

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
BLUE VALLEY PUBLIC SCHOOLS, USD #229  
ON DECEMBER 17, 2021

DATE OF REPORT: DECEMBER 29, 2021

This report is in response to a complaint filed with our office by \_\_\_\_\_ and \_\_\_\_\_ on behalf of their daughter, \_\_\_\_\_. \_\_\_\_\_ will be referred to in the remainder of this report as "the student." Mr. and Mrs. \_\_\_\_\_ will be referred to as "the parents."

### Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with Mark Schmidt, Assistant Superintendent of Special Education for Blue Valley Public Schools, on December 20 and 21, 2021.

In completing this investigation, the complaint investigator reviewed the following material provided by the parents with their complaint:

- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated January 23, 2020
- Psychology Evaluation Final Report dated February 3, 2020
- Reading data from the 2019-20 school year
- Student Progress Monitoring Graphs (Acadience Reading) for the 2019-20 school year
- Speech-Language Evaluation completed in September 2020
- Evaluation Report draft dated October 14, 2020
- Specific Learning Disability
- Notes regarding an Eligibility Assessment Meeting dated October 26, 2020 taken by a student advocate
- Special Education Initial Evaluation eligibility determination dated November 16, 2020
- Email exchange dated June 9, 2021 between the student's mother and the school psychologist

- Email dated June 20, 2021 from the parents to the Assistant Superintendent

The investigator also reviewed an email dated July 27, 2021 from the Assistant Superintendent to the parents.

### **Background Information**

The student is an eight-year-old girl. In January of 2020, when she was six years old and enrolled in first grade in the district, she was referred for special education evaluation by her parents. In February of 2020, the student was diagnosed with dyslexia, ADHD, and Generalized Anxiety Disorder at Children's Mercy Hospital. When schools were closed by order of the governor of Kansas in March of 2020 due to COVID-19, the student's evaluation was paused.

The student did not return to the district for the 2020-21 school year, but the parents did bring the student to the school so that the evaluation to determine her eligibility for special education services could be completed. An eligibility meeting was held on November 20, 2020. The team determined that the student was not in need of special education services, and therefore, not eligible for special education.

In June of 2021, the parents met with the Assistant Superintendent to discuss the possibility of a future transfer of the student to a school other than her neighborhood school. Following the meeting, the Assistant Superintendent also directed the parents to information regarding Child Find for students enrolled in private schools should they decide to have the student reevaluated for special education. The district has not received a request from the parents for the reevaluation of the student.

The student was not enrolled in the district for the 2021-22 school year.

### **Applicable Statutes and Regulations**

Formal complaint is one of the methods parents of children with exceptionalities have to resolve special education-related disagreements with the school district. When filing a complaint, parents must allege that the district is not complying with the requirements of the Individuals with Disabilities in Education Act (IDEA), the Kansas Special Education for Exceptional Children Act, or the corresponding federal or state regulations. The formal complaint must be for a situation that occurred in the 12-month period preceding the receipt of the complaint by the Kansas State Department

of Education. (See K.A.R. 91-40-51(a) and (b).)

### Issues

In their complaint, the parents raised three issues:

Issue One: The IDEA guarantees the right to a Free and Appropriate Public Education (FAPE). The district has violated the student's rights by not assessing the correct areas defined on the prior written notice and consent for evaluation form (PWN). Because not all areas were assessed, the student did not have the opportunity to be correctly identified, and therefore, also does not have services provided in all area of concern through an individualized educational program appropriately designed to meet her unique needs.

### Parents' Position

In their complaint, the parents point specifically to an evaluation that was initiated at the request of the parents in January of 2020. The eligibility determination meeting related to that evaluation was conducted on November 20, 2020. The parents allege that the district

- failed to conduct a comprehensive evaluation;
- failed to address the student's social/emotional concerns;
- evaluated the student in areas not identified on a prior written notice and consent form;
- did not consider all areas of suspected disability; and
- discounted information provided by the parents and the student's teachers when determining that the student did not need special education services.

### Conclusion

Because this issue alleges violations related to a special education evaluation and eligibility decision that occurred more than 12 months prior to the date this complaint was received by the Kansas State Department of Education, this issue was not investigated.

Issue Two: The elementary school in which the student was enrolled has failed to support the student's emotional and academic needs.

### Parents' Position

In their complaint, the parents state that they are concerned about the mental health of the student and assert that the learning environment at the school has directly impacted her emotional stability and self-confidence. The parents state that they are concerned that the student has a negative attitude towards the public schools because of the way she felt while attending. The parents assert that following the district's evaluation of the student in the Fall of 2020, she was resistant to return to the school.

The parents allege that, during the student's Kindergarten year (school year 2018-19), the school did not start the Child Find process for the student despite expressed concerns from the parents and the teachers and numerous absences.

### Conclusion

Building climate is not addressed in special education statutes and regulations. Further, allegations regarding the district's failure to implement Child Find activities for the student prior to the parents' referral of the student for a special education evaluation in January 2020 pertain to a situation that occurred outside the 12-months prior to the receipt of this complaint. For these reasons, this issue was not investigated.

**Issue Three:** (Per the complaint) "[The student] is unable to access a FAPE without intense and sustained resources to meet her disability needs without meeting Prong 2 evaluation criteria."

### Parents' Position

The parents assert that they did not agree with Prong 2 findings of the student's initial evaluation for special education as they stated in an evaluation team meeting on November 20, 2020. The parents contend that the student's first grade teacher, a reading specialist, and a speech and language pathologist identified areas of concern. It is their position that the student had been provided with intense and sustained resources but was still not achieving above benchmark levels.

The parents further assert that the district's general education curriculum was inadequate to meet the needs of a student with dyslexia such as their daughter and that district staff was not well trained regarding dyslexia.

## Conclusion

In this issue, the parents are again alleging a violation related to a situation that occurred in November of 2020, more than twelve months prior to the receipt of the complaint by the Kansas State Department of Education. Therefore, this issue was not investigated.

## **Corrective Action**

For reasons described above, the three issues presented by parents in this complaint were not investigated. No corrective actions are required.

## **Right to Appeal**

Either party may appeal the findings 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, Kansas 66612-1212. That notice of appeal must be delivered to Special Education and Title Services, designee of the State Commissioner of Education, 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 is included below.



Diana Durkin, Complaint Investigator

### 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)

Kansas statutes, at K.S.A. 72-3404(j), define a "Special Teacher" as a "person, employed by or under contract with a school district or a state institution to provide special education or related services, who is: (1) Qualified to provide special education or related services to exceptional children as determined pursuant to standards established by the state board."