

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #458
ON JANUARY 28, 2025

DATE OF REPORT: FEBRUARY 27, 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, 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 school district. In this case, the KSDE initially received the complaint on January 28, 2025, and the 30-day timeline ended on February 27, 2025.

Allegations

The following issue will be investigated:

Issue One

Whether USD #458, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), disclosed confidential mediation information and provided this confidential information in subsequent proceedings. K.S.A. 72-3438(g); 34 CFR(b)(6)(8).

Investigation of Complaint

Tania Tong, the Complaint Investigator, interviewed the Parent by video on February 13, 2025. The District’s Director of Special Education and the Mediator were interviewed on February 14, 2025.

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 relevant materials were used as the basis of the findings and conclusions of the investigation:

1. Complaint (25FC458-003), 1/28/25
2. District Response, 1/31/25

3. KSDE Special Education Services, re: formal complaint request form, 01/27/25
4. NOTICE OF MEETING, 04/01/24
5. Meeting Notes, 04/10/24
6. Prior Written Notice, 04/15/24
7. Investigation Finding Appeal, 01/24/25
8. Email, re: 24MN458-001 Mediation Request, 05/13/24
9. REQUEST FOR MEDIATION, 04/11/24

Background Information

This investigation stems from a prior Complaint (25FC458-002) filed by the Parent, which the District appealed. While the District's appeal successfully overturned the initial decision on one allegation, the District submitted a Mediator's email as evidence that mediation had concluded. Following the reversal of the initial decision, the Parent filed this Complaint in response to the documentation the District provided during the appeal of Complaint 25FC458-002.

Findings of the Investigation

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

1. A Notice of Meeting dated April 1, 2024 indicated:
 - a. A proposed meeting for April 10, 2024 to discuss possible changes to the IEP, conduct an annual review of the IEP, and discuss results from the Functional Behavior Assessment (FBA) and the review of the Behavior Intervention Plan (BIP).
 - b. The Parent signed the document on April 2, 2024 and indicated they would attend the meeting.
2. Meeting Notes dated April 10, 2024 indicated:
 - a. The Director of Special Education requested mediation, and the Parent agreed.
 - b. The team reviewed the FBA and BIP.
 - c. The Parent did not want to review the draft IEP at the time of the meeting.
 - d. The team agreed to have a mediation session prior to reviewing the draft of the annual IEP.
3. A Prior Written Notice (PWN) dated April 15, 2024 indicated:

- a. The team met on April 10, 2024 to review special education and related services needed by the Student and any additions, changes, or modifications required for the Student to meet their IEP goals.
 - b. The Parent proposed, and the team agreed, to amend the IEP to reflect new services and accommodations rather than conduct an annual review.
 - i. The team wanted to participate in mediation before moving forward with an annual review to hopefully resolve confusion about data being used in the progress reports.
 - c. In the section titled "Explanation of Why the Action is Proposed or Refused," the PWN stated, "The team agreed to amend the IEP rather than conduct the annual review per the parent's request because there is confusion about the data being used via the progress reports. The team would like to participate in mediation to resolve this prior to moving forward with the annual review."
 - d. A draft IEP was provided to the Parent before the meeting, but the team did not continue with the annual review per the Parent's request.
4. In an interview with the Complaint Investigator, the Mediator indicated that the parties engaged in an "... in-person mediation on May 1st, 2024, and then I was engaged with the parties with, I would call them informal post-mediation communications through email and telephone I know that at some point, the Parents asked me to end the mediation process, and then I sent an email telling the State Department basically that I'm stopping the post-communications, and so we ended in an impasse. ... On May 13, 2024, I sent an email talking about that the Parents had communicated to me that they would like to end the post-mediation discussions, and so I let the School District and my contact at the State know that information, and I considered my file closed at that point."
5. Regarding the sharing of confidential information in the email that the Mediator sent to the District on May 13, 2025, the Mediator shared in an interview with the Complaint Investigator that "... so I think I can tell you, so I told the School District that the [Parents] communicated to me that they would like to end post-mediation discussions and move forward with their due process, and formal complaints. So I don't consider that confidential information, but I did communicate that to them."
6. In an interview with the Complaint Investigator, the Mediator described the communication process to end mediation and indicated that "I wouldn't say it's standard. ... I thought this was a little bit unusual ... unusual that I get this abrupt, "I want to end the mediation now," and I don't remember specifically the details of what was going on, but it looks like from my emails that I felt like I needed to let the State and the School District know. ... I know in my email I say I was in another mediation today, so I think what happened is somehow I got this message from the Parents that day, and so

in the evening, I sent these emails because I felt like it was important communication that I needed to pass along.”

7. An email dated May 13, 2024, from the Mediator to the Director of Special Education stated, “... the [Parents] communicated to me that they would like to end post-mediation discussions and move forward with their due process and formal complaint(s).”
8. The Confidentiality Pledge, signed by the parents on April 11, 2024 and the Director of Special Education on April 10, 2024, indicated:
 - a. “The parties are not allowed to tell anyone about discussions which occur during the mediation process. This includes statements made, settlement proposals made or rejected, and the reasons an agreement was not reached However, the parties may discuss information, on a need[-]to[-]know basis, with appropriate staff and professional advisors.”
9. The District’s Investigation Finding Appeal, dated January 24, 2025, indicated:
 - a. While the District contended the annual IEP was not completed by the IEP due date, it was not a violation of state and federal regulations because:
 - i. The District held an annual IEP review meeting on April 10, 2024, which demonstrated a good faith effort to meet the required time frame. During this meeting, both parties agreed to mediation, which took place on May 1, 2024, and was ended by the Parent on May 13, 2024; and
 - ii. “The district scheduled the IEP meeting for August 15, 202[4], which is 10 school days after the parents chose to end post-mediation discussions and move forward with due process and state complaints (see email from [the Mediator] dated May 13, 202[4]).”
10. On January 27, 2025, the Parent alleged in their Complaint that the “... District’s appeal includes references to confidential communications from the mediation process [the Director of Special Education] authorized and included these references.” In an interview with the Complaint Investigator, the Parent specified that the District “used an email from our mediator ... the KSDE mediator that we had. [The Director of Special Education] used that as evidence as to why the KDSE found [it] wrong, that it was not an appropriate finding.” The Parent’s understanding was that neither party “that agrees to be in mediation is allowed to use any type of communication of mediation in any subsequent cases, appeals court cases, anything along those lines because it’s protected communication for all parties.”

The Parent indicated in an interview with the Complaint Investigator that to enter into mediation, “There’s a contract that we signed ... [and] ... mediation communication was very protected for just that duration.”

11. In an interview with the Complaint Investigator, the Director of Special Education shared, "I just included the email ... from the mediator that mediation has ended, and I think that upset [the Parent]. ... I did not state anything that occurred during mediation. I just stated that I ... included the email from [the Mediator]. The Director of Special Education indicated that their only experience regarding the notification of changes during the mediation process was ... "with [the Mediator] and [the Mediator] responded. [The Mediator] let us know that mediation ended via email."
12. The Director of Special Education shared in an interview with the Complaint Investigator that they did not share the Mediator's email dated May 13, 2024 with anyone else or in any other documents or communications, "I did not violate the confidentiality agreement, and I don't know what the regular course of action is to indicate that a mediation has ended because I've only done this once and the mediator responded via email without disclosing any additional information." The Director of Special Education indicated that their reasoning for providing the May 13, 2024 email in the appeal communication was to show that mediation ended on that date.

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), disclosed confidential mediation information and provided this confidential information in subsequent proceedings. K.S.A. 72-3438(g); 34 CFR(b)(6)(8).

According to K.S.A. 72-3438(g), "Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process."

The Parent alleged that on May 13, 2024, the Mediator emailed the Director of Special Education and shared that the Parents "had decided to terminate post-mediation discussions and proceed with due process and formal complaints." The Parent indicated they believed that the information "disclosed in this email reflects substantive discussions and decisions directly connected to the mediation process," violating confidentiality protections afforded during the mediation process.

The District alleged the email they shared from May 13, 2024, did not reveal any details about mediation discussions. The District stated the email only indicated the Parent's desire to conclude the post-mediation process. According to the District, nothing was shared regarding statements made, settlement proposals made or rejected, or the reason an agreement was not reached. The District indicated this did not violate confidentiality. The District stated the email was sent to the KSDE, which appointed the special education mediator and already knew who the mediator was. The District alleged the email was sent as evidence in an appeal to the findings of a complaint lodged by the Parent. The District stated a response to a state complaint was not a due process hearing or a civil proceeding.

Kansas law K.S.A. 72-3438(g) states that mediation discussions are confidential and cannot be used as evidence in later civil proceedings or due process hearings. Participants may be required to sign a confidentiality agreement before mediation begins.

The purpose of mediation confidentiality is to foster open communication and encourage settlement by protecting all aspects of the mediation process from later use in specified proceedings. The statute explicitly states that mediation discussions “cannot be used as evidence in later civil proceedings or due process hearings,” both of which are formal legal processes. A special education appeal is neither a civil proceeding nor a due process hearing. The appeal was an administrative process within the Kansas education system. Additionally, the District’s use of the Mediator’s email from May 13, 2024 was limited to establishing a timeline of events for the appeal. The date on which the mediation process ended was a relevant fact for demonstrating the District’s efforts to comply with procedural timelines. The District did not use the email to gain any strategic advantage or to reveal any protected information about the mediation itself.

Finally, the statute needs to be read carefully. The statute (K.S.A. 72-3438(g)), as indicated earlier in this report, says, “Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings... .” Accordingly, it is only the “discussions” that occur during the meeting that are confidential. For example, a participant could not allege in a later civil proceeding that in the conversation during the mediation session a school official admitted that certain IEP services were not provided or that a parent admitted his/her child did not need a particular service. It is these kinds of “discussions” that cannot be used in a subsequent proceeding. This statute does not make any other information confidential, including the agreement itself (which is certainly admissible in a court proceeding seeking to enforce the mediation agreement), as contemplated by paragraph(f)(4) of the very same statute, stating that “the agreement may be enforced in state or federal court.” How could that occur if the agreement could not be used later in court. For the purpose of this complaint, there is nothing that prohibits the parties or the “mediator” from reporting the results of the mediation to the parties or to the state department of education. Indeed, the Kansas State Department of Education (KSDE) is required to report mediation resolution data to the United States Department of education (USDE), and routinely asks the mediator to send KSDE a copy of any mediated agreement so that it can verify that resolution was achieved. Moreover, in order to ensure that special education mediations are completed as required by law, KSDE requires state mediators to inform it, at minimum, whether the mediations they handle are successful or unsuccessful.

Based on the foregoing, according to IDEA and Kansas special education regulations, *it is not substantiated* that the District disclosed confidential mediation information and provided this confidential information in subsequent due process or civil proceedings.

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.gov. 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)