

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #290
ON DECEMBER 3, 2021

DATE OF REPORT: DECEMBER 31, 2021

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 December 6 and 7, 2021. On December 6, 2021, 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:

- Materials submitted by the parent in the formal complaint received by the Kansas State Department of Education (KSDE) on December 3, 2021 which included the following:
 - selected sections of a Score Report;
 - excerpts from the Team Evaluation Eligibility/Identification Report dated May 18, 2021;
 - a portion of the Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated August 23, 2021; and
 - a parent-developed transcription of an excerpt from the May 18, 2021 Eligibility Team meeting
- Complete copy of Score Report dated May 10, 2021

- Team Evaluation Eligibility/Identification Report dated May 18, 2021
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated August 23, 2021 (complete document)
- Woodcock Johnson IV Tests of Achievement (WJ IV ACH) Form A protocol dated March 29, 2021
- Woodcock Johnson IV Tests of Cognitive Abilities (WJ IV COG) protocol dated April 5, 2021
- User Qualifications Guide for the Woodcock-Johnson IV Tests of Cognitive Abilities (WJ IV COG) and WJ IV ACH provided by the test producer
- WJ Perspectives: Getting to Know the Woodcock-Johnson IV test of Achievement and Oral Language developed by the test producer
- College transcript for the individual who administered the WJ IV ACH
- License granted by the Kansas State Board of Education to the special education teacher
- License granted by the Kansas State Board of Education to the school psychologist
- Educator Credentials for the school psychologist
- Audio recording of a May 18, 2021 Eligibility team meeting
- Eligibility/Identification Report dated May 18, 2021
- Online course catalogue for Fort Hays State University
- Online course catalogue for Emporia State University

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 diagnosed. The student participates in Cognitive Behavioral Therapy with a private, licensed psychologist.

Issues

In her written complaint, the parent presented two issues. In a telephone conversation with the investigator on December 6, 2021 and in a subsequent email dated December 6, 2021, the parent agreed to allow her complaint to be broken into three separate issues for the sake of clarity. The investigator then informed the district of this modification via email and telephone on December 6, 2021.

Issue One: The district allowed an unqualified staff member, whose only training regarding the Woodcock-Johnson IV Achievement (WJ IV ACH) test had been provided by the district, to administer the test to the student.

Applicable Statutes and Regulations

Special education regulations require that any standardized tests that are given to a child must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment. (34 C.F.R. 300.304(c)(1)(iv) and (v) and K.A.R. 91-40-9(a)(4)(B)).

Parent's Position

It is the position of the parent that because the special education teacher had not received either specific training on the administration of the WJ IV ACH from the company that developed the test or specific instruction through college/university coursework on the administration of the WJ IV ACH, the special education teacher was not qualified to administer the test.

District's Position

It is the position of the district that the special education teacher was fully qualified to administer the WJ IV ACH. The district also asserts that the evaluation team was led by a school psychologist, another highly qualified individual who was available to consult with the special education teacher regarding this assessment.

Investigative Findings

An audio recording of an Independent Evaluation Review Meeting on November 10, 2021 was provided by the parent. On that recording, at

approximately the one hour and fifty-two-minute mark, the parent asks the special education teacher whether she has received any training from “Pearson” – a company that produces a number of assessment instruments but not the WJ IV suite of assessments. The teacher tells the parent that she had not. The teacher also states that she did not receive specific training on the instrument through her university coursework.

Riverside Insights is the producer of the Woodcock Johnson IV suite of assessments which includes both the WJ IV ACH and the WJ IV COG. The company has established a “User Qualifications Guide” informed by the “Joint Standards for Educational and Psychological Testing [American Educational Research Association...American Psychological Association...National Council on Measurement in Education... [and] Standards for educational and psychological testing [in] Washington, D. C. (See riversideinsights.com or call 800.323.9540.)”

The guide outlines three applicable standards for these tests:

- Responsibility for test use should be assumed by or delegated only to those individuals who have the training, professional credentials, and expertise necessary to handle this responsibility. Any special qualifications for test administration or interpretation specified in the test manual should be met.
- Those responsible for educational testing programs should ensure that the individuals who administer and score the test(s) are proficient in the appropriate test administration procedures and scoring procedures and that they understand the importance of adhering to the directions provided by the test developer.
- Those responsible for educational testing programs should ensure that the individuals who interpret the test results to make decisions within the school context are qualified to do so or are assisted by and consult with persons who are so qualified.

The guide lists “qualification levels” associated with the two Woodcock-Johnson instruments identified in this complaint. For the WJ IV ACH, the company specifies the following “medium” level of required education/training for individuals who administer the test:

Bachelor’s degree or higher (e.g., BA, BS, MS, MA, etc.) in early childhood education or development, education, or psychology-related field, OR

certification in OT/PT [occupational therapy/physical therapy or other medical field that is closely related to the intended use of the assessment AND supervised training in administration, scoring, and interpretation of standardized assessments.

OR

Formal supervised mental health, speech/language, medical, and/or educational training specific to assessing children, or infant and child development (school psychologist, speech/language pathologist, occupational therapist, educational diagnostician, nurse practitioner, head start specialist, etc.) AND supervised training in administration, scoring, and interpretation of standardized assessments.

OR

Licensure or certification in a field closely related to the intended use of the assessment OR full active membership in a professional organization such as ASHA [American Speech-Language-Hearing Association], AOTA [American Occupational Therapy Association], AERA [American Educational Research Association], ACA [American Counseling Association], AMA [American Medical Association], CEC [Council for Exceptional Children], AEA [American Evaluation Association], EAA [Educational Audiology Association], NAEYC [National Association for the Education of Young Children], NBCC [National Board for Certified Counselors) that requires training and experience in the relevant area of assessment.

In a document entitled “WJ Perspectives – Getting to Know the Woodcock-Johnson IV Tests of Achievement and Oral Language: An Introduction for Special Education Teachers” Riverside Insights states

For many school settings, special education teachers are the primary administrators of the WJ IV ACH [and another Woodcock-Johnson assessment instrument].

Riverside Insights does not require that a user receive specific training on the WJ IV ACH from either the company or a college/university in order to have the “medium” level capabilities. Rather, the company requires a general level of training that would equip a user to administer the WJ IV ACH or another achievement test.

The district has outlined its own expectations for evaluations that are completed by district staff. As stated on page 12 of the district Special Education Handbook,

All tests administered for evaluation purposes will be given by trained, licensed, and knowledgeable personnel. Test protocols will be followed in accordance with instructions by the publisher of the test.

The district has established internal practices to ensure that individuals who are responsible for the special education-related assessment of students have the training needed to conduct these evaluations. Training regarding the WJ ACH IV includes the modelling of test administration by a trained evaluator and supervised assessments by the trainee.

Additionally, the district has developed a structured mentoring program for new staff that includes sessions specifically designed to target assessment.

The WJ IV ACH was administered to the student by the special education teacher over a three-day period beginning on March 29, 2021 and continuing on April 5 and 21, 2021. At the time this assessment was conducted, the special education teacher held a Bachelor's degree in General Studies (BGS) with a concentration in Child Development. She had been licensed by the State of Kansas since August of 2019 in the area of High-Incidence Special Education for Pre-kindergarten through grade 12.

In the Fall of 2019, the special education teacher participated in the district-level training described above which focused specifically on the administration of the WJ IV ACH. That training included a review of overall expectations for the administration of the test, observations of the assessment being conducted by the trainer, and supervision/observation of the special education teacher by the trainer as the special education teacher administered the assessment. Additional district-level training in assessment was provided to the special education teacher in the Fall of 2019 and 2020 through the special education mentoring program.

In the Fall of 2020, the special education teacher completed university coursework on assessment as a part of a Master's in Special Education program. According to the online catalog for the university from which the special education teacher received her Master's degree in July of 2021, the course **was**

designed to prepare “students to plan, use and report on formal and informal assessments with individuals with exceptionalities. Students will gain knowledge and skills in analyzing data from standardized tests and curriculum-based measurements. Students will also acquire skills in using assessments to make decisions that will improve instructional and learning outcomes.”

Summary and Conclusions

Special education regulations require that any standardized tests that are given to a child must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment.

In a User Qualifications Guide, Riverside Insights, the producer of the WJ IV ACH, defines what the company labels a “medium” level of education/training required for individuals who administer the test. In its listing of acceptable training for an examiner to be considered qualified, the company does not require that an examiner receive either company-developed training on the test or specific college/university course instruction focused on the administration of the WJ IV ACH. Rather, the company requires a level of training that would generally equip a user well to administer this test or any other achievement test like the WJ IV ACH

At the time she administered the WJ IV ACH to the student, the special education teacher met multiple criteria established by the test producer in order to be qualified to administer that test. The teacher held a Bachelor’s degree with concentration in Child Development. She had completed Master’s-level coursework in the area of assessment, was licensed by the State of Kansas as a special education teacher, and had completed district-level supervised training on the administration of the WJ IV ACH. Under these circumstances, a violation of special education statutes and regulations is not substantiated on this issue.

Issue Two: The district allowed an unqualified staff member to administer the Woodcock-Johnson Cognitive assessment but initially provided the parent with information which indicated that the test had been administered by another examiner.

Parent’s Position

The parent asserts that the WJ IV COG was administered by the same examiner who had given the student the WJ IV ACH and contends that this individual was not qualified to administer the cognitive assessment. In support of her position, the parent points to a document entitled "Score Report" which only identifies one examiner. In the opinion of the parent, this document provides evidence of the district's attempt to conceal the true identity of the person who administered the WJ IV COG.

District's Position

The district asserts that the WJ IV COG was given by a school psychologist who was fully qualified to administer the test.

Applicable Statutes and Regulations

As noted above under Issue One, special education regulations require that any standardized tests that are given to a child must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment. (34 C.F.R. 300.304(c)(1)(iv) and (v) and K.A.R. 91-40-9(a)(4)(B)).

Investigative Findings

When filing this complaint, the parent submitted a copy of the first page of a document entitled "Score Report." The parent asserts that this document provides proof that the special education teacher – not the school psychologist – administered the WJ IV COG assessment because the only examiner identified in the report is the special education teacher.

In support of its contention that the school psychologist administered the WJ IV COG to the student, the district provided an audio recording of a May 18, 2021 Eligibility Team meeting. At approximately the one hour and thirty-minute point of an audio recording of the meeting, the school psychologist, who was also facilitating the meeting, began to address the student's performance on the WJ IV COG. On the recording, the school psychologist makes several comments which indicated that she was the person who had administered the WJ IV COG to the student.

The parent is heard asking for the student's percentile scores on the subtests of the WJ IV COG. After a brief discussion, a member of the team leaves the

meeting to print a document that team members believed would include percentile scores. That document was the Score Report.

The Score Report is an internal, working document that was generated by a Riverside Insights computer scoring program. Raw data was entered into the scoring program, and scores were generated which the school psychologist subsequently included in the summative Eligibility/Identification Report given to the parents prior to the Eligibility Team meeting.

The district provided a copy of the Score Report. The document does not specify who administered the WJ IV COG, noting only that the WJ IV ACHA was administered by the special education teacher. The WJ IV ACH "A" is one of three parallel forms of the WJ IV ACH.

The cover sheet of the WJ IV COG protocol provided by the district shows that the test was administered over multiple sessions in April and May of 2021 by the school psychologist.

In addition to the general "applicable standards" for Woodcock-Johnson assessments outlined above under Issue One, Riverside Insights specifies in its User Qualifications Guide the following "high" level of education/training required for individuals who can administer that test:

Doctorate or Masters (e.g., PhD, PsyD, EdD, etc) in a field closely related to the intended use of the assessment, which includes supervised training in administration, scoring, and interpretation of standardized clinical assessments.

OR

Licensure or certification to practice in your state in a field related to purchase (School Psychologist, Clinical Psychologist, etc.) AND supervised training in administration, scoring, and interpretation of standardized assessments.

OR

Licensure or certification in a field closely related to the intended use of the assessment OR full active membership in a professional organization (such as APA [American Psychological Association], NASP [National Association of School Psychologists], NAN [National Academy of Neuropsychology], INS [International Neuropsychological Society]) that requires training and experience in the relevant area of assessment.

At the time the school psychologist administered the WJ IV COG, she held a Bachelor's degree (BS), an Educational Specialist's degree (EDS) and a Master's degree (MS). She was licensed by the State of Kansas to work in grades pre-kindergarten through 12 as a School Psychologist. As a part of her training programs, the school psychologist completed coursework in the administration, scoring, and interpretation of standardized intelligence and achievement testing.

Summary and Conclusions

The investigator found no support for the parent's contention that the district attempted to conceal the identity of the individual who administered the WJ IV COG to the student. Evidence shows that the test was not given by the special education teacher. The evaluation was conducted by a licensed school psychologist whose advanced degrees and training met the "high" standards established by the producer of the test to be considered qualified to administer the test. A violation of special education statutes and regulations is **not** substantiated on this issue.

Issue Three: The student was denied a free appropriate public education (FAPE) on the basis of data obtained through assessments completed by the unqualified staff member identified above in both Issue One and Issue Two.

Parent's Position

The parent asserts that the district's refusal to determine that the student was in need of special education services was based upon assessments administered by an unqualified evaluator. The parent contends that by disregarding the parent's concern regarding the qualifications of the special education teacher and the use of WJ IV ACH scores obtained through evaluation by an unqualified examiner, the district failed to protect the parent's rights and the rights of the student to a free appropriate public education (FAPE).

District's Position

It is the position of the district that the special education teacher and the school psychologist met the user qualification standards established by the producer of the WJ IV ACH and WJ IV COG for the test each administered. The district

further asserts that these two assessments represent only a portion of the information used in May of 2021 to make decisions regarding the student's need for special education services.

Applicable Statutes and Regulations

As noted above under Issue One, special education regulations require that any standardized tests that are given to a child must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment. (34 C.F.R. 300.304(c)(1)(iv) and (v) and K.A.R. 91-40-9(a)(4)(B)).

Investigative Findings

Investigation of Issues One and Two above determined that the individuals who administered the WJ IV ACH and WJ IV COG were qualified.

According to a Prior Written Notice form dated August 23, 2021, the determination that the student was not in need of special education (Prong 2), was based on a number of factors. The report states

"Based on MAP testing and WJ testing, [the student's] academic skills are not significantly below his peers. There were some below average scores on the WJ but none of his scores were close to being significantly below average or not 1.5 standard deviations below the mean. [The student's] MAP scores are in the average range. Based on classroom data, [the student] is reading at a Level O which is an end of 3rd grade level. Providing modifications and accommodations through his 504 Plan are allowing [the student] to make progress in the general curriculum. Since returning from remote learning, his educational growth has been at an appropriate level. He is making the appropriate progress with Title reading interventions that is expected."

Summary and Conclusions

The investigation of Issues One and Two above found that the individuals who administered the WJ IV ACH and the WJ IV COG were qualified. Additionally, the district's determination that the student was not in need of special education services was based on factors beyond the student's scores on Woodcock-

Johnson testing. 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 identified any areas of noncompliance with special education statutes and regulations. Therefore, no corrective actions are required.

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)