

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #290
ON JANUARY 20, 2022

DATE OF REPORT: FEBRUARY 22, 2022

This report is in response to a complaint filed with our office by _____, on behalf of her son, _____. For the remainder of this report, _____ will be referred to as "the student." Ms. _____ will be referred to as "the student's mother," "the complainant," or "the parent."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on February 1, 2022. On February 3, 2022, the investigator spoke by telephone with Dr. Joshua Robinson, Assistant Superintendent/Director of Special Education for the district.

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

- Materials submitted by the parent in the formal complaint received by the Kansas State Department of Education (KSDE) on January 20, 2022 which included the following:
 - Notice of Meeting dated October 27, 2021 regarding a meeting on November 10, 2021 at 9:30 AM
 - Notice of Meeting dated October 27, 2021 regarding a meeting on November 10, 2021 at 9:00 AM
 - Staffing Record dated November 11, 2021
 - Notice of Meeting dated November 10, 2021 regarding a meeting on December 6, 2021 at 7:35 AM
 - Second Notice of Meeting dated November 10, 2021 regarding a meeting on December 6, 2021

- Third Notice of Meeting dated November 10, 2021 regarding a meeting on December 6, 2021
- Notice of Meeting dated December 7, 2021
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated December 6, 2021 (partial form)
- Second Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated December 6, 2021
- Email dated November 29, 2021 from the assistant director of special education to the student's parents
- Email dated December 1, 2021 from the assistant director of special education to the parent
- Email dated December 1, 2021 from the parent to the assistant director of special education
- Email dated December 3, 2021 from the assistant director of special education to the parent
- Email exchange dated December 3, 2021 between the parent and the assistant director of special education
- Consent for Electronic Communication (blank form)
- Email exchange dated May 12, 2021 between the director of special education and the parent
- Email dated May 13, 2021 from the director of special education to the parent
- Consent for Electronic Communication dated February 22, 2021
- Email dated January 20, 2022 from the parent to the assistant director of special education
- Meeting Agenda dated December 6, 2021
- Staffing Record dated December 6, 2021

Background Information

This investigation involves a ten-year-old boy who is enrolled in the fourth grade in his neighborhood school. The student was diagnosed by Children’s Mercy Hospital with Tourette Syndrome at the end of Kindergarten after having initially been determined to have a transient tic. Diagnoses of Anxiety, Attention Deficit Hyperactivity Disorder (ADHD), and Developmental Dyslexia were subsequently identified. The student participates in Cognitive Behavioral Therapy with a private, licensed psychologist.

Issues

In her written complaint, the parent presented four issues.

Issue One: The district has failed to provide notice at least 10 days prior to multiple meetings.

Applicable Statutes and Regulations

Parents are to be provided an opportunity to participate in eligibility determination and IEP meetings. Schools must provide a notice of these meetings at least 10 calendar days prior to the meeting date (K.A.R. 91-40-17(2)). The notice must indicate the purpose, time, and location of the meeting and the titles or positions of the persons who will attend on behalf of the agency (K.A.R. 90-40-17 (2)(b)(1)).

Parent’s Position

It is the position of the parent that she was given less than 10 calendar days’ notice prior to two meetings when the district made changes in the time, location, and/or participants for these meetings and was given less than 10 calendar days’ notice of two additional meetings,

District’s Position

It is the position of the district that the parent was provided with notice of two of these meetings well in advance of 10 calendar days. The district asserts that amendments were subsequently sent to the parent in order to ensure transparency when changes were made.

With regard to the third meeting specified by the parent, the district contends that meeting was scheduled with less than 10 calendar days' notice in order to accommodate the parent's request that the meeting be expedited.

Investigative Findings

On October 27, 2021, the district mailed both parents notice of a meeting to be held on November 10, 2021 at 9:30 AM at the student's school for the purpose of reviewing the results of an independent evaluation to determine whether the student needed "special education services and/or supplementary aids in order to receive FAPE [free appropriate public education]." The parent signed the form on October 30, 2021, checking a box to indicate that she planned to attend the meeting as scheduled.

A second notice regarding the meeting on November 10, 2021 was mailed to the parent on November 4, 2021, less than 10 days prior to the meeting. This notice stated that the meeting would be held at 9:00 AM instead of 9:30 AM. The parent signed that document on November 7, 2021 but did not indicate that she planned to attend. The parent also did not indicate that she consented to waive her right to a 10-day prior written notice of the meeting,

The parent was present for the November 10, 2021 meeting.

On November 23, 2021, the district mailed the parent notice of a meeting to be held on December 6, 2021 at 7:35 AM at the student's school. According to the notice, participants would include – among others – the "School Social Worker" and the "School OT [Occupational Therapist]." The notice form stated that the meeting was to be held "to develop the individualized education program [IEP]."

A second notice of the 7:35 AM meeting on December 6, 2021 was mailed to the parent on November 29, 2021, less than 10 days prior to the meeting. This notice indicated that among other participants a "KASB Attorney" would be in attendance as would the school social worker. The "School OT" was dropped from the list of attendees. According to the notice, the meeting was to be held "to develop the individualized education program [IEP]" for the student. The parent did sign the form but did not consent to waive her right to a 10-day prior written notice of the meeting.

On December 1, 2021 – less than 10 days prior to the scheduled meeting – the district mailed the parent notice of the December 6, 2021 meeting which stated that the meeting would be held not only for the purpose of developing an IEP for the student but also to “review the evaluation and determine eligibility.” This notice also stated that the school social worker, the OT, a KASB attorney, and an SLP (Speech/Language Pathologist) not previously listed would be present. The parent did not sign this notice to indicate her consent to waive her right to 10-day prior written notice of the meeting.

On December 1, 2021, the parent sent an email to the assistant director of special education indicating that the parent’s advocate would be attending the meeting. The assistant director responded via email stating

With additional people, I think we have outgrown our space at [the student’s school] and need a bigger meeting location. We are going to change the location to the Board of Education office conference room where we can spread out just a little. I have notified our team today of the change. Please confirm with me that you will be at the Board of Education office as our new meeting location.

The parent replied to the assistant director on December 3, 2021 stating

Since the district moved the meeting to a new location, the sudden shift in meeting location has meant that I cannot begin until I am able to drop off the children at [the student’s school]. This will be around 7:45.

On December 5, 2021, the assistant director sent the parent an email stating

Dropping the kids off first is no problem. The small delay to the start will just mean that our team will be ready to go and we can get technology up and working. We will just see you...as soon as you can get there.

A fourth notice of the December 6, 2021 meeting was hand delivered to the parent on December 6, 2021. This notice reflected the change in location for the meeting to the Board of Education office. No other changes from the December 1, 2021 iteration of the notice were included. The parent did not sign the form to indicate that she was willing to consent to waive her 10-day prior written notice of the meeting.

The parent was present for the December 6, 2021 meeting. At that meeting, the parent requested that the scheduling of a subsequent meeting to finalize an IEP for the student be expedited, and the team agreed to reconvene as soon as both parents were available.

On December 6, 2021, the district hand delivered the parent notice of a meeting to be held at the Board of Education Office on December 8, 2021 at 8:00 AM, less than 10 days after the notice was sent. The meeting was to be for the purpose of developing the IEP for the student. Among others, attendees would include the social worker, OT, and KASB attorney. The parent did not sign this notice. Because of a scheduling conflict on the part of the parents, this meeting was rescheduled for December 16, 2021.

The district mailed the parent notice of the December 16, 2021 meeting on December 8, 2021 – less than 10 days prior to the meeting. The parent did not provide her written consent to waive her right to 10 days' notice. She did attend the meeting.

Summary and Conclusions

Special education statutes and regulations do not permit addendums or modifications to meeting notices. If any of the required elements of meeting notice are changed after appropriate notice is provided to the parent, a new, complete notice is required and must be given to the parents 10 calendar days prior to the proposed meeting date.

A parent may want to waive the right to 10-day notice and allow the scheduling of a meeting to be expedited. However, if the parent does not consent to waive that right, the 10-day requirement must be met, and the meeting must be scheduled for a date that allows for 10-day prior notice.

The district initially provided the parent with more than 10-day notice regarding meetings on November 10 and December 6, 2021. However, changes were subsequently made to the times, locations, and/or purposes of these meetings. While the district provided notice to the parent of each of these changes, these subsequent notices were not provided 10 days prior to the dates of the meetings, and the parent did not waive her right to the 10-day notice for any of these meetings.

The meeting initially proposed for December 8, 2021 was rescheduled due to a scheduling conflict, but the parent was not given 10-day notice of the new meeting date and did not waive her right to that notice.

The district's failure to provide 10-day notice of meetings did not prevent the parent from participating as she did attend all of the meetings that are the subject of this issue. However, the parent was not provided 10-day prior notice of three meetings which included all required information regarding those meetings and did not consent to waive her right to that notice. A violation of special education statutes and regulations is substantiated on this issue.

Issue Two: The district did not make reasonable efforts to ensure that the parents understood the purpose of a meeting on December 6, 2021.

Applicable Statutes and Regulations

Schools must provide parents with a notice of meetings at least 10 calendar days prior to the meeting date (K.A.R. 91-40-17(2)). As noted above under Issue One, the written notice must indicate the purpose of the meeting (K.A.R. 90-40-17 (2)(b)(1)).

Parent's Position

It is the position of the parent that the student's eligibility for special education services was established in a meeting on November 10, 2021. The parent asserts that she was given notice of a meeting scheduled for December 6, 2021 to be held for the purpose of developing an IEP for the student. The parent contends that prior to December 6, 2021 the district changed the purpose of the meeting from IEP development to a continued discussion of the student's eligibility for special education services.

District's Position

While acknowledging that the purpose of the December 6, 2021 meeting did change between the time the first notice of that meeting was sent to the parent on November 23, 2021 and the date the third notice related to that meeting was sent to the parent on December 1, 2021, the district asserts that meeting notices and additional email communication articulated the intended purpose of the December 6, 2021 meeting.

Investigative Findings

On November 23, 2021, the district mailed the parent notice of a meeting to be held on December 6, 2021. The notice form stated that the meeting was to be held “to develop the individualized education program [IEP].”

A second notice of the meeting on December 6, 2021 was mailed to the parent on November 29, 2021. According to the notice, the meeting was to be held “to develop the individualized education program [IEP]” for the student.

At 7:35 AM on December 1, 2021, the parent sent an email to the assistant director of special education asking – among other things – when a draft of the IEP would be sent to the parents. The assistant director of special education responded to the parent stating that it was anticipated that a draft IEP would be sent to the parent “late this afternoon or tomorrow morning.”

As the meeting date approached, the special education teacher had been developing a draft IEP document for the team to review. The special education teacher expressed to both the school psychologist and the assistant director that she felt that more information was needed in order to complete sections of the draft related to the student’s social/emotional needs as well as services and accommodations.

At 4:22 PM on December 1, 2021, the assistant director sent an email to the parent stating

I wanted to give you an update about the upcoming meeting. We have been gathering present levels of performance for (the student) for the team to discuss, and we have been trying to put together an addendum to the original eligibility report that encapsulates our conversation from the last time and also attempts to answer the qualifying questions for eligibility. There are still parts of eligibility the team has not discussed and eligibility has not been determined. We also have not signed any documents yet for eligibility. Eligibility is the first step in the process and will be the focus of our Monday (December 6, 2021) meeting. While (the special education teacher) has gathered present levels, there will not be an IEP to review until the team determines eligibility and completes that process. Since eligibility paperwork will be discussed and signed, we will also invite...the speech pathologist to the meeting.

An agenda for Monday's meeting has been attached to this email.

According to the agenda, seven topics would be discussed.

- Purpose of the meeting;
- parent concerns;
- brief review of IEE (independent educational evaluation) from the previous meeting;
- discussion of present levels of performance in the area of social/emotional needs;
- discussion of present levels of performance in reading, math, and written language;
- discussion of eligibility questions (exceptionality and need); and
- final eligibility determination.

On December 2, 2021, the parent sent an email to the assistant director stating,

We object to revisiting the issue of Eligibility for Special Education for [the student]. As the LEA Rep at that meeting, you are on record as confirming that [the student] is eligible for Special Education. After extensive discussion, as well as repeated efforts by our Advocate to refer to and apply the Eligibility Indicators from the KSDE Handbook, when asked one by one, 8 of the 10 members of the team did say they were in favor of qualifying [the student] for Special Education Eligibility. At that point, as the LEA Rep, you confirmed that determination...

The team then went on to discuss areas of concern to be addressed in the next meeting at which the IEP would be addressed, and the discussion focused on his ability to compose a written paragraph, and at what point an intervention would begin...

On December 3, 2021, the assistant director sent the parent an email stating

I appreciate your viewpoint and I understand your frustration. Through our gathering of present levels, there is simply not enough feedback from the team yet to complete the eligibility report. We are particularly interested in discussing the social emotional section and whether he might qualify for any services in that area. Discussing the

social/emotional aspect of [the student's] testing and present levels needs to be an item of discussion before we move forward in the process.

The parent responded via email on December 3, 2021 stating

As far as extending any discussion about eligibility, we are more than happy to consider adding an additional area of eligibility relevant to [the student's] Social-Emotional levels.

However, the team at the 4-hour Eligibility Meeting on November 19, 2021, determined [the student's] eligibility under the Eligibility Indicators for Specific Learning Disability, with needs demonstrated in Reading and Writing. We are not willing to consent to exiting him from that eligibility and expect that regardless of any other determination we may add, we will be working as a team on Monday morning to develop an appropriately ambitious IEP with services, supports, and accommodations relative to [the student's] already determined eligibility.

A third notice of the meeting on December 6, 2021 was mailed to the parent on December 1, 2021. According to this notice, the meeting was "to review the evaluation and determine eligibility" as well as "to develop the individualized education program [IEP]."

The staffing record from the December 6, 2021 meeting shows that the team addressed each of the topics specified in the agenda that was emailed to the parent on December 1, 2021 with the exception of the student's performance in reading, math, and written language. That discussion was deferred at the request of the parent advocate to allow the team to answer the question of the student's eligibility for special education services.

Summary and Conclusions

The district provided the parent with notice of a meeting to be held on December 6, 2021 for the purpose of developing an IEP for the student. However, as school staff prepared for the meeting, a need for additional discussion of the student's social/emotional needs surfaced. The district contacted the parent via email to let her know that the purpose of the meeting would be expanded to include a discussion of the student's eligibility for services

in areas related to his social/emotional needs. The district included a meeting agenda with the email message. A notice of meeting which reflected the meeting's expanded purpose was subsequently sent to the parent.

In an email to the district, the parent objected to further discussion of the student's eligibility if that discussion led to "exiting" the student from eligibility in areas she felt had been established in a previous meeting, but agreed to a discussion of eligibility in areas related to his social/emotional needs.

The staffing record from the meeting of December 6, 2021 shows that the team addressed the topics outlined in an agenda sent to the parent prior to the meeting.

While the parent did not agree with the district's decision to alter the purpose of the December 6, 2021 meeting, email communications between the district and the parent show that she had been informed of the change and the reasoning behind that change. A violation of special education statutes and regulations is **not** substantiated on this issue.

Issue Three: The district made eligibility decisions regarding the student without the participation of the parents and included individuals in the decision-making process who were not part of the evaluation team.

Applicable Statutes and Regulations

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). Schools are to ensure that parents have the opportunity to be members of the IEP team that makes decisions on the educational placement of their child.

The required members of an IEP team are specifically identified and described in state and federal statutes and regulations (K.S.A. 72-3404). Other parties may participate in an IEP team meeting including those who are invited by the parent or the school. The determination of who has knowledge or special expertise regarding the child is made by the party (parents or school) who invited the

person to be a part of the team. Therefore, the other party may not bring into question the expertise of an individual to be a member of the team and may not exclude another team member based upon the quality of their expertise (K.A.R. 91-40-17(j) and 34 C.F.R 300.321(c)).

The presence of an attorney at a team meeting is generally discouraged as it often sets an adversarial tone for the meeting. However, the participation of an attorney is not prohibited by special education statutes and regulations. An attorney may attend a team meeting if the parents or school officials believe an attorney is needed. If the attorney is coming at the invitation of the school, they must be included on the notice of meeting provided to the parents (34 C.F.R. 300.322(b)(1)(i)).

Parent's Position

The parent contends that the special education director attempted to negate the evaluation team's decision regarding the student's eligibility and need for special education by continuing the eligibility discussion at the December 6, 2021 meeting rather than allowing the team to move forward with the development of an IEP for the student.

The parent asserts that the inclusion of a KASB attorney in the meeting led her to believe that the district had made the decision not to provide services to the student and was attempting to "exit the child even before the IEP was developed." It is the position of the parent that in securing the approval for the attorney's participation in the meeting, individuals who were not a part of the evaluation team were involved in the decision-making process and in an attempt to impede parent participation.

District's Position

The district asserts that no educational decisions regarding the student were made without parent participation. The district contends that the KASB attorney was invited to the meeting at the request of the school team because of her knowledge of special education law – a frequent topic of discussion in previous meetings. While the participation of the attorney did require approval from the district superintendent, no decisions regarding services to the student were made outside of the team process in which the parent participated.

Investigative Findings

In a telephone conversation with the investigator on February 1, 2022, the parent stated that she could not provide specific evidence to support her assertion.

According to the district, questions about legal issues had arisen in all team meetings regarding the student's eligibility beginning in the Spring of 2021. Staff members who had participated in those meetings expressed concern to the school psychologist and assistant director regarding how best to respond to those questions. The assistant director approached the director of special education about the possibility of including an attorney as a member of the school team to provide guidance should legal issues again become a topic of discussion.

The district stipulates that a meeting took place involving the director and assistant director of special education and the district superintendent. According to the district, the approval of the superintendent was required in order for the counsel to participate in upcoming meetings. No discussion of the student's eligibility occurred during this meeting.

The district provided the parent with written notice that the attorney would be attending team meetings on December 6 and 16, 2021.

Summary and Conclusions

The inclusion of an attorney in a team meeting at the invitation of a school district is not prohibited by special education statutes and regulations. The director and assistant superintendent sought and received permission for the attorney's participation from the superintendent as required by district policy. No evidence was presented to suggest that any decisions regarding services to the student were made during this meeting. A violation of special education statutes and regulations is **not** substantiated on this issue.

Issue Four: The district transmitted confidential information regarding the student without first obtaining the consent of the parent.

Applicable Statutes and Regulations

Confidentiality of education records is a basic right shared by all students in public schools and their parents. These fundamental rights are described in the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended. The federal regulations relating to FERPA are available at <https://www2.ed.gov/policy/gen/reg/ferpa/index.html> as well as at <https://www.ksde.org/Default.aspx?tabid=337>. In addition, Kansas Special Education Regulations at K.A.R. 91-40-50 have adopted by reference provisions in 34 C.F.R. 300.612 through 300.624, regarding parental access to education records and confidentiality of those records.

Unless it has parent consent, or a FERPA exception applies, a district must prevent the disclosure to any unauthorized person of personally identifiable information from student records. Disclosure is the release, transfer or other communication of records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic.

FERPA allows the school to release records to the parent of a student who qualifies as a dependent under section 152 of the Internal Revenue Service Code (34 C.F.R. 99.31(a)(8)) without first obtaining parental consent.

The Family Policy Compliance Office (FPCO) * is the division of the United States Department of Education responsible for investigating and enforcing complaints from parents and eligible students relating to their rights under FERPA. In Letter re: St. Tammany Parish School Board (September 15, 2004), the FPCO acknowledged FERPA does not mandate the use of any specific method of transmission of student records. Schools are expected to “take appropriate steps consistent with current technological development to control access.” FPCO states that schools “should” use regular mail for the transmission of records but does not specifically prohibit electronic transmission of records so long as the district takes “reasonable steps to protect information in a student’s educational record from unauthorized access or improper disclosure.”

*The FPCO is currently the Student Privacy Policy Office (SPPO).

Position of the Parent

The parent contends that by electronically transmitting the student’s records to her without her consent in May of 2021, the district exposed confidential student information to potential disclosure to a third party.

Position of the District

It is the position of the district that the parent had provided written consent for the electronic communication of confidential information in February 2021 and did not revoke that consent until January of 2022. The district contends that the parent and school staff had communicated frequently via email, and the district had no reason to believe that messages sent to the email address provided by the parent were going to anyone other than the parent.

Investigative Findings

The parent states that she did not provide written consent to the district for the electronic transfer of confidential information regarding the student until December of 2021. However, the district states that it is standard practice to request the consent of the parent for the electronic transmission of confidential information as a part of the initial evaluation process. Therefore, when the student was referred by the parent for initial evaluation in February of 2021, the district requested and obtained the parent's written consent for the electronic transmission of confidential information on February 22, 2021.

According to a form entitled "Consent for Electronic Communication"

My signature below represents my consent for district staff to communicate confidential information regarding my student's special education services via electronic means. I understand that the district is not responsible for security outside of the district network and the district may not be able to guarantee confidentiality once information leaves the district system. This consent remains in effect until revoked.

On January 20, 2022, the parent sent an email to the assistant director of special education stating

[the student's father] and I revoke our consent for electronic communications regarding confidential information. As LEA, please provide notification of your receipt of this notification as of 1/20/22.

The district stipulates that confidential student information was electronically transmitted to the parent in May of 2021 after receipt of a request from the parent for copies of the student's educational records. The district states that

the information was sent to the parent at an email address provided by the parent which had been used frequently for communication between the parent and the district. At no time prior to the time the student records were sent to the parent in May 2021 had the parent raised concerns regarding the security of her email account.

The parent acknowledges that she received the information sent to her by the district in May of 2021 and does not assert that any disclosure to an outside party occurred at the time the information was sent.

The parent states that the electronic records were still in her email inbox at the time she was notified by her internet provider in the Fall of 2021 that her account could have been hacked. While the internet provider provided no proof that the account had actually been hacked, the parent was encouraged to take steps to ensure the privacy of her account. No evidence of actual disclosure of confidential student information was provided to the investigator by the parent.

Summary and Conclusions

Parental consent is not required for a district to release confidential student information to a parent. Neither FERPA nor special education statutes and regulations specifically prohibit the electronic transmission of educational records. At the time the district electronically transmitted student educational records to the parent in May of 2021, the parent had provided her written consent for that action. No evidence of actual disclosure of confidential information to a third party was provided by the parent. 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 one of the issues presented in this complaint. Specifically, a violation was substantiated with regard to K.A.R. 91-40-17(a)(2) which requires that parents be given written notice of eligibility and IEP team meetings regarding their child at least 10 calendar days prior to the meeting date. That notice must indicate the purpose, time, and location of the meeting and the titles or positions of the persons who will attend on behalf of the agency (K.A.R. 90-40-17(b)).

Therefore, USD #290 is directed to take the following actions:

- 1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with K.A.R. 91-40-17(2) and K.A.R. 90-40-17 (2)(b)(1) by providing parents at least 10-day prior written notice of eligibility and IEP team meetings regarding their child which includes the time, purpose, and location of the meeting.

- 2) a) Within 40 calendar days of the date of this report, USD #290 shall develop and submit to SETS for approval, a plan for the implementation of training for all special education staff regarding all of the legal requirements for providing notice of an IEP meeting.

b) Once the training plan described above under Item a) has been approved by SETS, USD #290 must implement that plan within 20 school days after SETS approval.

c) Upon completion of training of identified staff, USD #290 shall submit to SETS a record showing the dates of training and an attendance log signed by all staff who participated in the training.

- 3) Further, USD #290 shall, within 10 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).

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such 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), which can be found at the end of this report.



Diana Durkin
Complaint Investigator

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)