

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #458
ON DECEMBER 17, 2024

DATE OF REPORT: JANUARY 14, 2025

This report is in response to a complaint filed with our office on behalf of a student, -----, by their parent, -----. In the remainder of the report, the student will be referred to as “the Student” and the parent as “the Parent.”

The Complaint is against USD # 458, Tonganoxie/Basehor-Linwood Public Schools. In the remainder of the report, the “School,” the “District,” and the “local education agency (LEA)” shall refer to USD #458.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint. A complaint is considered to be filed on the date it is delivered to both the KSDE and the District. In this case, the KSDE initially received the complaint on December 17, 2024, and the 30-day timeline ended on January 16, 2025.

Allegations

The following issues will be investigated:

ISSUE ONE: Whether USD #458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the Parent the opportunity to participate in IEP meetings. K.A.R. 91-40-17 (a).

ISSUE TWO: Whether USD # 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to annually review the Student’s IEP. K.A.R. 91-40-16.

ISSUE THREE: Whether USD # 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the Student with an Augmentative and Alternative Communication (AAC) device, the least restrictive environment, and a free appropriate public education (FAPE). K.A.R. 91-40-1.(II); K.S.A. 72-3420; K.A.R. 91-40-1(z).

Investigation of Complaint

The Complaint Investigator interviewed the Parent by video call on January 8, 2024, and the Director of Special Education for the Tonganoxie/Basehor-Linwood Special Education Cooperative on January 9, 2024.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the Parent and the District. Although additional documentation was provided and reviewed, the following materials were used as the basis of the findings and conclusions of the investigation:

1. Email, re: no subject, 05/09 no year
2. Email, re: no subject, 05/14-05/21
3. Notice of Meeting, 05/07/24
4. Email, re: [Student], 05/08-05/17/24
5. Insurance Claim, 07/08-07/13/24
6. Individualized Education Program, Amended, 04/10/24
7. Notice of Meeting, 10/11/24
8. Meeting Notes, 11/19/21 [sic]
9. Prior Written Notice (PWN), 11/19/24
10. Request for Consent, 12/04/24
11. Notice of Meeting, 01/18/24
12. Notice of Meeting, 01/03/24
13. PWN, 01/24/24
14. Notice of Meeting, 03/03/24
15. Notice of Meeting, 03/28/24
16. Notice of Meeting, 04/01/24
17. Meeting Notes, 04/10/24
18. PWN, 04/15/24
19. Notice of Meeting, 05/09/24
20. Email, re: meeting tomorrow, 05/20-11/14/24
21. Notice of Meeting, 08/13/24
22. Individualized Education Program (IEP), 08/15/24
23. Assistive Technology Help Form, no date
24. Parent Consent Form, 08/22/24
25. PWN, 08/15/24
26. Meeting Notes, 08/15/24
27. IEP, Amended, 09/26/24
28. PWN, 09/25/24
29. IEP Amendment Signature Panel, 09/25-09/26/34
30. IEP, Amended, 10/02/24

Additional documents, statutes, and administrative regulations were reviewed during this investigation:

1. Kansas Special Education Process Handbook
2. K.S.A. 72-3416
3. District Website

Background Information

This investigation involved a second-grade student who attends an elementary school within the same special education cooperative but outside of their resident district in USD #458. The Student is currently receiving special education or related services as a child with a disability per the Individuals with Disabilities Education Act (IDEA) due to Autism, speech and language delay, and a hearing loss.

The current complaint coincides with a period of interaction between the Parent, the District, and the Kansas Department of Education. Multiple complaints filed by the Parent during this timeframe resulted in scheduled mediations and a Due Process Hearing convened on September 16, 2024. While the outcomes of those prior complaints hold no direct relevance to the present complaint, it is important to note the overlap in the timeframe.

Findings of the Investigation

The following findings are based on a review of documentation and interviews with the Parent and the Director of Special Education for the District.

1. A May 1, 2023 IEP indicated the Parent's participation in the IEP development and included information and documentation regarding the Student's strengths and needs in the areas of fine motor, gross motor, language, reading, math, sensory, and social/emotional. Placement considerations were the following:
 - a. The Projected Date of the Annual Review was April 30, 2024.
 - b. The Special Considerations Section indicated that the Student did not require Assistive Technology devices and/or services and was not considered deaf or hearing impaired.
 - c. A continuum of six different placements was considered.
 - d. Placement Selected:
 - i. "Special Education Direct Services in a General Education Classroom in a[n] Elementary or Secondary Building"; and
 - ii. "Special Education Classroom in General Education Elementary or Secondary Building."
 - e. Placement decisions regarding possible harmful effects were discussed.
 - f. Placement Considerations:
 - i. "Is the nature or severity of the student's disability such that placement in the regular education environment with supplementary aids and services cannot be achieved satisfactorily?"
 1. Marked "Yes:" "The team determined that [the Student] would most greatly benefit from placement within a specialized program that would meet [their] social/behavioral needs more directly than the regular education environment with supplementary aids and services only. [The Student] will be away from [their] non-

- disabled peers during written expression, small group reading, social studies, science, [and] whole group math.”
- ii. “Is the student’s placement as close as possible to the student’s home and/or in the school he/she would attend if nondisabled ... ?”
1. Marked “No.” “The team determined that [the Student’s] least restrictive environment was within a specialized program housed at a school that is not [the Student’s] neighborhood school.” (D370-D388)
2. A January 3, 2024 Notice of Meeting indicated a meeting to “address parent concerns” was scheduled for January 12, 2024. (D70-D71)
3. A January 18, 2024 Notice of Meeting indicated a meeting to “discuss parent concerns” was scheduled for January 24, 2024 and was signed by the Parent on January 18, 2024. (D68-D69)
4. Meeting Notes and a PWN from January 24, 2024 indicated a change in the IEP. The Student met two communication goals, and two new goals were added. All other IEP services and goals remained the same. The meeting notes included a conversation regarding missed IEP services due to inconsistent staffing and options for providing compensatory services. (D74-D79, D526-D528)
5. In an interview, the Director of Special Education shared that in January 2024, the Student had achieved some of their speech goals, so new goals were set. However, these new goals were mistakenly left out of the Student’s IEP, leading to confusion. Progress Reports from March 2024 showed data from the old goals, even though the Student was working on the new ones. According to the Director of Special Education, this error was acknowledged, and the reports were re-issued with the correct goals. The Director of Special Education described that the Student “made progress in speech despite their hearing loss.” (Director of Special Education Interview, P12, 32:42)
6. In an interview, the Director of Special Education indicated that “... the District received the audiogram on February 1, 2024. The information was considered and addressed in the IEP meeting ... on April 10th” (Director of Special Education Interview, P4, 11:37)
7. A March 3, 2024 Notice of Meeting indicated a meeting to “[d]iscuss possible [IEP] changes” and “[c]onduct an annual [IEP] review” and was scheduled for March 29, 2024. (D80-D82)
8. The Progress Report for the IEP year May 1, 2023 through March 13, 2024 indicated that the Student was making progress in five of ten goal areas and had met their goals in the remaining five areas. (D356-D362)
9. On March 22, 2024, the Special Education Teacher emailed the Parent, “I just wanted to follow-up [sic] on our conversation from this morning. I talked with the team and they all were in agreement that we can move the annual IEP to April and proceed with the BIP meeting this Friday, March 29th. I will chat more with everyone

- to see what dates in April work best for that annual IEP meeting. I will send you a couple of dates to see what works best with your schedule.” (D390)
10. On March 26, 2024, the Parent completed the Notice of Parent’s Request for Special Education Due Process Hearing. (D490) The District received the Notice on the same day and indicated that a “resolution session was convened within 15 days of the receipt of request for due process.” April 10, 2024 was listed as the “date of the resolution session.” The District and Parents signed and dated the document and marked, “We agree to use the mediation process (This will retain the 30[-]day resolution period).” (D493)
 11. On March 28, 2024, the School Psychologist emailed the IEP Team and the Parent and attached documents related to a Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP) for a March 29, 2024 IEP meeting. The Parent responded on the same day, “I am reaching out to address some confusion we as parents have encountered regarding the recent email correspondence with [the Special Education Teacher] and [the School Psychologist] regarding [the Student’s] IEP meeting.” The Parent wrote, “We kindly request that the team and [the District], [Director of Special Education] provide clarification, verification, and confirmation in a transparent and easily understandable manner, with detailed sources, to explain why [the District] is requesting [the Parents] to attend an official IEP meeting in light of this information.” The Special Education Teacher apologized for the confusion and wrote, “Tomorrow, Friday March 29th we will conduct a BIP meeting to discuss the FBA and BIP. We will not be holding an annual review of [the Student’s] IEP. However, we will be able to schedule a date for the annual review at that meeting.” (D389-D390)

The Director of Special Education replied on March 28, 2024 to explain the purpose of the scheduled IEP meeting and how it correlated with the complaint investigation results, including certain required timelines and actions. The Director of Special Education mentioned a required team meeting due by April 16, 2024 for a different issue and listed options for the Parent. The Director of Special Education wrote, “Since the annual review is due before May 1, 2024 you can choose whether to schedule two separate meetings or add this to the agenda while conducting the annual review”.

The Director of Special Education listed attendees for the March 29, 2024 IEP meeting to discuss the FBA and BIP and clarified that the original meeting notice was sent on March 3, 2024. The Director of Special Education wrote, “There could be confusion regarding the phrase ‘IEP meeting.’ On the Notice of Meeting there is a list of several options as to why the IEP team can convene. Based on the Notice that was sent on 3/3/24 the options selected were to ‘Discuss possible changes in your child’s [IEP]; and ‘Conduct an annual review of your child’s [IEP].’ My understanding, based on the email correspondence you attached, is that there was a request to

only review the FBA and BIP and to move the annual review to April. So, the IEP team can meet if you are agreeable to changing the purpose of the meeting to 'Discuss possible changes in your child's [IEP]' and 'Other: Discuss results from [FBA] and review [BIP],' and that the school invited additional people to the meeting. The revised Notice is attached to this email." (D389-D391)

12. On March 28, 2024, the Director of Special Education sent a follow-up email and said, "There has been a lot of information to take in this week. If you would prefer, we are happy to reschedule. The only issue is that the timeline for the FBA is 60 days, and if we reschedule we would have to extend the evaluation timeline, which requires your consent. Please let us know if you would like to reschedule"

The Parent replied, "As you mentioned, we have already rescheduled the meeting that was initially set for March 29, 2024, and the IEP team for [the Student] has agreed to this rescheduling for a later date in April 2024. However, I would like to seek clarification on your recent email. It seems to imply that there is a plan for an IEP meeting tomorrow without prior notice. Could you please provide an explanation for this and clarify the circumstances surrounding the proposed meeting? ... The tone of your email has raised concerns that you, [the Director of Special Education], [the School], and [the District], are pressuring us into complying with demands that could infringe upon our rights." (D392)

13. A March 28, 2024 Notice of Meeting described a meeting to "[d]iscuss possible [IEP] changes" and to "[d]iscuss results from Functional Behavior Assessment [FBA] and review Behavior Intervention Plan [BIP]" and was scheduled for March 29, 2024. (D83-D85)
14. On March 29, 2024, email exchanges occurred between the Parent and the Director of Special Education regarding an IEP meeting scheduled for that day. The Director of Special Education explained that the Parent received a meeting notice on March 3, 2024 to review the FBA and BIP information. The Director of Special Education wrote, "My intent is to clarify that today is indeed an IEP meeting, although not an annual review since we are discussing changes to [the Student's] IEP (the BIP is part of the IEP)." They asked the Parent if they wanted to reschedule or proceed with the scheduled meeting.

The Parent acknowledged receipt of the Notice of Meeting on March 3, 2024, and added that they had also received confirmation on March 22, 2024 that the IEP Team agreed to reschedule the IEP meeting in April 2024. Their understanding was that the March 29, 2024 meeting was to "discuss data and answer questions about data, that today was NOT [emphasis added] an IEP meeting." They added, "Your email responses have made us feel that you are compelling us and the IEP team to meet and deliberately schedule an IEP MEETING for TODAY [emphasis added] while only providing [Notice of Meeting] yesterday 3/27/2024. Because we fear direct reprisal against us as parents, [the Student], and members of the IEP team, pending

future interactions and their outcomes with [the District] we will [emphasis added] be at [the School] today at 1 pm. ... Your conduct for us is a blatant retaliation for the [Agency] report."

The Director of Special Education replied, "My intent is to provide clear, direct communication so that everyone can make decisions that are in [the Student's] best interest. Given that there is clear confusion about the IEP meeting today, I am cancelling [sic] the meeting scheduled for 1:00 [p.m.] today. We will reschedule the meeting prior to April 15th, as required by the timeline given. In addition, we will have legal counsel at our next meeting. You have the right to bring guests as well. We will be in touch to set up the next meeting." (D393-D394)

15. In a March 29, 2024 email exchange, the Parent asked the Special Education Teacher, "In light of [the Director of Special Education] cancelling [sic] the IEP meeting, would you still be willing to meet with me today at 1 pm to discuss methodology in regards to [the Student] as previously agreed upon?" The Special Education Teacher replied, "We are not able to meet outside of the time that we have scheduled for our team meetings. Transparency fosters trust and ensures that everyone is hearing the same message and on the same page to do what is best for [the Student]." (D531)
16. The Parent described in an interview that the March 29, 2024 meeting "was to go over the behavioral, it was an FBA that was due on [the Student] and we were just going to go over that data and hold off on the IEP meeting. We were currently doing [a] mediation situation. We were going through the formal complaint process, attempting to do mediation, and so we were holding off." (Parent Interview, P7, 18:14)
17. A March 29, 2024 email from the Director of Special Education to the Parent listed two dates in April 2024 to schedule the next IEP meeting. They also notified the Parent of the duration and location of the meeting and a proposed agenda. It was noted that once the Parent picked a date, a Notice of Meeting would be sent. (D363)
18. An April 1, 2024 Notice of Meeting indicated a meeting to "conduct an annual review" of the IEP and "[d]iscuss results from [FBA] and review [BIP]" was scheduled for April 10, 2024 and signed by the Parent on April 2, 2024. (D86-D87)
19. April 10, 2024 IEP amendments showed an updated present levels statement in the area of health to reflect the unilateral hearing loss and the addition of support for school personnel via consultation with the DHH Teacher for 15 minutes, one day every 4th week. The accommodations of minimizing background noise, using closed captioning, preferential seating, and getting the Student's attention before speaking to them were added to the IEP. (P17-P36)
20. April 10, 2024 Meeting Notes indicated the Parent's participation in the meeting and included the following topics of discussion:
 - a. Reviewing the PWN section of the Special Education Process Handbook.
 - b. Reviewing the due process resolution process and mediation.

- c. Reviewing the FBA and BIP.
 - d. A new diagnosis of hearing impairment and the determination to amend the current IEP to add related services and accommodations.
 - e. "Determine whether [the Student] was denied educational benefit because of the disruption in education services and whether compensatory education is needed to make up for the denial including addressing any skills that [may] have been lost." The Team agreed to discuss this topic during mediation.
 - f. "[The Parent] did not want to review the draft IEP at this time. The team decided to wait to review the draft IEP until after a mediation session." (D88-D89)
21. In an interview, the Director of Special Education indicated that there was no discussion about an Augmentative and Alternative Communication (AAC) device at the April 10, 2024 meeting. (Director of Special Education Interview, P3, 7:21)
22. An April 15, 2024 PWN for the April 10, 2024 IEP meeting indicated:
- a. "Addition of the [FBA] and [BIP]."
 - b. Updated present levels of performance in the areas of health to address the recent hearing loss diagnosis.
 - c. An agreement to amend the IEP to reflect the above services and accommodations rather than conducting an annual review.
 - d. The Team's discussion regarding the denial of educational benefits because of a disruption in services and possible compensatory services.
 - e. "The team proposed determining if the nature or severity of [the Student's] disability is such that placement in the regular education environment with supplementary aids and services cannot be achieved satisfactorily." It was noted that a draft IEP documenting that the Team addressed this prompt was provided to the Parent, but the Team did not continue with the annual review of the draft IEP per the Parent's request.
 - f. The Parent gave consent for the changes and signed the PWN on April 18, 2024. (D90-D95)
23. "Clinical Documentation" from the Hospital, dated May 6, 2024, described the Student's hearing testing, diagnosis, summary, findings, and recommendations. It stated, "Due to the severity of the hearing loss, traditional amplification is no longer an appropriate recommendation as the device would not provide enough power to properly aid [the Student's] loss." It was noted that the Student had "normal hearing" in one ear, which indicated "adequate auditory access for speech-language development." The report mentioned, "We reviewed communication goals, and [the Parent] understands that [the Student] may benefit from exploring multi-modal communication – especially if speech development is not progressing or is difficult to understand. [The Parent] understands that [American Sign Language] ASL or augmentative alternative communication (AAC) devices could be incorporated should [the Student] show improved communications using these resources."

- Relevant recommendations for the School/District were to “continue with therapy/school support per primary therapist” and “consider multi-modal communication strategies to increase access to language.” (D365-D367)
24. A May 7, 2024 Notice of Meeting indicated a meeting to conduct an annual IEP review and discuss possible IEP changes was scheduled for May 13, 2024. (P9)
 25. A May 8, 2024 email indicated the Parent sent the Hearing Clinical Documentation report to the Deaf and Hard of Hearing (DHH) Teacher. (P14) The Parent confirmed in an interview that they shared the May 6, 2024 Hearing report to the Deaf and Hard of Hearing Teacher and scheduled an IEP meeting for May 13, 2024. That meeting was later rescheduled for May 21, 2024. (Parent Interview, P3, 8:12)
 26. A May 9, 2024 email from the School Psychologist notified the IEP Team that the annual IEP meeting was being rescheduled from May 13, 2024 to May 21, 2024 in order to have time to receive an additional audiology report for the Student. A Notice of Meeting documented this change. (D110-D111, P5)
 27. On May 13, 2024, the Mediator emailed the District and wrote that the Parent communicated to the Mediator that “they would like to end post-mediation discussions and move forward with their due process and formal complaints.” (D503)
 28. On May 14, 2024, the Parent confirmed in an email to the Special Education Teacher that the Student would be participating in Applied Behavior Analysis (ABA) instead of Extended School Year (ESY) during the summer. (P8)
 29. On May 17, 2024, the Deaf and Hard of Hearing Teacher emailed the Parent to check if the Parent had received “any other medical records this week.” The Parent replied the same day and shared, “We have an appointment next Friday to review [the Student’s] results and information.” (P15)
 30. In a May 20, 2024 email, the Director of Special Education stated, “We are canceling the IEP meeting scheduled for tomorrow for [the Student]. As a reminder, the purpose of tomorrow’s meeting was to conduct the annual review for [the Student] which includes the most recent health information, specifically, [their] hearing loss.” It then listed reasons for canceling:
 - a. “On April 10th we met to have the annual review, but this did not occur because both parties agreed to wait until after mediation was complete. Since we did not reach resolution via mediation, we are at the same point as at the April 10th meeting.”
 - b. “[The Student] has had some additional appointments regarding [their] hearing loss. When I spoke with [the DHH Teacher] last week [they] did not have the most recent report from [the Hospital]. The team will use this report to consider how to address the need in the IEP. If the report is available, please send it [the DHH Teacher’s] way so that it can be reviewed and we can reschedule the annual review, which includes addressing [the Student’s] hearing loss.”

"If you would like to meet tomorrow to attempt to come to a resolution, please let me know. The meeting tomorrow would be an opportunity to resolve any concerns that you have documented." (D112)

The Parent responded to the Director of Special Education on May 20, 2024 stating that they had sent [the DHH Teacher] the Student's audiology report, including the diagnosis and results. They added, "We seem to be a bit confused about the request for [the Student's] medical results from [their] MRI and EKG to address [their] hearing loss. ... Could you kindly clarify if these medical records are necessary for the district to provide services for [the Student]? Additionally, we are interested in knowing which qualified team member will be reviewing [the Student's] personal medical records. Could you please share the policy or law that outlines why [the District] requires access to [the Student's] private medical records for [them] to receive [Free Appropriate Public Education] FAPE?"

The Director of Special Education replied, "You are not required to provide any medical reports for the team. If you choose to share, the IEP team is required to consider the information in making decisions for [the Student]. The records that I was referencing were in regard to the hearing loss specifically and the possibility of the hearing loss being degenerative." The Director of Special Education shared that the DHH Teacher would interpret the medical information regarding the hearing loss.

The Parent responded that moving forward, they would no longer be sharing additional medical documentation because they had already provided all necessary details, such as "test results, diagnosis, and treatment options." They also stated, "The recent cancellation of [the Student's] IEP meeting after suggesting mediation and resolution has raised concerns for us. By choosing to cancel the meeting and making comments implying a need for resolution without elaboration, it has left us unsure of the direction you intend to take. We firmly believe that there is already substantial medical documentation available to facilitate the implementation of appropriate accommodations and to allow the team to assess the recent results objectively." The Parent added that they believed the Student was being targeted and that their rights were being infringed upon. (D112-D114)

31. In an interview, the Director of Special Education indicated that one of the reasons the May 21, 2024 IEP meeting was canceled was because "... we were in due process at that time and we were also in mediation. We had met on ... April 10th to have an IEP meeting, but it ended up being an amendment [meeting] where we discussed the most recent results that we had regarding [the Student's] hearing loss ... and made some changes to [the Student's] IEP." The Director of Special

Education indicated that at the April 10, 2024 meeting, “[The Parent] said it was degenerative hearing loss. [The Parent] states that, and so we were like ... well, we will consider any of that medical information once we have it, because that’s what we do. Any medical information, we take it, we consider it and how that’s going to affect programming for the Student moving forward.” According to the Director of Special Education, “We didn’t receive any additional information regarding [the Student’s] hearing loss specifically. We didn’t receive anything related to it being degenerative, which could potentially impact how we programmed for [the Student] which was alluded to many times in the 4/10/24 IEP meeting.”

The Director of Special Education described additional reasons they canceled the May 21, 2024 IEP meeting and referred to an email they sent the Parent detailing the reasons. The Director of Special Education said, “The first one was because on April 10th, we agreed to go to mediation because there was [sic] some trust issues. And so we said, okay, let’s not do the annual review. Let’s go through mediation, get some resolution, and then we can move forward from there. Well, the mediation ended without resolution, so we were in the same place there. And then, basically, the second reason was ... we were going to get more information regarding that degenerative hearing loss, and we did not receive that. Therefore, there was nothing to take action on. Yes, the annual review, but we couldn’t have the annual review because [the Parent] doesn’t trust us. ... So now we’re in due process. So we did not move forward with an annual review at that time.” (Director of Special Education Interview, P1, 1:05)

32. In an interview, the Parent indicated that the Student’s May 13, 2024 IEP meeting was rescheduled for staffing scheduling issues. That meeting was rescheduled for May 21, 2024 and then canceled by the Director of Special Education, and, according to the Parent, “... [The Student’s] IEP went noncompliant for four months over the summer and the end of the school year, partially beginning of the new school year. And we were not allowed to have that meeting because, according to the director, we did not meet a resolution in mediation and [the Director] wanted access to ... [the Student’s] medical doctor.” (Parent Interview, P1, 1:18)
33. According to the Parent, the May 21, 2024 meeting “was an opportunity for my [Spouse] and I to bring a new diagnosis. ... [The Student] was diagnosed with unilateral deafness, and that was an opportunity for us to bring that to the meeting so that we could get accommodations and set up any type of support systems for ... [the Student]. [The Student] struggles with autism, ADHD, unilateral deafness, and vision issues. ... And so this would give us an opportunity to kind of participate and help [the Student], and unfortunately, we were not provided that. And so we had to go through other alternatives throughout the summer and throughout ... the end of the school year for assistance for children with deaf-hard of hearing. We had to go through ... our hospital to learn sign language. We had to go through our insurance to help us purchase an AAC device. We had to get classes on how to help [the

- Student] in public school, whether or not it was an appropriate setting for [the Student] so that when the Director allowed us to have a meeting, we could ask these questions. We could formulate a plan with the team. Unfortunately, we were not provided that opportunity ... until the beginning of the school year.” (Parent Interview, P1, 2:15) The Parent believed, “... When we were denied the meeting and our doctor on the prognosis said that [the Student] needed an AAC device because of [the Student’s] communication issues ... that would be the best outcome. And because we weren’t allowed to go through [the School], we had to go through our insurance, we had to go through a private speech therapist to get an assessment done so that [the Private Speech Therapist] could send it to our insurance so that we could get approved ... We had to send in all that paperwork so that [the Student] could get an AAC device” (Parent Interview, P4, 9:55)
34. Regarding the Student’s least restrictive environment, the Parent described in an interview that “there were no concerns because we didn’t know to have any concerns. We didn’t know what the options were. [The Student’s] in a SLC room, a structural learning classroom, and [the Student] goes to gen[eral] ed[ucation] class part of the time. But for [the Student’s] diagnosis, we weren’t asking for anything other than change of school, change of replacement [sic], but [the Student] was restricted in the fact that nothing was done until September, and [the Student] had this diagnosis and we had to reach out to [the] School for the Deaf to have [the Student] evaluated” (Parent Interview, P5, 14:10)
35. The District Calendar listed the last day of school for the 2023-2024 school year as May 24, 2024. The District Calendar listed the first day of school for the 2024-2025 school year as August 13, 2024. (District Website)
36. The Parent filed an insurance claim on behalf of the Student on July 8, 2024 that was processed on July 13, 2024. The Claim Details indicated that the Insurance company paid \$3,746.25 to a company and that no money was paid to the Parent. The Claim Details section does not describe the specifics of the request. (P16)
37. The Director of Special Education shared in an interview that the May 21, 2024 IEP meeting was not rescheduled until August 15, 2024, “In August, it was scheduled ... our school year ended at the end of the year in May. People were [off] duty and then we scheduled it in August. Even though Due Process was still in play, we did not come to mediation. We wanted to meet together to try to come to [a] consensus on items, and we were able to successfully do that.” (Director of Special Education Interview, P3, 7:29) The Director of Special indicated that they did not receive any additional documentation or additional diagnoses for the Student between May 20, 2024 and August 15, 2024. (Director of Special Education Interview, P3, 8:40)
38. The Director of Special Education said in an interview, “... We had been advised from [the State] Department of Education that because we’re in Due Process, that actually in the timeline for [the] IEP, it’s on pause, so you’re not in violation of not having the IEP meeting.” The Director of Special Education shared, “Now we’re in

Due Process, and that was not scheduled until September 16, [2024]. So, I guess in my mind ... we're at a standstill right now Mediation, we could not come to consensus. I'm not sure what we're going to accomplish in an annual review because we're in the very same place that we ended when we tried to have the annual review before. But in the meantime, now [the Parent's] asking for an annual review. And so we did acquiesce. ... So we did have an IEP review ... on 8/15, which moved us into the new school year." (Director of Special Education Interview, P9, 23:23)

39. An August 13, 2024 Notice of Meeting indicated that a meeting to review the IEP and discuss possible changes was scheduled for August 15, 2024. It was signed by the Parent indicating their planned attendance and willingness to waive the 10-day notice on August 15, 2024. (D138-D139)
40. The August 15, 2024 IEP included Parent concerns, current performance in language, fine motor, reading, math, social/emotional, independence, challenging behavior, sensory, adaptive behavior, and a hearing update.
 - a. The Sign Language section described, "The IEP team has identified the following situations where sign language support in the related service and/or classroom settings could be utilized in an effort to reinforce [the Student's] understanding: Signing wh- questions, signing targeted content vocabulary (such as 'all together' in the area of math), signing classroom routines & directions (sit down, stand up, line up, open your book, etc). Additionally, sign language may assist [the Student] if [the Student] is dysregulated by providing a visual mode of communication instead of bombarding [the Student] with verbal requests. [The Student] may also be more able to sign "help" rather than verbalize it if [the Student] is escalated."
 - b. The Special Considerations section described that the Student required Assistive Technology devices and/or services and had communication needs that were addressed in the IEP. The Student was deaf or hearing impaired, and the IEP team has considered the student's language and communication needs, opportunities for direct communication with peers and professionals in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode in the development of the IEP."
 - c. Baselines, Goals, and Benchmarks/Objectives were listed.
 - d. The Related Services listed included Adapted PE, Attendant Care, OT, OT consultation, and Special Education Transportation.
 - e. Special Education Services, including Speech/Language Therapy and "specials," were listed.
 - f. The Student's Extent of Participation in Regular Education indicated, "... the student will not participate 100% of the time with non-disabled peers in the regular education environment. The regular education environment includes

all academic instruction as well as meals, recess, assemblies, field trips, etc. [The Student] will not participate with [their] non-disabled peers when [the Student] is receiving special education services in the special education setting. [The Student] will be away from [their] non-disabled peers during written expression, small group reading, social studies, science, whole group math." The Student will participate in regular physical education and will have an equal opportunity to participate in extracurricular activities offered.

- g. The following Placement Considerations and Decisions were listed:
 - i. "Alternative School";
 - ii. "Regular class environment with supplementary aids and services";
 - iii. Special Education Direct Services in a General Education Classroom in a[n] Elementary or Secondary Building";
 - iv. "Outside regular class 21-60% of time";
 - v. "Outside regular class more than 60% of time"; and
 - vi. "Special Education Classroom in General Education Elementary or Secondary Building."
- h. Placement Selected:
 - i. "Special Education Direct Services in a General Education Classroom in a[n] Elementary or Secondary Building"; and
 - ii. "Special Education Classroom in General Education Elementary or Secondary Building."
- i. Placement decisions regarding possible harmful effects.
- j. Placement Considerations:
 - i. "Is the nature or severity of the student's disability such that placement in the regular education environment with supplementary aids and services cannot be achieved satisfactorily?"
 - 1. Marked Yes: "The team determined that [the Student] would most greatly benefit from [a] placement within a specialized program that would meet [their] social/behavioral needs more directly than the regular education environment with supplementary aids and services only. [The Student] will be away from [their] non-disabled peers during written expression, small group reading, social studies, science, [and] whole group math."
 - ii. "Is the student's placement as close as possible to the student's home and/or in the school he/she would attend if nondisabled ... ?"
 - 1. Marked No: "The team determined that [the Student's] least restrictive environment was within a specialized program housed at a school that is not [the Student's] neighborhood school."
(D158)
- k. ESY was considered, and services were described.
- l. Program Modifications, Accommodations, and Supplementary Aids and Services included access to alternative writing tools, access to a sentence

strip, access to sensory tools, access to visual schedules, alternative seating, minimized background noise, closed captioning, frequent sensory/movement breaks, and optional homework. Additionally, the Teacher for the Deaf will share the ASL signs for certain vocabulary words with the IEP team, and the Student's classroom teacher will use the classroom sound system. The Student will receive assistance during writing tasks, and modeling will be provided during writing assignments. Also, preferential seating, sign language paired with visuals, and standing with scissors were listed. Teachers will repeat or rephrase comments and will secure the Student's attention before speaking to the Student.

- m. The Assistive Technology Access Help Form indicated a request to "initiate the use of a sound system in the classroom for [the Student]." According to the notes on the form, "The option of a sound system will assist with signal-to-noise ratio, and potentially improve [the Student's] ability to access language and learning." (D142-D168)
- 41. Meeting Notes from the August 15, 2024 meeting indicated that the IEP Team discussed various aspects of the Student's needs, including their academic performance and communication challenges. They reviewed the Student's strengths and weaknesses and noted the Student's difficulties with language at home. A key concern was determining the best way to support the Student's communication and education needs, "[The Parent] indicated that [the Student] has a personal communication device, but at this time the focus is ASL instruction. [The Parent] indicated that [the Student] is not using the device at this time. The Team determined that [the Student] does not require an assistive technology device or services." Additionally, the Team discussed the need for goals focused on improving the Student's language skills, "the school team asked [the School for the Deaf] when it is appropriate to create goals that focus on sign vs. verbal language. [The School for the Deaf] shared that this is a unique situation and given that [the Student] has hearing in one ear it would be good to capitalize on [the Student's] hearing at this time." The Team reviewed accommodations and modifications and discussed the creation of visual supports like schedules. They also discussed the Student's most appropriate placement. (D174-D175)
- 42. An August 15, 2024 PWN described the actions proposed or refused:
 - a. "Attendant care in the general education setting for 50 minutes, 5 days per week."
 - b. "Special education services in the general education setting for 125 minutes, 5 days per week and 50 minutes, 5 days per week (for specials)."
 - c. "Consult Adaptive PE services for 20 minutes, 1 day every other week."
 - d. "Special education transportation services for 90 minutes, 5 days per week."
 - e. "Occupational therapy services in the special education setting for 20 minutes, 1 day per week, and indirect occupational therapy services for 30 minutes, 1 day every fourth week."

- f. "Speech[-]language services in a special education setting for 20 minutes, 2 days per week."
- g. "Supports for school personnel for deaf/hard of hearing teacher consultation for 15 minutes every 4th week."
- h. BIP.
- i. "[The Student] qualifies for Extended School Year [ESY] services."

The Explanation of the proposed action indicated that "Revisions to [the Student's] IEP are necessary to reflect [their] current level of academic performance, functioning, and update annual goals in order to continue to address [the Student's] individual needs. The Student was recently diagnosed with a hearing loss, and deaf/hard of hearing consultation was added to provide teachers and school staff with support and information regarding [the Student's] hearing loss, accommodations, and hearing technology."

The PWN indicated that "The team considered the input from the parent regarding the goals for verbal communication versus a focus only on sign language. The team determined that the goals are appropriate because [the Student] has hearing in one ear and it capitalizes on [the Student's] hearing and verbal communication skills at this time." The Parent signed their consent to the changes on August 22, 2024. (D169-D173)

- 43. A September 19, 2024 Notice of Meeting indicated a meeting to discuss possible IEP changes was scheduled for October 2, 2024, and was signed by the Parent on October 2, 2024. (D303-D304)
- 44. The IEP was amended on September 26, 2024 to include "[a]ccess to a speech[-]generating AAC device" in "all areas for the duration of the communication exchange." (D240-D262)
- 45. A September 25, 2024 IEP Amendment Between Annual IEP Meetings and a PWN indicated a proposed IEP amendment to "indicate a need for assistive technology and add an accommodation that outlines access to a speech[-]generating AAC device." The Parent signed their consent on September 26, 2024. (D265-D268, D270)
- 46. When asked if it was established at the September 25, 2024 meeting who would be providing the AAC device, the Director of Special Education described in an interview that while they were not at the September 25, 2024 meeting, the "communication device from home was going back and forth." (Director of Special Education Interview, P6, 15:58)
- 47. October 2, 2024 meeting notes indicated the Parent's participation in the meeting and supported the following amendments documented on the IEP and PWN:

- a. "Special Education Services" from October 2, 2024 through August 14, 2025 for "145 minutes 5 days per week" as "Special Ed[ucation] Direct Services in a Regular Ed[ucation] Classroom."
 - b. "Special Education Services" from October 2, 2024 through August 14, 2025 for "165 minutes 3 days per week" as "Special Ed[ucation] Direct Services outside Regular Ed[ucation] Classrooms, programs, other locations."
 - c. "Special Education Services" from October 2, 2024 through August 14, 2025 for "185 minutes 2 days per week" as "Special Ed[ucation] Direct Services outside Regular Ed[ucation] Classrooms, programs, other locations." (D294, D306-D307, D308-D312)
48. An October 11, 2024 Notice of Meeting indicated a meeting to "review progress with change in service minutes, discuss reevaluation assessment tools; [and] review progress reports from March 2024 per resolution complaint 25FC458-001" was scheduled for November 19, 2024. The Parent signed the notice on November 19, 2024. (D54-D55)
49. November 19, 2024 meeting notes indicated the Parent participated in the meeting. Discussed topics included:
 - a. Complaint resolution.
 - b. Previous phone communication that the Parent believed "tainted [their] relationship with [them] and the school." As a result, the Director of Special Education would "plan to not be at future meetings unless there is state complaint/due process or any litigious situation."
 - c. Addition of service time and accommodations to the IEP to support the Student with participation in science and social studies.
 - d. A Parent request to receive sign language videos once a month instead of once a week. (D57)
50. A November 19, 2024 PWN documented changes to the IEP for science and social studies support (alternating weeks) and was signed by the Parent on December 4, 2024. The IEP was amended to include the following:
 - a. Ending dates changed to November 19, 2024 for "Special Education Services" that were added October 2, 2024.
 - b. "Special Education Services" from November 20, 2024 through August 14, 2025 in the regular education classroom:
 - i. "125 minutes 5 days per week"; and
 - ii. "145 minutes 5 days every other week."
 - c. "Special Education Services" from November 20, 2024 through August 14, 2025 outside the regular education classroom:
 - i. "205 minutes 2 days every other week";
 - ii. "185 minutes 3 days every other week";
 - iii. "185 minutes 2 days every other week"; and
 - iv. "165 minutes 3 days every other week."

- d. An accommodation for the Student to attend social studies in the general education classroom when their class “is working on a project or other hands[-]on activity.” (D59-D62, D339-340, D346)
- 51. December 4, 2024, the Parent filed this complaint.
- 52. The Parent believed that the Student’s current placement is the least restrictive for the Student and shared that the Student is excelling. (Parent Interview, P6, 15:35)

Positions of the Parties, Applicable Regulations, and Conclusions

Issue One

Whether USD #458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), provided the Parent the opportunity to participate in IEP meetings. K.A.R. 91-40-17 (a).

According to K.A.R. 91-40-17 (a), Agencies (Districts) should take steps to ensure that one or more of the parents of an exceptional child are present at each IEP meeting or are afforded the opportunity to participate. Meetings should be scheduled at a mutually agreeable time and place, and parents should be provided information via written notice at least 10 days in advance of the meeting unless the 10-day notice is waived by the parent.

The Parent alleged that on May 20, 2024, the District canceled a meeting unless “certain conditions are met, including granting access to [the Student’s] medical records, signing a waiver for the school to communicate with the doctor, and reaching a resolution.” (Complaint, 12/17/24)

The District responded, “With respect to the issue of parent’s ability to participate in IEP meetings [the District] disagrees with this complaint and feels the ... parent had the opportunity to participate meaningfully in IEP meetings.” (District Response, no date, D570-D572)

The Parent participated in numerous IEP meetings throughout the year, including those held in January and April of 2024 during the 2023-24 school year and in August, September, October, and November of 2024 during the 2024-25 school year. In each instance, the Parent either received proper notice, requested the meeting themselves, consented to a shorter notice period, or expressed their intention to attend.

While the March 29th, 2024 meeting was initially postponed due to a need for clarification regarding its purpose, it was promptly rescheduled for April 10th, 2024. The Parent acknowledged the revised meeting date and waived the 10-day notice requirement. The May 21, 2024 meeting was postponed due to the District’s understanding of procedural timelines during the due process period.

Based on the foregoing, according to IDEA and Kansas special education regulations regarding Parent participation in IEP meetings, *the allegation is not substantiated*.

Issue Two

Whether USD # 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to annually review the Student's IEP. K.A.R. 91-40-16.

According to K.A.R. 91-40-16, agencies must ensure that a child with special needs has an IEP in effect at the beginning of each school year and in place before receiving any special education or related services. Those services in which written consent is required by law must be implemented no later than ten school days after consent is granted unless a reasonable justification for a delay can be shown. Each teacher and provider must be informed of their responsibilities related to implementing the IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

The Parent alleged that the Student's "annual IEP was non-compliant due to [the Director of Special Education], this would be the 2nd time that year." The Parent indicated that the Student would need "ASL, AAC, and ABA services according to the treatment prognosis for [the Student]" and alleged that they were denied opportunities "... to advocate for [the Student] to modify [their] IEP to include [the Student's] diagnosis which was the direct result of parents being forced to purchase an AAC device with the LAMP communication application." (Complaint, 12/17/24)

The District responded that "the school team began attempts to start the annual IEP review process in late March of 2024 before the required due date. The IEP meeting process was started with the first meeting on 4/10/24. At this time, both parties agreed to address some aspects of the IEP while pausing on other aspects of the IEP until parents and the school team completed mediation. As noted in the timeline, communication continued between parents and the school in an attempt to resolve disagreements including responding to state complaints and participating in due process. Mediation was conducted with [the Mediator] on May 1, 2024. There was no agreement reached on that day, but [the Mediator] continued to engage both parties via email and phone until the parents ended mediation on May 13, 2024, which moved the parties into due process proceedings. These were scheduled for September 16, 2024. The team met to complete the IEP review process on August 15, 2024. The Kansas State Department of Education was consulted regarding timelines for annual IEPs during due process and were advised that once due process is filed that these timelines are paused. Despite this, the team continued to try to work in good faith to resolve issues with the parents, including scheduling IEP meetings. Of note is that [the] annual IEP meeting occurred prior to the due process hearing." (District Response, undated, D571)

The Annual Review of the IEP was due by April 30, 2024. At the March 29, 2024 IEP meeting, the Team decided to conduct the annual review in April. At the April 10, 2024 meeting, the

Parent requested to wait to review the IEP until after a mediation session. An Annual Review was scheduled for May 13, 2024 and then rescheduled to May 21, 2024. The District engaged in mediation beginning on April 10, 2024, and ending on May 13, 2024. According to the Kansas Special Education Process Handbook, Chapter 10 and K.S.A 72-3438 (b)(2), "The mediation process should not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under this act" (Kansas Special Education Process Handbook, Chapter 10, Section A; K.S.A 72-3438) The District erred by not conducting the Annual Review by April 30, 2024. By not conducting the Annual Review within the appropriate timeline, the Student did not begin the 2024-25 school year with an updated IEP. The IEP was updated on August 15, 2024, two days after the start of the school year.

Based on the foregoing, ***the District violated K.A.R. 91-40-16*** by failing to conduct the annual IEP review and implement an updated IEP for the Student by the beginning of the 2024-25 school year.

Issue Three

Whether USD # 458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the Student with an AAC device, the least restrictive environment, and a free appropriate public education (FAPE). K.A.R. 91-40-1.(II); K.S.A. 72-3420; K.A.R. 91-40-1(z).

According to K.A.R. 91-40-1.(II) and K.S.A. 72-3420, the least restrictive environment is the educational placement, which requires that each school district, to the maximum extent appropriate, educate children with disabilities with children who are not disabled. The LRE must be determined annually, based on the Student's IEP, and provided in the environment as close as possible to the child's home. School Districts are required to provide special classes or separate schooling. Children with disabilities are only removed from the regular education environment when the nature or severity of the disability of the child is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily. According to K.A.R. 91-40-1(z), a "free appropriate public education" and "FAPE" mean special education and related services that are provided at public expense, under public supervision and direction, and without charge, meet the standards of the state board, include an appropriate preschool, elementary, or secondary school education; and are provided in conformity with an individualized education program.

The Parent alleged that the District's actions violated the Student's right to the least restrictive environment, the Student's annual IEP was not compliant, and that the Parent was "denied opportunities to advocate for [the Student] to modify [their] IEP to include [their] diagnosis which was the direct result of parents being forced to purchase an AAC device with the LAMP communication application." (Complaint, 12/17/24)

The District responded regarding the provision of an AAC device, "The possibility of use of an AAC device and/or sign language was prompted by an evaluation at [the Hospital]. The report

dated 5/6/24 was provided to our teacher of the deaf and hard of hearing on 5/8/24. In part, the report says 'ASL or augmentative alternative communication (AAC) devices could be incorporated should [the Student] show improved communication using these resources.' The district received the audiogram on February 1, 2024. This information was considered and addressed in the subsequent IEP meeting on April 10, 2024 through supplementary aids and services. The school team supports the use of the device, by ensuring that [the Student] has it with [them], modeling, and prompting. [The Student's] primary mode of communication is verbal. [The Student] is able to communicate for all functions of communication verbally (request, ask questions, socially interact, protest, etc.). Goals in IEPs for communication are based on [the Student's] primary communication, which is verbal communication. Data indicates continued progress. The team also supports the use of sign language in the same manner. This is noted in accommodations as well as supports for school personnel. On 9/25/24, "access to a speech[-] generating device" was added to [the] student's IEP."

The District responded regarding the least restrictive environment, "On 10/2/24 - An IEP meeting was held and [the] least restrictive environment was discussed. Adjustments to the IEP were made including a change to increasing the amount of time the student will be in the general education classroom. On 11/19/24 - An IEP meeting was held. At this meeting, follow up occurred as to the student's progress since adding additional time in the general education classroom. After [a] review of data and IEP team discussion, further adjustments were made to the amount of time the student attended the general education classroom. The team considered the student's needs, based on data in the present levels of performance, developed goals reasonably ambitious in light of [the Student's] circumstances, determined services and then placement. The team always had in mind how [the Student] could be included in the general education classroom to the maximum extent appropriate."

Regarding the provision of a FAPE, the District responded, "At all IEP meetings noted in the attached timeline, the school team reviewed data to determine reasonably ambitious goals, as well as services to address those needs in the least restrictive environment. Data has [been] reviewed IEP adjustments [sic] have been made throughout the IEP progress. First quarter progress reports on IEP goals indicate student progress." (District Response, undated, D570-D591)

At the April 10, 2024 IEP meeting, the IEP team reviewed the results of the Student's February 1, 2024 audiogram and updated present levels statement, support for school personnel, and accommodations. According to the medical report from May 6, 2024, "We reviewed communication goals, and [the Parent] understands that [the Student] may benefit from exploring multi-modal communication – especially if speech development is not progressing or is difficult to understand. [The Parent] understands that ASL or augmentative alternative communication (AAC) devices could be incorporated should [the Student] show improved communications using these resources." While the meeting to address this new information was not held until August 15, 2024, the Team did not implement the use of an AAC. The incorporation of the AAC occurred at the September 25, 2024 meeting. The Parent sought the

AAC on their own accord. The Parent did not ask the District to provide it as the Student already had one and, according to the Director, the “communication device from home was going back and forth.”

The District did not complete the Student’s Annual Review of the LRE prior to April 30, 2024. However, at the August 15, 2024 IEP meeting, the Student’s LRE and placement were determined.

The IEP Team revised the Student’s IEP on multiple occasions to make adjustments and update goals. According to the Progress Report data, the Student either met or made progress toward meeting their goals.

Based on the foregoing, the allegations regarding the provision of an Augmentative and Alternative Communication (AAC) device and Free Appropriate Public Education (FAPE) ***are not substantiated***.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following areas:

- A. The District violated K.A.R. 91-40-16 by failing to conduct the annual IEP review and implement an updated IEP for the Student by the beginning of the 2024-25 school year.

In this case, the evidence supports the finding that USD # 458 did not conduct an IEP meeting to conduct an annual review of the Student’s IEP by the annual review date.

Based on the foregoing, USD # 458 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #458 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. § 300.323 and K.A.R. 91-40-16 by conducting annual IEP reviews within 365 days.
2. By March 15, 2025, USD #458 will complete the following submit a written statement of assurance to Special Education and Title Services (SETS) that the district’s practices and procedures for annual IEP reviews have been reviewed and revised as appropriate to be responsive and compliant with the Individuals with Disabilities Education Act (IDEA) and the Kansas Special Education for Exceptional Children Act.
3. Further, by March 15, 2025, USD #458 will provide training, pre-approved by KSDE, to all staff responsible for scheduling and conducting annual IEP reviews on the District’s obligations to comply with the IDEA and Kansas State regulations for annual IEP reviews.

Tania Tong, Licensed Complaint Investigator

Right to Appeal

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