

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES
REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #266, MAIZE PUBLIC SCHOOLS
ON OCTOBER 7, 2024

DATE OF REPORT:NOVEMBER 12, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #266 (Maize Public Schools) on behalf of ----- by his mother----- and stepfather ----- . In the remainder of the report, ----- will be referred to as “the student”, --- ----- will be referred to as “the complainant”, “the parent”, or as “the mother.” ----- will be referred to as “the complainant” or “the stepfather”. ----- is the student’s father and will be referred to as “the father”. The mother, stepfather and father as a group will be referred to as “The parents”.

The complaint is against USD #266 (Maize Public Schools). In the remainder of the report, USD #266 will be referred to as “the district.” The student attends Maize South High School which will be referred to as the “high school” in the remainder of the report. Maize South Middle School will be referred to as the “middle school” and the Maize special education cooperative will be referred to as the “special education cooperative”. Sarah Loquist is the general counsel for the Special Education Coop and will be referred to as the “general counsel”.

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 October 7, 2024. The timeline for the investigation was extended for one week to allow the district to provide additional documentation for review.

Evidence Reviewed

USD #266 made the following staff available for interviews on October 24, 2024 as part of this investigation. These staff will be referred to as follows in the remainder of this report:

- Bryan Wilson is the director of special services and will be referred to as “the director of special services”
- Janna Fahrenholtz is a psychologist and will be referred to as “the psychologist”.
- Jennifer Faus is the social worker and will be referred to as “the social worker”.
- Sara Rivers is the occupational therapist and will be referred to as “the OT”
- Michael Boykinds is the high school principal and will be referred to as “the high school principal”

- Maggie Purvis Rapp is the high school assistant principal and will be referred to as “the high school assistant principal”
- Donnel Clay is an instructional coach at the high school and will be referred to as “the instructional coach”.
- Ashley Willmott is the speech-language pathologist at the high school and will be referred to as “the SLP”.
- Alison Charboneau was the middle school special education teacher and will be referred to as the “middle school special education teacher”.
- Aundrea Tinkler is the special education teacher for English language arts (ELA) and math and will be referred to as “the special education teacher”.
- Jeremy Stefan is the special education health, life skills and physical education (P.E) teacher and will be referred to as “the health, life skills and P.E. teacher”.

During the investigation, the Complaint Investigator, Nikki Crawford, reviewed all evidence and documentation provided by both the district and the parents. Additionally, the complaint investigator contacted the district and parents on October 8, 9, 10, 11, 12, 13, 17, 18, 21, 23, 24, 25, 27, 28, 30 and November 4, and 7, 2024 by phone and email to clarify evidence and documentation.

The following documentation and information were used in consideration of the issues:

1. Special Education Eligibility Determination Team Report dated December 15, 2021
2. Psychological Evaluation Report dated December 15, 2021
3. Assistive Technology Report dated December 15, 2021
4. Occupational Therapy Evaluation Report, December 15, 2021
5. Parent Questionnaire Reevaluation dated December 15, 2021
6. List of board approved curriculum utilized in the Functional Applied Academics (FAA) program dated May 8, 2023
7. Read Write Consent August 31, 2023
8. IEP Goal Progress Report dated November 6, 2023
9. Notice of Meeting for annual IEP sent to mother dated November 1, 2023
10. Notice of Meeting for annual IEP sent to father dated November 2, 2023
11. Notice of Meeting Acknowledgment dated November 2, 2023
12. Prior Written Notice (PWN) sent to mother and father dated December 12, 2023
13. IEP meeting minutes December 12, 2023

14. Annual IEP dated December 12, 2023
15. IEP Goal Progress Report March 7, 2024
16. IEP Team Meeting notes dated May 20, 2024
17. PWN dated May 20, 2024 for an IEP amendment made without a meeting
18. IEP Amendment IEP dated May 20, 2024 to the December 12, 2023 Annual IEP
19. IEP Goal Progress Report dated May 20, 2024
20. An August 21, 2024 training outline with sign in sheet to review student behavior plans
21. An August 21, 2024 training outline with sign in sheet to review student use of communication device
22. A spreadsheet of the student's behavioral data from August 21 to October 8, 2024 created by the instructional coach
23. An August 23, 2024 summary of the student's BIP issues and those teachers in attendance
24. Notice of Meeting for annual IEP sent to both the mother and the father dated September 10, 2024
25. Agenda and records request dated September 13, 2024
26. Behavior Intervention Plan dated September 13, 2024
27. Consent to Communicate September 13, 2024
28. IEP Amendment dated September 13, 2024
29. Current draft IEP dated September 13, 2024
30. Notice of Meeting for IEP continuation meeting scheduled September 27, 2024 sent to the mother and father on September 24, 2024
31. A record of training topics related to implementation of the student's BIP along with teacher attendance, dated September 25, 2024
32. An outline of information shared with staff related to use of the student's communication device and spreadsheet of teachers attending on September 25, 2024
33. Consent for Reevaluation September 27, 2024
34. Notice of continuation of IEP meeting sent to the mother and father on September 27, 2024
35. IEP/Emergency Safety Intervention (ESI) meeting agenda dated September 27, 2024
36. Audio recording of IEP meeting held on September 27, 2024
37. Audio recording of related services conversation held on September 27, 2024

38. October 2, 2024 spreadsheet of teachers trained on LAMP (Language Acquisition through Motor Planning) Words for Life vocabulary training and accompanying handout
39. PWN describing the IEP Amendment dated September 27, 2024 sent to the mother and father dated October 4, 2024
40. Email dated October 5, 2024 from mother to psychologist and special education director indicating mother will not sign PWN.
41. Phone call between the investigator and the mother on October 8, 2024
42. LEA Response to PWN Refusal from the assistant principal to the mother, dated October 9, 2024
43. Audio recording of IEP continuation meeting held on October 9, 2024
44. IEP meeting agenda dated October 9, 2024
45. Student activity report from the Unique Curriculum dated September 19 through October 9, 2024
46. Phone call between the investigator and the general counsel on October 9, 2024
47. Corrected PWN Amended IEP meetings on September 13 & 27, 2024 sent to the mother and father, sent October 15, 2024
48. PWN describing the IEP Amendment made on October 15, 2024 sent to the mother and father on October 16, 2024
49. IEP Goal progress report dated October 16, 2024
50. October 16, 2024 spreadsheet of teachers attending training for student's BIP, with no outline or agenda
51. October 16, 2024 outline from instructional coach who was available to answer teacher's questions about student's communication and the corresponding attendance spreadsheet
52. Email on October 18, 2024 from stepfather to the investigator sharing daily communication logs dated 16-19, 23-26, October 1 and 8, 2024., the template of which was created by the mother and completed by school staff.
53. The district shared daily communication logs dated September 17-20, 23-25 and October 4, 8, 9, 15 and 17, 2024
54. Daily communication logs September 17-20, 23-25 and October 4, 8, 9, 15 and 17, 2024 kept by USD #266
55. Examples of the student's current modified lessons provided by USD #266

56. USD #266's response to the allegations dated October 21, 2024 written by the general counsel.
57. Teacher Information Page (TIP) for the student dated October 24, 2024
58. Email from the health, life skills and P.E. special education teacher to investigator dated October 25, 2024
59. Email from the middle school special education teacher to investigator dated October 25, 2024
60. Email written by the mother to the investigator to clarify concerns dated October 27, 2024
61. Email from instructional coach to investigator dated October 28, 2024 with screenshot of the student's Unique Curriculum dashboard
62. Email from the instructional coach to investigator with a summary of behavior data dated October 28, 2024
63. Email dated October 29, 2024 from Mark Ward, Special Education and Title Services Attorney, to the investigator clarifying KSDE guidance on the issue of lack of instructional minutes specified in the IEP.

Background Information

The subject of this complaint is a 14-year young man enrolled in the 9th grade at the high school during the 2024-2025 school year. He lives with both his mother/stepfather and father/stepmother who share custody and are actively involved in his education. The only language spoken in the home is English.

The student has medical diagnoses of Rubinstein-Taybi syndrome, Eosinophilic Esophagitis, and Asthma. He participated in early intervention services, birth to three years, via an Individualized Family Service Plan (IFSP). The student attended an Early Childhood Special Education Classroom beginning at age three until kindergarten. He entered kindergarten with an Individualized Education Program (IEP) and has had a Behavior Intervention Plan (BIP) since first grade. Prior to enrollment in the high school, he attended a district middle school. The local special education cooperative has provided services to the student from 4th grade to current. The student's qualifying exceptionalities include intellectual disability and speech language impairments. His most recent reevaluation was conducted in December of 2021 and the district is currently in the process of conducting a reevaluation with additional assessments including a Functional Behavioral Assessment (FBA) and an Occupational Therapy (OT) assessment for sensory needs.

Issues Investigated

Based on the written complaint and an interview with the complainant, four issues were identified and investigated.

Issue One

Did USD #266 appropriately implement the student's IEP during the past 12 months?

Parent Position

The parent reported that the district has failed to provide the required special education and related services to the student because the IEP does not include any specific service minutes. The parent also indicated the special education teachers do not engage the student meaningfully during the school day and fail to provide necessary accommodations and modifications. The parent complained that the student does not have access to curriculum approved by the school board and does not have regular and consistent access to his augmentative communication device throughout the school day. The parent believes USD #266 has denied the student access to extracurricular activities by not allowing him the same opportunities as other students. Finally, the parent reports the IEP was updated on September 13, 2024 to require daily communication with parents; however, this was not done in a timely manner.

For clarity, please note that each of these specific allegations will be investigated separately with a finding of facts, the applicable law, and a conclusion under Issue One.

It is also noted that the district response dated October 21, 2024 shared that a project specialist was hired by the district on October 9, 2024 to work with the student's team to assist the special education personnel in the development and implementation of effective teaching techniques, service delivery, classroom management skills, data collection, materials, and equipment to help each student in the FAA classroom to achieve their IEP goals and objectives.

Allegation

- Failure to include a specific amount of special education services in the student's IEP.

Applicable Law

Federal regulations at 34 C.F.R. 300.320(a)(7) require the IEP to include the projected date for the beginning of the special education and related services as well as the anticipated frequency, location, and duration of each of those services.

Analysis: Findings of Fact

1. In the parent complaint dated October 7, 2024 and in a phone interview on October 8, 2024, the mother expressed concern that the instructional minutes in the student's IEP are not specific.
2. The current IEP dated September 13, 2024, under Special Education and Related Services states the student will receive special education services for all core academic instruction in English Language Arts (ELA), Math, Science and Social Studies, "in a special

education classroom," "per enrolled schedule" and "for the same amount of time that peers receive instruction".

3. Although the current IEP does not specify the number of days per week or the minutes/hours required for specialized instruction, it does so for related services such as speech, occupational therapy, adaptive physical education and social work.
4. In the district interview on October 24, 2024 the general counsel for the special education cooperative shared that the cooperative had been advised by Kansas State Department of Education that it was not necessary to specifically state the number of days per week or the minutes/hours the student is to receive core academic instruction.
5. The district shared the student's Teacher Information Page (TIP) dated October 24, 2024 which specifies the service, setting, number of minutes of provision, days per week, start and stop dates and frequency of services including instruction.
6. An October 29, 2024 email from the Special Education and Title Services Attorney responded to the lack of instructional minutes specified in the IEP. The attorney shared that based on a guidance letter from Office of Special Education Programs (OSEP), "with regard to frequency and duration of services, the IEP must include sufficient information about the amount of services that will be provided so that the level of the agency's commitment of resources will be clear. But, that does not require that duration of services be stated in minutes per session. And, the duration of services may vary due to the needs of the student as long as adequately described in the IEP".

Conclusion

Based on a review of the IEP, the document includes the number of times per week and number of minutes for the frequency and duration of related services such as OT social work, adaptive PE, and Speech/Language Therapy. For core academic classes such as English, Math, Science and Social Studies the frequency is "per enrolled schedule" and duration, "for the same amount of time that peers receive instruction".

The district shared the student's Teacher Information Page dated October 24, 2024 which specifies the service, setting, number of minutes of provision, days per week, start/stop dates and frequency of services including instruction. However, parents typically do not have access to this information unless it is included in the IEP.

It is important to note that the IEP is not required to specifically state the duration of services in minutes per session, but should include enough information to convey the level of services offered. Based on the foregoing, the district is found *IN compliance* with IDEA which does not require that duration of services be stated in minutes per session.

Allegation

- Failure to provide appropriate special education services and program modifications which meaningfully engage the student during the school day.

Applicable Law

Federal regulations at 34 C.F.R. 300.320(a)(3) require the IEP to include a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children.

Federal regulations at 34 C.F.R. 300.323(c)(2) requires school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. Federal regulations at 34 C.F.R. 300.17 states that when special education and related services are provided in conformity with the IEP so that the student is making progress towards achieving the IEP goals, the student is receiving a free appropriate public education.

Analysis: Findings of Fact

1. In the parent interview on October 8, 2024 the mother shared that she does not see instructional planning or modifications happening and that her son reports that his work is too hard.
2. The current IEP dated September 13, 2024, under Program Modifications, states the student will participate utilizing a modified curriculum for core academic areas and participate in elective classes using modifications as necessary to participate.
3. The current IEP dated September 13, 2024, under Special Education and Related Services states the student will receive special education services for all core academic instruction in ELA, Math, Science and Social Studies.
4. An October 4, 2024 PWN added, "clarifying language to Special Education Service record 1, to read "[student] will receive special education services for all core academic instruction in ELA, math, science, and socials studies in alignment with board-adopted modified curriculum"
5. The current IEP dated September 13, 2024, states that the student uses his iPad with Words for Life (LAMP) to communicate in structured activities. The student also uses a communication device provided by the parents. Additional examples of modifications noted in his IEP include: accessing digital books through the Unique Curriculum, TarHeel Reader, epic!, and Storylineonline for reading. He also uses a Chromebook to access most of his written language tasks including typing slides, an online typing game

as well as computer to text speech. For math he uses a number line, touch points on numbers, manipulatives, a calculator and counts out objects.

6. In audio recordings of IEP meetings on September 27 and October 9, 2024 the team discussed the use of instructional modifications to support the student's learning.
7. In the October 24, 2024 district interview two of the student's special education teachers (ELA/math and health, life skills, P.E.) described strategies used to ensure specialized instruction for the student. Strategies included; re-teaching, breaking down the task to one step at a time, use of manipulatives, use of video to support the content, utilizing errorless practice, and providing hands-on support. These teachers also shared that along with the SLP who is embedded in the classroom, they model these behaviors and offer on-the-spot training for the paraprofessionals.
8. The district shared a folder which includes examples of lessons and aids including multi-modes of delivery including video, powerpoints, schedule boards, written words, photos and pictorial representation. There were also examples of modified curriculum lessons from the Unique Curriculum.

Conclusion

In this case, the current IEP dated September 13, 2024, under Program Modifications, states the student will participate utilizing a modified curriculum for core academic areas and participate in elective classes using modifications as necessary to participate. An October 4, 2024 PWN added, "clarifying language to Special Education Service record 1, to read, "[student] will receive special education services for all core academic instruction in ELA, math, science, and social studies in alignment with board-adopted modified curriculum"

The current IEP dated September 13, 2024 includes several modifications including Words for Life (LAMP), a communication device provided by the parents, digital books through the Unique Learning System curriculum, TarHeel Reader, epic!, and Storylineonline for reading, a Chromebook to access most of his written language tasks, including typing slides, and an online typing game as well as computer to text speech. For math he uses a number line, touch points on numbers, manipulatives, a calculator and counts out objects.

In the October 24, 2024 district interview two of the student's special education teachers (ELA/math and health, life skills, P.E.) described strategies used to ensure specialized instruction for the student. Strategies included; re-teaching, breaking down the task to one step at a time, use of manipulatives, use of video to support the content, utilizing errorless practice, or providing hands-on support. These teachers also shared that along with the SLP who is embedded in the classroom, they model these behaviors and offer on-the-spot training for the paraprofessionals.

The district shared a folder which includes examples of lessons and aids including multi-modes of delivery including video, powerpoints, schedule boards, written words, photos, pictorial representation. There were also examples of modified curriculum lessons from the Unique

Curriculum. The IEP document, IEP meeting audio recordings, and district staff interviews reflect the use of many different modifications utilized to provide specialized instruction for this student.

The district reported that at times the student will put his head down in an effort to self-regulate. The district and parents both shared that the student has had medication changes this summer, began wearing glasses and at times has not felt well. The district also shared that the transition from middle school to high school includes a big change in his environment including more students and staff in his classrooms and in the building as well as a change in his schedule.

The district and family continue to problem solve ways to help the student engage academically as evidenced by IEP audio recordings on September 27 and October 9, 2024 when the team discussed the nuances of when to offer the student a break and when to try and re-engage him in work. The team also discussed that the instructional coach will share through the daily communication log the number of minutes the student is off schedule.

Based on the foregoing, USD #226 is found to be *IN compliance* with the requirement to provide program modifications or supports for school personnel which will be provided to enable the child to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children.

Allegation

- Failure to provide the student with access to the Unique Learning System curriculum.

Applicable Law

Federal regulations at 34 C.F.R. 300.320(a)(3) require the IEP to include a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children.

Federal regulations at 34 C.F.R. 300.323(c)(2) requires school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. Federal regulations at 34 C.F.R. 300.17 states that when special education and related services are provided in conformity with the IEP so that the student is making progress towards achieving the IEP goals, the student is receiving a free appropriate public education.

Analysis: Findings of Fact

1. In the parent complaint dated October 7, 2024 the mother stated that, “Based on daily sheets home the Unique curriculum is not being used across [student’s] day”.
2. The current IEP dated September 13, 2024 states the student utilizes the Unique Curriculum for reading.
3. A PWN dated October 4, 2024 added, “clarifying language to Special Education Service record 1, to read “[student] will receive special education services for all core academic instruction in ELA, math, science, and social studies in alignment with board-adopted modified curriculum”.
4. The district response dated October 21, 2024 includes a list of board approved curriculum utilized in the FAA program where the student engages in instruction. On this list is the Unique Learning System curriculum for 7th-12th grade students.
5. Unique Learning System Curriculum Transition Passport was used for the student’s transition assessment dated December 4, 2023.
6. A review of 12 daily communication logs dated between September 16 and October 17, 2024 provided by the district mentions the use of the Unique Learning System curriculum twice. The logs vary in the specificity of information provided.
7. The headers on the daily communication logs state, “activity”, the logs do not prompt the name of the curriculum being used for the activity.
8. The district shared documentation from the instructional coach that she worked with the staff on the use of the Unique Learning System curriculum on October 7 and 16, 2024.
9. The district shared the student’s activity report from the Unique Learning System curriculum dated September 19 through October 9, 2024.
10. In the district interview on October 24, 2024 the ELA/math and the health, life skills and P.E. teacher shared that the student utilizes the Unique Learning System curriculum for expressive communication, math, and reading. The staff also uses embedded assessment elements in the Unique Learning System curriculum.
11. The district shared a folder which includes several examples of modified curriculum lessons for the student utilizing the Unique Curriculum.
12. On October 28, 2024 the instructional coach shared a screenshot of the Unique Curriculum dashboard which the coach uses to monitor the number of Unique Learning System curriculum activities the student completes each day.

Conclusion

In this case, the current IEP dated September 13, 2024, under Program Modifications, states the student will participate utilizing a modified curriculum for core academic areas and participate in elective classes using modifications as necessary to participate. An October 4, 2024 PWN added, "clarifying language to Special Education Service record 1, to read "[student] will receive special education services for all core academic instruction in ELA, math, science, and social studies in alignment with board-adopted modified curriculum"

The current IEP dated September 13, 2024 states the student utilizes the Unique Learning System curriculum for reading. Interviews and documentation support a finding that USD #266 is *IN compliance* with the requirement for providing the student access to the Unique Learning System curriculum as stated in the student's IEP.

Allegation

- Failure to provide the student with access to his augmentative communication system throughout the school day.

Applicable Law

Federal regulations at 34 C.F.R. 300.324(a)(2)(iv - v) requires IEP teams to consider the communication needs of the child and consider whether the child needs assistive technology devices and services.

Federal regulations at 34 C.F.R. 300.323(c)(2) requires school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. Federal regulations at 34 C.F.R. 300.17 states that when special education and related services are provided in conformity with the IEP so that the student is making progress towards achieving the IEP goals, the student is receiving a free appropriate public education.

Analysis: Findings of Fact

1. In the parent complaint dated October 7, 2024 the mother stated that, this fall "During multiple observations, [the student] has not had access to his device." Also, "During multiple observations, across many hours the stepfather, father and mother have not seen any staff engage with [student] using his augmentative and alternative communication (AAC) device."
2. The current IEP dated September 13, 2024 states the student will carry his communication device, daily, in all school settings, for the duration of the school day.
3. The district response dated October 21, 2024 notes that the SLP is full-time at the student's high school and primarily works in the FAA program where the student spends his instructional time. The duties of the SLP include, but are not limited to:

- a. "Tailored Support: The SLP provides personalized interventions, collaborating with teachers, related service providers, and paraprofessionals to align strategies with each student's unique communication abilities and challenges.
 - b. Collaborative Strategies: She works closely with the educational team to develop and implement communication strategies that enhance student engagement across various subjects, helping them participate more fully in classroom activities.
 - c. Peer Interaction: The SLP facilitates opportunities for nonverbal students to communicate with their peers, promoting social interaction and inclusion through group activities and collaborative learning experiences.
 - d. Training and Resources: She equips teachers, related service providers, and paraprofessionals with tools and training to support augmentative communication methods, such as speech-generating devices or picture exchange systems, fostering a more supportive environment.
 - e. Monitoring Progress: The SLP continuously monitors students' communication progress, working with the team to make necessary adjustments to interventions and ensure effective communication skills are developed."
4. In the district interview on October 24, 2024 the SLP shared that staff prompt use of multimodal communication in addition to the student's device. The communication device, which is from home, is always with the student, at his desk or with the paraprofessional who is supporting the student. The student also has a backup pocket communication device.
 5. The SLP noted that at times the student may throw his communication device if he does not want to use it. She also stated that they are now working with the student to use a backpack in which the student can carry the device with him at all times.
 6. The current IEP dated September 13, 2024 states that staff working with the student will be trained on the use of his communication device/program on an annual basis and there will be monthly check-in meetings with providers, general and special education teachers and paraprofessionals to discuss the student's communication device.
 7. The district shared training outlines and sign-in sheets documenting staff training on the student's use of the communication device on August 21 and September 25, 2024.
 8. Staff were trained on October 2, 2024 on LAMP (Language Acquisition through Motor Planning) Words for Life vocabulary which the student utilizes.
 9. An October 16, 2024 outline shared that the instructional coach was available to answer teacher's questions about student's communication and corresponding attendance spreadsheet

10. Communication concerns and updates were discussed at least monthly at his September 13, 2024, September 27, 2024 and October 9, 2024 IEP meetings. Documentation shared by the district reflects that several staff, including the SLP and at least one of his special education teachers was in attendance at these meetings.

Conclusion

The IEP states the student should carry the device with him daily, in all school settings and for the duration of the school day. The parents report that on multiple occasions they observed that the student did not have his communication device with him and that staff were not prompting use.

The district provided documentation that the SLP and the instructional coach support the student and staff in using the communication device. The SLP emphasized in the district interview on October 24, 2024 the staff actively works with the student to ensure possession and use of the communication device. The district also provided a number of documents which reflect several instances of training in the classroom related to the communication device.

It is acknowledged that the parent observations took place early in the school year, in a new school, a new classroom, and with new staff. It is further noted that USD #266 responded appropriately to the parent concerns related to access and use of the augmentative communication device by meeting to discuss these concerns, collaborating with the parents, and changing practices in relationship to the access and use of the augmentative communication device. Based on the foregoing, USD #266 is *IN compliance* for implementing the student's IEP, specifically related to use of the augmentative communication device.

Allegation

- Failure to provide access to extracurricular activities by not allowing him to have the same interaction opportunities as other students.

Applicable Law

Federal regulations at 34 C.F.R. 300.42 and 300.107 requires school districts to provide aids, services, and other support in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

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

Analysis: Findings of Fact

1. The complaint dated October 7, 2024 states, "School staff are discriminating towards [student] by not allowing him the same opportunities as other students in his

classroom, and has indicated he is sad and does not want to go to school due to not being allowed opportunities.”

2. In the district interview on October 24, 2024 and in review of records provided by the district it was clear that the student has access to a typical variety of extracurricular opportunities and is not restricted or limited in his attendance. The student is a member of the Circle of Friends club, attended the Homecoming pep rally and dance, enjoys bowling, and attends sporting events at the school.
3. In an October 27, 2024 email to clarify the concern with the mother, she stated that this concern was not based on extracurricular opportunities but rather, “...the segregation that [student] was experiencing, which we note has already significantly changed based on our observations. Even outside of the “break room” he was segregated within classrooms and sat away from peers.” Further she clarified that he is less segregated now than he was at the beginning of the school year.
4. The current BIP dated September 13, 2024 states that, “Sometimes he chooses to sit alone for a while, take deep breaths (adults will model this with [student]), lie down, or have quiet time.” It also adds, “He will have a safe space that can have a large pillow or a bean bag for a break in a quiet space.”
5. In the October 9, 2024 IEP audio recording the team discussed that they are supporting the student to engage in alternative ways to calm himself rather than leaving the instructional setting, while continuing to offer the quiet spaces if needed.
6. In the October 9, 2024 IEP audio recording the mother also stated that she is happier that he is now spending so much less time out of the classroom.

Conclusion

Interviews and documentation found the student engages in a rich array of extracurricular activities in USD #266. The Investigator then clarified the parent concern to be “...the segregation that [student] was experiencing, which we note has already significantly changed based on our observations. Even outside of the ‘break room’ he was segregated within classrooms and sat away from peers.”

The student’s IEP and BIP include the option of time alone in a safe, quiet space when the student is feeling upset. Again, it is noted that the student experienced a significant change in educational programming when he transitioned between the middle school and high school buildings at the beginning of the 2024-25 school year. And again, it appears that the district responded appropriately to the parent concerns by meeting to discuss these concerns and collaborating with the parents. In the October 9, 2024 IEP recording, the IEP team discussed this concern and the mother indicated that she is happier that he is now spending so much less time out of the classroom.

Based on the foregoing, USD #266 *is IN compliance* for providing the student with access to extracurricular activities and for implementing the student's BIP by allowing the student the option of time alone in a safe, quiet space when the student is feeling upset.

Allegation

- Failure to provide daily communication logs to the parent required by the student's IEP.

Applicable Law

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

Analysis: Findings of Fact

1. On August 27, 2024 the parents requested regular daily communication including specifics on what the student does in class, what curriculum is being used, and any adjustments made to the work during the student's day.
2. The current IEP was developed on Friday, September 13, 2024 and states there will be daily communication home to parents regarding daily activities, when the student is not participating in his schedule or is not with his peers.
3. The first day the daily communication log was shared with parents was on September 16, 2024.
4. The stepfather shared daily communication logs, the template of which was created by the mother and completed by school staff. These logs are dated September 16-19, 23-26, October 1 and 8, 2024.
5. The district shared daily communication logs dated September 17-20, 23-25 and October 4, 8, 9, 15, 16 and 17, 2024.
6. Daily communication logs are missing for September 27 and 30 as well as October 2, and 7, 2024. These are days when the student was in attendance.
7. As evidenced by the October 9, 2024 IEP meeting recording the special education teacher expressed concern that the log may not get put in the student's backpack if she is not present at the end of the school day.
8. As evidenced by the October 9, 2024 IEP meeting recording the district and parents continue to work together to create a daily communication log that has all of the information the parents requested and is accessible to the parents every day.

Conclusion

In this case, On August 27, 2024 the parents requested regular daily communication including specifics on what the student does in class, what curriculum is being used, and any

adjustments made to the work during the student's day. The district responded to the parent request and held an IEP team on September 13, 2024.

The current IEP dated September 13, 2024 states there will be daily communication home to parents regarding daily activities, when not participating in his schedule or not with peers. The first daily communication log came home with the student on Monday, September 16, 2024.

Documentation and interview found USD #266 provided the daily communication logs to the parents all but four days when the student was in attendance. The district is aware of the missing logs and is making a good faith effort to remedy the issue as evidenced in the October 9, 2024 IEP meeting recording.

As evidenced by the October 9, 2024 IEP meeting recording the district and parents continue to work together to create a daily communication log that contains all of the information to meet the parents needs.

Based on the foregoing, USD #266 *is IN compliance* for implementing the student's IEP, specifically related to provision of daily communication with parents when not participating in his schedule or not with peers.

Issue Two

Did USD #266 appropriately implement the student's IEP, specifically the Behavior Intervention Plan (BIP), by providing access to calming tools and support during behavioral incidents and appropriately addressing increases in behaviors during the last 12 months?

Parent Position

The parents report that USD #266 has failed to consistently implement the student's BIP during the 2024-25 school year based upon their observations. USD #266 has not conducted training with school staff regarding the implementation of the BIP nor held at least monthly meetings to review data related to the student's behavior.

Failing to provide this training and staff support this school year has resulted in the student experiencing more frequent behavioral difficulties. When these behavioral difficulties occur, the parent indicates the student is isolated in room J114b; however, he does not have access to the required calming materials and tools in that location which has then resulted in an increase of the duration of inappropriate behavior in the school setting.

The parent believes the student has not made progress on either the BIP or the behavioral goals included in the IEP during the past 12 months and USD #266 has failed to respond appropriately to the increases in the frequency and duration of the student's behavioral difficulties and lack of progress.

Applicable Law

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

Federal regulations at 34 C.F.R. 300.324(a)(2)(i) requires IEP teams to consider the use of positive behavioral interventions and supports and other strategies to address the behavior of a child whose behavior impedes that child's learning or the learning of others.

Federal regulations at 34 C.F.R. 300.324(b)(1)(ii) requires that the IEP team revises the IEP as appropriate to address the lack of expected progress toward the annual goals.

Federal regulations at 34 C.F.R. 300.17 states that when special education and related services are provided in conformity with the IEP so that the student is making progress towards achieving the IEP goals, the student is receiving a free appropriate public education.

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with both parties.

Required Training and Meetings

1. The current IEP dated September 13, 2024 states staff working with the student will be trained on his behavior plan and instructional control scale on an annual basis, and there will be monthly meetings with providers, general and special education teachers and paraprofessionals to discuss the student's behavior plan and data sheets.
2. The district shared an August 21, 2024 training outline with a sign in sheet documenting school staff reviewed the student's behavior plan.
3. The district provided a summary of the student's BIP issues discussed with all pertinent staff on August 23, 2024.
4. The district provided a record of training topics related to implementation of the student's BIP along with teacher attendance, dated September 25, 2024.
5. The district provided a spreadsheet of teachers attending the October 16, 2024 training for student's BIP, but no outline or agenda.
6. The student's behavior plan and data sheets were also discussed at his IEP meetings on September 13, 27 and October 9, 2024. Documentation shared by the district reflects that several staff and at least one of his special education teachers were in attendance at these meetings.
7. The special education teacher, who attended all three of the fall 2024 IEP meetings mentioned above, reported in the October 24, 2023 district interview that after each

IEP meeting she shared relevant updates about the student's BIP and data sheets with the paraprofessionals.

8. October 9, 2024 the district hired a project specialist to work with the student's team to support them with classroom management skills as well as refine data collection and analysis.

Access to the calming kit or calming strategies.

1. The current IEP dated September 13, 2024 states the student will have access to a break/safe space in each work/learning location and have access to a calming kit or calming strategies.
2. In the district interview on October 24, the OT shared specific examples of the items the student has access to which help him become calmer when he is having difficulty staying calm. These items are now kept in his backpack so that he will have them with him in all locations throughout the school day; however, this was not the case at the beginning of the school year.
3. The special education teacher shared in the October 24, 2024 district interview that staff regularly prompt the student to use agreed upon calming strategies which include; deep breathing, counting, muscle tension and release, imagining calm places, using a Zones of Regulation visual and matching strategy, using a thumbs up/thumbs down to respond to choices, and preferred pictures kept in his folder.

Respond appropriately to Increases in behaviors

1. The Progress Reports dated November 6, 2023, March 7, 2024 and May 20, 2024 indicate the student made progress on his behavior goal. The Progress report dated October 21, 2024 indicates the student is maintaining progress on his behavioral goal.
2. A PWN dated September 13, 2024 states that the team "updated information to the BIP clarifying the use of a token economy" at the September 13, 2024 IEP meeting as a strategy to better support the student.
3. The behavior goal in the student's current IEP dated September 13, 2024 states, "By the next annual IEP, during a transition or non-preferred activity, [student] will show instructional control (for example but not limited to quiet voice, ready hands, and safe feet) and/or use his self-regulation skills (by using deep-breathing, taking a break, etc.) to get back to demonstrating instructional control 8 out of 10 times with 4 or less prompts."
4. The most recent Progress Report dated October 16, 2024 states that the student maintained progress over the first quarter and "showed tremendous growth starting with week 6 to the end of the first term! He was able to show instructional control 70% of the time which is a wonderful progression for him."

5. Behavioral data provided by the district ranging from August 26, 2024 to October 8, 2024 reflect instances of physical aggression toward peers, toward staff or property destruction 28 times.
6. The district hired a Project Specialist on October 9, 2024 to work with the student's team including these areas of focus:
 - a. Classroom Management Skills: Support special education personnel in developing and maintaining a positive classroom environment. This includes creating behavior management plans, implementing positive reinforcement strategies, and fostering social-emotional learning among students.
 - b. Data Collection and Analysis: Aid in the systematic collection of data on student performance and behavior. This includes using tools and methods to track progress toward IEP goals, ensuring that data is accurate, relevant, and used to inform instructional decisions.
7. The district response dated October 21, 2024 states that the father requested assistance from Kansas Technical Assistance System Network (TASN) and the district agreed on September 26, 2024.
8. In the district interview on October 24, 2024, the social worker shared that a behavioral flowchart was created with the mother to specify the student's behaviors more clearly.
9. In the district interview on October 24, 2024 the director of special services added that the TASN visit includes a Functional Behavioral Assessment (FBA) which is scheduled November 4, 2024. The visit consists of a morning observation and afternoon team meeting, including the parents, to discuss results and possible strategies.
10. In the district interview on October 24, 2024 the special education teacher stated that in the classroom they actively document behaviors including the antecedent, behavior and consequence to better understand the function of the student's behaviors.
11. In an email from the instructional coach on October 28, 2024 she shared that the number of instances of target behaviors has been declining since mid-September. She also shared that mid-September is when the amount of time out of schedule, per incident, also decreased.

Conclusion

In this case, there were three IEPs in effect during the 2024-25 school year. The IEP team met on September 13, September 27 and October 9, 2024 and made amendments to the December 12, 2023 annual IEP. None of these meetings resulted in any changes to the personnel training requirements, monthly check in meetings or the use of the calming kit and strategies.

Interviews and documentation showed school staff were trained on the student's BIP on August 21, 2024 and USD #266 followed up by providing a summary of the BIP issues to staff

on August 23, 2024. Interviews and documentation also support the fact that meetings to review student data were held in August, September, and October during the 2024-25 school year and concerns were identified and strategies developed to address these concerns.

It is unclear if the student had access to his calming kit in all environments throughout the school day at the beginning of the 2024-25 school year; however, documentation and interview showed the district addressed this concern through the use of the backpack of calming tools strategy during one of the monthly meetings. Based on IEP goal progress reports and interviews with staff, the student has made progress towards his IEP goals despite a potential error in consistent implementation of the IEP in regards to the calming tools.

Finally, the Progress Reports from the past 12 months indicate the student is making or maintaining progress on his behavioral goal. However, it is noted that from August 26, 2024 to October 8, 2024 the student exhibited instances of physical aggression toward peers, toward staff or property destruction 28 times, which may account for the parent's concerns that the student's behaviors are increasing. However, due to the way behavioral data is being collected for the IEP goal, "...demonstrating instructional control 8 out of 10 times with 4 or less prompts.", the student is progressing according to his IEP goal yet still exhibiting instances of serious behaviors.

In an email from the instructional coach on October 28, 2024 she shared that the number of instances of target behaviors has been declining since mid-September. She also shared that mid-September is when the amount of time out of schedule, per incident, also decreased.

The collaboration with TASN and addition of a program specialist to support the student's classroom reflects the capacity of the family and district to work together and the district's willingness to address the family's concerns even though there was not an increase in behaviors as measured and reported by the BIP goal.

Based on the foregoing, USD #266 is found to be *IN compliance* for implementing the student's IEP, specifically related to addressing increases in behaviors. In addition, there is evidence to support a finding of compliance with the requirement that school staff received training on the student's BIP and held at least monthly meetings to review data. It is noted that USD #266 proactively sought out additional support to address the student's behavioral issues by hiring a project specialist to help train and facilitate the student's IEP team for implementing the student's IEP and BIP with fidelity.

Finally, it is unclear if the student had access to the calming objects at the very beginning of the school year when the student was taking a break or placed in the safe space. However, interviews and documentation shows the IEP team implemented the backpack strategy during the first quarter of the 204-25 school year to ensure the student had access to his calming kit at all times and in all locations throughout the school day. Additionally, interviews show that the calming strategies were used by the staff even if the calming objects are not available. IEP goal progress reports reflect the student was making progress towards achieving his annual IEP goals.

Based on the foregoing, USD #266 is found to be IN compliance with IDEA regulations to implement the IEP as written and address lack of progress during the 2024-25 school year.

Issue Three

Did USD #266 ensure instruction was planned and delivered by appropriately certified staff during the past 12 months?

Parent Position

The parent believes the student is receiving specialized instruction from classroom paraprofessionals rather than the special education teacher.

Applicable Law

Federal regulations at 34 C.F.R. 300.156 requires that each school district must ensure that all personnel necessary to carry out the requirements of IDEA are appropriately and adequately prepared and trained. All special education personnel, as appropriate, shall have the content knowledge and skills to serve children with exceptionalities. This includes special education teachers, related services personnel and paraeducators.

In Kansas, paraeducators must meet the requirements outlined in the "Special Education Reimbursement Guide State Categorical Aid". Paraeducator duties are allowed to include providing instructional or related services under the supervision of a licensed or certified special educational professional in both special education and general education settings. If the paraeducator provides instructional services under the supervision of a qualified special education teacher, the time will be counted as student contact hours for the purposes of reimbursement. However, paraeducators must not be responsible for selecting, programming, or prescribing educational activities or materials for the students without the supervision and guidance of the special teacher or be solely responsible for preparing lesson plans or initiating original concept instruction. Paraeducators must not be assigned to implement the IEP for students with exceptionalities without direct supervision and involvement from the professional and may not be hired in lieu of appropriately certified special education teachers.

Analysis: Findings of Fact

The following facts are based upon a review of the documentation noted previously and interviews with both parties.

1. In the parent complaint dated October 7, 2024 the mother stated, "[student] is not gaining access to direct instruction from teachers daily." "In observing the classroom we have seen that [student] will be taught by one para for an entire activity/class period."
2. The current IEP dated September 13, 2024 states the student will need special education support daily, in all school settings.

3. In the district interview on October 24, 2024, school staff acknowledged that paraprofessionals regularly work with the student to review, practice, and reinforce skills and concepts under the supervision of the special education teacher.
4. In the district interview on October 24, 2024 the special education teacher stated that she designs all new instruction after which she has the paraprofessionals observe her while she introduces or reintroduces the lesson to the student. She stated that the paraprofessional's role is to review and practice the concept with the student; they may use a variety of activities to teach the content, but the content is always first introduced by the teacher.
5. In an email provided by the district on October 25, 2024 the health, life skills and P.E. teacher stated that he plans and introduces new instruction for the student.
6. In an email provided by the district on October 25, 2024, the special education teacher from the 2023-2024 school year stated that, "either [special educator] or I would sit with him, provide direct instruction for an assignment, get him started, and often a para would switch out to provide support for him to complete the task(s). We also had an area with tasks /concepts that [student] had been previously instructed in, and a para could grab anything to work with him on during either down-time, or to supplement curricular activities."

Conclusion

Federal regulations at 34 C.F.R. 300.156 require school districts to ensure that special education teachers, related services personnel and paraeducators who implement student IEPs must have the content knowledge and training to provide the special education and related services to each student.

In Kansas, paraeducator duties may include providing instructional or related services under the supervision of a licensed or certified special educational professional in both special education and general education settings. However, paraeducators must not be responsible for selecting, programming, or prescribing educational activities or materials for the students without the supervision and guidance of the special teacher or be solely responsible for preparing lesson plans or initiating original concept instruction. Paraeducators must not be assigned to implement the IEP for students with exceptionalities without direct supervision and involvement from the professional and may not be hired in lieu of an appropriately certified special education teacher.

In this case, interviews and documentation found the district's procedures and practices consisted of an instructional model where the special education teacher designs and provides initial instruction of concepts and uses paraprofessionals to regularly review, practice, and reinforce skill and concept acquisition with students.

Based on the foregoing, USD #266 is found to be *IN compliance* with IDEA regulations and Kansas requirements that allow for paraprofessionals to provide specialized instruction to

review, practice, and reinforce skills and concepts under the supervision of appropriately certified staff during the past 12 months.

Issue Four

Did USD #266 appropriately report progress toward IEP goals to the parents during the past 12 months?

Parent Position

In the parent complaint dated September 7, 2024 the parents stated there has been no data shared to indicate the student's IEP is being followed or that he is making progress on his IEP goals.

Applicable Law

Federal regulations at 34 C.F.R. 300.320(a)(3) require the IEP to include a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided, e.g quarterly or other periodic reports, concurrent with the issuance of report cards.

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with both parties.

1. The current IEP dated September 13, 2024 states that, "Parents will receive progress reports at the same time intervals as general education parents. For this student, this will be through written reports and/or conferences."
2. In the past 12 months, the district shared IEP progress reports with the student's parents on November 6, 2023, March 7, 2024, May 20, 2024 and October 21, 2024.
3. The progress reports include how the student is performing based on the IEP goal as well as a narrative description of performance under the Progress Report Comments header.
4. In addition to the progress reports, the district shared documentation of meetings to discuss student progress held in the past 12 months which include; December 12, 2023 IEP meeting, May 20, 2024 meeting to discuss transition to the high school, September 13, 2024 IEP meeting, September 27, 2024 IEP meeting and October 9, 2024 IEP meeting.
5. The district shared agendas, minutes, and/or audio recordings for each of the above meetings which all include discussions of the student's progress on his IEP goals.

Conclusion

The district reported student progress on IEP goals to the family periodically, and at least quarterly as required by the student's IEP. IEP Goal Progress Reports were shared with the family on November 6, 2023, March 7, 2024, May 20, 2024 and October 21, 2024. These progress reports reflected where the student's performance was in relationship to his IEP goals and included a description of the student's progress.

Also, there have been several team meetings in the past 12 months to discuss the student's IEP goals: December 12, 2023 IEP meeting; May 20, 2024 meeting to discuss transition to the high school; September 13, 2024 IEP meeting; September 27, 2024 IEP meeting; and October 9, 2024 IEP meeting. In each of these meetings progress toward IEP goals was discussed according to meeting agendas, meeting notes, and meeting audio recordings.

Based on the foregoing, USD #266 is found to be *IN compliance* with the requirement to appropriately report progress toward IEP goals to the parents during the past 12 months.

Summary of Conclusions/Corrective Action

1. ISSUE ONE:

ALLEGATION: Failure to include a specific amount of special education services in the student's IEP. A violation of 34 C.F.R. 300.320(a)(7) **is not found** based on the lack of IDEA requirement for duration of services to be stated in minutes per session. Corrective action is not required.

ALLEGATION: Failure to provide appropriate special education services and program modifications which meaningfully engage the student during the school day. A violation of 34 C.F.R. 300.320(a)(3), 34 C.F.R. 300.323(c)(2) and 34 C.F.R. 300.17 **is not found** based on provision of program modifications and specialized instruction as written in the IEP. Corrective action is not required.

ALLEGATION: Failure to provide the student with access to the Unique Learning System curriculum. A violation of 34 C.F.R. 300.320(a)(3), 34 C.F.R. 300.323(c)(2) and 34 C.F.R. 300.17 **is not found** based on provision of the Unique Learning System curriculum as written in the IEP. Corrective action is not required.

ALLEGATION: Failure to provide the student with access to his augmentative communication system throughout the school day. A violation of 34 C.F.R. 300.324(a)(2)(iv - v), 34 C.F.R. 300.323(c)(2) and 34 C.F.R. 300.17 **is not found** based on the provision and prompted use of the student's augmentative communication system as written in the IEP. Corrective action is not required.

ALLEGATION: Failure to provide access to extracurricular activities by not allowing him to have the same interaction opportunities as other students. A violation of 34 C.F.R. 300.42, 34 C.F.R. 300.323(c)(2) and 300.107 **is not found** based on provision of

extracurricular activities and reduction in the amount of time the student is away from his peers due to behavioral concerns. Corrective action is not required.

ALLEGATION: Failure to provide the daily communication logs to the parents as required by the student's IEP. A violation of 34 C.F.R. 300.323(c)(2) **is not found** based on provision of daily communication logs with parents when the student is not participating in his schedule or not with peers. Corrective action is not required.

2. **ISSUE TWO:** A violation of 34 C.F.R. 300.323(c)(2), 34 C.F.R. 300.324(a)(2)(i), 34 C.F.R. 300.324(b)(1)(ii) and 34 C.F.R. 300.17 **was not found** based on implementation of the IEP as written and progress on the BIP goal as noted in the IEP Progress Reports in the past 12 months. Corrective action is not required.
3. **ISSUE THREE:** A violation of 34 C.F.R. 300.156 **was not found** based on the fact that paraeducators are allowed to provide instructional or related services under the supervision of a licensed or certified special educational professional. Corrective action is not required.
4. **ISSUE FOUR:** A violation of 34 C.F.R. Federal regulations at 300.320(a)(3) **was not found** based on the provision of timely IEP goal progress to the parents. 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)