

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #290  
ON FEBRUARY 23, 2022

DATE OF REPORT: MARCH 25, 2022

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 March 18, 2022. On March 22, 2022, 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:

- Staffing Record dated November 10, 2021
- Audio recording of the November 10, 2021 meeting
- Notice of Meeting mailed to the parent on November 23, 2021
- Notice of Meeting #1 mailed to the parent on December 1, 2021
- Email dated December 1, 2021 from the assistant director of special education to the parent
- Notice of Meeting #2 mailed to the parent on December 1, 2021
- Notice of Meeting hand-delivered to the parent on December 6, 2021
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated December 6, 2021
- Audio recording of the December 6, 2021 meeting
- Notice of Meeting hand-delivered to the parent on December 6, 2021
- Notice of Meeting mailed to the parent on December 8, 2021

- IEP for the student dated December 16, 2021
- Audio recording of the December 16, 2021 meeting
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated December 20, 2021

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

### Issue

In her written complaint, the parent presented one issue.

The IEP Team did not develop an IEP within 30 calendar days of determination of eligibility, which delayed my child's access to a free and appropriate public education (FAPE).

### Applicable Statutes and Regulations

An eligibility determination team should try to reach consensus regarding an eligibility decision for a student. However, if the team cannot reach agreement, the final decision rests with the person who serves as the LEA (local education agency) representative at the eligibility determination meeting.

An IEP must be developed within 30 calendar days of a determination that the child is eligible for and needs special education and related services (K.A.R. 91-40-8(h)). That IEP must then be implemented within 10 school days after written parent consent is granted for the services in the IEP unless reasonable justification for a delay can be shown (K.A.R. 91-40-16 (b)(2)).

### Parent's Position

It is the position of the parent that the district determined the student to be eligible for and in need of special education services on November 10, 2021 but did not develop an IEP for the student until December 16, 2021 and did not initiate service for the student until mid-January of 2022.

### District's Position

It is the position of the district that the student was not determined to be eligible for and in need of special education services until December 6, 2021. According to the district, the parent was provided with a draft IEP one day after the student was determined to be eligible. The district asserts that the IEP was revised with input from the parent, finalized less than 30 days after the eligibility determination, and implemented on January 13, 2022 – less than 10 school days after the parent provided her written consent for the district's implementation of the IEP.

### Investigative Findings

The student was first referred for special education evaluation by his parents in February 2021. The parents provided written consent for the evaluation on February 26, 2021. An eligibility meeting was held on May 18, 2021 at which time the district provided the parents with prior written notice that the student was not eligible for special education services.

The parent disagreed with the district's determination and on May 19, 2021 submitted a written request for an IEE (independent educational evaluation). On May 28, 2021, the district gave the parent written notice that her request for an IEE had been accepted. The district provided information regarding the district's criteria and procedures for IEEs.

On June 25, 2021, the parent sent an email to the assistant superintendent which addressed a number of topics including the names of individuals/agencies that would be conducting the IEE which was scheduled to be completed on September 30, 2021.

The district received reports of the results of the cognitive portion of the IEE on September 20, 2021. Reports regarding the reading and language portions of the IEE were received by the district on October 14, 2021.

On October 27, 2021, the district mailed both parents notice of a meeting to be held on November 10, 2021 for the purpose of reviewing the results of the IEE and determining whether the student needed "special education services and/or supplementary aids in order to receive a FAPE [free appropriate public education]." A second notice regarding the meeting on November 10, 2021 was mailed to the parent on November 4, 2021.

Both of the student's parents were present for the November 10, 2021 meeting as were the assistant director of special education for the district, a special education teacher, an occupational therapist, a social worker, a school psychologist, a speech/language pathologist, and the student's general education teacher. A parent advocate joined the meeting via Google Meets.

According to the Staffing Record of the November 10, 2021 meeting, the group met to consider the IEE and to "review FAPE [free appropriate public education]." The Staffing Record shows that the group reviewed the IEEs conducted by the outside evaluators and "discussed whether [the student was] receiving FAPE." In an audio recording of the meeting, participants are heard discussing whether or not the student should be considered eligible for and in need of special education services.

According to the Staffing Record, "most team members determined [the student was] in need of specially designed instruction." Approximately three hours and twenty minutes into the audio recording of the meeting, the assistant director (who was the LEA representative for the meeting) stated that because so many of the participants felt that the student was in need of specialized instruction, she was making the decision to identify the student as exceptional.

The group can then be heard discussing timelines for an IEP Team meeting, noting that the IEP needed to be completed by no later than December 9, 2021 (thirty calendar days). The group spoke about timelines for presenting the parents with a draft of an IEP for the student which could be used as a basis for the IEP Team discussion at the next meeting.

On November 23, 2021, the district mailed the parent notice of a meeting to be held on December 6, 2021. The notice form stated that the meeting was to be held "to develop the individualized education program [IEP]."

A second notice regarding the meeting on December 6, 2021 was mailed to the parent on November 29, 2021. This notice also indicated that the meeting was to be held “to develop the individualized education program [IEP]” for the student.

According to the district, concerns began to surface among district team members that the team lacked all the information needed to address all the student’s needs in the draft IEP. Specifically, staff members reported that they felt they were not able to gather the information they needed to adequately discuss all areas of possible special education eligibility and expressed concern about developing services and accommodations related to the student’s social-emotional needs.

On December 1, 2021, the assistant director sent an email to the parent stating:

I wanted to give you an update about the upcoming meeting. We have been gathering present levels of performance for (the student) for the team to discuss, and we have been trying to put together an addendum to the original eligibility report that encapsulates our conversation from the last time and also attempts to answer the qualifying questions for eligibility. There are still parts of eligibility the team has not discussed and eligibility has not been determined. We also have not signed any documents yet for eligibility. Eligibility is the first step in the process and will be the focus of our Monday (December 6, 2021) meeting. While (the special education teacher) has gathered present levels, there will not be an IEP to review until the team determines eligibility and completes that process. Since eligibility paperwork will be discussed and signed, we will also invite...the speech pathologist to the meeting.

An agenda for Monday’s meeting has been attached to this email.

According to the agenda, seven topics would be discussed.

- Purpose of the meeting;
- parent concerns;
- brief review of IEE (independent educational evaluation) from the previous meeting;
- discussion of present levels of performance in the area of social/emotional needs;
- discussion of present levels of performance in reading, math, and written language;
- discussion of eligibility questions (exceptionality and need); and
- final eligibility determination.

Also on December 1, 2021, the district mailed the parent a new notice regarding the December 6, 2021 meeting which stated that the meeting would be held not only for the purpose of developing an IEP for the student but also to “review the evaluation and determine eligibility.”

On December 2, 2021, the parent sent an email to the assistant director stating:

We object to revisiting the issue of Eligibility for Special Education for [the student]. As the LEA Rep at that meeting, you are on record as confirming that [the student] *is* eligible for Special Education. After extensive discussion, as well as repeated efforts by our Advocate to refer to and apply the Eligibility Indicators from the KSDE Handbook, when asked one by one, 8 of the 10 members of the team did say they were in favor of qualifying [the student] for Special Education Eligibility. At that point, as the LEA Rep, you confirmed that determination...

The team then went on to discuss areas of concern to be addressed in the next meeting at which the IEP would be addressed, and the discussion focused on his ability to compose a written paragraph, and at what point an intervention would begin...

On December 3, 2021, the assistant director sent the parent an email stating:

I appreciate your viewpoint and I understand your frustration. Through our gathering of present levels, there is simply not enough feedback from the team yet to complete the eligibility report. We are particularly interested in discussing the social emotional section and whether he might qualify for any services in that area. Discussing the social/emotional aspect of [the student's] testing and present levels needs to be an item of discussion before we move forward in the process.

The parent responded via email on December 3, 2021 stating:

As far as extending any discussion about eligibility, we are more than happy to consider adding an additional area of eligibility relevant to [the student's] Social-Emotional levels.

However, the team at the 4-hour Eligibility Meeting on November 10, 2021, determined [the student's] eligibility under the Eligibility Indicators for Specific Learning Disability, with needs demonstrated in Reading and Writing. We are not willing to consent to exiting him from that eligibility and expect that regardless of any other determination we may add, we will be working as a team on Monday morning to develop an appropriately ambitious IEP with services, supports, and accommodations relative to [the student's] already determined eligibility.

A third notice of the meeting on December 6, 2021 was mailed to the parent on December 1, 2021. According to this notice, the meeting was "to review the evaluation and determine eligibility" as well as "to develop the individualized education program [IEP]." A fourth notice of the December 6, 2021 meeting was hand delivered to the parent on December 6, 2021.

The Staffing Record from the December 6, 2021 meeting shows that the purpose of the meeting was "eligibility." According to the record, the school psychologist stated at the beginning of the meeting that the team was "continuing eligibility discussion."

Discussion of academic present levels was deferred at the request of the parent advocate to allow the team to answer the question of the student's eligibility for special education services.

On an audio recording of the meeting on December 6, 2021, the team can be heard discussing the student's eligibility for special education services under the category of Other Health Impaired. As the meeting concluded, participants spoke about dates for a future meeting for the purpose of IEP development.

The district told the parent that a draft IEP could be sent to her on December 7, 2021 and proposed December 8, 2021 as the date for the IEP team meeting. On the audio recording, the parent can be heard telling the district that she was not sure she would be available for a meeting on that date since she would have to take more time off work to attend. The school psychologist suggested that the parties discuss a second optional date should December 8, 2021 prove unworkable. December 16, 2021 was agreed upon as the back-up date.

On December 6, 2021, the parent was provided with a notice of meeting for December 8, 2021 for the purpose of developing the IEP for the student.

On December 6, 2021, the district also provided the parent with a prior written notice stating that “it was agreed upon at the 11/10/21 meeting that [the student] meets eligibility criteria for Specific Learning Disability.”

The district sent a draft of a proposed IEP for the student to the parent on December 7, 2021.

The parent was not able to take a second day off work to attend a second meeting during the week of December 6, 2021, so the meeting was moved to the back-up date of December 16, 2021. On that date, 36 calendar days after the district determined that the student was determined to be eligible for special education services under the category of Specific Learning Disability, the team met to develop an IEP with input from the parent.

A copy of the IEP developed by the team at the December 16, 2021 meeting was sent electronically to the parent on December 20, 2021 shortly before the start of Winter Break on December 23, 2021. A paper copy of the IEP was sent home to the parent in the student’s backpack.

On December 20, 2021, the district also provided the parent with prior written notice of its proposal to provide the student with special education services.

The parent reviewed the IEP and on January 3, 2022 sent an email to the special education teacher to request additional changes to both the IEP and the prior written notice document.

Revisions were sent to the parent on January 4, 2022. On January 7, 2022, the parent sent the special education teacher an email with additional changes to the IEP.

The parent provided written consent for the implementation of the district’s proposed special education services on January 8, 2021. Those services included the following:

- Pullout reading instruction within the special education classroom for 30 minutes 4x/week and 15 minutes 1x/week;
- pullout social skills instruction within the special education classroom for 20 minutes 1x/week;
- pullout movement breaks for 4 minutes on an hourly basis 5x/week; and
- consult services between the special education teacher and the general education teacher for 5 minutes 1x/week to discuss [the student’s] needs and compile weekly data.

The district was prepared to begin implementing these services on January 10, 2022, but the student had been exposed to Covid-19, was quarantined, and did not return to school until January 13, 2022 at which time special education services were initiated.

### Summary and Conclusions

On November 10, 2021, a meeting was held to review the results of an IEE requested by the parent. At the conclusion of that meeting, the assistant director of special education stated that while there was not unanimous agreement among the team regarding the student's eligibility for special education, she – as the LEA representative – had determined that the student was eligible under the category of Specific Learning Disability.

As the meeting concluded, the participants discussed the scheduling of another meeting for the purpose of developing an IEP for the student within a 30-calendar day timeline. An IEP meeting was scheduled for December 6, 2021 – three days prior to the 30-day deadline of December 9, 2021.

On December 1, 2021, the district changed course and determined that the December 6, 2021 meeting should be used for additional discussion of the student's eligibility under the category of Other Health Impaired.

At the December 6, 2021 meeting, there was no discussion regarding the development of an IEP. The district proposed that an IEP team meeting be held on December 8, 2021, but the parent was not able to take off work for a second meeting that week, so the IEP meeting was scheduled for December 16, 2021 – 36 calendar days after the student had been determined to be eligible for and in need of special education services.

On December 6, 2021, the district provided the parent with prior written notice that the student had – on November 10, 2021 – been determined to be eligible for and in need of special education services under the category of Specific Learning Disability.

On December 20, 2021, the district provided the parent with an IEP based on the discussion during the December 16, 2021 meeting. The district continued to revise that IEP based upon input from the parent through January 7, 2022. The parent provided written consent for the implementation of the IEP on January 8, 2022, and services to the student were initiated on January 13, 2022 – 4 school days after written

parental consent was obtained and the same day the student returned to school following a Covid-19 quarantine.

The district responded in a timely fashion by providing special education services to the student after receiving parent consent for the implementation of those services. However, the student's IEP was not completed until nearly 63 calendar days (33 school days) after the decision was made that he was eligible for special education services. While special education statutes and regulations do not prohibit a district from considering a student's eligibility for special education services under multiple categories, the decision by a team that a student is eligible under any category marks the beginning of a 30-calendar day timeline for the district to develop an IEP for the student. The prior written notice document which the district provided to the parent on December 6, 2021 confirms that the student's eligibility for special education services under the category of Specific Learning Disability was established on November 10, 2021.

Neither the continued eligibility discussion on December 6, 2021 nor the district's development of a draft IEP serve to extend the 30-calendar day timeline. IEPs are to be developed by a team that includes the student's parents. In this case, IEP development by the student's IEP team did not begin until 36 days after eligibility was determined, and the IEP was not finalized for another three weeks. It was incumbent on the district to schedule any further eligibility meetings and IEP meetings within the 30-calendar day period immediately after the student's eligibility was first determined.

The audio recording of the November 10, 2021 meeting shows that the team was well aware that the student's IEP needed to be in place by December 9, 2021 and that the Thanksgiving Break fell within the 30-day period, but by scheduling the next team meeting on December 6, 2021, the district left itself with little to no room to guarantee completion of an IEP within the required timeline. As a result, the first IEP offered to the parent was offered on December 20, 2022, seven school-days beyond the required timeline.

Because the district failed to develop an IEP for the student within 30-calendar days of the date that his eligibility for special education services was determined, a violation of special education statutes and regulations is substantiated. The corrective actions for this violation are specified in the following section of this report. The corrective actions do not include any requirement to offer compensatory services because the services offered in the initial IEP proposal were not destined to receive parent consent even if the required timeline had been met. After the initial IEP proposal, the parent extended

negotiations for a significant period of time. The IEP was offered on December 20, 2022. Fifteen days later, on January 3, 2022, the parents requested additional changes to the IEP and to the Prior Written Notice. School officials responded the very next day, on January 4, and on January 7, the parent again requested additional changes to the proposed IEP. The district responded immediately and the parent provided consent to the proposed IEP on January 8, 2022. These extended negotiations were initiated by the parent to address their legitimate continuing concerns, but also resulted in a delay in providing the consent that was necessary in order for the district to begin services.

### Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations on an issue presented in this complaint. Specifically, a violation was substantiated with K.A.R. 91-40-8(h) which requires that a district develop an IEP within 30 calendar days of the determination that a student is eligible to receive special education services.

Therefore, USD #290 is directed to take the following actions:

- 1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with K.A.R. 91-40-8(h) by ensuring that an IEP is developed within 30 calendar days of the determination that a student is eligible to receive special education services.
- 2) a) Within 40 calendar days of the date of this report, USD #290 shall develop and submit to SETS for approval, written guidelines for staff to follow with regard to a parent request for an IEE which include timelines for developing an IEP if the IEE review results in a determination that a student is eligible for special education services.  
  
b) Once the guidelines described above under Item a) have been approved by SETS, USD #290 must within 20 school days after SETS approval submit to SETS a plan for the training of staff on these guidelines.  
  
c) Upon completion of training of identified staff, USD #290 shall submit to SETS a record showing the dates of training and an attendance log signed by all staff who participated in the training.

3) Further, USD #290 shall, within 10 calendar days of the date of this report, submit to SETS one of the following:

- a) A statement verifying acceptance of the corrective action or actions specified in this 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. Any such appeal shall be in accordance with K.A.R. 91-40-51(f).

### 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 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).