSDE on June 24, 2024 at 5:16 pm, after the office closed for the day. Accordingly, the filing date is June 25, 2024.

### **Investigation of Complaint**

The following materials and correspondence were provided by the parties and reviewed by KSDE during its investigation.

Provided by the parents:

1. Complaint, dated 6/24/24, received 6/25/24
2. E-Mail correspondence dated 7/1/24, including:
  - a. Online registration dated 8/6/23;
  - b. E-mail dated 8/11/20;
  - c. On-Line registration dated 6/2/21;
  - d. Status of registration, dated 6/2/21;
  - e. Status of registration dated 6/22/22;
  - f. E-mail dated 8/29/23 from Dr. Schmidt re: reevaluation and enrollment;
  - g. E-mails dated 9/10/20 – 10/22/20/letter dated 10/14/20; and
  - h. Exhibit A: Affidavit of Asst. Dir., dated 1/28/21.
3. E-Mail, dated 7/1/24 with exhibits in district court
4. E-Mail, dated 7/12 & 7/13/24 from parents, answering investigator questions

Provided by the District:

- a. Response to Complaint

- b. E-mail, dated 8/9/23 from Principal to Parent
- c. Email dated 8/29/23 from Assistant. Superintendent to Parent
- d. E-mails dated 7/1/24 through 7/12/24 from attorney for district
- e. Initial Evaluation Report, dated 5/15/18
- f. Student's IEP, dated 4/27/20

Obtained independently

- a. Baker v. Watson, U.S. District court decision, dated June 25, 2024

Spoke by phone to Director 7/12/24

Spoke by phone to father on 7/15/24

## **Background Information**

This complaint involves a nine year-old boy who was found to be eligible under the category of Developmental Delay. The student attended a public school at Wolf Springs Elementary School, where he was in pre-school in the spring of 2020. He has not attended a public school since that time and his April 2020 IEP was the student's last IEP as a district student.

In the complaint, the parents state that: "This complaint is not related to the substance of (the student's) IEP." Instead, the parents allege a number of violations that resulted from the same action, namely that the district refused to enroll the student or to keep the student enrolled.

### **Issue 1**

In Issue 1, the complaint lists seven allegations against USD 229. They are:

### **Issue 1**

The district has failed to comply with multiple state special education statutes and regulations by repeatedly refusing to enroll, or to keep the student enrolled in school for the 2023-2024 school year. The complaint includes alleged violations of the following Kansas statutes and regulations, when the district allegedly:

- K.A.R. 91-40-21: failed to enroll the student so that he can be "served by the agency."
- K.A.R. 91-40-21: refused to enroll the student so that he can be educated in the LRE.
- K.A.R. 91-20-27: did not obtain parental consent before making a material change in services or a substantial change in placement.
- K.A.R. 91-40-41: did not reimburse parents when the district did not make FAPE available to the student in a timely manner before the private school enrollment.

K.S.A. 72-3410: failed to provide a Free Appropriate Public Education for the student in its district by failing to provide the student, who was enrolled by his parents in a private school, with special education and related services.

K.S.A. 72-3421: refused to enroll the student within the last year.

K.S.A. 72-3433: refused to enroll or keep the student enrolled, which constituted a disciplinary removal without using the required procedures for the suspension or expulsion of a child with a disability.

### **Preliminary Matters**

The district inquired about the application of 34 C.F.R. 300.152(c)(2), which states that if an issue raised in a complaint has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue. The effect of this regulation is to bar complaints that have already been litigated in a due process hearing. The district was referring to due process hearing 23DP229-001, requested by the parents on March 24, 2023. The hearing officer in that hearing dismissed the action without prejudice, concluding that the request for due process was insufficient. The parents appealed that ruling, and on appeal, the review officer upheld the hearing officer's decision. Again, the parents appealed. In a Memorandum and Order, dated June 25, 2024 (the same date this complaint was filed) the United States District Court for the District of Kansas, dismissed Count VII, the parent's special education due process hearing appeal.

This investigator will proceed with the complaint as it appears that the decision to grant the motion on Count VII, was not made based on the merits of the case, but on the insufficiency of the original pleading. The original hearing officer dismissed, without prejudice, for lack of sufficiency. Accordingly, the merits of the parents FAPE claims were never considered or resolved in any final decision at any level. Thus, 34 C.F.R. 300.152(c)(2) does not apply because the issue presented in the complaint was "not decided in a due process hearing."

In a second preliminary matter, the parents' complaint referred to HB 2567, now K.S.A. 72-3120(h), requiring school districts to permit specified children in private schools to enroll part-time. This is not a special education statute. Accordingly, the Special Education and Title Services (SETS) team does not have authority to address it in this complaint, and will not do so.

### **Applicable Law:**

A school district's obligation to a child with a disability, who is enrolled by parents in a private school, is somewhat different than its obligation to children who are not enrolled by their parents in a private school. It is very different under federal law. Under federal law these students are not entitled to a free appropriate public education (FAPE), or even to receive an IEP. Instead, these students receive a "services plan." See, 34 C.F.R. 300.137(c). The district's obligation to these students is merely a spending obligation. That is, districts must determine

the percentage of their children with disabilities who are enrolled by their parents in a private school and spend that percentage of their federal IDEA funds on those students. Once that money has been spent, the district's obligation to these students is over (34 C.F.R. 300.133). Public schools which have multiple children with disabilities attending a private school can spend all of their proportionate share of federal dollars on a single student until those funds are exhausted, and then end services to that student, even in the middle of a school year. The federal regulations make it clear that, "No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school." See, 34 C.F.R. 300.137(a).

Kansas law is much more favorable to these children with disabilities who are enrolled by their parents in a private school. Accordingly, state law will be used to determine whether the district complied with its duty to this student.

The primary Kansas regulation related to these children with disabilities who are enrolled in a private school by their parents is K.A.R. 91-40-45(c)(1). That regulation says: "Each board shall develop, review, and revise, as necessary, in accordance with this article, an IEP for the following children: (1) Each private school child whose **parent requests special education and related services...**"

The primary Kansas statute related to these children is K.S.A. 72-3462. That statute says, in relevant part, "Every school district shall provide special education services for exceptional children who reside in the school district and attend a private, nonprofit elementary or secondary school, whether such school is located within or outside the school district, **upon request of a parent or guardian of any such child for the provision of such services.**" The statute adds that: "Special education services which are provided under this section for exceptional children who attend a private, nonprofit elementary or secondary school which is located in the school district **may be provided in the private, nonprofit elementary or secondary school or in the public schools of the school district. The site for the provision of special education services under this section for an exceptional child shall be determined by the school district in consultation with the parent or guardian of the child and with officials of the private, nonprofit elementary or secondary school** (emphasis added)."

Another applicable statute is K.S.A. 72-3421(a), which says, "Except as otherwise provided in this section, **it shall be the duty of the parent of each exceptional child to require such child to attend school to receive the special education and related services which are indicated on the child's IEP or to provide for such services privately** (emphasis added)." Thus, when a parent of a child who is being educated privately, wants special education and related services indicated on the child's IEP, from a public school district, the parent must "require such child to attend school."

Accordingly, the duty to provide special education and related services to a child who is enrolled in a public school by their parents arises when the parents request such services and requires the child to attend school.

## **Parent's Position**

The parents assert that the district has repeatedly refused to enroll or to keep the student enrolled, in school, resulting in a failure to comply with multiple state and federal regulations, including a failure to provide a Free Appropriate Public Education (FAPE), educate the student in the least restrictive environment, to obtain consent for a material change in services and a substantial change in placement. These allegations are based on the parent's assertion that they completed an on-line registration, through a registration process called ParentView, and the district has repeatedly not enrolled, or not kept the student enrolled.

## **District's Position**

The district asserts that while the parent did use the ParentView registration to enroll the student, they did not complete the enrollment process because the parents did not respond to questions seeking clarification from the parents regarding whether they were enrolling the student in the second grade or in the third grade. The district requested this information, in writing, but the parents did not respond. Thereafter the ParentView indicated that the status of the enrollment was incomplete, showing the statement: "School Reviewing."

## **Findings of Fact**

1. The student is, and has been, a resident of the Blue Valley school district for the past year.
2. The student is a child with a disability.
3. For all of the past year, the student was enrolled by his parents in, and attended, a non-accredited private school.
4. The student last attended a district school (pre-school) at Wolf Springs Elementary school in the spring of 2020.
5. Over the past one year, there have been only four documented communications between these parties regarding enrollment for the 2023-2024 school year, they are:
  - a. On 8/6/23, The parents accessed the Blue Valley ParentView on-line registration process to enroll the student for the 2023-2024 school year.
  - b. On 8/9/23, the Principal of Stillwell Elementary School sent an e-mail to the student's mother, stating "We are in receipt of your registration records to enroll (the student) in the second grade at Stillwell Elementary School this school year. We are glad to have (the student)! We see that you have enrolled (the student) as a second grader. By our calculation, (the student) should be in 3rd grade for the 2023-2024 school year. Can you confirm that you indeed want (the student) to be in the second grade this fall?"
  - c. On 8/29/23, the Assistant Superintendent of Special Education sent an e-mail addressed to the student's parents, saying:  
I was made aware that you have **begun the steps to enroll (the student) at Stilwell Elementary for this school year, 2023-24**. If you haven't done so already,

**you can complete the enrollment process** on the Blue Valley Registration page. We would love to see (the student) at school. I understand (the student) missed the first several days of school, but I hope he will attend school very soon. Blue Valley **remains ready, willing, and able to provide the student's special education services.**

I am reaching out to request your consent and to encourage you to make (the student) available to the Stillwell Elementary IEP team to evaluate his current special education needs. **We have not seen (the student) presented to a Blue Valley school for any services since the spring of 2020.** (The student) was due for a triennial re-evaluation in 2021 but you did not sign consent for Blue Valley to complete that evaluation. Completing a re-evaluation is essential to understanding the student's current needs. We will send you a Consent to Evaluate form through DocuSign so we can evaluate (the student) in the upcoming year. I have also attached a copy for your review.

Through your current lawsuit against Blue Valley, I recently saw a copy of records you provided indicating that (the student) was denied admission to private schools because he was behind in reading. While I understand you want (the student's) special education services to be wrapped up in religious education—something Blue Valley cannot legally do—we can address his educational needs in Reading and other areas of need. **Some of our other parents have their children attend Blue Valley Schools just for special education services and return to home school or private school for other subjects including religious instruction.** If this is something you would consider, the evaluation would provide information to create an updated IEP that would target his current needs and to improve his skills. **Even if you do not consent to the evaluation, the district is ready, willing, and able to serve (the student) either part or full time.** Regardless of your decisions, if the courts ultimately rule that we must change something, we will of course abide by that decision.

- d. On 12/2/23, the parent accessed ParentView with regard to enrollment for the 2023-2024 school year only to find a message stating: "School Reviewing."
6. The parties have been engaged in litigation with each other over special education issues since March 23, 2023, when the parents requested a due process hearing. The due process hearing officer dismissed the hearing, saying: "I am unable to construct a description of the nature of the problem and the facts that form the basis for the Request of Special Education Due Process Hearing, from the 8 pages of the Notice, 120 pages of miscellaneous emails, and 36 pages from the Federal complaint. Thus, I find the Notice of Insufficient Due Process Complaint is meritorious and the Notice of Parents Request for Special Education Due Process Hearing, signed March 23 2023, is dismissed." The hearing officer specified that this ruling was without prejudice, and that it did not rule on any issue other than the sufficiency of the parent's request for a due process hearing. On appeal by the parent, a state review officer affirmed the hearing

officer's decision, on May 1, 2023, and that decision was affirmed by the federal district court on June 25, 2024.

### **Analysis regarding the district's obligation to provide special education services to this student under State Law**

There are three parts to this analysis: (1) did the parents request special education and related services, (2) did the district refuse a request from the parents for special education and related services, and (3) did the parents require the student to attend the public school to receive said services? If the answer to any one of these questions is "no," the district did not have an obligation to provide services to this student.

#### **1. Did the parents request special education and related services?**

On 8/6/23, the student's parents "completed" the Blue Valley ParentView on-line registration process to enroll the student for the 2023-2024 school year. On 12/2/ 2024, the parents checked on the status of the enrollment in ParentView and found only a note that said "School Reviewing." There is no credible evidence that the parents took any other action, or made any other inquiry, regarding enrollment of the student in the Blue Valley district. The question to be determined is whether these two actions amounted to a "request" for services sufficient to trigger the district's duties under K.A.R. 91-40-45(c)(1) and K.S.A. 72-5393 to provide services, and, if so, did the district deny that request.

K.A.R. 91-40-45(c)(1) says: "Each board shall develop, review, and revise, as necessary, in accordance with this article, an IEP for the following children: (1) Each private school child whose **parent requests special education and related services...**"

K.S.A. 72-3462 says: "Every school district shall provide special education services for exceptional children who reside in the school district and attend a private, nonprofit elementary or secondary school, whether such school is located within or outside the school district, **upon request of a parent or guardian** of any such child **for the provision of such services.**" The statute adds that special education may be provided at the private school or at the public school, and, in consultation with the parents and private school officials, the site for services is determined by the school district.

Neither the applicable statute nor the applicable regulation define the term "request." Accordingly, we use the ordinary meaning of the word "request," which is: "to ask for." (Webster's College Dictionary, Random House 1999). The question, then, is did the parents ask for special education and related services, and, if so, did the district deny this request? Each of these questions presents a "first impression" situation because the investigator could not locate any court cases or authoritative guidance on these matters.

As indicated in the Findings of Fact portion of this complaint report, the only documented communication between the parties was as follows:

On 8/6/23, The parents completed the Blue Valley ParentView on-line registration process to enroll the student for the 2023-2024 school year. Three days later, on 8/9/23, the Principal of Stillwell Elementary School sent an e-mail to the student's mother, stating "We are in receipt of your registration records to enroll (the student) in the second grade at Stillwell Elementary School this school year. **We are glad to have (the student)!** We see that you have enrolled (the student) as a second grader. By our calculation, (the student) should be in 3rd grade for the 2023-2024 school year. Can you confirm that you indeed want (the student) to be in the second grade this fall?" (Emphasis added). The parents never responded to that communication requesting important information necessary for enrollment in the proper grade level. When the school year began, the student did not come to school. On 8/29/23, the Assistant Superintendent of Special Education sent an e-mail addressed to the student's parents, saying, in part:

I was made aware that you have **begun the steps to enroll (the student) at Stilwell Elementary for this school year, 2023-24.** If you haven't done so already, **you can complete the enrollment process** on the Blue Valley Registration page. We would love to see (the student) at school. I understand (the student) missed the first several days of school, but **I hope he will attend school very soon. Blue Valley remains ready, willing, and able to provide the student's special education services.**

The 8/29/23 email from the Assistant Superintendent of Special Education specifically tells the parents that they "have **begun the steps to enroll (the student)**" and instructs the parents how to "**complete the enrollment process.**" The parents did not respond to this correspondence. Then, some three months later, on 12/2/23, the parent accessed ParentView with regard to enrollment for the 2023-2024 school year to find a message stating: "School Reviewing." Even then, the parents did not make any further contact with school officials with regard to the student's enrollment.

In short, the parents attempted to enroll the student using an on-line enrollment process and were promptly sent two messages by high level school officials stating that more information was needed to complete the enrollment. Both of these messages stated that the student could attend school and receive special education services. The parents never responded to this correspondence or took any action over the entire school-year to complete the enrollment process. Thus, this investigator finds that the parents attempt to enroll the student was initiated but not completed, and as a result, the parents did not effectively request special education services.

## **2. Did the district refuse a request for special education and related services?**

As noted above, on August 9, 2023, the Principal of Stillwell Elementary School sent an e-mail to the student's mother, stating "We are in receipt of your registration records to enroll (the student) in the second grade at Stillwell Elementary School this school year. **We are glad to have (the student)!**" The August 29, 2023 email from the Assistant Superintendent said that



the district has other students who are enrolled in private schools by their parents and attend Blue Valley Schools just for special education services and return to home school or private school for other subjects, and that this student could do the same thing, and **“Even if you do not consent to the evaluation, the district is ready, willing, and able to serve (the student) either part or full time.”**

The correspondence between the parties over the past year is scant. It consists of an attempted on-line enrollment by the parents, two emails by school officials, and a December on-line check of the status of the child’s enrollment by the parents. There is no evidence that the district ever communicated a refusal to enroll or refuse to provide services to this student. There is no evidence that the district ever took any action or inaction that would constitute a refusal to enroll or keep the student enrolled, or a refusal to provide services to this student. The evidence indicates the opposite. Both of the district’s correspondence with the parents stated that the student was welcome to attend school. The fact that the on-line registration process remained as: “School Reviewing” was because the parents did not respond to the district’s requests for more information, and was not due to any refusal to enroll the student or refusal to provide special and related services. Therefore, it is found that the district did not refuse a parental request for special education and related services.

### **3. did the parents require the student to attend the public school to receive said services?**

In the parents complaint, under the heading, “Facts,” Fact number 14 says that the district prevented the student from attending school, as required by K.S.A. 72-3421, by either its refusal to enroll the student, or to keep him enrolled.

The parents did not bring the student to school when school opened in August of 2023. Even after several months had passed and the parents checked the status of the students enrollment to find that the enrollment had not been completed (as they had been advised by two earlier written communications), the parents made no further effort to complete enrollment or to bring the student to the public school. Because this investigator finds the district at no time refused to enroll this student, or refused to keep him enrolled, and that the student never came to school, the investigator finds that the parents did not require the student to attend a public school.

## **Conclusion**

There is no documented evidence supporting the parents allegation that during the past year this district ever refused to enroll the student or to keep him enrolled, or refused to provide special education and related services to this student. Rather, the documented evidence supports the finding that the district, at all times stood ready, willing, and able to provide special education services to this student. The documented evidence also shows that the parents: (1) made no effort to complete the students enrollment even after being sent two

written notices indicating that more information was needed to complete the enrollment; (2) made no effort, outside the initial enrollment, to communicate with school officials about enrollment for the entire school-year; and (3) did not bring the student to a public school. Under these facts, it is concluded that all seven of the parents allegations, specified on pages 2 and 3 of this report, all of which were based on the parents assertion that the district refused to enroll the student, or to keep the student enrolled, are not substantiated. *No violation of special education laws and regulations is found with regard to Issue1.*

## **Issue 2**

the Commissioner and the KSDE failed to enforce federal and state special education laws and regulations by not taking action against the school district

### **Preliminary Matter**

In some initial correspondence, the parents inquired whether there may be a potential conflict of interest because this issue alleges that the Commissioner and the KSDE failed to comply with law and that the person appointed to investigate this complaint is employed by a party to the complaint (the Kansas State Department of Education). The investigator responded to this concern, with the following:

I understand your concern. However, the Department has an obligation to investigate all special education complaints, including complaints against the Department, itself. The Department could contract with an independent agency to conduct investigations that name the Department, but it is not required to do so. There are a number of reasons that states use their own resources to conduct these investigations. That includes the short time-lines (30 days in Kansas) to complete investigations and issue a report and the expertise agency employees have, particularly with regard to the Kansas special education laws and regulations. This is particularly applicable to this complaint because the Kansas law with regard to children with disabilities who are enrolled by their parents in a private school is unique.

The Office of Special Education Programs (OSEP) is the office within the United States Department of Education that develops the federal rules and regulations for Special Education. In a "Questions and Answers" guidance document, titled Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act, dated July 23, 2013, OSEP directly addressed this question, saying:

*Question B-12: How does an SEA resolve a complaint against itself?*

*Answer: An SEA must resolve a complaint alleging that it has violated a requirement of Part B or the Part B regulations just as it must resolve any other signed written complaint that meets the requirements in 34 CFR § 300.153. Under 34 CFR § 300.33, the term "public*

agency" includes the SEA. Therefore, an SEA must resolve a complaint alleging that the SEA (a public agency) has violated a requirement of Part B or the Part B regulations.

In resolving a complaint filed against the SEA, an SEA may either appoint its own personnel or may make arrangements with an outside party to resolve the complaint. Regardless of whether the SEA chooses to resolve the complaint on its own or chooses to use an outside party, the SEA must ensure that all of the procedures in 34 CFR §§ 300.151-300.153 are followed. Specifically, an independent on-site investigation must be conducted, if necessary, consistent with 34 CFR § 300.152(a)(1) and the SEA must take appropriate steps to ensure this occurs. Additionally, the SEA must ensure that all relevant information is reviewed and that an independent determination is made as to whether the public agency (in this case the SEA) has violated a requirement of Part B or the Part B regulations with respect to the complaint. 34 CFR § 300.152(a)(4).

The SEA also must ensure that it or an outside party, whichever resolves the complaint, considers all available remedies in the case of a denial of appropriate services consistent with 34 CFR § 300.151(b). Regardless of whether the complaint is resolved by the SEA or by an outside party that the SEA designates to resolve the complaint, the SEA must comply with all corrective actions, including remedies, set out in the final decision. 71 FR 46602 (August 14, 2006).

Thus, OSEP instructs that a state may appoint its own personnel to resolve special education complaints alleging that the State Education Agency has violated a requirement of special education law. Kansas has elected to use its own resources.

In this second issue, the complaint alleges that the Commissioner and the Kansas State Department of Education (KSDE) failed to enforce Kansas Statutes: K.S.A. 72-3410 and K.S.A. 72-3424 because they failed to enforce Kansas regulations. The parents allege that both the Commissioner and KSDE had knowledge of the district's actions in dis-enrolling or refusing to enroll the student but failed to give the proper advice or to make recommendations or demands that the district enroll and maintain enrollment of the student.

### **Applicable Federal Law**

Federal regulations at 34 C.F.R. 300.600 requires state education agencies to monitor the implementation of Part B, of the Individuals with Disabilities Act (IDEA) through specified monitoring activities and the exercise of general supervision.

In accordance with this requirement, the KSDE has adopted a state performance plan, using quantifiable indicators to measure performance in priority areas identified in 34 C.F.R. 300.600(d). In accordance with 34 C.F.R. 300.602, KSDE makes an annual report to the United States Department of Education of its performance of the state plan. In addition, KSDE makes informal inquiries when it receives credible information that a Kansas school district is not in compliance with federal or state law regarding special education.

## Findings and Analysis

The findings and conclusions in Issue 1 of this report are incorporated herein by reference.

In Issue 1 of this complaint, it is concluded that the district has not failed to comply with the special education legal requirements as they apply to this student. Accordingly, the investigator finds that the Commissioner and the KSDE had no notice of a violation of special education law, nor any duty to intervene in the dispute between the district and these parents, outside of this complaint process.

With regard to the allegation that the Commissioner and the KSDE failed to enforce the special education laws and regulations by not taking action against the school district, the investigator also notes that the United States Circuit Court of Appeals for the 10th Circuit (Kansas is in the 10th Circuit) has cautioned State Education Agencies (SEA) that there are procedural steps the SEA must use before taking action against Local Education Agencies (LEA).

Chavez v. New Mexico Public Education Department, 621 F.3d 1275 (10th Cir. 2010), involved a case of a sixth grade student with autism who was dropped from the rolls of the school after not attending school for several weeks. As here, the parents alleged that the State Education Agency (SEA) was aware that the student was no longer receiving services and that the student's parents were dissatisfied with the district's offer of services, but failed to take action against the school district.

The 10th Circuit Court reversed a lower court ruling in the parents favor, stating: "While we agree that it is apparent that the IDEA centralizes responsibility for assuring that the requirements of the Act are met in the SEA, this is not the end of the story." The court then proceeded to explain that although the SEA is responsible for insuring that all requirements of the act are carried out, it cannot:

*"simply yank funding from an LEA without further ado. Instead, the SEA is required first to provide notice and a hearing to the LEA before it determines that it is failing to comply with a requirement of the Act. 20 U.S.C. § 1413(d)(1) (providing for notice and a hearing); § 1413(a)(3)."*

The court added:

*"Given the central focus of the IDEA on the IEP and on the procedural mechanisms for addressing grievances through the IEP team and due process proceedings, it seems inconsistent with the statutory structure to allow the state to run roughshod over these procedures simply because parents contend that an IEP is not providing their child a FAPE."*

In other words, an SEA has an obligation to insure local district compliance with the IDEA, after credible notice that a district is failing to do so, but that obligation is not triggered simply because parents contend that a local district is failing to comply with its duties. The filing of this complaint is one other way a parent can trigger the SEA obligation to monitor school

districts, if the parent 's complaint is substantiated. Had a violation of law been substantiated through a state investigation, KSDE would have ordered the district to correct the non-compliance and monitored the completion of the corrected action.

### **Conclusion**

For the reasons, stated above, it is concluded that *neither the Commissioner nor the Department are in violation* of their responsibility to monitor the implementation of Part B, of the Individuals with Disabilities Act (IDEA) through the exercise of general supervision over this school district.

### **Investigator**

Mark Ward  
Complaint Investigator

### **Right to Appeal**

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