

Kansas Administrative Regulations

State Department of Education

Article 40.—Special Education

91-40-51. Filing complaints with the state department of education.

(a) Any person or organization may file a written, signed complaint alleging that an agency has violated a state or federal special education law or regulation. Also, a prevailing party in a due process hearing may file a complaint alleging that the other party has failed to implement the hearing decision. The complaint shall include the following information:

(1) A statement that the agency has violated a requirement of state or federal special education laws or regulations;

(2) the facts on which the statement is based;

(3) the signature of and contact information for the complainant; and

(4) if the complaint involves a specific child, the following information:

(A) The child's name and address of residence, or other contact information if the child is a homeless child or youth;

(B) the name of the school the child is attending;

(C) a description of the problem involving the child; and

(D) a proposed resolution to the problem, if a possible resolution is known and available to the complainant.

(b)(1) The complaint shall allege a violation that occurred not more than one year before the date the complaint is received and shall be filed with the commissioner of education.

(2) The party filing the complaint shall forward a copy of the complaint to the agency against which the allegations are made at the same time the complaint is filed with the commissioner of education.

(c) Upon receipt of a complaint, an investigation shall be initiated. At a minimum, each investigation shall include the following:

(1) A discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded;

(2) contact with the agency against which the complaint is filed to allow the agency to respond to the complaint with facts and information supporting its position, offer a proposal to resolve the complaint, or offer to engage in mediation to resolve the complaint; and

(3) a written report of findings of fact and conclusions, including reasons for the decision, and any corrective action or actions that are required, including the time period within which each action is to be taken. Unless the parent and the agency agree to engage in mediation, this report shall be sent to the parties within 30 days of the receipt of the complaint. If the parties mediate but fail to resolve the issues, the report shall be sent 30 days after the department received notice that mediation has failed.

(d) An on-site investigation may be conducted before issuing a report.

(e)(1) If a report requires corrective action by an agency, that agency, within 10 days of the date of the report, shall submit to the state director of special education one of the following:

(A) Documentation to verify acceptance of the corrective action or actions specified in the 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. Each appeal shall be made in accordance with subsection (f).

(2) If an agency files a request for an extension of time within which to complete one or more corrective actions required in a report, a review committee of at least three department of education members shall be appointed by the commissioner to review the request and the offered justification for the extension of time. A decision on the request shall be made by the committee within five business days of the date the request was received. The decision of the review committee shall be final.

(3) If a local education agency fails to respond to a report within the time allowed, the sanctions listed in paragraph (f) (2) may be invoked.

(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).

(g) (1) If a complaint is received that is also the subject of a due process hearing or that contains multiple issues of which one or more are part of the due process hearing, the complaint or the issues that are part of the due process hearing shall be set aside until conclusion of the hearing.

(2) If an issue that has previously been decided in a due process hearing involving the same parties is raised in a complaint, the due process hearing decision shall be binding on that issue and the complainant informed of this fact.

(Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-988;
effective May 19, 2000; amended March 21, 2008.)

***** Authenticated Kansas Administrative Regulation *****