

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT # 500
ON AUGUST 28, 2023

DATE OF REPORT OCTOBER 4, 2023

This report is in response to a complaint filed with our office by ----- on behalf of her daughter, ----- . For the remainder of this report, ----- will be referred to as "the student." - ----- will be referred to as "the parent."

Investigation of Complaint

On August 29, 2023, the complaint investigator spoke via telephone with Dr. JaKyta Lawrie, Executive Director of Special Education for the Wyandotte Comprehensive Special Education Cooperative. The investigator spoke by telephone with the parent on September 5, 2023.

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

- Individualized Family Service Plan (IFSP) for the student
- Part C to Part B referral dated November 11, 2022
- Evaluation/Eligibility Report dated April 25, 2023

Background Information

This investigation involves a 3-year old girl who was referred to Part C Infant Toddler (IT) services by her pediatrician due to speech and gross motor concerns. She was evaluated through IT services and was determined to be eligible for that program.

In the fall of 2022, the parent was informed by IT about options available to the student when she turned 3-years of age, including the option of pursuing evaluation of the student by the school district to determine whether or not she would be eligible to receive early childhood special education services.

An IT worker scheduled a transition meeting between the worker, the parent, and a staff member from the early childhood center in the district to which the student would be assigned if eligible for special education services. That transition meeting was held on November 30, 2022. The student would turn 3 years of age on April 28, 2023. The school psychologist who participated on behalf of the district in the transition meeting left the district in December 2022, and the cases she was following were assigned to another school psychologist.

At the November 30, 2022 meeting, the evaluation/eligibility process for district early childhood services was explained, and the parent was asked whether she wanted to pursue the

evaluation of the student by the district. After the parent had responded that she was interested in pursuing the evaluation, the parent reports that she was told that “someone from the district” would reach out to her in the near future to schedule the evaluation.

According to the parent, she was not contacted by anyone from the district until April 18, 2023. In her complaint, the parent writes that she was told by a staff member from the early childhood center (later identified as the school psychologist) that at that time there was not enough manpower to complete the student’s evaluation. The parent states that she was told that she could still request that an evaluation be completed, or she could revoke her request for evaluation and apply for the district’s general education preschool program. The student could subsequently be referred for evaluation by the preschool program, and an evaluation could be conducted at that time. The parent told the school psychologist that she wanted to discuss her options with her spouse.

The parent reports that she was again contacted by the school psychologist on April 20, 2023 and was told that an eligibility meeting needed to be held. The parent reports that she questioned how an eligibility meeting could be conducted when the student had not yet been evaluated. The parent explained to the psychologist that, based on her experience with another of her children, she did not believe the student would be considered eligible for the general education pre-school and asked the school psychologist to send her the evaluation consent form. She also informed the school psychologist that she would be filing a formal complaint.

The parent was provided an electronic evaluation consent form and provided electronic written consent for the evaluation of the student on April 20, 2023. Later that day she was contacted again by district staff and was told that “they were trying to find other providers in the district to complete the evaluation.” The parent was asked to bring the student to the early childhood center on April 24, 2023. The district proposed an 8:00 AM evaluation time, and the parent indicated that she could have the student at the center by 8:30 AM.

On Sunday, April 23, 2023, the parent received a text asking if she was still available at the 8:30 AM time on April 24, 2023. The parent brought the student to the center at the appointed time, and an evaluation was completed. The parent states that she was fearful that the evaluation would be rushed and would not be a “quality” evaluation but “the staff were great. They were pleasant and treated my daughter and me great. I believe the evaluation was done appropriately.”

The parent reports that, after the evaluation, she was told that an eligibility determination meeting would need to be held the following day on April 25, 2023. The parent agreed to participate in that meeting via Zoom. At the meeting, the student was not determined to be eligible for early childhood special education services.

Issue

In her complaint, the parent acknowledges that the transition of her child met legal requirements and was completed before the student's third birthday, but she states that she was frustrated by the district's delay in reaching out to her regarding the evaluation until 8 days prior to the student's third birthday. The parent states in her complaint that it appeared to her that the district's decision to timely complete the student's evaluation was the result of the parent's indication that she intended to file a formal complaint.

In a telephone conversation with the investigator on September 5, 2023, the parent stated that it was her concern that other parents who lack her experience with the evaluation/eligibility process or their rights or who may have other barriers such as language might be persuaded to withdraw their request for evaluation and therefore might not be aware that their child was in fact eligible to receive early childhood special education services. In her written complaint and in her conversation with the investigator, the parent stated that she did not consider this "an individual issue." Rather, the parent asserts the following:

There is a systemic lack of staff required to conduct Part C to Part B transition evaluations and provide services in a timely manner.

Applicable Statutes and Regulations

For children receiving Part C services who may need an initial evaluation to determine eligibility for Part B special education services, the Part C Infant-Toddler Program may make a referral to the school district. The referral is to be made and a transition plan must be developed at least 90 calendar days prior to the child's third birthday. If it is determined that an evaluation will be needed to determine a child's eligibility for Part B Early Childhood Special Education Services, parents must be provided with notice of that evaluation and written parental consent must be obtained before the evaluation can be conducted. The evaluation must be completed within 60 days of the receipt of parental consent or sooner if needed to ensure that an IEP is developed and implemented by the time the child turns three years of age.

Understanding that a child's development changes rapidly during these early years, a local education agency (LEA) may have concerns about the appropriate timing of the initial evaluation and Individualized Education Program (IEP) development. In such a case, the LEA must carefully weigh the benefits and risks of when an eligibility evaluation should be conducted, taking into consideration timeline requirements for completion of the initial evaluation, and if eligible, implementing the IEP by the child's third birthday.

Investigative Findings

Early Childhood Special Education preschool programs are located in four centers in the district. The boundaries for each of these centers are determined by early childhood program staff. School assignments for individual students transitioning from Part C Infant Toddler

programs are based on the needs of the student, the student's residential address, and proximity to centers within the established boundaries.

Evaluations for students being considered for eligibility for early childhood programs are conducted by school psychologists, related services providers, "Academic Teachers/Academic Evaluators," nurses and/or an audiologist. School psychologists and "Academic Teachers/Academic Evaluators" co-facilitate eligibility meetings for transitioning students. "Academic Teachers/Academic Evaluators" are certified special education teachers who are responsible for completing the Assessment, Evaluation, and Programming System for Infants and Children (AEPS) portion of the initial evaluation. These individuals also take the lead for the evaluation team in writing a student's initial IEP, and they facilitate the initial IEP team meeting for an eligible student.

The district has one team of school psychologists and academic evaluators who complete evaluations for all early childhood special education sites. Each site has its own group of related services providers who complete those portions of the evaluation related to their areas of expertise.

Part C IT providers are responsible for the scheduling of transition conferences. Data collected by the district shows that, during the 12-month period covered by this complaint, Part C to Part B transition meetings were sometimes scheduled as early as 180 days before a child's third birthday. The average time between the transition conference and the date when the district obtained consent to evaluate the child has been 60 days. The average time between the date of the transition conference and the date the students have been evaluated has been 90 days.

A total of 71 Part C to Part B transition meetings were held during the 12-month period covered by this complaint. Not all of these transition meetings resulted in a referral to the district for evaluation to determine eligibility for early childhood special education services. Some of those children and their families moved outside of district boundaries. In other instances, contact with the families was lost. Other parents did not want the district to evaluate their child.

According to information provided by the district, a total of 48 students were referred from Part C Infant Toddler to Part B district services during the period of September 1, 2022 to May 31, 2023. Of that total, 34 students were evaluated to determine eligibility for special education services from the district.

An additional 23 students have been referred to the district by Infant Toddler since June 1, 2023; 14 of those students have been evaluated for special education service eligibility. One student is being evaluated as of the date of this report.

The parent did not provide any evidence to show that the evaluation of any student extended beyond the required 60-day timeline between the date written consent for evaluation was obtained and the date that the evaluation was completed.

The parent also did not provide any evidence to show that either an eligibility determination meeting or the initiation of services to any eligible child extended beyond the date of that child's third birthday.

The district reported that the evaluation of one student was conducted 7 days after his third birthday and the eligibility determination meeting for that child was not held until 9 calendar days after that child's third birthday. There were, however, extenuating circumstances. In this case, the parent had initially refused consent for the district's evaluation but subsequently opted to allow the evaluation. The student's third birthday was on April 26, 2023. The parent provided written consent for evaluation on April 13, 2023. The evaluation was completed on May 3, 2023, and the parent was unable to participate in an eligibility meeting until May 5, 2023 when it was determined that the student was ineligible for special education services.

According to the Executive Director of the special education cooperative, while staff may have had conflicts with regard to scheduling an evaluation of the subject student on a given day, the early childhood programs have been fully staffed during the 12-month period covered by this complaint and there would have been no shortage of staff to conduct this student's evaluation or the evaluation of any other transitioning student.

According to the Executive Director, there were no staff vacancies in the cooperative's early childhood programs between May of 2022 and May of 2023. Coverage has been provided for two teacher vacancies in a location other than the student's assigned program since the start of the 2022-23 school year. There have been no vacancies in any related service staff positions for the early childhood special education programs from May of 2022 to date.

The parent did not provide any evidence to show that other parents were told that they had the option to withdraw their referral for evaluation to determine early childhood eligibility. The district has no record of any other parent being offered such an option and no record to show that any referral/request for evaluation from a parent was withdrawn.

The Executive Director of the special education cooperative has stated that the parent should not have been offered the option of withdrawing her referral for an evaluation to determine early childhood special education eligibility. However, because the school psychologist who is alleged to have offered the parent this option is no longer employed by the district or available, neither the director nor this investigator was able to interview that individual.

Summary and Conclusions

As confirmed by the parent, the evaluation of the student named in this complaint was completed within the timeline established by special education statutes and regulations. This investigation focused only on the parent's concern regarding a potential systemic failure on the part of the district to timely and appropriately manage Part C to Part B transitions for other students.

Evidence examined during this investigation did not reveal the presence of systemic delays with regard to the evaluation and determination of eligibility for early childhood special education preschool services for children transitioning from Part C to Part B services. No evidence was presented by the parent nor was any found by this investigator to show that parents have systematically been encouraged to withdraw either their referral for evaluation or their written consent for evaluation. No evidence was provided by the parent nor was any found by this investigator to show that staff vacancies have delayed the evaluation of children beyond their third birthday. In only one instance did the process of completing an evaluation and determining the eligibility of a child to receive early childhood special education services extend beyond the child's third birthday. In that instance, extenuating circumstances contributed to the delay.

Under the circumstances outlined above, a violation of special education statutes and regulations is not established on the issues presented in this complaint.

Corrective Action

Information gathered in the course of this investigation has not substantiated noncompliance with special education statutes and regulations on the issue presented in this complaint. Therefore, no corrective actions are required.

Investigator



Diana Durkin
Complaint Investigator

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f).

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

- (A) The issuance of an accreditation deficiency advisement;
- (B) the withholding of state or federal funds otherwise available to the agency;
- (C) the award of monetary reimbursement to the complainant; or
- (D) any combination of the actions specified in paragraph (f)(2)

and according to the school's policy for making a referral for an initial evaluation. For additional information about the Part C to Part B referral timeline see, https://ectacenter.org/~pdfs/topics/transition/timeline_flowchart_APR_indicators_09-12_OSEP_approved.pdf; and the Kansas Early Childhood Transition (SPP Indicators C8/B12), Part C to B Frequently Asked Questions at <https://www.ksde.org/Portals/0/SES/KIAS/indicators/Ind12-FAQ-KS.pdf>.