

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #392

ON MARCH 7, 2022

DATE OF REPORT APRIL 6, 2022

This report is in response to a complaint filed with our office on behalf of _____ by her parents, ____ and ____ _____. In the remainder of the report, _____ will be referred to as “the student” and ____ and ____ _____ will be referred to as “the parents” or “the father” or “the mother” respectively.

The complaint is against USD #392 (Osborne County Public Schools) who contracts with the North Central Kansas Special Education Cooperative (NCKSEC) to provide special education and related services to students enrolled in USD #392. In the remainder of the report, “USD #392,” the “school,” the “district” or the “local education agency (LEA)” shall refer to both of these responsible agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on March 7, 2022 and the 30-day timeline ended on April 6, 2022.

Investigation of Complaint

Donna Wickham and Nancy Thomas, Complaint Investigators, interviewed the father by telephone on March 9, 2022 and Donna Wickham interviewed the father again on March 25, 2022.

USD #392 made the following school staff available for a Google meet interview with the Complaint Investigators on March 24, 2022:

- Cher Greving, Director of Special Education, North Central Kansas Special Education Cooperative (NCKSEC)
- Troy Langdon, Superintendent, USD #392
- Debra Hanson, Occupational Therapist, USD #392
- Alexis Warner, Speech Language, USD #392
- Bethany Remus, Elementary Counselor, USD #392
- Rebecca Rash, Special Education Teacher, USD #392

Donna Wickham also had phone calls with the LEA staff between March 9, 2022 and April 1, 2022 to gather additional information and to clarify documentation provided by the LEA.

In completing this investigation, the Complaint Investigators reviewed documentation provided by both the parent and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Speech Language Evaluation Summary Report from the Herndon Speech-Language-Hearing Clinic dated February 9, 2019
- Individualized Education Plan (IEP) and Staffing Notes dated November 9, 2020
- Prior Written Notice dated November 9, 2020
- IEP Goal Progress Report dated May 6, 2021
- IEP Goal Progress Report dated May 14-15, 2021
- Request for Consent for Evaluation or Reevaluation dated September 9, 2021
- IEP Goal Progress Report dated October 15, 2021
- Email dated November 8, 2021 at 9:42 A.M. written by the Bethany Remus, Elementary Counselor to the student's IEP team sharing Speech Language Evaluation Summary Report from the Herndon Speech-Language-Hearing Clinic
- Tri-Annual Evaluation Report dated November 9, 2021
- Individualized Education Plan (IEP) and Staffing Notes dated November 9, 2021

- Phone notes from call between parent and LEA dated November 10, 2021
- Number identification data dated November 10, 2021- December 10, 2021
- Student's Progress Monitoring dated November 10, 2021 - November 9, 2022
- Vowel Digraph Data dated November 10, 2021- January 26, 2022
- Email dated November 11, 2021 at 7:22 P.M. from Parents to Director of Special Education regarding Cognitive testing and November 15, 2021 at 2:59 P.M.
- Email dated November 15, 2021 at 2:59 P.M. from Director of Special Education to parents regarding Cognitive testing and
- Email dated November 15, 2021 at 2:15 P.M. from Director of Special Education to special education teacher regarding Dyslexia conference
- Email dated November 17, 2021 at 12:23 P.M. from parents to Director of Special Education regarding Dyslexia Assessment
- Email dated November 17, 2021 at 1:30 P.M. from Tara Marshall, Herndon Speech-Language-Hearing Clinic to Rebecca Rash discussing 2021 IEP draft
- Email dated November 18, 2021 at 1:39 P.M. from USD#392 school psychologist to Tara Marshall, Herndon Speech-Language-Hearing Clinic discussing release to review Herndon Speech-Language-Hearing Clinic evaluation
- Email dated November 19, 2021 at 12:47 P.M. from Director of Special Education to Rebecca Rash, Special Education Teacher discussing release to review Herndon Speech-Language-Hearing Clinic evaluation
- Email dated November 22, 2021 at 1:56 A.M. from Director of Special Education to parents regarding Dyslexia Assessment
- Email dated November 23, 2021 at 9:45 A.M. from Rebecca Rash, Special Education Teacher to Tara Marshall from the Herndon Speech-Language-Hearing Clinic discussing draft 2021 IEP
- Email dated December 1, 2021 at 4:31 P.M. from Tara Marshall, Herndon Speech-Language-Hearing Clinic to Rebecca Rash, Special Education Teacher sharing curriculum resources and ideas for re-evaluation
- Email dated December 3, 2021 at 10:41 A.M. from Rebecca Rash, Special Education Teacher to Tara Marshall from the Herndon Speech-Language-Hearing Clinic replying to December 1, 2021 at 4:31 email about resources
- Email dated December 7, 2021 at 1:05 P.M. from general educator to IEP team
- IEP Goal Progress Report dated December 21, 2021

- Dyslexia: Best Targeted Interventions to Accelerate Literacy Success Attendance Certificate dated January 11, 2022 for Rebecca Rash, Special Education Teacher
- Teacher Note dated January 23, 2022
- Dolch Primer Data dated January 26, 2022 - March 21, 2022
- Email dated February 2, 2022 at 4:41 P.M. from Tara Marshall from the Herndon Speech-Language-Hearing Clinic to Rebecca Rash, Special Education Teacher checking on student progress
- IEP Amendment Between Annual IEP Meetings with Prior Written Notice and Request for Consent signed February 7, 2022
- Email dated February 8, 2022 at 10:45 A.M. from Rebecca Rash, Special Education Teacher to Tara Marshall from the Herndon Speech-Language-Hearing Clinic replying to February 2, 2022 at 4:41 P.M. about student progress
- Assessment Report from the Phillips Learning Center dated February 9, 2022
- Letter dated February 21, 2022 from Denice Kuhns, C-SLDS, CALT of the Phillips Learning Center to the parents
- Email dated March 4, 2022 at 8:58 P.M. from Rebecca Rash, Special Education Teacher to Tara Marshall from the Herndon Speech-Language-Hearing Clinic about re-evaluation meeting
- Email dated March 21, 2022 at 2:17 P.M. from elementary school counselor to School staff sharing Herndon Speech-Language-Hearing Clinic progress reports
- IEP Progress Review Meeting staffing notes March 31, 2022
- PWN dated April 1, 2022
- Kansas State Board of Education License for Rebecca Rash

Background Information

This investigation involves an 11-year-old female student currently enrolled in the fourth grade at Osborne Elementary School in USD #392. Her most recent reevaluation on November 9, 2021 determined she continued to be eligible for special education and related services under the exceptionality category of Learning Disabled.

The student received special education and related services in the preschool setting. The student began kindergarten one year behind her same-age peers. She was reevaluated in 2018 and the multidisciplinary team determined that the student's

exceptionality category would be Developmental Disability. She transferred to Osborne Elementary School during the 2018-2019 school year. USD #392 reevaluated the student in 2019 and changed her exceptionality category to Learning Disabled. The student is currently receiving special education and related services at Osborne Elementary School as well as attending the Herndon Speech-Language-Hearing Clinic and Phillips Fundamental Learning Center for supplemental instruction for a diagnosis of dyslexia.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parent raised three issues that were investigated.

ISSUE ONE: The USD #392, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to consider parent-initiated evaluations to develop an appropriate IEP for the student during the last 12 months.

Positions of the Parties

The parents reported their daughter has a diagnosis of dyslexia and that they have paid for services at the Herndon Speech -Language-Hearing Clinic at Fort Hays State University and the Phillips Fundamental Learning Center in Wichita, Kansas to address concerns with academic progress since the student was in kindergarten. She was assessed or evaluated at both of these outpatient facilities for services and recommendations for instructional strategies, curriculum, and therapy. The parents indicated that both reports have been provided to USD #392; however, the student's IEPs were never changed to reflect those recommendations.

USD #392 reported they considered the 2019 parent-initiated evaluation from the Herndon Speech-Language-Hearing Clinic. In addition, the student's school team meets regularly with the staff at the Herndon Speech-Language-Hearing Clinic to coordinate services and improve interventions.

The district also reported that they received an Assessment Report from the Phillips Fundamental Learning Center and met March 31, 2022 to review the report and determine if any changes should be made to the IEP as a result of that review.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #392.

There were two parent-initiated evaluations shared with USD 392 during the past 12 months.

The first evaluation was the Herndon Speech-Language-Hearing Clinic Evaluation, which was completed on February 9, 2019. Although this evaluation falls outside the 12-month investigation window, USD #392 did not receive a copy of this evaluation for consideration until December 1, 2021.

The Speech Language Evaluation Summary Report from the Herndon Speech-Language-Hearing Clinic dated February 9, 2019 was referenced in an email dated November 8, 2021 written by Tara Marshall, Assistant Clinic Coordinator of the Herndon Speech-Language-Hearing Clinic, to Bethany Remus, Elementary Counselor at USD#302. School staff reported the reference in the email marked the first time they were made aware that this parent-initiated evaluation existed. With consent of the parent, a copy of this evaluation report was provided to the LEA on December 1, 2021 and distributed to all members of the student's school team.

The parents indicated they did not physically share a copy of the February 9, 2019 report with school staff because they assumed the Herndon Speech-Language-Hearing Clinic would automatically send a copy to the district because of the release of information form they had signed allowing these two agencies to share information.

The LEA acknowledged that the February 9, 2019 report was not considered at the November 9, 2020 or November 9, 2021 IEP team meetings because USD #392 was unaware of its existence. However, school staff noted in an email dated November 5, 2021 written by Ms. Marshall to the parents documented that Ms. Marshall reviewed a draft copy of the November 9, 2021 IEP and provided feedback to the parents. On November 8, 2021, the parents shared this feedback with the IEP team for consideration in the development of the IEP when they forwarded Ms. Marshall's email to the entire IEP team. Although the staffing notes from the November 9, 2021 IEP team meeting do not specifically mention the February 9, 2019 Speech Language Evaluation Summary Report from the Herndon Speech-Language-Hearing Clinic, the present level of that IEP states the student receives services from the Herndon Speech-Language-Hearing Clinic.

USD #392 acknowledged that the student's IEP team has not reconvened since receiving the February 9, 2019 Speech Language Evaluation Summary Report from the Herndon Speech-Language-Hearing Clinic on December 1, 2021 in order to consider this parent-initiated evaluation.

The second parent-initiated evaluation shared with USD #392 as the Phillips Fundamental Learning Center Assessment Report, dated February 9, 2022.

The parent initially emailed a copy of the assessment report to Bethany Remus on February 22, 2022; however, this email went to Ms. Remus' spam folder. Following a conversation with Ms. Remus, Ms. Remus confirmed receipt of the assessment report in a March 2, 2022 email with Mr. _____. Ms. Remus forwarded a copy of the assessment report via email to the other members of the IEP team on that same date.

The IEP team met on March 31, 2022 to review the assessment report from the Phillips Fundamental Learning Center. The Staffing Notes from that IEP team meeting document a discussion of the assessment report and the follow up activities based on the report. USD #392 provided the parent with a Prior Written Notice and Request for Consent for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement and Request for Consent, dated April 1, 2022 that listed the Phillips Fundamental Learning Center Assessment as data used in the decision-making process for retaining services and goals in the student's IEP.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at C.F.R. 300.502(c)(1) and K.A.R. 91-40-12 state, "If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child."

In this case, the parent thought the February 9, 2019 Speech Language Evaluation Summary Report from the Herndon Speech-Language-Hearing Clinic was automatically sent to the district in 2019 and believe the recommendations from the evaluation report should have been incorporated into the student's IEP once the district was provided with a copy of the report on December 1, 2022.

Even though USD #392 reported that the staff from the Herndon Speech-Language-Hearing Clinic regularly consulted with school staff and even provided written feedback for the November 9, 2021 IEP, they acknowledged that the February 9, 2019 Speech Language Evaluation Summary Report from the Herndon Speech-Language-Hearing Clinic was never considered by the student's IEP team after it was received by the district on December 1, 2021.

In addition, documentation and interviews showed USD #392 received a copy of the Phillips Fundamental Learning Center Assessment Report dated February 9, 2022 on March 2, 2022. An IEP team meeting was held on March 31, 2022 where the assessment report was discussed and considered as documented in the Staffing Notes dated that same date. As a result of the March 31, 2022 IEP team meeting, the parent was provided with a PWN dated April 1, 2022 that listed the Phillips Fundamental Learning Center Assessment Report as data used in the decision-making process for proposed changes in the student's IEP.

Based on the foregoing, a procedural violation of special education statutes and regulations is substantiated for failing to consider the results of the February 9, 2019

Herndon Speech-Language-Hearing Clinic evaluation obtained at private expense when it was shared with USD # 392 on December 1, 2021.

ISSUE TWO: The USD #392, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the IEP, as appropriate, to address lack of expected progress toward the annual goals during the 2021-22 school year.

Positions of the Parties

The parents reported that their daughter is not making any progress and is losing interest in school. They allege the district has no plan of action or sense of urgency in addressing their daughter's disability through her IEP.

The district stated that they are meeting the requirements of the IDEA by providing intensive instruction that is consistent with her learning needs and regularly assessing her progress in the classroom through data collection to monitor her progress towards her IEP goals. They reported the student's progress towards her IEP goals is reported to parents on a quarterly basis as required by the student's IEP. School staff indicated that when she does not make progress towards an IEP goal, the student's IEP is reviewed and revised, as appropriate. USD #392 noted that they regularly consult with the Herndon Speech-Language-Hearing Clinic.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #392.

The findings of Issue One are incorporated herein by reference.

Interviews and documentation found two IEP were in effect during the 2021-22 school, which began on August 19, 2021 in USD #392. The first IEP was developed on November 9, 2020 and the second IEP was developed on November 9, 2021. Both IEPs

included measurable annual goals and required that progress towards the IEP goals be provided to the parent on a quarterly basis.

The November 9, 2020 IEP included the following five goals:

1. By the end of the IEP year, when given 50 sight words from a Primer word list, the student will read the words with 80% accuracy 4 out of 5 opportunities. Baseline is 80% of sight words using observation and data
2. By the end of this IEP year, when presented with a list of 20 words with vowel digraphs, the student will correctly read the words with 80% accuracy in 4 of 5 trials. Baseline is 15 of 20 words or 75% using teacher observation and data
3. By the end of this IEP year, when given word problems in both addition and subtraction, the student will complete them with 80% accuracy, 4 out of 5 times. Baseline is listed at 0% based on teacher observation and data
4. By the end of the IEP year, when given numbers with 7, 8, or 9, the student will be able to identify numbers named by the teacher with 90% accuracy. Baseline is that she can identify these numbers with 72% accuracy through teacher observation and data
5. By the next annual IEP, during structured activities the student will demonstrate improved phonemic awareness by segmenting 4-5 phoneme words and deleting, adding, and substituting phonemes in 3-phoneme words with at least 80% accuracy. Baseline is notes at 0% with SLP data

The first quarter of the 2021-22 school year ended on October 14, 2021 and the IEP Goal Progress Report for that period showed the student made adequate progress towards Goal One but did not make adequate progress towards Goals Two, Three, Four, and Five.

The IEP team reconvened on November 9, 2021 and the IEP was reviewed and revised. The goals were updated, and a sixth goal was added as follows:

1. By the end of the IEP year, when given 20 sight words from a Primer word list, the student will read the words with 75% accuracy 4 out of 5 opportunities. Baseline is 50% of sight words using teacher checklist
2. By the end of this IEP year, when presented with a list of 10 words with vowel digraphs, the student will correctly read the words with 75% accuracy in 4 of 5 trials. Baseline is 25% on vowel digraphs using teacher checklist

3. By the end of this IEP year, when given 4-word problems in both addition and subtraction, the student will complete them with 75% accuracy, 4 out of 5 times. Baseline is listed at 0% based on teacher checklist
4. By the end of the IEP year, when given 10 numbers the student will be able to identify 7, 8, or 9 with 75% accuracy. Baseline is 30% accuracy through teacher checklist
5. By the next annual IEP, during structured and unstructured activities the student will produce voiced and unvoiced /th/, /s/, and /z/ with an average of at least 80% accuracy at the sentence level. Baseline is voiced /th/ 25%; voiceless /th/ 0%; /s/ 27%; /z/ 53% with SLP data
6. By the end of the IEP, during structured and unstructured activities, the student will improve phonological awareness skills through various phonemic awareness tasks (phoneme, deletion, addition, substitution, segmentation, isolation, and rhyme recognition) with at least 80% accuracy and minimal cueing. Baseline is Phoneme deletion 3/12 (25%); Phoneme addition 2/6 (33%); Phoneme Substitution 3/6 (50%); 4-phoneme segmentation 5/13 (38%); Phoneme isolation 5/12 (42%); Rhyme recognition 1/6 (17%)

The second quarter of the 2021-22 school year ended on December 21, 2021. The IEP Goal Progress Report for that period showed the student made adequate progress toward all six goals.

The third quarter of the 2021-22 school year ended on March 10, 2022. The IEP Goal Progress Report for that period showed the student continued to make adequate progress toward all six goals.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(a)(2) require that each student's IEP includes a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports of the student's progress towards meeting those annual goals will be provided to the parent.

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(b)(1) require school districts to review the student's IEP periodically, but at least annually, to determine whether the annual goals are being achieved and to revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals.

In this case, there were two IEPs in effect during the 2021-22 school year. Both IEPs included measurable annual goals and required that progress towards the IEP goals be provided to the parent on a quarterly basis.

Interviews and documentation found that the parents were provided IEP Goal Progress Reports on a quarterly basis during the 2021-22 school year. The IEP Goal Progress Report for the first quarter was dated October 14, 2021 and showed that the student only made adequate progress towards one IEP goal. USD #392 reconvened the student's IEP team on November 9, 2021 and, as a result, the IEP goals were updated, and a sixth goal was added.

The IEP Goal Progress Report for the second quarter was dated December 21, 2021 and showed the student was making adequate progress toward the six IEP goals. The IEP Goal Progress Report for the third quarter was dated March 10, 2021 and showed the student was continuing to make adequate progress toward the six IEP goals.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to review and revise the IEP, as appropriate, to address lack of expected progress toward the annual goals during the 2021-22 school year.

ISSUE THREE: The USD #392, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately certificated and trained special education staff, specifically the special education teacher, to provide the special education services to the student during the 2021-2022 school year.

Positions of the Parties

The family contend that the special education teachers do not have the proper training to treat the students' condition of Dyslexia. They further believe that the district does not have a Dyslexia specialist available to their daughter and, as a result, they have sought out and obtained more appropriate supplemental services for the student through the Herndon Speech-Language-Hearing Clinic and the Phillips Fundamental Learning Center .

The district reports they are in compliance with IDEA as the student's special education teacher is licensed in Kansas to teach students with high incidence disabilities. Teachers who are licensed to teach students with high incidence disabilities are considered to be appropriately trained to teach students with specific learning disabilities, which includes dyslexia, by the Kansas State Board of Education. Further, USD #392 indicated that Ms. Rash, the student's special education teacher has received additional training specifically for working with students diagnosed with dyslexia.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #392.

There were two IEPs in effect during the 2021-22 school year dated November 9, 2020 and November 9, 2021. No specialized training for school personnel is required by either IEP.

The district's website shows Ms. Rash as teaching "Interrelated Elementary" during the 2021-22 school year at Osborne Elementary School.

Ms. Rash was issued a teaching license from the Kansas State Board of Education allowing her to teach Art to students aged pre-kindergarten through twelfth grades and special education for high incidence students in kindergarten through twelfth grade. Her teaching license will expire on April 5, 2025. She completed her master's degree in high incidence special education from Emporia State University in 2021.

The Special Education Director reported that Ms. Rash attended the annual teacher training on dyslexia required by the KSDE for the 2020-21 and 2021-22 school years.

In an email exchange between the Director of Special Education at USD #392 and parents regarding dyslexia assessment dated on November 17, 2021 and November 22, 2021, Ms. Greving explained,

Under IDEA guidelines, Dyslexia falls under the category of the specific learning disability exceptionality. Special education teachers address dyslexia when providing support and instruction to meet the needs of a student with a specific learning (reading) disability. NCKSEC does not have an expert in the area of dyslexia, however, our special education teachers in USD 392 are well trained and adept to address reading disabilities of their students. Each school district within our Interlocal is adhering to the dyslexia screening recommendations of KSDE. Our special education teachers in USD 392 have attended two trainings in the area of dyslexia. One in August of 2020 and the other this past August of 2021.

Emails dated November 17, 18, 19, and 23, 2021; December 1 and 3, 2021; February 2 and 8, 2022; and March 4, 2022 between members of the student's IEP team and Ms. Marshall from the Herndon Speech-Language-Hearing Clinic as well as interviews with the district staff found that the student's IEP team is regularly corresponding with Ms. Marshall for resources and to ensure they are coordinating services and instruction at school with those provided at the Herndon Speech-Language-Hearing Clinic.

The Souday Curriculum, a curriculum recommended for students with dyslexia, was adopted for use with the student in December 2021. Ms. Rash completed the publisher's DVD training to ensure reliable use of the curriculum on or around December 16, 2021.

Ms. Rash attended a five-hour training on dyslexia on January 11, 2022 in Wichita. She was provided a certificate of attendance for "Dyslexia: Best Targeted Interventions to Accelerate Literacy Success."

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.156 require each state education agency (SEA) to establish and maintain qualifications to ensure that personnel necessary to provide special education and related services in accordance with the IEP are appropriately and adequately prepared and trained.

The KSDE details personnel qualifications in the [2021-22 Special Education Reimbursement Guide State for Categorical Aid](#). Per the *Special Teacher Reimbursement Licensing Requirements* chart in Appendix C, a Licensed Personnel Report for High Incidence Special Education is required for the teacher of an interrelated program and is necessary to teach students with learning disabilities.

The term “learning disabilities” is defined in K.A.R. 91-40-1 as follows:

Specific learning disability” means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Dyslexia is a specific learning disability. In recent years, much debate has occurred regarding dyslexia and whether it is covered under the Individuals with Disabilities Education Act (IDEA) and in Kansas. The IDEA, as well as Kansas statute and regulations, recognize dyslexia as a disability as stated within the definition of specific learning disability.

In this case, Ms. Rash is assigned as the interrelated classroom teacher at Osborne Elementary School in USD #392. She holds a current teaching license issued by the KSDE allowing her to teach special education for high incidence students in kindergarten through twelfth grade. Based upon that information Ms. Rash meets the KSDE requirements to be the teacher of an interrelated program as well as students with learning disabilities.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to provide appropriately certificated and trained special education staff, specifically the special education teacher during the past twelve months because Ms. Rash meets the SEA requirements to be considered appropriately and adequately prepared and trained to teach students with specific learning disabilities, including those students with dyslexia. Further, the district continues to seek out opportunities to improve expertise in teaching students with dyslexia.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following area:

- A. Federal regulation implementing the IDEA at C.F.R. 300.502(c)(1) and K.A.R. 91-40-12 state, "If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child."

In this case, USD#392 received a copy of the February 9, 2019 Herndon Speech-Language-Hearing Clinic Evaluation Report, which was obtained at parent expense, on December 1, 2021. USD #392 acknowledged that it failed to meet the IEP team to consider the results of that 2019 evaluation after receiving it on December 1, 2021. While USD#392 erred in following IDEA procedure, it is noted that the information contained in the report was considered and documented in ongoing email documentation as well as the revisions made to the student's IEP.

Based on the foregoing, USD #392 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #392 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:

- a. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) Federal regulations at C.F.R. 300.502(c)(1) which requires school districts to consider independent educational evaluation results in any decision made with respect to the provision of FAPE to the child.”
2. It is noted that noncompliance was identified for not considering the Speech Language Evaluation Summary Report from the Herndon Clinic at an IEP team meeting after December 1, 2021 when a copy of the report was received by USD#392. However, it also noted that the district received a copy of the Phillips Fundamental Learning Center assessment report on March 1, 2022 and held an IEP team to consider that report on March 31, 2022. The IEP team considered the Phillips Fundamental Learning Center assessment report submitted by the family, and documented it as part of a PWN and in staffing notes. Therefore, the district has subsequently demonstrated compliance with C.F.R. 300.502(c)(1). For this reason, no individual or systemic corrective action is ordered at this time.

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), which can be found at the end of this report.

Donna Wickham

Donna Wickham, Complaint Investigator

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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)