

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON NOVEMBER 8, 2024

DATE OF REPORT: DECEMBER 10, 2024

This report is in response to a complaint filed with our office by ----- on behalf of their daughter, ----- . For the remainder of this report, ----- will be referred to as "the student." ----- will be referred to as "the parents." Individually, ----- will be referred to as "the student's father." ----- will be referred to as "the student's mother." USD #259 will be referred to as "the district."

Investigation of Complaint

On November 13 and 19, and December 3, 2024, the complaint investigator spoke via telephone with the Mediation/Due Process Supervisor for the district. On December 6, 2024, the investigator spoke via conference call with the social worker, school nurse, classroom teacher, building principal, the speech/ language pathologist, a Director of Special Education, and the Mediation/Due Process Supervisor.

The investigation of a formal complaint requires the investigator to contact the complainant in order to gather additional information and verify specific allegations of noncompliance that may be relevant to the investigation. To that end, the investigator spoke twice by telephone with the student's father on November 18, 2024 and later that same day spoke by telephone with the student's mother. On November 18, 2024, the investigator sent the parents an amended summary of their complaint issues for their review and approval. The student's mother responded with questions which the investigator answered by email that same day. On November 19, 2024, the student's father provided documents requested by the investigator.

The investigator and the student's father exchanged emails regarding additional documents on November 20 and 21, 2024. On November 22, 2024, the student's father sent the investigator an email regarding an email the parents had received from the district and asking for the investigator's thoughts regarding the district's request for an IEP team meeting, noting that the parents were "under the impression that [they] had a right to put the IEP meeting on hold, especially when there is an open complaint." The investigator sent an email response to the student's father on November 22, 2024 stating that she would call him on November 23, 2024. The student's father did not answer the investigator's first or second call on November 23, 2024, but the investigator left a message responding to the parents' question about the IEP team meeting.

The student's father called the investigator on December 3, 2024 to ask again about the district's proposal to conduct an IEP team meeting. The student's father stated that he had not received the previous voicemail message left by the investigator.

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

- Special Ed Student Contact Log covering the period of August 8, 2021 through November 14, 2024
- Evaluation or Reevaluation and Request for Consent dated January 22, 2024
- Evaluation or Reevaluation and Request for Consent dated February 2, 2024
- Section 504 Plan for the student dated February 8, 2024
- Notice of Meeting dated April 9, 2024
- Multidisciplinary Team Report dated April 17, 2024
- Multidisciplinary Evaluation Team Participants dated April 17, 2024
- IEP for the student dated April 16, 2024
- IEP signature page dated April 17, 2024
- IEP signature page containing the student's mother's signature dated April 20, 2024
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 17, 2024
- Email exchange dated August 14-19, 2024 between the student's mother and the classroom teacher
- Email dated August 21, 2024 from the student's mother to the classroom teacher
- Letter dated August 23, 2024 from the student's classroom teacher to all parents in her classroom
- Email exchange dated August 27, 2024 between the student's mother and the classroom teacher
- A second email exchange dated August 27, 2024 between the student's mother and the classroom teacher
- Email dated August 28, 2024 from the student's mother to the classroom teacher
- Email dated August 31, 2024 from the parent to the classroom teacher
- Skills Competency Training for Delegation - Oxygen Saturation Monitoring dated September 4, 2024
- Email dated September 4, 2024 from the student's mother to the classroom teacher
- Email dated September 17, 2024 from the student's mother to the classroom teacher
- Educational Occupational Therapy Referral for Observation/Screening dated September 18, 2024
- Email exchange dated September 25, 2024 between the student's mother and the building principal
- Email exchange dated September 27, 2024 between the student's mother and the school nurse
- Email dated October 4, 2024 from the student's father to the student's classroom teacher
- Email dated October 14, 2024 from the student's mother to the classroom teacher

- IEP Progress Report - Annual Goal dated October 18, 2024
- Email exchange dated October 22, 2024 between the student's mother and the social worker
- Email exchanges dated October 22 and 23, 2024 between the student's mother and the school nurse
- Sample communication pages covering the period of October 22 - 25, 2024
- Email dated October 24, 2024 from the student's mother to the social worker
- Email exchange dated October 24, 2024 between the student's mother and the speech/language pathologist
- Email dated October 24, 2024 from the student's mother to the social worker
- Email dated October 25, 2024 from the student's mother to the IEP case manager
- Communication sheet dated October 28, 2024
- Communication sheet dated October 29, 2024
- Communication sheet dated October 30, 2024
- Email exchange dated October 29-30, 2024 regarding an email sent by the student's mother on October 29, 2024
- Communication sheet dated October 31, 2024
- Communication sheet dated November 1, 2024
- Email exchange dated November 1, 2024 between the student's mother and the school nurse
- Email exchange dated November 4, 2024 between the student's father and school staff
- Email exchange dated November 5, 2024 between the student's father and the building principal (with the principal's response sent at 10:36 am)
- Email dated November 5, 2024 from the building principal to the student's father at 10:41 am
- Email dated November 5, 2024 from the building principal to the student's father at 4:17 pm
- Email dated November 7, 2024 from the security supervisor for the district to the building principal
- Email dated November 8, 2024 from the building principal to the student's father
- Email exchange dated November 8, 2024 between the building principal and the student's father
- Email dated November 12, 2024 from the building principal to the student's father
- School-wide Homework Policy for the student's school for the 2024-25 school year
- Homework folder sample items including a word list, color chart, shape chart, letter sound fluency chart, number chart, alphabet chart, upper case letter chart, and pencil grip illustration
- Written statement from the school nurse provided to the investigator on November 20, 2024
- Written statement regarding homework from the building principal provided to the investigator on November 20, 2024

- Written statement from the classroom teacher provided to the investigator on November 20, 2024 regarding an alleged incident on November 4, 2024
- Written statement from the classroom teacher provided to the investigator on November 20, 2024 regarding classroom breaks
- 2024-25 SLP Calendar covering the period of August 20 through November 11, 2024
- Skills Competency Training for Delegation for the administration of inhaler medication and oxygen saturation monitoring for the 2024-25 school year
- Medicaid treatment log for speech/language services covering the period of August 20 through September 26, 2024
- Medicaid treatment log for speech/language services covering the period of August 27 through October 22, 2024
- Medicaid treatment log for speech/language services covering the period of October 22 through November 7, 2024
- Elementary Progress Report for the student for the first quarter of the 2024-25 school year

Background Information

This investigation involves a 6-year old girl who is currently attending a performing arts and science magnet elementary school in the district. According to her current IEP dated April 15, 2024, the student demonstrates deficits in her cognitive and communication skills that meet the criteria for her to be identified as a special education student under the category of Developmental Delay. The IEP also states that she has chronic lung problems and asthma. According to the student's father, the student was delivered at 23 week's gestation and has experienced a number of medical issues due to her premature birth.

As reported by the student's father, the student has been diagnosed with Stage III IOP, a significant decline in vision due to advanced glaucoma, where the intraocular pressure (IOP) is significantly elevated, causing noticeable damage to the optic nerve and resulting in significant peripheral vision loss.

During the 2023-24 school year, the student participated in a half-day "PreK" classroom where she received special education support throughout the school day. On February 2, 2024, the parents provided written consent for evaluations to determine the student's eligibility for speech/language and other special education services. On February 8, 2024, a Section 504 Plan was implemented for the student which outlined a number of accommodations. Additionally, the student received 30 minutes of speech/language services each week.

For the 2024-25 school year, the student has been enrolled in a full-day general education kindergarten classroom. Her April 2024 IEP states that she would be provided 180 minutes of special education support in the general education classroom for ELA (English/Language Arts), math, and "other curriculum activities as determined by the special education team." She has continued to receive 30 minutes per week of speech/language services.

Medical issues have contributed to the student missing many days of school this year. School records show that she had missed all or part of 35 days of school by the time this complaint was received.

Issues

In their complaint, the parents identified 10 concerns. Following telephone calls with the parents on November 18, 2024, these concerns were - for the sake of clarity - reorganized into 5 issues.

Not every action taken by a school district with regard to a student who has been determined to be a student with an exceptionality is covered under special education law. Similarly, special education law does not address everything experienced by an exceptional student within a school setting. At K.A.R. 91-40-51, Kansas regulations state that, when filing a formal complaint, the complainant must allege that a violation of federal or state special education laws or regulations has occurred during the 12-month period preceding the date the complaint is received and filed with the commissioner of education.

In their written complaint, the parents have presented some concerns which are not eligible for investigation under this complaint process as they do not represent an allegation that the district violated state or federal special education legal requirements (K.A.R. 91-40-51(a)). Concerns focused on alleged bullying, for example, are not eligible for investigation through this process. Likewise, district homework policies are not covered by special education laws. This investigator does not, therefore, have the authority to resolve these concerns.

Issue One

The district has failed to properly implement the student's IEP.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations at K.A.R. 91-40-2(b)(1) require that each school district makes FAPE available to each child with a disability residing in its jurisdiction. Federal regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an Individualized Education Program (IEP).

The parents contend that the district has failed to provide the student with six of the accommodations that are specified in the student's April 16, 2024 IEP. Each of these areas will be addressed separately below.

Communication Binder

Position of the Parents

The parents state that they made numerous requests via phone and email for the communication binder to be implemented. They assert that they met with the building

principal on September 27, 2024 and were assured that the communication binder would be implemented correctly. The parents contend that the binder was not sent home until October 28, 2024. According to the parents, the binder was subsequently provided on an inconsistent basis, was incomplete, and was managed by the IEP manager for the student rather than the classroom teacher.

Position of the District

The district stipulates that the accommodation of a communication binder was not implemented at the start of the school year on August 14, 2024.

Investigative Findings

The "Supplementary Aids and Services (Accommodations and Modifications)" section of the student's April 16, 2024 IEP includes the following statement:

"Communication book between parents and teacher regarding [the student's] school day, services that were provided that day and nutrition log...This will keep the family in the loop and knowledgeable about [the student's] nutrition intake at school to decipher what is needed to be given once she comes home."

The IEP states that the book will be provided "every school day." According to the student's father, the book was completed daily and sent home approximately once a week during the 2023-24 school year.

For the 2024-25 school year, the communication book was not sent home to the parents until October 25, 2024. On that date, the parents received reports for the previous four days. The speech/language pathologist created a form for communication which reflected the student's day on a 4-point scale with room for comments. The form included a 3-point scale to describe how much of her lunch the student had eaten by mouth as well as a 4-point scale to describe her transitions. The form also showed what classes and services the student had during the day, what special education services she had received, and when she went to the bathroom.

The parents sent an email to the teacher on October 25, 2024 asking:

"What are these pages? Is this her 'communication binder?' Because it should be a daily binder coming home with her from school. Where are the other missing days? It needs to have on there also what school work she has worked on and what she needs to continue to work on, from her Teacher with all of the rest of the stuff that was on the paper."

The investigator determined that the communication sheet has been completed on a daily basis since October 22, 2024. The information needed to complete the form has been given to the case manager by the classroom teacher, nurse, and speech/language pathologist.

The district has reached out to the parents to schedule an IEP team meeting to discuss the content and structure of the communication book. The parents had requested an IEP team meeting for the same purpose, though they subsequently notified the district that they wanted to have the IEP meeting put on hold. At the time this complaint was received, no IEP meeting

to address this concern had yet been conducted, but a meeting is scheduled for December 17, 2024.

The district is also working on creating an electronic version of the communication binder to share with the parents at the upcoming IEP meeting.

Summary and Conclusions

Because the accommodation calling for a communication book was not implemented until the end of October 2024, a violation of special education statutes and regulations *is substantiated* on this aspect of this issue.

Pulse Oximeter

Position of the Parents

According to the parents, the principal at the student's building confirmed on September 27, 2024 that a pulse oximeter was not being used to check the student's oxygen levels and staff had not yet been trained on the use of the pulse oximeter.

Investigative Findings

The "Supplementary Aids and Services (Accommodations and Modifications)" section of the student's April 16, 2024 IEP includes the following statement:

"Pulse oximetry monitor in the room and staff have been trained on it...to ensure [the student's] oxygen is within normal limits and if not, she will need oxygen or a breathing treatment..."

According to the "Health/Physical" portion of the "Summary of Present Levels of Academic Achievement and Functional Performance - Needs as They Affect Learning" section of the student's April 16, 2024 IEP,

"Due to her chronic lung disease, [the student] will be affected by respiratory infections worse than her peers. She may need oxygen and breathing treatments in the nurse's office."

In a telephone conversation with the investigator on November 18, 2024, the student's father stated that, during the 2023-24 school year, the parents would notify classroom staff if the student had been experiencing breathing problems at home that might make it advisable to check her oxygen levels at school. If oxygen levels fell outside the normal range when checked, staff would notify the school nurse who would then determine what - if any - additional actions were needed. If staff observed the student to be breathing with difficulty, they would initiate a check on her oxygen levels and contact the nurse if levels warranted.

A nurse is assigned to the student's building of attendance on a full-time basis. The nurse sees the student every day she is in school to address her feeding-related needs. The school nurse and the student's mother communicated via email at least once regarding the student's O2 level (October 23, 2024).

According to a record provided by the district, the school nurse completed training on oxygen saturation monitoring for the social worker and the behavior specialist on September 4, 2024. The district provided the guidance document used for that training.

The nurse reports that no one in the general education classroom has been trained on the use of the pulse oximeter, and a pulse oximeter is not available in the classroom.

According to the nurse, she has not received any requests from the parents to check the student's O2 levels during this school year. In a conference call on December 6, 2024, the nurse stated that she had checked the student's O2 level once during this semester - on December 4, 2024 when the student came in after recess with a cough. The student was subsequently sent home "sick." The student used her inhaler while in the nurse's office on one separate occasion earlier in semester.

Summary and Conclusions

A pulse oximeter is not currently available in the student's Kindergarten classroom. Training on the use of the pulse oximeter for two other staff members was not completed until September 4, 2024. Because this accommodation is not being fully implemented as written in the student's April 16, 2024 IEP, a violation of special education statutes and regulations *is substantiated* on this aspect of this issue.

Documentation of Speech Therapy Services

Position of the Parents

The parents assert that the student's IEP requires the district to notify them of the "dates [and] times" when speech therapy services were provided to the student and to document the "objectives addressed." It is the position of the parents that they have not been provided with this information through the communication book. The parents contend that they have only received a "single general progress note," making it hard for the parents to "monitor her progress and confirm the consistent delivery of required speech therapy services."

Investigative Findings

The "Supplementary Aids and Services (Accommodations and Modifications)" section of the student's April 16, 2024 IEP includes the following statement:

"Communication book between parents and teacher regarding [the student's] school day, [including] services that were provided that day [emphasis added]..."

The "Annual Goals and Benchmarks or Short Term Objectives" section of the student's April 2024 IEP also includes the following statement:

"A report of progress toward meeting annual goals will be provided to the parents in the same manner and frequency as general education report cards."

According to the student's father, the district speech/language pathologist who provided services to the student during the 2023-24 school year communicated with the parents frequently on an informal basis.

On October 23, 2024, the student's mother sent an email to the speech/language pathologist (SLP) asking about services to the student, writing:

" I would like to get a copy of the data from [the student's] speech therapies, times, dates and progress notes please."

The SLP responded in an email dated October 24, 2024, writing:

"I have attached the [IEP] progress note for you to review. Her service minutes are 15 minutes 2 times a week (30 minutes total) and I do my best to serve those when she is available to me here at school. I absolutely adore working with her and would love to get you guys in to talk further about her progress and more about what I do with her and go over her IEP and develop it to better serve her. Is there a time that works best for you? Please let me know. Hope this helps!"

According to the progress report, the student's skills had been monitored on October 18, 2024. At that time, she was making adequate progress toward attaining the following goal:

"By the next annual IEP, given speech services, and with no more than 1-2 cues/prompts, [the student] will correctly produce phonemes /f/, /v/, and various /r/-blends and /l/ blends with 80% accuracy at the phrase level as measured by SLP data and observation."

The progress report stated that the student was doing well "given verbal and visual cues by the SLP." The student had improved from a baseline level of 43% at the word level for the /f/ to a 70% level. For the /v/ sound, she had maintained 70% correct production.

The student's mother responded to the email from the SLP on October 24, 2024, writing :

"Thank you for the progress attachment. Do you have any date that shows what dates and times you've worked with her? I'm so glad you enjoy working with her. Thank you... Sorry I ment [sic] Data. Could we get data for the dates and times you've worked with her please."

The SLP replied:

" I pull her from class on Tuesdays and Thursdays from 11:10-11:25."

The student's mother wrote back:

" Thank you. Is there a log or any data or notes you have on the days you do speech with her?"

The speech/language pathologist did not respond to the parent's last question and has not provided the parent with additional data.

Once the communication book was implemented in late October 2024, the SLP provided the classroom teacher with information regarding speech services for inclusion in the binder. The

parents subsequently told the SLP that they expected to receive more information, including the raw data which the SLP provides in aggregate form in quarterly IEP progress reports.

Medicaid treatment logs provided by the district reflect the provision of speech/language services to the student over the period of August 20 through November 7, 2024. A calendar of speech/language services for the student for the period of August 20, 2024 through November 11, 2024 was provided by the district. The document shows that the student received services on 12 days during this period and was absent 9 days.

Summary and Conclusions

Records provided by the district show that when the student was present at school, she was provided with the speech/language services called for in her April 16, 2024 IEP. As noted above, the communication book which was to convey information to the parents regarding what services were provided to the student each day was not implemented until the end of October 2024. Therefore, a violation of special education statutes and regulations *is substantiated* on this aspect of this issue.

To be clear, however, the accommodation as written in the student's April 16, 2024 IEP states only that the parents are to be notified of what services were provided on a given day. The IEP does not require that daily information regarding what specific skills were addressed during the therapy sessions be provided to the parents nor does the accommodation require that parents be given raw data collected during therapy sessions. If that information is maintained by the district, the parents may request access to those records under the requirements established by FERPA (Family Education Rights and Privacy Act).

Maintenance of a Nutrition Log and Provision of Assistance in Opening Food and Drink Items

Position of the Parents

The parents contend that they have not been provided with a nutrition log during this school year. If the student is observed to have eaten less than half of her lunch, she is to be given a tube feeding. The parents state that in the absence of a nutrition log, they cannot make informed decisions regarding her dietary needs.

The parents also allege that the classroom teacher is neither providing nor allowing the provision of assistance to the student in opening food and drink items in order to ensure adequate nutrition. According to their complaint, the classroom teacher discouraged them from assisting their daughter with opening food and juice containers when they attended the classroom Halloween party.

Position of the District

The district stipulates that it did not, at the start of the school year on August 14, 2024, implement the accommodation regarding the provision of a nutrition log.

Investigative Findings - Nutrition Log

The "Supplementary Aids and Services (Accommodations and Modifications)" section of the student's April 16, 2024 IEP includes the following statement:

*"Communication book between parents and teacher regarding [the student's] school day, services that were provided that day **and nutrition log** [emphasis added]...This will keep the family in the loop and knowledgeable about [the student's] nutrition intake at school to decipher what is needed to be given once she comes home."*

The district provided a copy of a daily nutritional intake record that has been maintained by the school nurse. In that log, the nurse records when bolus feedings are given to the student and in what amount. The school nurse and the student's mother have communicated frequently about the student's nutritional intake since the start of the school year. Once the communication binder was implemented, the nurse provided information for inclusion in the binder. Any remainder from the student's daily lunch was also sent home so the parents could see what was left and supplement as needed.

The school nurse administers daily tube feedings each morning that the student is in school. Supplemental feedings are also administered by the nurse at lunch unless the student consumes more than 50% of her lunch. (The student has only eaten more than half of her lunch on two occasions this school year - when pizza was on the menu.) The school nurse also completes a water flush for the feeding tube at the end of each school day. The school nurse and the student's mother have communicated via email at least twice (September 27 and November 1, 2024) regarding tube feedings for the student.

On October 29, 2024, the student's mother sent an email to the student's classroom teacher and the school social worker stating "I will need to know what she is eating orally at lunch from now on." The building principal told her staff that she would contact the student's mother and ask her to "join us on a phone conference or in person to discuss all her questions."

Summary and Conclusions -Nutrition Log

While the school nurse has since the beginning of the school year maintained a record regarding the student's nutritional intake, that information was not for a period of several weeks provided to the parents through a communication log as required by the student's April 16, 2024 IEP. A violation of special education statutes and regulations *is substantiated* on this aspect of this issue.

Investigative Findings - Assistance in Opening Food and Drink Items

According to the "Health/Physical" portion of the "Summary of Present Levels of Academic Achievement and Functional Performance - Strength" section of the student's April 16, 2024 IEP,

"[The student] asks for help when needing a package opened or a milk carton during snacks."

The "Needs as They Affect Learning" section of that same section states,

"[The student] is working on independently opening her snacks and milk."

There is no requirement in the student's IEP for the student to be provided with assistance when opening food or drink items.

In a conference call with the investigator on December 6, 2024, the classroom teacher stated that it is her practice to ask this student - and her peers in the classroom - to try to manage food and drink containers on their own before offering assistance. According to the classroom teacher, the student has been increasing in her independence with this task but is provided with assistance if she is unable to access her food or drink on her own.

Summary and Conclusions - Assistance in Opening Food and Drink Items

The student's current IEP does not require the provision of assistance to the student in opening food and/or drink items. The classroom teacher's request that the parents not provide assistance to the student during the classroom Halloween party is not a violation of requirements of the student's IEP. A violation of special education statutes and regulations *is not substantiated* on this aspect of this issue.

Bathroom Access

Position of the Parents

The parents assert that the teacher has on at least two occasions refused to allow the student to use the restroom upon request. It is the position of the parents that the student should immediately be granted permission to use the restroom whenever she asks, since failing to allow the student to do so could result in her wetting herself.

Position of the District

It is the position of the district that the requirements of the student's IEP related to bathroom access have been implemented.

Investigative Findings

The "Supplementary Aids and Services (Accommodations and Modifications)" section of the student's April 16, 2024 IEP includes the following statement:

"[The student] will need a separate bathroom break with a visual checklist of bathroom steps. This will help [the student] successfully use the restroom and take care of her hygiene needs. This will also help with the growth of developing independence as time progresses due to the consistent use of the visual bathroom step checklist."

In a statement provided to the investigator on November 20, 2024, the school nurse stated that the student has two daily tube feedings and a flush at 9 am, 12:20 pm, and 3 pm respectively.

"At each of those times, she is in the nurse's office with a private bathroom. She is offered a separate bathroom break at each of those feedings - connecting and disconnecting times. Disconnect times are around 9:25 am and 12:55 pm."

In a conference call with the investigator on December 6, 2024, the nurse reported that the student wears a lanyard with attached picture prompts to encourage her independence in toileting. According to the nurse, the student has toileted without assistance and has not had an accident in the school setting during the 2024-25 school year.

In the Kindergarten classroom, students are given multiple opportunities to use the bathroom and reminders to do so. Students have the opportunity to use the bathroom before instructional time and are encouraged to do so (since there are no bathroom breaks during instructional time). The class as a whole has a bathroom break after Alphabet Arcs and before lunch. The class also takes a bathroom break after first recess at noon, and breaks are taken before afternoon special classes.

In a conference call with the investigator on December 6, 2024, the classroom teacher stated that it was her general practice to allow the student to take a bathroom break if she asks. According to the classroom teacher, the student has rarely asked to use the restroom outside of the opportunities she is routinely provided.

Summary and Conclusions

The student is provided with three to five extra bathroom breaks throughout the school day in conjunction with tube feeding and flushing. While the parents want the student to be allowed to use the bathroom any time she makes a request, the student's April 16, 2024 IEP only requires that the student be provided "a" separate bathroom break daily. A violation of special education statutes and regulations *is not substantiated* on this aspect of this issue.

Preferential Seating

Position of the Parents

The parents report that they have personally observed and have been told by others that the student has been seated at the back of her classroom, well away from the blackboard where instructions are provided. The parents further assert that the student has been seated next to another student who has been reported to have bullied the student.

Investigative Findings

The "Supplementary Aids and Services (Accommodations and Modifications)" section of the student's April 16, 2024 IEP includes the following statement:

"Preferential seating near a staff member and the board as able. This will help [the student] see the materials and lessons being taught better and she will have an adult providing frequent redirects along with someone to further explain the information being taught for better comprehension."

The section of the student's April 16, 2024 IEP entitled "Statement of Special Education/Related Services" includes the following statement:

"For the 2024-25 school year, [the student] will start in full-day kindergarten. She will be served in a general education classroom with special education support. She will receive 180 minutes that will include ELA, math, and other curriculum activities as determined by the special education team."

In a conference call with the investigator on December 6, 2024, the classroom teacher stated that while the student's assigned desk is in the back of the classroom, the student moves throughout the room for instruction. Little instruction is delivered by the teacher from the large classroom board, and when instruction is presented at the front of the room, the student and her group are moved to the front of the classroom. Similarly, the student is moved to the front row during classroom library time and circle time. If the student is working from her assigned desk, she is working with her own individual white board and is assisted by a Paraeducator who is seated between the student and a classroom peer. During this type of instruction, the teacher moves throughout the room using instructional materials placed at various locations around the classroom.

Summary and Conclusions

The classroom teacher is aware of the student's visual needs and provides flexible preferential seating near the teacher and/or a Paraeducator. A violation of special education statutes and regulations *is not substantiated* on this aspect of this issue.

Issue Two

By failing to provide homework and other academic materials for the student when she was absent, the district has denied the student a free appropriate public education (FAPE).

Position of the Parents

The parents contend that the district has failed to provide any "makeup work and homework" necessary for the student to maintain academic progress consistent with her IEP and grade level. It is the position of the parents that the withholding of academic materials has limited the student's ability to engage with grade-appropriate curriculum and interferes with her right to FAPE. The parents assert that the classroom teacher has discriminated against the student by failing to recognize the student's disability and by stating that "all she does is scribble."

The parents state that the student has only been provided with homework on one occasion - on September 10, 2024 - following a specific request from the parents.

Applicable Statutes and Regulations

"FAPE" is defined as "special education and related services that meet the following criteria:

1. Are provided at public expense, under public supervision and direction, and without charge;
2. meet the standards of the state board;
3. include an appropriate preschool, elementary, or secondary school education, and
4. are provided in conformity with an individualized education program." (K.A.R. 91-40-1(z)

Special education statutes and regulations do not establish any requirements for the provision of homework to a student unless failure to do so results in a failure to comply with the student's IEP. Districts and individual schools are free to establish their own policies and practices regarding the assignment of homework so long as those policies are applied consistently for students who are and are not determined eligible for special education services.

The investigation of a formal complaint is intended to determine whether, in the 12-month period prior to the receipt of the complaint, there has been a violation of special education statutes and regulations. If the parents believe that the district has - with regard to the implementation of its homework policy or through other actions - discriminated against the student because of her disability, these allegations must be presented to the Office of Civil Rights.

Investigative Findings

The student's April 16, 2024 IEP does not include any specific reference to the provision of homework.

Attendance records provided by the district show that the student had been absent for part or all of a total of 35 days during the 2024-25 school year at the time this complaint was received on November 8, 2024.

The district's "School-wide Homework Policy (24-25)" guidelines state:

1. *"1. All students will receive a minimum of the following as homework every night not to exceed 30 minutes:
 - a. Reading-fluency practice from decoding routine or 6-minute solutions (20 minutes).
 - b. Math-computation practice from Facts Strategies (10 minutes).*
2. *All parents are expected to read with or to their students and have discussions about what was read.*
3. *All parents are expected to ask students to share something about their day at school."*

In a letter dated August 23, 2024 to all parents of Kindergarten students, the student's classroom teacher wrote:

"Starting next week, I will send homework home on Tuesday. It's due back on Friday. Please help your student manage their time and complete their homework."

In an email to the classroom teacher dated August 27, 2024, the student's mother wrote:

"[The student] said she left her homework under her desk. Can someone remind her before leaving to bring it home please? Thanks!"

The classroom teacher responded on August 27, 2024:

"If she brought her folder back today after she get her sticker, she would have put her homework in the folder and then in her backpack. There is never anything left under desk or the floor without being noticed. If she has her folder, she can trace her upper and lower case and her numbers. Hope this will help."

The student's mother replied:

"That was helpful. I thought shed [sic] have more homework and didnt [sic] realize the folder she has all the sheets in to practise [sic] was her homework. Weve [sic] been working on those everyday [sic] after school and she did come home with stickers today. And we used her purple folder and white board to practice. Thank you!"

On August 28, 2024, the student's mother sent an email to the classroom teacher asking the following:

"Is there any schoolwork/workbooks or anything I need to pick up to keep her on track with the rest of the classroom?"

On September 4, 2024, after the student had missed school for a period of days due to illness, the student's mother wrote to the classroom teacher asking:

"Could you please send me homework for this week and any other things you've been working on with the kids so I can keep her up to speed with the class. I can also pick it up if need to be. Workbooks, papers etc. I don't want her grade to drop since she's missing so much school."

In a written statement provided to the investigator on November 20, 2024, the building principal described a meeting with the parents on September 27, 2024 to discuss their concerns about homework:

I met with parents on September 27[2024] to answer questions they had about [the student]. One of the topics discussed was homework. I explained the homework policy to the parents and also explained that Kindergarten students do not usually have homework. The bulk of what they are doing does not involve writing other than practicing handwriting. They said they were working on handwriting at home. I explained that since students are in early literacy and learning letters and sounds, they do a lot of oral activities like Heggerty. I went on to describe

the Alphabet Arc that is used in class and they said they already had one that the teacher had given. [T]he classroom teacher was present and shared a homework folder that she had given all students containing activities (practice writing letters and numbers, alphabet arc and plastic letters) for parents to practice at home with their students if they chose. We went on to discuss how school is very different and how we prefer teachers to do the heavy lifting; especially with teaching the letter sounds and steps to reading. Reading with students is what we prefer parents to focus on. I explained that there aren't many worksheets or packets because that is not best practice and schools have really moved away from that. I offered both parents to visit the classroom to observe what is being taught so they would have a better understanding of what I was saying. They visited on October 31 for the Fall party."

In a conference call on December 6, 2024, the classroom teacher told the investigator that she had at the beginning of the year told all of her classroom parents that she would be sending homework home on Tuesday for return on Friday. The homework folder contained a number of pages that could be used by parents to work with their children on basic Kindergarten skills such as color and shape recognition, letter sounds, number and alphabet recognition, letter formation, and pencil grip. According to the teacher, she determined that only about 40% of her students were working on these activities with their parents, and she discontinued the practice of sending homework home on Tuesdays. When asked by classroom parents about what activities to work on with their children, the teacher encouraged them to review the skills covered under those initial pages. No other "homework" has been assigned.

Despite her many absences, the student is progressing through the Kindergarten curriculum. On a scale of 0 ("Even with help, student is not successful, or no evidence is shown") to 4, ("Advanced. Student demonstrates knowledge which exceeds grade level standards"), she demonstrates proficiency at a Level 2 ("Developing: Student demonstrates understanding of the foundational skills related to the grade level standard") or above in 23 of the 28 areas assessed according to her Elementary Progress Report. Her IEP Progress Report shows that she is making progress on attaining 3 of her 5 annual goals that should enable her to achieve those goals by the time of her annual review. She has made progress on the two remaining goals but may not attain them by the time of her annual review; there may be a need to review instructional strategies and supports in these areas (working independently and identifying sounds).

Summary and Conclusions

The student's April 16, 2024 IEP does not include any special requirements with regard to homework. At the present time, homework is not assigned to any student in the Kindergarten classroom. Despite her numerous absences, the student is making progress in both her general education and special education skills. Under these circumstances, a violation of special education statutes and regulations *is not substantiated* on this issue.

Nonetheless, the investigator strongly encourages the student's IEP team to take a close look at strategies for mitigating the potential impact of the student's chronic absenteeism on her future educational development.

Issue Three

The district has failed to provide the student with adult supervision during transitions.

Applicable Statutes and Regulations

As stated above under Issue One, federal regulations, at 34 C.F.R. 300.17, define a free appropriate public education (FAPE), in part, as special education and related services provided in conformity with an Individualized Education Program (IEP). In other words, a student's IEP must be implemented as written.

Position of the Parents

The parents contend that while the student's IEP requires adult supervision of the student during transitions within the school building, the student has in fact been assisted on multiple occasions by classmates. The parents allege that on one of those occasions, when the student was escorted to the restroom by a male peer, the student went into the boys' restroom.

Investigative Findings

The student's current April 16, 2024 IEP does not contain any mention of a requirement for adult supervision during transitions nor does that IEP prohibit the use of a peer to assist the student during transitions within the school environment.

In a written statement provided to the investigator on November 20, 2024, the building principal wrote:

"[The student] is one of our students that we believed through observations required hand to hand pass off during the school day. All adults in contact with her were made aware that she should not be left alone. She transitioned with her class in line to move from one location to the other, but when she was required to go somewhere without the entire class, she was guided by an adult or responsible student."

Summary and Conclusions

Because the student's April 16, 2024 IEP contains no requirement for the student to have adult supervision for every transition, a violation of special education statutes and regulations *is not substantiated* on this issue.

Issue Four

The district has failed to promptly and effectively communicate with the parents on issues impacting the student's well-being and IEP compliance.

Applicable Statutes and Regulations

As stated in the Kansas Special Education Process Handbook:

"To address the requirement to strengthen the role of parents in the special education process, Congress mandated that schools afford parents the opportunity to be members of any decision making team for their child, including eligibility, initial evaluation and reevaluation, and development of an individualized education program (IEP) for the provision of a free appropriate public education (FAPE)...Additionally, parents have a responsibility to participate and provide their input into their child's educational progress (K.A.R. 91-40-25(a); K.A.R. 91-40-17(a); 34 C.F.R. 300.501(b),(c))."

Districts are required to attempt to schedule IEP Team meetings at a mutually agreed-upon time and place (K.A.R. 91-40-17(1)) and must make reasonable attempts to secure parent participation. Reasonable attempts are defined as at least two contacts by two different methods and documentation of such attempts should be kept including records of telephone calls, copies of written correspondence sent to the parents, and the response, if any, from parents. (See K.A.R. 91-40-27(g); K.A.R. 91-40-17(e)(2); 34 C.F.R. 300.322(d)(1)).

Position of the Parents

According to the parents, multiple emails to school staff have gone unanswered including an email request for an IEP meeting sent on October 4, 2024. The parents additionally assert that the district has not been responsive to their need for information regarding their identified concerns including an allegation of unsupervised outdoor exposure on November 4, 2024. The parents also contend that the district has failed to respond to their concerns about the bullying of the student and denial of access to the restroom. (See Issue One.)

IEP Meeting

Investigative Findings - IEP Meeting

On September 18, 2024, the school social worker called the student's mother to discuss the accommodations shown in the student's April 16, 2024 IEP as well as a possible referral of the student for an Occupational Therapy evaluation.

The student's father sent an email to the student's classroom teacher on October 4, 2024 writing:

"I am writing to request an IEP meeting for my daughter...to discuss adjustments to her plan that accommodate her medical needs and ensure a supportive learning environment. I would like to discuss a concern regarding [the student's] health management at school. As you may know, [the student] has several medical issues, including low blood sugars and oral aversion. Getting her to eat by mouth is a big step for her, even if it's just a small piece of candy. To help manage her condition, we've packed a couple of small chocolates in her backpack. She had one in her hand when she got off the bus yesterday. She mentioned that a teacher took the chocolate from her and threw it away, stating "no candy allowed." Could

you please help me understand why it was necessary to throw it away instead of putting it back in her backpack? Additionally, [the student] has expressed concerns about an incident during math class yesterday, where the classmate sitting next to her pulled her hair. This is one of four similar incidents that have come to our attention. We are worried that these occurrences have not been formally addressed or communicated to us..."

The classroom teacher forwarded the parent's message on to the social worker who has been designated by the building principal as having the responsibility of working with parents to schedule all IEP Team meetings except for annual review meetings.

The student's IEP case manager contacted the student's mother on October 11, 2024 to schedule an "amendment meeting" regarding the student's IEP and placed a follow-up call on October 14, 2024 leaving a message for the student's mother regarding that meeting. On October 22, 2024, the case manager again spoke with the student's mother about the parents' concerns and about scheduling an amendment IEP meeting.

On October 22, 2024, the social worker and the student's mother exchanged a series of emails. The social worker initiated the exchange, asking:

"I am just seeing if you have the ability to schedule your IEP review. I believe [the case manager] reached out to you regarding scheduling it, but I have not heard of a date that works for you. Please let me know as soon as possible. Thanks!"

The student's mother responded:

"She did reach out with [the building principal]. We are looking at some more information and options and I let her know I'll reach out soon with a date. With [the student] being sick so much and trying to get our schedules to match also. I did let [the building principal] know to follow the current iep because it hasn't been completely been followed since beginning of school, until we get the new iep meeting done. She said she just now today got the communication binder done."

The social worker replied:

"For the more information and options you are looking into, is there anything I can help with? Just trying to meet the request that was made in a timely manner. Thanks again!"

The student's mother wrote back:

"Do you know why [the case manager] is suddenly pushing this iep amendment? As you know we do want an iep meeting."

The social worker responded:

"It's being scheduled because it was requested by [the student's father] in an email on 10/4/2024. We have an obligation to hold the meeting within a certain timeframe once it's requested."

The student's mother then wrote:

"He did request it but didn't receive any response. Appreciate the explanation though. I'll reach out soon with some dates and see if it works for you guys."

On October 24, 2024, the student's mother sent an email to the social worker and case manager, writing:

"[The student's father] and I have decided to put a hold on the IEP amendment meeting for now until we look through all our options. We will notified [sic] you when we would like to reopen it. For the parent teacher conference, a email with her progress and grades would be fine. If we are required to attend, then please have [the classroom teacher] reach out on what evening time and days might work."

In a telephone conversation with the investigator on December 3, 2024, the student's father stated that the parents were open to holding an IEP team meeting but wanted the results of this investigation to be available to the parents before that meeting was held.

Summary and Conclusions - IEP Meeting

The district has provided ample evidence to show that a good faith effort was made to schedule an IEP Team meeting. The district first proposed an IEP Team meeting on September 18, 2024, well before such a meeting was requested by the student's father. The district followed up with the parents to find a mutually agreed-upon time for the meeting, but the parents subsequently withdrew their request for a meeting and declined the district's attempts to schedule such a meeting. Under these circumstances, a violation of special education statutes and regulations *is not substantiated* on this aspect of this issue.

Outdoor Exposure

Investigative Findings - Outdoor Exposure

The parents state that the principal told them that the student would never be in the hallway alone, but the student reported to them that she was left outside the building in the rain on November 4, 2024 until she was found by a teacher who brought her inside.

In response to the parents' expressed concerns, security camera footage from the date of the alleged incident was reviewed, and, according to the security supervisor for the district, the student was not seen outside of the building in the rain. The building principal notified the student's father of this finding via email on November 8, 2024.

The student's father wrote back to the building principal on November 8, with a series of follow-up questions to which the building principal responded on November 12, 2024. That exchange follows:

The student's father asks: *"Are you able to tell me which areas were checked by both security supervisors? Was it the playground, recess doors, or hallways leading up to either of those around lunch time? Of course give or take a little after lunch."*

The building principal responds: *"I had them check the recess doors leading out to the playground, and the playground itself because those are the locations you mentioned."*

Regarding the alleged incident of November 4, 2024, the classroom teacher gave the following written statement which was provided to the investigator on November 20, 2024:

"It has come to my attention that there is a misunderstanding about an incident on November 4, 2024, regarding a student being taken outside in the rain and left. I want to address this matter directly and assure you that this did not occur. On that date[, not]only my class but the entire school had indoor recess due to the rainy weather. The students [sic] in question spent the recess time playing with Barbies inside the classroom, along with her peers. I am responsible for supervising my entire class of 23 students and if we had gone outside, I would have had to take all of them with me. However, since it was raining, we remained indoors the entire time. As our policy prioritizes student safety and comfort[, w]e do not go outside for recess when it is raining, I hope this clears up any confusion."

Summary and Conclusions - Outdoor Exposure

The district responded to the parents' expressed concerns by conducting an internal investigation and studying security footage from the day of the alleged incident. Evidence provided by the district documents responsiveness to the parents' concerns. A violation of special education statutes and regulations *is not substantiated* on this aspect of this issue.

Other Concerns

Investigative Findings and Conclusions - Other Concerns

At 8:36 m on Wednesday, September 25, 2024, the student's mother sent an email to the building principal writing:

"My Husband and I would like to schedule a meeting for the concerns we are having to hopefully resolve the issues. It's for our daughter [in the Kindergarten] class. What days/time work for you? I'm normally free after 330pm."

The building principal responded by email at 8:50 am on September 25, 2024 writing:

"I am available Friday after 3:30. Does that work for you guys?"

The meeting with the parents was held on September 27, 2024.

On October 28, 2024, the social worker sent an email to the parents, writing:

"We would like to schedule a phone conference with both of you to discuss what was missed during parent/teacher conferences. [The classroom teacher] has her plan time around 3 pm so we would like to meet around then. Please let me know dates that would work for you. If you would rather do it in person, we can do that too!"

On November 4, 2024, the student's father and members of the school staff exchanged a series of emails. The student's father first wrote:

"[We] are available to have a parent teacher conference on Wednesday the 6th at 3:30. To be able to make it work, we would need to do it by phone. Please let us know if this time works for you all."

The social worker confirmed the time and asked for a phone number to call at the designated time. The student's father responded with the number and wrote:

"Also, to confirm, this is only a parent-teacher conference, and not an IEP meeting, correct? Lastly, if I can just get a list of staff that will be on the call."

After receiving a list of the meeting participants from the social worker, the student's father wrote:

"Are the people listed here involved in all parent-teacher conferences? I'm just a little confused as to why we need campus support, a psychologist, a nurse, the principal and the IEP manager when this call is only regarding the school grades. Were the listed individuals [sic] also at the in-person parent-teacher conferences [sic] on Oct 15?"

The social worker responded:

"Yes, we have all of those supporting positions available for parent teacher conferences. We are including those staff members due to the emails and concerns that have come up this year. We want to make the best of the time you are willing to give us to ensure communication is effective in helping [the student] be successful."

The building principal added her comment to the exchange:

"I asked the team to sit in on the meeting for my benefit. I have been trying to keep up with the various emails and conversations between all of you, so this way if there are any questions or concerns that need attention, we can get immediate feedback. It helps me problem solve in a timely manner if I don't have to relay messages to everyone at different times. I hope this is ok with you guys."

The student's father replied;

"Thank you both for the reply. Respectfully, [addressing the building principal], all the issues we have been emailing about are in regards to her IEP, which at the point we have on hold, because nothing was being taken care of and we are now going through our options. Also, how come all the emails are being referred to you and not the normal parent/teacher communication relationship that could have fixed most all of the issues like we have expressed to you before in our meeting. You had a conversation with [the student's mother] last week about scheduling a whole team meeting and we will be reaching backout to you in order to schedule that. At this time we would like to have just a normal parent-teacher

conference about [the student's] grades. We would prefer this meeting to only be between us and [the classroom teacher]."

The building principal responded:

"Of course, you can hold a meeting with [the classroom teacher] for parent/teacher conference. Let me know when you would like to meet to address the IEP. Thank you."

At 10:07 am on November 5, 2024, the student's father sent an email to the building principal, writing:

"When you can, do you mind giving me a call to discuss an incident?"

The principal responded at 10:36 am that same date, writing:

"Yes, sir, I will call you in a few minutes. I am wrapping up a meeting."

At 10:41 am, the building principal sent an email to the student's father, writing:

"I just called and didn't get an answer. You can call me when you have a minute..."

At 4:17 pm on November 5, 2024, the building principal sent an email to the student's father, writing:

"I just tried calling you back again. I'll be here until about 5:00 if you would like to call me..."

In an email on November 8, 2024, the student's father posed a series of questions in an email response to a message from the building principal. The questions and the building principal's responses follow:

The student's father asks: *[C]an you tell me why [the student] is being sent to [the student's case manager's] office a lot? During the Halloween Party, she was sent to [the case manager] after we left and [the case manager] also brings her out to the bus at the end of the day. What exactly is she doing in there? We just didn't know and haven't been made aware of any classes she has in there. I know the Para...had mentioned during the party that she 'was not trained to handle' [the student], but [the case manager] is?*

The building principal responded: *"[The case manager] is the IEP manager for [the student] so she may service her at any time. She could have been filling in for the para because of an absence, checking progress, or collecting data for her reports."*

The student's father asks: *"A week or so ago, [the student] says [the classroom teacher] would not let her keep her jacket on during class and made her hang it up. Again yesterday the same thing happened. Is this normal? I'm just confused as to why [the student] wouldn't be allowed to keep her jacket on. The first time [the student] says she was 'shivering'."*

The building principal responded: *"[The classroom teacher] said she asks the students to take their jackets off when they go to PE because the students get hot in the gym. When they get hot, they take their jackets off in the gym and forget to bring the jackets back with them to class."*

The student's father writes: "Lastly, per our phone conversation about a boy taking [the student] to the bathroom on two occasions, bringing her to the office (which I witnessed) on at least one occasion, and Monday the boy continued to mess with [the student's] shirt. I went back through some notes and the name I have from the shirt incident is 'Amari' or 'Amar'?"

The building principal responds: "I could not verify who was messing he [sic] [the student's] shirt. There isn't a student in the class by that name. I visited with specials teachers and no one sends a boy to escort a girl to the bathroom. It is possible that a boy walked her to the office, but I couldn't verify which boy."

Summary and Conclusions - Other Concerns

Substantial evidence has been provided by the district to show timely responsiveness to parent concerns on an ongoing basis. A violation of special education statutes and regulations *is not substantiated*.

Issue Five

The district failed to properly document the reasons for the student's absence from school.

Position of the Parents

The parents assert that the student's absences due to illness on September 12 and October 14 and 15, 2024 was incorrectly coded as unexcused. They contend that the district did not timely respond to their repeated contacts with school staff in order to have the record corrected.

Position of the District

The district asserts that student absences are recorded through an automated system with some inherent delays in updating after receipt of excusal notes from parents. The district contends that attendance records show absences on the three dates in question as excused.

Applicable Statutes and Regulations

Procedures regarding the recording of daily attendance are not covered by special education laws. Districts establish policies and procedures regarding the reporting of absences. Accordingly, the handbook for the student's school states:

"Good attendance is critical for steady academic growth, and, by law, children are required to attend school.

Please call the school office any time your child will not be in school.

If you are asked to leave a voice mail, please give the following information:

- *Name of the parent or guardian calling*
- *Student's name and grade*

- *Date(s) of absence*
- *Reason for absence; please be specific*

Absences will only be excused for the following reasons:

- *Illness*
- *Medical or dental appointment*
- *A family death or serious illness*
- *Court/judicial appearance*
- *Religious observations*
- *School-sponsored activities"*

Investigative Findings and Conclusions

While absences may have initially been coded as "unexcused" as reported by the parents, attendance records provided by the district on November 20, 2024 show the student absent on all three days cited by the parents due to "Medical/Dental" reasons. Records show that there was a "Dr. Note on file."

The student's current April 16, 2024 IEP does not require the district to address this student's absences differently than it would the absence of any other student in the district. A violation of special education statutes and regulations *is not substantiated* on this issue.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations on an issue presented in this complaint.

Specifically, a violation was substantiated with regard to 34 C.F.R. 300.101 and 34 C.F.R. 300.17 which require the provision of a FAPE through conformity with a student's IEP. In this case, the district failed to implement two accommodations:

- providing the parents with a communication book which included a daily record of services provided to the student and a log of her nutritional intake; and
- making a pulse oximeter available in the classroom and timely training staff to use the device.

Therefore, USD #259 is directed to take the following actions:

1. Submit to Special Education and Title Services (SETS) by no later than January 6, 2025, a written statement of assurance stating that it will comply with 34 C.F.R. 300.101 and 34 C.F.R. 300.17 by providing special education services in conformity with the student's IEP.
2. By no later than January 7, 2025, USD #259 shall
 - a. Place a pulse oximeter in the student's general education classroom (unless the student's IEP has been revised to no longer include this accommodation).
 - b. Conduct an IEP team meeting for the purpose of clarifying the content and structure of the communication "book."

- c. Provide the parents with prior written notice of any proposed changes to the student's IEP with regard to her accommodations and request parental consent for any material change (25%) in services.
- d. The district shall provide SETS a copy of the revised IEP within 5 business days of the day the proposed IEP is presented to the parent and shall at that same time provide SETS with a copy of the associated prior written notice form.

Further, USD #259 shall, within 20 calendar days of the date of this report, submit to SETS one of the following:

- a) A statement verifying acceptance of the corrective action or actions specified in this report;
- b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
- c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f).



Diana Durkin

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)