

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #229  
ON JANUARY 5, 2024

DATE OF REPORT: FEBRUARY 5, 2024

This report is in response to a complaint filed with our office by Tolga Ulusemre on behalf of his son, D [REDACTED]. For the remainder of this report, D [REDACTED] will be referred to as "the student." Dr. U [REDACTED] will be referred to as "the parent." USD #229 will be referred to as "the district."

Investigation of Complaint

On January 9, 2024, the investigator spoke by telephone with Dr. Mark Schmidt, Assistant Superintendent for Special Education for the district. The investigator spoke by telephone with the parent on January 11, 2024. On January 12, 2024, the investigator participated in a Zoom conference with the Assistant Superintendent and the Chief Legal Officer for the district, Melissa Hillman.

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

- Email dated August 14, 2023 from the Chief Legal Officer for the district to the parent
- Notice to Conduct a 504 Evaluation dated September 1, 2023
- Daily Attendance Profile for the student
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated November 30, 2023
- Attachments to the complaint submitted by the parent which included the following:
  - Letter dated January 3, 2024 from the parent to the complaint investigator
  - Letter dated August 8, 2023 from the student's private counselor

- o Email dated February 12, 2023 from the building principal to parents of students at the school
- o Email dated February 13, 2023 from the building principal to parents of students at the school
- o Email dated February 19, 2023 from the attorney for the student's parents to the Chief Legal Officer for the district
- o Email dated February 20, 2023 from the building principal to parents of students at the school
- o Email dated April 21, 2023 from the parent addressing the executive director of school administration for the district
- o Email dated May 6, 2023 from the student's mother to executive director of school administration for the district
- o Undated email from executive director of school administration for the district to the student's parents
- o Email dated May 8, 2023 from the student's mother to executive director of school administration for the district
- o Email dated May 23, 2023 from the parent to the principal of the student's brother's school regarding the student's brother
- o Email dated May 31, 2023 from the parent to the principal of the student's brother's school regarding the student's brother
- o Email dated June 3, 2023 from the parent to the principal of the student's brother's school regarding the student's brother
- o Meeting notes dated November 29, 2023
- o Email dated December 4, 2023 from the school psychologist to the student's parents
- o Email dated December 8, 2023 from the building principal to the student's parents
- o Email dated December 11, 2023 from the building principal to the student's parents
- o Email dated December 12, 2023 from the building principal to the student's parents
- o Email exchange dated December 13 and 14, 2023 between the Chief Legal Officer for the district and the parent

- Email exchange dated December 14, 2023 between the building principal and the student's mother
- Email exchange dated December 14, 2023 between the school psychologist and the student's mother
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated December 14, 2023
- Email dated December 15, 2023 from the building principal to the student's mother
- Email exchange dated December 17, 2023 between the building principal and the student's mother
- Email dated December 18, 2023 from the building principal to the student's mother
- Email dated December 20, 2023 from the building principal to the student's parents
- Notice of in-school suspension dated December 20, 2023
- Additional materials provided by the parent to the investigator via email including the following
  - Email dated January 4, 2024 from the building principal to the student's parents
  - Email dated January 5, 2024 from the student's mother to the building principal
  - Email dated January 6, 2024 from the building principal to the student's mother
  - Email dated January 24, 2024 from the building principal to the parents
  - Email exchange dated January 25, 2024 between the student's mother and the building principal
  - Email dated January 28, 2024 from the student's mother to the building principal
  - Email dated January 29, 2024 from the building principal to the student's parents
  - 14 video recordings of the student

Background Information

This investigation involves a 9-year old boy who is in the 4th grade in his neighborhood elementary school. The student and his family moved to the district at the beginning of his third grade year having previously attended school in Hawaii. At the time of his enrollment, the student was granted a transfer from his neighborhood elementary school in order to participate in a Chinese Immersion program at another district school.

The parent reports that the student has been diagnosed by a local mental health agency with an "anxiety disorder" and has truancy/school avoidance issues. According to a letter written by the private counselor who treats the student, he has been diagnosed with Social Anxiety Disorder. The therapist stated that the student has difficulty with following directions and staying on task and sometimes displays anxious behaviors. During counseling sessions, the student and his therapist focus on "self-advocating, confidence, and conflict resolution."

During February of the student's third grade year, the student was accused of having a "murder list." While it was subsequently determined that no such list existed, the student's transfer was revoked, and he moved to his neighborhood elementary school. However, according to the parent, the student's anxiety regarding interactions with peers in the new setting escalated. According to the parent, he and the student's mother felt that the environment at the neighborhood school was not safe for the student. The student did not attend school in April and May of the 2022-23 school year.

In an effort to provide their son with a "fresh start," the student's parents purchased a home in another attendance area in the district, and the student started the 2023-24 school year in his current building. The student's parents requested that he be evaluated to determine his eligibility for support under a Section 504 Accommodation Plan and gave written consent for a 504 evaluation on September 3, 2023.

The student was absent for 5 days during August 2023 and 5 more days during September 2023. The parent asserts that the student has been "seen and treated as a disruptive student...from day one. Therefore, he again became truant and missed school during the entire October and November, 2023."

The district reported the student as truant, and a guardian ad litem was appointed by the truancy court. The student returned to school on December

1, 2023. The building principal sent a series of emails to the student's parents regarding a series of incidents between December 8 and 12, 2023.

### Issues

The parent's complaint was received by Special Education and Title Services (SETS) on January 5, 2024. The parent's complaint included a number of attachments in support of his complaint including a letter to the complaint investigator dated January 3, 2024. That letter identified two issues:

1. The student's special education evaluation has been skewed by an incorrect disciplinary record, which prejudices and misguides the IEP team. This is most likely to result in a wrong, inappropriate IEP plan for the student; and
2. The restriction the district has imposed on the parent bar him from meaningfully participating in the student's evaluation process, as well as from receiving some of the notices by email.

In his written complaint, the parent cited violations of three federal regulations. One of these regulations (34 C.F.R. 300.304(c)(1)(iii)) relates to Issue One. The other two citations (34 C.F.R. 300.322(a) and 34 C.F.R. 300.505) are associated with Issue Two.

In his letter to the investigator, the parent also referenced issues related to the referral of the student for a Section 504 evaluation and the implementation of the student's 504 Plan. However, pursuant to federal regulations at 34 C.F.R. 300.153, a state department of education may only investigate allegations of a violation of special education laws and regulations. This investigator does not have the authority to investigate allegations related to Section 504, so only the special education issues contained within this complaint will be addressed in this report.

In his written complaint and attached letter to the investigator, during a subsequent phone call with the investigator, and in additional emails to the investigator dated January 29, 2024, the parent asserted that building staff are biased in their treatment of the student and are unfairly targeting the student for disciplinary consequences because the parent filed this complaint. It is important to note that, at the time this complaint was submitted by the parent,

the student had not been determined through a comprehensive district evaluation to be an exceptional child. While the parent and student are entitled to certain special education protections related to the evaluation process, the investigative actions of the principal and the determination of disciplinary consequences for a general education student are not issues properly addressed through a formal special education complaint.

**Issue One:** The student's special education evaluation has been skewed by an incorrect disciplinary record, which prejudices and misguides the IEP team. This is most likely to result in a wrong, inappropriate IEP plan for the student.

### **Parents' Position**

The parent alleges a violation of 34 C.F.R. 300.340(c)(1)(iii), asserting that the evaluation process for the student has been "skewed" by an incorrect disciplinary record, which prejudiced the IEP team members.

The parent objects to the district's proposal to include a Functional Behavior Assessment (FBA) as a part of a comprehensive assessment to determine whether the student is eligible for and in need of special education services. The parent asserts that the proposal to conduct an FBA represents an effort on the part of the district to prove the student is disruptive and that he - not other students - is the source of the conflicts that have resulted in the student's school avoidance. The parent contends that by having a Behavior Analyst complete the FBA, the district is attempting to focus on punishment and consequences for the student rather than looking outside the student for the source of this behavior.

It is the position of the parent that the police report filed against the student and additional video footage from two recent incidents involving the student should be shared with the student's IEP team in order to ensure that the evaluation process is not "misguided by prejudice and rumors."

### **Applicable Statutes and Regulations**

Special education statutes and regulations state that a formal complaint must allege that a district has - within not more than one year prior to the date the

complaint is received and filed with the commissioner of education - violated a state or federal special education law or regulation. (See K.A.R. 91-40-51(b).) In support of his position on this issue, the parent cites 34 C.F.R. 304(c)(1)(iii) which states that when conducting an evaluation of a student, the assessments and other materials used to assess the child must be

*"...used for the purposes for which the assessments or measures are valid and reliable."*

### Investigative Findings

On September 3, 2023, the parent participated in a meeting held to discuss the referral of the student for a 504 Evaluation. The parent gave his written consent for that evaluation on the date of that meeting. However, the student was not in attendance at any time between September 21 and December 1, 2023 and the district was unable to conduct the evaluation.

In conversations with district staff while the student was absent, the parents reported on newly obtained diagnoses for the student including social anxiety disorder which resulted in negative peer interactions and school avoidance. In light of the information provided by the parents as well as the student's therapist, the district began discussions with the student's parents regarding a special education evaluation.

A meeting was held on November 29, 2023 to plan for the student's return to school. Present were the student's parents and his private therapist, a guardian ad litem appointed due to a truancy report, the assistant superintendent for special education, the building principal, the counselor, the school social worker, and the student's classroom teacher. Among other topics, the group discussed the student's diagnosis of Social Anxiety Disorder and the assessment of the student to determine his eligibility to receive support under Section 504 and /or special education.

Prior written notice of the district's proposal to conduct a special education evaluation was emailed to the parent on November 30, 2023, and the parent provided written consent for the evaluation on that same date.

According to the prior written notice form, the district proposed the evaluation because the student had "been diagnosed with Social Anxiety Disorder and has

concerns with social skills and executive functioning." The district proposed to gather new and existing data with regard to the student's "social/emotional status/behavioral status," his "general intelligence," his "academic performance," and his "communicative status."

With regard to "social/emotional status/behavioral status," the prior written notice form stated that the assessment

*"May include assessment of social/emotional/behavioral development in relation to the child's learning, interpersonal relationships, feelings and/or physical symptoms. May include a functional behavioral assessment or evaluation to determine appropriate positive behavioral support."*

An FBA is a process for gathering information about behaviors of concern, whether the behaviors are academic, social, or emotional. FBAs are rooted in the theory that behavior is functional (that it has a purpose), predictable, and changeable. Understanding the function or purpose underlying a student's behavior can help a school team develop a plan to teach the child more appropriate replacement behaviors or provide support for the development of more desirable behaviors.

On December 4, 2023, the school psychologist sent an email to the student's parents to let them know that their signed consent for evaluation had been received. The school psychologist told the parents which staff members would be conducting the various assessments included in the evaluation:

- The special education teacher would conduct the academic assessment;
- the speech/language therapist would evaluate social language;
- the school psychologist would administer a cognitive assessment, conduct classroom observations and parent/teacher interviews, and would send behavior and social responsiveness rating scales to the parents and staff for completion; and
- the classroom teacher would complete and return teacher interview forms and rating scales.

The school psychologist noted in her email that the building principal and school counselor (who was coordinating the 504 evaluation for the student) would also be members of the team. The student's parents were provided with rating scales and a parent questionnaire for them to complete and return.



The email also included attached notes from the November 29, 2023 meeting and suggested a date (February 13, 2024) for the team to meet at 1:00 PM if that time worked for the parents.

The assistant superintendent for special education subsequently realized that the plan that had been sent to the parents did not include the designation of an individual who would be responsible for the development of the FBA and asked the school psychologist to provide the parents with that information.

On December 14, 2023, the school psychologist sent another email to the student's mother. The school psychologist wrote:

*"In reviewing this evaluation plan, I left out an important part of the evaluation:...[the] Board Certified Behavior Analyst. She will be walking the team through the Functional Behavioral Assessment data collection. We would also like to propose adding the occupational therapist to the evaluation team looking at both his fine motor skills and sensory needs. The consent to add these additional areas will be available in ParentVue shortly for your review. If you have any questions, please let me know."*

The student's mother wrote back to the school psychologist on December 14, 2023, stating:

*"We do not understand the rationale behind these two additions. Could you please enlighten us?..."*

Attached to the school psychologist's email was a prior written notice and request for consent. The document stated that the district was proposing the following:

*"A fine motor and sensory profile evaluation are proposed to be added to the current Special Education evaluation to provide a comprehensive assessment of [the student's] strengths and needs."*

The school psychologist responded on December 15, 2023, writing:

*"The fine motor and sensory profile evaluation are proposed to be added to the current Special Education evaluation as part of a comprehensive evaluation of his strengths and needs, to rule out points of concern. The*

*functional behavioral assessment will assist the team in understanding from [the student's] perspective the function or the why some behavior are occurring.*

*These assessments will guide the team in supporting [the student] with necessary accommodations and/or additional executive functioning tools to manage his reactions to others in a healthy way, communicate with others and how to work through conflicts with peers."*

On December 19, 2023, the assistant superintendent sent an email to the student's parents stating:

*"While [the school psychologist] marked box [sic] for Social/Emotional Status/Behavioral Status that included the functional behavioral assessment (FBA) below [in the included screenshot] she didn't include the information in the [subsequent email] narrative about who would be doing the FBA. This is an important piece of the evaluation as it helps the team develop an effective positive behavioral support plan that will reinforce positive behaviors and replacement behaviors. The Occupational Therapist (OT) was added because we want to investigate whether [the student] has any sensory concerns that are impacting him at school. I ask that you provide consent on the new request to test as they are important pieces and of [sic] the comprehensive evaluation we discussed in our meeting."*

Because the student's parents have not provided written consent for the district to include an OT evaluation in the current comprehensive evaluation, no motor assessment was conducted. Further, because the student's parents objected to the inclusion of an FBA in the comprehensive evaluation after being presented with details of the assessment plan, the district did not conduct an FBA - even though the student's parents had given written consent for an FBA on November 30, 2023.

### Summary and Conclusions

When requesting consent for the comprehensive evaluation of the student on November 30, 2023, the district specified that the evaluation could include an FBA. However, when the school psychologist provided the parents with an assessment plan that included the names of individuals who would be

responsible for various components of the evaluation, the name of the Behavior Analyst who would be leading the development of the FBA was inadvertently omitted. At the direction of the assistant superintendent, the school psychologist sent a follow-up email to the parents calling out that omission and offered an explanation as to why an FBA had been included in the proposed evaluation. In a separate email, the assistant superintendent also provided the parents with an explanation as to why an FBA was included in the district's proposed evaluation.

No evidence was provided by the parent to show that the FBA proposed by the district was to be used for any purpose other than would be considered appropriate. FBAs are designed to assist a team in understanding the function or purpose underlying a student's behavior - such as this student's school avoidance - and can help the team develop a plan that would provide interventions and positive supports for the student in the school setting. FBAs are commonly used by teams to explore the context in which behaviors occur. The parent has asserted that the district included an FBA in their proposed evaluation only because of a biased disciplinary record which unfairly prejudiced the IEP team members. However, FBAs are commonly used to help teams take a closer look at what might be causing a student to exhibit behaviors that hinder his/her success in the school setting.

Because the parent subsequently objected to an FBA being included in the student's evaluation plan, the district opted not to complete an FBA as a part of the comprehensive evaluation - even though the parent had initially provided consent for an evaluation that could include an FBA. Therefore, the issue of the improper use of an FBA is moot. A violation of special education statutes and regulations *is not substantiated* on this issue.

**Issue Two:** The restrictions the district has imposed on the parent bar him from meaningfully participating in the student's evaluation process, as well as from receiving some of the notices by email.

#### **Parent's Position**

Citing 34 C.F.R. 300.322(a), the parent contends that the district violated federal special education regulations by failing to take steps to ensure that he has been afforded an opportunity to participate in the evaluation process of the student. The parent further asserts that federal regulations at 34 C.F.R. 300.505 have been violated because the district has restricted his access to school property

and limited his communication with district staff. Specifically, the parent states that the district has blocked his ability to communicate directly with the student's current and former teachers and other non-administrative staff. He further states that he is not allowed to come to the school to observe the student.

### 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).

Federal regulations, at 34 C.F.R. 300.322, state

*"Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—*

- o *Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and*
- o *Scheduling the meeting at a mutually agreed on time and place."*

At 34 C.F.R. 300.505, federal regulations state:

*"A parent of a child with a disability may elect to receive notices required by 300.503, 300.504 and 300.508 by an electronic mail communication, if the public agency makes that option available."*

The notices referenced under this regulation include

- Notice of the district's proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- notice of the district's refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

- the provision of procedural safeguards available to the parents of a child with a disability; or
- information regarding the filing of a due process complaint.

Neither federal nor state statutes and/or regulations limit a district's ability to establish policies and practices regarding classroom observations. Districts are also not limited in their ability to establish guidelines regarding communication between parents and staff so long as those guidelines do not keep the parent of a child with a disability from participating in educational decision-making on behalf of the child.

Additional case law has addressed this issue. Recently, for example, in L.F. v. Lake Washington Sch. Dist., 75 IDELR 239 (9th Cir. 2020), the court ruled on a case wherein the school imposed a communication plan prohibiting the parent from any communication in any form with any district employee aside from a bi-weekly meeting with designated administrators. This was later lengthened to monthly meetings because the parent did not abide by this requirement. The court said communication restrictions on a parent were not retaliatory because they were put in place due to a pattern of "sen[ding] incessant emails to staff accusing them of wrongdoing; ma[king] presumptuous demands; level[ing] demeaning insults; ... and in face-to-face interactions, act[ing] in an aggressive, hostile, and intimidating manner." District employees complained that L.F.'s extraordinarily time-consuming communications made District staff feel threatened and intimidated. and was unrelated to any protected activity. The parent also alleged that the communication plan was a violation of his First Amendment right of free speech. The court disagreed, saying "it is not a constitutional violation to require that parents, if they wish to be heard, communicate only with particular staff members or do so only at a specified time and place. Because schools are not a forum for public expression, the district can set reasonable limits of the time, place, and manner of a parent's communications. In addition, the district plan also stated that school employees would no longer respond to the parent's communications. This was, the court said, regulation of the district personnel conduct, not the conduct of the parent. Because the government is under no constitutional obligation to respond to such views, there is no violation where a government entity such as a school district ignores (or threatens to ignore) communications from outside the specified channels.

### Investigative Findings

On August 14, 2023, the Chief Legal Officer for the district sent an email to the parent which stated:

*"We request you cease communication with any staff member at [the student's previous district elementary schools]. In addition, you shall not enter the premises of those schools. As we have already conveyed to you, the events at [the student's school of enrollment when entering the district] were thoroughly investigated and the resulting disciplinary consequences will stand, as well as the grade assigned by [the student's teacher at that school]. All future communication from you should be directed solely to school administrators who are currently serving your children. Your failure to comply with this direction will result in further remedial action, including a complete ban on your access to [district] property and personnel. "*

The parent was emailed prior written notice of the district's proposal to conduct a special education evaluation on November 30, 2023, and the parent provided written consent for the evaluation via email on that same date.

On December 4, 2023, the school psychologist sent an email to the student's parents to let them know that consent for evaluation had been received and providing information regarding who would be responsible for completing various elements of the assessment. In her email, the school psychologist also proposed a possible date (February 13, 2024) for the evaluation team to meet with the parents.

On December 13, 2023, the Chief Legal Officer for the district sent the following email to the parent:

*"It has come to my attention that you have resumed sending harassing emails to [district] staff and Board of Education members. Your emails are perceived as uncivil and threatening. On August 14, 2023, I instructed you to limit your communications to school administrators who are currently serving your children. I cautioned you that your failure to comply with that instruction could result in further remedial action, including a complete ban on your access to [district] property and personnel. Your continued communication to teachers and school staff members is in direct violation of that instruction. Because your conduct has caused substantial distress for [district] staff, you are no longer*

*permitted to be on the premises at [the student's elementary school] for any purpose other than to transport [the student] to and from school. I am again instructing you to cease communication with any [district] staff member except school administrators who currently serve your children. Should you fail again to comply with this instruction, your access to [district] schools and staff will be terminated altogether.*

*I understand you are requesting an observation at [the student's current school]. Based on your threatening behavior, we will not agree for you to conduct an observation at the school. [The student's mother] and [the student's] therapist will be permitted a 30 minute observation opportunity upon [the student's mother's] request to [the building principal]."*

The student's mother and the school psychologist exchanged additional emails about the evaluation process on December 14 and 15, 2023.

On December 14, 2023, the Chief Legal Officer for the district sent an email to the parent writing:

*"Your access to staff has been restricted due to the harassing and intimidating nature of your emails. I have addressed your uncivil conduct with you in the past, and I am again forced to take this issue up at the present. You may only communicate with [the principal of the student's brother's school], [the student's building principal] and the administrators you have engaged with at District Office such as [the assistant superintendent for special education], Amy Farthing, and me."*

In a subsequent email to the parent on December 14, 2023, the Chief Legal Officer for the district wrote:

*"Your communication at [the student's elementary school] is limited to [the building principal]. I do not intend to have continued dialogue on this matter."*

In an email to the student's parents dated December 19, 2023, the assistant superintendent for special education wrote:

*"One final issue. I want you both to be able to ask questions to the appropriate person as we go through the evaluation process. We also need to follow the communication restrictions that are in place from...our [chief legal officer]. I believe that [the parent] is restricted to emailing only [the building principal at the student's neighborhood school], and she will share your questions with the appropriate staff member. You can also email me or anyone else indicated by [the chief legal officer] with any questions or concerns. I don't believe [the student's mother] has any restrictions."*

In his email of December 19, 2023, the assistant superintendent encouraged the parent to provide consent for the district to include an OT evaluation in the student's comprehensive special education evaluation.

On page 9, the Parent/Student Handbook for the student's elementary school contains the following section:

*"Classroom Visits/Observations*

*Providing and ensuring quality, uninterrupted instructional time for students and staff is very important at [the elementary school].*

- 1. Classroom visits by parents/legal guardians are allowed under these circumstances:
  - 1. To attend an event such as a party or a play.*
  - 2. To conference with the teacher in the classroom when other students are not present. Conferences during school day hours must be prearranged.*
  - 3. To be a classroom volunteer. The teacher must prearrange and approve the volunteer's tasks and schedule. Volunteers must follow all guidelines outlined by the principal.**
- 2. To make classroom observations during instructional time, requests and approvals must be processed through the principal in advance. The principal reserves the right to accompany the parent to the classroom and to limit the observation to no more than one hour. Observations will not be scheduled during student assessments."*

In an email exchange over the period of January 5 and 6, 2024, the student's mother and the building principal discussed the scheduling of an observation by



the student's mother and the scheduling of an opportunity for the parent to view video footage of an incident that occurred in the student's PE class in December 2023.

At the time of the writing of this report, the comprehensive evaluation of the student was still in process.

### Summary and Conclusions

The parent gave written consent for the district to conduct an evaluation of the student. As demonstrated through documents provided by the district and the parent, information regarding the evaluation plan was conveyed to one or both of the student's parents by both the school psychologist and the assistant director of special education. The consent of the parent(s) was sought for changes to the initial request for consent for evaluation, and the parent exercised his decision-making power by declining to allow those changes to be made.

While the parent had expressed his interest in observing the student in the school setting during the evaluation, the comprehensive evaluation proposed by the district did not require that the parent complete an observation.

Special education statutes and regulations do not limit a district's ability to establish protocols related to observations by parents in the school setting. The student handbook for the student's elementary school addresses the topic of classroom observations, noting that observations are subject to the approval of the building principal and are limited to one hour. Although the district had restricted the parent's access to the student's building, the student's mother and his therapist have been allowed access.

Documents provided by the district and by the parent show that there has been ongoing email communication between the parties. While the parent's email access to district staff has been limited by the district's actions, there is no evidence that these restrictions have deprived the parent of his right to any special education notice or limited his participation in educational decision-making regarding the comprehensive evaluation. 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 not substantiated any violation of special education statutes or regulations*. Therefore, no corrective actions are warranted.

### 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](mailto: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 20 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 20 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)