

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #378

ON MARCH 29, 2022

DATE OF REPORT APRIL 28, 2022

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

The complaint is against USD #378 (Riley County Public Schools) who contracts with the Twin Lake Education Cooperative (TLEC) to provide special education and related services to students enrolled in USD #378. In the remainder of the report, “USD #378,” 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 29, 2022 and the 30-day timeline ends on April 28, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, initially interviewed the mother by telephone on April 1, 2022 and then again on April 13, 2022. Additionally, the Complaint

Investigator interviewed a family friend and advocate, Rachel Crawford, on April 12, 2022 and the father on April 19, 2022.

USD #378 made the following school staff available for an interview on April 13, 2022:

- Anita Breen, Director of Special Education, TLEC
- Nancy Johnston, 5th grade teacher, Riley County Grade School
- Jennifer Begnoche, School Psychologist, TLEC
- Jacob Larson, Principal, Riley County Grade School
- Kylie Miller, 5th grade teacher, Riley County Grade School
- Danica Nelson, , 5th grade teacher, Riley County Grade School
- Katy Hanson, Special Education Teacher - TLEC, Riley County Grade School

The Complaint Investigator also exchanged emails with the district staff between April 1, 2022 and April 22, 2022 to gather additional information and to clarify documentation provided by the LEA.

In completing this investigation, the Complaint Investigator 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:

- Documentation of District Policies, Practices and Procedures: Child Find, Screening, General Education Intervention, Referral, Evaluation & Eligibility Procedures, undated
- Star Annual Progress Report, Star Math Enterprise Assessment, Star Reading Enterprise Assessment for the dates September 2, 2021 and December 1, 2021
- Email dated October 6, 2021 at 9:14 a.m. written by the mother to Jared Larson, Principal, Riley County Grade School
- Email dated October 7, 2021 at 9:58 a.m. written by Mr. Larson to the mother
- Email dated October 7, 2021 at 1:53 p.m. from the mother to Mr. Larson
- Email dated October 7, 2021 at 2:04 p.m. from Mr. Larson to the mother
- Email dated October 20, 2021 at 9:43 a.m. from the mother to Mr. Larson
- Email dated October 20, 2021 at 10:53 a.m. from Mr. Larson the mother
- Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated October 28, 2021, signed by parents on November 2, 2021

- Email dated December 2, 2021 at 11:49 a.m. from the mother to Anita Breen, Director of Special Education TLEC
- Email dated December 2, 2021 at 12:24 p.m. from Ms. Breen to the mother and Jennifer Begnoche, School Psychologist, USD #378
- Email dated December 2, 2021 at 1:24 p.m. from Ms. Begnoche to Ms. Breen
- Wechsler Individual Achievement Test, Fourth Edition (WIAT-4) testing results with administration date of December 2, 2021
- Wechsler Intellectual Scale for Children 5th Edition (WISC-V) testing results and summary recommendations with administration date of December 2, 2021
- Email dated December 9, 2021 at 8:02 a.m. from the mother to Ms. Begnoche
- Email dated December 9, 2021 at 9:02 a.m. from Ms. Begnoche to the mother
- Email dated December 10, 2021 at 10:50 a.m. from the mother to staff at USD #378
- Behavior Assessment System for Children, 3rd edition (BASC3) testing results from administration dates of January 5 and January 10, 2022
- Email dated January 10, 2022 at 1:04 p.m. from Ms. Begnoche to the mother
- Notice of Meeting (NOM) to review the Evaluation and Determine Eligibility dated January 11, 2022
- Email dated January 11, 2022 at 8:53 a.m. from the mother to staff at USD #378
- Email dated January 11, 2022 at 9:23 a.m. from Ms. Begnoche to the mother
- Email dated January 21, 2022 at 1:08 p.m. from Ms. Begnoche to the mother
- Email dated January 21, 2022 at 8:09 a.m. from the mother to staff at USD #378
- Email dated January 21, 2022 at 8:15 a.m. from Ms. Begnoche to the mother
- Email dated January 24, 2022 at 8:35 a.m. from the mother to staff at USD #378
- Email dated January 24, 2022 at 9:36 a.m. from Ms. Begnoche to the mother
- ADHD Diagnosis Report from Riley Family Physicians dated January 24, 2022
- Twin Lakes Educational Cooperative Eligibility and Multidisciplinary Team Report dated January 26, 2022
- PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated January 26, 2022
- Email dated February 9, 2022 at 12:09 p.m. from the mother to Ms. Begnoche and Ben Gordon, Assistant Principal, Riley County Grade and Middle School
- Email dated February 9, 2022 at 3:13 p.m. from Ms. Begnoche to the mother

- Email dated February 9, 2022 at 4:13 p.m. from the mother to Ms. Begnoche
- Email dated February 9, 2022 at 4:25 p.m. from Ms. Begnoche to the mother
- Email dated February 9, 2022 at 8:53 p.m. from the mother to Ms. Begnoche
- Email dated February 10, 2022 at 5:36 a. from Ms. Breen to Ms. Begnoche
- Email dated February 10, 2022 at 8:14 a.m. from Ms. Begnoche to Ms. Breen
- Email dated February 10, 2022 at 9:44 a.m. from the mother to Ms. Breen
- Email dated February 17, 2022 at 1:51 p.m. from Ms. Begnoche to the mother
- Email dated February 17, 2022 at 3:21 p.m. from the mother to Ms. Begnoche
- Email dated February 17, 2022 at 3:39 p.m. from Ms. Begnoche to the mother
- Email dated February 17, 2022 at 6:59 p.m. from the mother to Ms. Begnoche
- Email dated February 18, 2022 at 2:15 p.m. from Ms. Begnoche to the mother
- Email dated February 24, 2022 at 9:08 a.m. from the mother to Ms. Begnoche
- Email dated February 24, 2022 at 10:10 from Ms. Begnoche to the mother
- PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated February 28, 2022
- Email dated March 28, 2022 at 12:04 p.m. from the mother to Ms. Breen
- Email dated March 28, 2022 at 1:52 p.m. from Ms. Breen to the mother
- Email dated March 28, 2022 at 2:40 p.m. from Ms. Begnoche to Mr. Gordon
- Email dated March 28, 2022 at 2:45 p.m. from Mr. Gordon to Ms. Begnoche
- Email dated March 28, 2022 at 2:45 p.m. from Ms. Begnoche to Mr. Gordon
- Email dated March 28, 2022 at 2:49 p.m. from Ms. Begnoche to Mr. Gordon
- Email dated March 28, 2022 at 2:51 p.m. from Ms. Gordon to Ms. Begnoche
- Email dated March 28, 2022 at 3:18 p.m. from Ms. Begnoche to Mr. Gordon
- Email dated March 29, 2022 at 8:03 a.m. from the mother to Ms. Breen
- PWN for Evaluation or Reevaluation and Request for Consent dated April 1, 2022
- Email dated April 13, 2022 at 3:58 p.m. from Nancy Johnston, 5th grade teacher, Riley County Grade School to Donna Wickham, Complaint Investigator

Background Information

This investigation involves an 11-year-old male student who is currently enrolled as a 5th grader at Riley County Grade School. He lives with his family. The student initially received speech therapy services in Wyoming prior to entering kindergarten. He was

dismissed from these services when he met his IEP goals and he has not received any special education or related services since that time.

The student moved to Kansas in the fall of 2020 and enrolled at Riley County Grade School in USD #378 as a fourth grader. During fourth grade, the student struggled in mathematics, focus and attention. In fifth grade the student continued to struggle with focus and attention; however, his parents thought it could be attributed to the COVID pandemic learning loss or a long-term substitute having different grading and classroom expectations as he seemed to do better after his fifth-grade teacher returned from parental leave during the first semester of the 2021-2022 school year.

His parents reported they spent time every evening helping him with homework, studying or reviewing classroom work to enable the student to achieve average grades. They report his attitude toward school was deteriorating. The parents made a referral for an evaluation in October to learn if he could qualify for special education services, so he did not fall further behind in school and experience frustration. The student was diagnosed with attention deficit hyperactivity disorder (ADHD) in January, 2022 by his medical doctor.

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 parents raised two issues that were investigated. One additional issue was not addressed because it did not fall under the jurisdiction of the IDEA and the family was provided with information and resources for addressing that allegation to the appropriate authority.

ISSUE ONE: The USD #378, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond appropriately to a parent request for a special education evaluation and to conduct a timely evaluation of the student during the 2021-2022 school year.

Positions of the Parties

The parents reported they shared their concerns about the student's attention, focus and academics with the staff at Riley County Elementary School and shortly thereafter requested a formal comprehensive evaluation to determine if their son was a student with a disability and eligible for special education and related services. The parents cite their son's falling grades, frustration with schoolwork, attention issues and the amount of homework assistance needed at home to earn passing grades as the reason for a referral.

They allege that USD #378 failed to respond to their request for an evaluation in a timely manner and failed to conduct a comprehensive evaluation of the student in a timely manner. The parents also reported USD #378 failed to provide them with a complete copy of the evaluation report in a timely manner. The parents requested to receive a copy of the evaluation report prior to or at the eligibility determination meeting held on January 26, 2022. The parents indicated the district only provided them with incomplete computer-generated reports from the Behavior Assessment System for Children, 3rd edition (BASC3), the Wechsler Individual Achievement Test, 4th edition (WIAT-4), and the Wechsler Intelligence Scale for Children, 5th edition (WISC-V) on January 21, 2022.

USD #378 reported that it has followed the appropriate evaluation procedures during the 2021-2022 school year. The LEA reported that the student was successful in fourth grade and the district first learned of the parent's concerns through an email sent by the mother in October when the student was in fifth grade. School staff indicated the student's grades were average and the concerns were related to motivation and attention; however, the district honored the parent's request for a special education evaluation by conducting a comprehensive evaluation within the 60 school-day timeframe to determine if he was eligible for special education and related services.

USD #378 reported the parents were provided with a copy of the Eligibility and Multidisciplinary Team Report which included a summary of assessment results at the January 26, 2022 eligibility determination meeting. The district acknowledged that not all pages of the computer-generated WISC-V report were initially provided to the parents prior to the eligibility determination meeting but that a complete copy was provided to the parents on February 14, 2022.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents, family friend/advocate and LEA staff in USD #378.

The parent sent an email to the principal at the student's school on October 6, 2021 making a formal request for an evaluation. The parents stated,

The student has been really struggling this year academically. He seems to be struggling with his attention and completing work. If we didn't spend hours on homework many nights, he would be failing most of his core subjects. He has spoken about dropping out of school a couple of times this year already. I contacted my doctor's office and they suggested that I reach out to you about having the student tested for attention issues. I am requesting that the school psychologist evaluate to see if he truly is struggling because of his attention.

On October 7, 2021, the principal responded that school staff were more than willing to complete any attention rating scales provided by the student's doctor. The mother responded to the principal in an email on that same date that she was making a formal request for a full evaluation of the student for special education and related services by the multidisciplinary team. On October 20, 2021 the mother emailed the principal asking for an update on the status of the evaluation request.

On October 28, 2021 a PWN for Evaluation or Reevaluation and Request for Consent was sent to the family proposing to conduct an initial evaluation in the areas of social/emotional/behavioral skills, general intelligence, and academic performance. The parents signed consent for the proposed evaluation on November 2, 2021 and the district staff received the written consent on November 4, 2021.

On December 2, 2021 an email from the parent asked for an update on the status of the evaluation. She wrote, "What day was the consent to evaluate received in regards to the student? I know that I initially requested a full evaluation on October 7, but didn't receive the paperwork in the mail until November 1st. I mailed it back on November 2." The special education director responded to the parent via email on December 2, 2021 and explained the 60 school-day timeline to conduct the evaluation and determine eligibility.

On December 9, 2021 and again on January 21, 2022, the parent emailed the director of special education requesting to receive a copy of the evaluation results prior to the January 24, 2022 eligibility determination meeting.

The TLEC sent the parent a Notice of Meeting (NOM) on January 11, 2022 proposing a meeting date of January 26, 2022.

Computer-generated copies of the BASC3, WIAT-4 and WISC-V assessment results were sent home with the student on January 21, 2022; however, pages 10 through 20 of the WISC-V report were not provided. Pages 10 - 20 of the WISC-V assessment report included recommendations.

On January 24, 2022, the parent emailed the school psychologist requesting the missing pages from the WISC-V report. The parent requested copies of these missing pages at the January 26, 2022 eligibility determination meeting; however, these were not provided. On February 3, 2022 and on February 9, 2022, the parents again requested the missing pages via email to the school psychologist. According to a parent email, the missing pages were finally received by the parent on February 14, 2022.

The TLEC Eligibility and Multidisciplinary Team Report for an Initial Evaluation for a Specific Learning Disability is dated January 26, 2022.

USD #378 provided the parent with a PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent on January 26, 2022 stating that the student was determined to not meet the eligibility criteria as a student with a learning disability. Both parents signed their agreement with the PWN on January 26, 2022.

The Documentation of District Policies, Practices and Procedures: Child Find, Screening, General Education Intervention, Referral, Evaluation & Eligibility Procedures for Sponsoring District USD #379 Clay County and Cooperating Districts USD #223 Barnes/Hanover/Linn, USD #334 Southern Cloud, USD #378 Riley County, USD # 384 Blue Valley Randolph/Olsburg states:

1. Parental Request for Evaluation Parents have the right to request an evaluation. In most cases, the school will choose to comply with that request. The building principal or his designee however, must meet with

the parent within 15 school days and explain that a building level, general education intervention process that precedes an initial evaluation is available to assist the team in determining the specific concerns and needs of their child.

2. Upon completion of the administration of assessment and other evaluation materials the determination of whether the child is an exceptional child is made by the team of qualified professionals and the parent of the child and a copy of the evaluation report and the documentation of determination of eligibility is given to the parent. The evaluation time follows 60 school day timeline requirements.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.301 provides for parents to request an initial evaluation for their child if they suspect a disability and outlines timelines for the initial evaluation to occur.

Within a reasonable amount of time of the public agency receiving such a request, the district shall either accept the request and proceed with the evaluation process in accordance with the timelines and requirements set forth in the IDEA or refuse the request and provide the parent with written notice refusing the request. In Kansas, a reasonable amount of time is considered to be within 15 school days of the parent request for an evaluation, unless there are unusual circumstances. The USD#378 policies and procedures manual aligns with this 15-school day timeline as well.

The mother's request for an initial evaluation for special education for her child was made on October 7, 2021 and USD #378 responded to this request with a PWN proposing to conduct an initial special education evaluation on October 28, 2021, which is 13 school days. The allegation that the district did not respond in a timely fashion to a parent-initiated evaluation request is not substantiated because USD #378 responded to the parents' request within the required 15-school days of the parent request.

Additionally, 34 C.F.R. 300.301(c)(1)(i) and K.A.R. 91-40- 17(a) states the initial evaluation must be conducted within 60 school days of receiving parental consent for the evaluation. The activities that must be completed during the 60 school days include: 1:

conduct an evaluation of the child; 2) conduct a meeting to determine if the child is an exceptional child and if so, develop an IEP, and finally; 3) give notice of this meeting.

Parent consent was provided on November 4, 2021 to evaluate the student for special education eligibility, starting the 60 school-day timeline. The parent was provided with a Notice of the Meeting on January 11, 2022 scheduling an eligibility determination meeting for January 26, 2022. The student was not found eligible for special education or related services at the January 26, 2022 eligibility determination meeting which is 46 school days from the date the district received the parent consent to conduct an evaluation. Based on the foregoing, a violation that the district did not complete an evaluation in a timely fashion is not substantiated because USD #378 completed the initial evaluation within the required 60-school days of the parent consent.

Federal regulations at 34 C.F.R. 300.306(a)(2) require that the public agency provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. The Office of Special Education Programs (OSEP) provided clarification regarding the timeline to provide the parent with a copy of the assessment results and the evaluation report in the September 9, 2019 OSEP Letter to Anonymous stating,

However, neither IDEA nor its implementing regulations establish a timeline for providing a copy of the evaluation report or the documentation of determination of eligibility to parents. Likewise, IDEA does not prescribe a timeline for sharing the results of assessments conducted as part of the child's evaluation or reevaluation. Whether parents receive all evaluation reports prior to the IEP Team meeting is a decision that is left to State and local officials to make. (71 Fed. Reg. 46645)

Additionally, K.A.R. 91-40-10 and USD #378 district practices are consistent with Federal regulations at 34 C.F.R. 300.306(a)(2) and established no timeline requirement in regard to providing the eligibility report in Kansas.

In this case, USD #378 provided the parent with a copy of TLEC Eligibility and Multidisciplinary Team Report on January 26, 2022 which describes the assessment results, the consideration of eligibility criteria, and the determination of eligibility. Based on the foregoing, the allegation that a copy of the evaluation report was not provided prior to the meeting is not substantiated.

ISSUE TWO: The USD #378, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a comprehensive evaluation in all areas of suspected disability during the special education evaluations conducted during the 2021-22 school year.

Positions of the Parties

The parents alleged that the student's initial evaluation for special education and related services was incomplete and that they were not involved in reviewing the existing data to determine what areas of evaluation would occur. They state the school staff unilaterally determined the areas needed to be evaluated and then did not evaluate all areas identified in the PWN as areas of concern. They alleged the evaluation did not include any classroom observations, time on task or other assessments to determine the impact of the student's attention or focus despite concerns from parents and teachers.

They further alleged there was a predetermination of the specific learning disability (SLD) eligibility category, despite the parents' concern for attention and focus. They stated that the eligibility decision for SLD was made using only the WIAT-4 and good grades as the data sources. They stated the predetermination of eligibility was confirmed when a PWN was handed to the parents at the conclusion of the meeting stating he was not eligible for special education as a student with specific learning disabilities. During this eligibility determination meeting the parents shared with the team that the student was recently diagnosed with ADHD. They contended this new diagnosis was not considered in determining disability during this meeting because only one disability eligibility category could be considered at a time.

The parents then requested a new eligibility meeting to consider OHI as an eligibility category with the ADHD diagnosis, but were told he did not meet eligibility because he did not need special education services or related services to participate in general education.

Finally, the parents contended that the district failed to provide their advocate effective access to the eligibility determination meeting in spite of making a request to include her virtually.

USD #378 responded that while they did not initially suspect that the student was a student with special education needs or related services, they honored the parents request and scheduled and completed an evaluation to determine if he met eligibility for special education services. They reported the student was not receiving any additional assistance in his classroom beyond classroom accommodations available to all students in his class as the teacher saw a need. The district stated that while hearing and vision screening were marked on the PWN for evaluation it was noted in the justification as using screening to determine if further evaluation was indicated. The district stated they did not consider the medical diagnosis as part of the comprehensive evaluation as it was not available at the time of the report and meeting. They stated they later considered it and while he does have a diagnosis of ADHD his previous evaluation did not support a need for special education or related services.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #378.

The findings of Issue One are incorporated herein by reference.

The parent emailed a formal request for a special education evaluation based on concerns about attention and focus and its effect on academics to the school principal on October 7, 2021.

A PWN for consent to evaluate was sent to the parents by the USD #378 school psychologist indicating a need to collect new data for vision (school screening to assess for concerns), hearing (school screening to assess for concerns), social/emotional status, behavioral status (BASC3 to assess behavior concerns parent has), general intelligence (assess for cognitive delays that may impact learning), and academic performance (to assess academic delays that impact learning). Use of existing data were not indicated for any area of evaluation.

On January 24, 2022 the parent reported that the student went to a medical doctor where he was provided a prescription of Adderall for ADHD. It is handwritten on the January 24, 2022 Eligibility and Multidisciplinary Team Report that "the student has

recently received an ADHD diagnosis". Another handwritten note recorded parent input as "concerns with attention and focus on tasks, concerns with working memory."

On January 26, 2022 the parent and district reported that the parent provided a copy of the prescription to administer the medication at school and reported that the student had been diagnosed with ADHD, but not a doctor's report of the diagnosis.

The January 24, 2022 Twin Lakes Educational Cooperative Eligibility and Multidisciplinary Team Report showed the student was given the WISC-V to evaluate his cognitive abilities. The student was given the BASC3 to evaluate his social/emotional abilities. The WIAT-4 was given to evaluate his academic skills. No concerns were indicated in Health/Motor, Vision, Hearing and Communication and no evaluation was provided to substantiate those conclusions. The summary and conclusion section stated:

The student was evaluated to assess his need for special education services as a student with a learning disability. His cognitive skills are in the average range which indicates that he does not demonstrate cognitive delays which may impact his ability to learn. His achievement skills were assessed, and his skills are in the average to high average range. He appeared to put forth his best effort during the assessment. There were times that he started to provide answers before he was given all the instructions. Parents and teachers were also given the BASC3 to complete. The parent report indicated more behavioral symptoms in the home setting than are seen in the classroom setting. The homeroom teacher reports that at times he doesn't appear to want to complete the work unless it is preventing him from doing something he wants to do. She does have concerns regarding his view of education and its value. He maintained all passing grades first semester.

On the Eligibility and Multidisciplinary Team Report of January 26, 2022, Specific Learning Disability was checked as the exceptionality considered following the summary and conclusion section of the evaluation. The report indicated the student did not meet criteria for an exceptionality, specifically noting he did not meet criteria as a student with a learning disability. It was reported that his cognitive and achievement scores indicated that he had adequate skills to enable him to participate and complete grade level work.

The PWN dated January 26, 2022 resulting from the January 26, 2022 eligibility determination meeting indicated the student “was evaluated and does not meet criteria as a student with a learning disability and does not demonstrate a need for special education services.” Comprehensive evaluation, classroom data, and BASC3 reports were described as the data used as a basis for the proposed action. Both parents gave consent that they were provided a copy of procedural safeguards and consented to the special education action.

On February 9, 2022 in an email the parents formally requested a meeting to discuss the student’s recent ADHD evaluation and consider eligibility for special education and related services under the category of OHI in light of the new medical diagnosis. The director of special education agreed to the meeting in an email on February 9, 2022 to meet about the testing data. She further wrote,

The test for special education, whether checking for a specific learning disability or OHI would be the same. To qualify for special education, the student must meet two prongs of eligibility. The first prong is whether the student has a disability. The second prong is whether the student needs specially designed instruction to have access to the general education curriculum. After looking at the scores and grades today, he doesn’t meet the second prong. We could look at this again for OHI. One difference would be that he would be considered a student with a disability, but still would not meet the modifications in the classroom and curriculum, which could possibly qualify him for a 504 plan.

On February 17, 2022 the school psychologist emailed the parent to schedule a time to discuss the student’s needs for February 24 at 3:30. When an agreeable date and time was determined the parent requested in an email a zoom link so an advocate could participate. The school psychologist emailed that she will not set up a zoom link for the meeting and stated any person unable to attend could be called or facetedimed, if desired.

The February 24, 2022 meeting was recorded on a PWN, dated February 28, 2022. It stated, “we met to review the evaluation/assessment data of your child, including any evaluations or information you provided, current classroom-based assessments and observations, and teacher or other staff observations to determine whether your child

was eligible for special education." The action of the meeting was that he did not qualify for eligibility under the exceptionality of OHI. The explanation was that while the student does have an exceptionality due to his diagnosis of ADHD, the testing data showed he is making adequate progress and not in need of special education and related services.

Both parents and district acknowledged that the advocate's participation was via a Facetime call using the parent's phone. Both parents and district acknowledged that the advocate's participation was marred by the quality of sound.

On March 28, 2022 an email was sent to the director of special education by the parents requesting an independent educational evaluation (IEE) stating that not all evaluation areas indicated on the October 28, 2021 PWN were conducted, additional areas of evaluation were indicated in the WISC-V summary recommendations and attention and focus issues were not addressed through evaluation.

On March 28, 2022 the district agreed to provide an IEE at no cost to the family.

On April 1, 2022 a PWN for Evaluation or Reevaluation and Request for Consent was provided to the family for the IEE. It was signed and returned on April 22, 2022.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.304(c)(4) require school districts to assess any child suspected of being a child with a disability in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities.

As part of an initial evaluation, federal regulation implementing the IDEA at 34 C.F.R. 300.305 (a)(1) require that the IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on the child including evaluations and information provided by the child's parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers.

On the basis of that review and input from the child's parents, federal regulations implementing the IDEA at 34 C.F.R. 300.305(a)(2) require school districts to identify what

additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service.

Kansas regulations at (K.A.R. 91-40-8(c), (d) and K.A.R. 91-40-27(e) are more specific in directing a district to review “existing data that is currently available including evaluations and information provided by the parents, current classroom-based, local, or state assessments, and classroom-based observations, and observations by teachers and related service providers; and the child’s response to scientifically, research-based interventions, if implemented”. This review of existing data, as part of the evaluation, may be conducted without a meeting and without consent from the parents.

In this case, the evidence supports a finding that USD #378 is in violation of 34 C.F.R. 300.305(a)(1), 300.305(a)(2), (K.A.R. 91-40-8(c), (d); and K.A.R. 91-40-27(e) as it did not include the parents in the review of existing evaluation data, nor did it consider evaluations and information provided by the parents. USD #378 also failed to include classroom-based observations, and observations by teachers as a part of the initial evaluation when considering the eligibility category of specific learning disabilities.

Interviews and documentation found the parents had concerns in the area of attention and focus and its effect on his academic performance. The PWN of October 28, 2021 did not recommend any evaluation to address those concerns.

Interviews and documentation further found USD #378 made a predetermination of evaluating for a specific learning disability during the January 26, 2022 eligibility determination meeting in both the Eligibility and Multidisciplinary Team Report and PWN dated from that meeting. In spite of the parent bringing a medical diagnosis of ADHD to the meeting, the team continued with the predetermined eligibility category. As well, the January 26, 2022 PWN was filled out prior to the meeting with decisions about eligibility and presented to the family at the eligibility determination meeting for signatures.

The IDEA at 34 C.F.R. 300.302 states that screening of a student shall not be considered an evaluation for eligibility for special education and related services. Therefore, USD #378 committed a procedural error when it indicated that new data would be collected for hearing and vision, but then provided a justification that screening would occur to

assess for concerns that may impact learning and evaluation would occur if the screening warranted additional evaluation. This does not constitute evaluation for the purposes of considering eligibility.

The IDEA at 34 C.F.R. 300.321(a)(6) and K.A.R. 91-40-17(b)(4) provides that the parent has the right to invite to the IEP team meeting individuals whom the parent believes to have knowledge or special expertise about the child. The parent invited an advocate who is a credentialed special educator with knowledge of the student to the second eligibility determination meeting. She attended the meeting virtually as reported by parent, advocate and district report using inadequate virtual technology for participation. It is found that the district offered two options (FaceTime or call) for participation and could not have foreseen that the technology would be inadequate since they do not routinely rely on virtual participation meetings. It is noted that the district should explore and offer more adequate options for virtual participation in the future.

Finally, districts are required to provide notice of meetings according to IDEA at 34 C.F.R. 300.322(a)(1) and K.A.R.34 91-40-37(b), providing written notice at least 10 days in advance of the meeting. The parents allege that while they were contacted by USD#378 to schedule the meeting, no documentation was provided to demonstrate that a 10-day notice of meeting for the February 28, 2022 determination of eligibility meeting was provided to the parents or to waive the 10-day notice at the meeting. This allegation is therefore substantiated.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following areas:

- A. Federal regulations at 34 C.F.R. 300.305(a)(1), 300.305(a)(2), and state regulations at (K.A.R. 91-40-8(c), (d); and K.A.R. 91-40-27(e) require school districts to obtain participation in and to obtain input from the parents during the review of existing data in order to determine what additional data, if any, is needed to determine whether the child is a child with a disability; the present

levels of academic achievement and related developmental needs of the child and whether the child needs special education and related services.

In this case, the evidence supports the finding that USD #378 did not obtain participation or input from the parents during the review of existing data in order to determine what additional data, if any, was needed to determine whether the child is a child with a disability. All documentation and discussion for determination of eligibility was directed to eligibility as a child with specific learning disabilities (SLD) instead of equally considering all fourteen disabilities categories.

B. The IDEA at 34 C.F.R. 300.302 states that screening of a student shall not be considered an evaluation for eligibility for special education and related services.

USD #378 committed a procedural error when it indicated that screening would be used to determine if additional evaluation data were needed for hearing and vision.

C. Federal regulations at 34 C.F.R. 300.322(a)(1) require that parents be provided written notice at least 10 days in advance of the meeting.

In this case no Prior Written Notice was produced for the February 28, 2022 eligibility determination meeting. It is noted that emails document that parents and district agreed upon a mutually agreeable time and date.

Based on the foregoing, USD #378 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #378 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) at 34 C.F.R. 300.305(a)(1) and 300.305(a)(2) and state regulations at (K.A.R. 91-40-8(c), (d); and K.A.R. 91-40-27(e) which require school districts to obtain participation in and obtain input from the parents during the review of existing data in order to determine what additional data, if any, is needed to determine whether the child is a child with a disability; the present levels of

academic achievement and related developmental needs of the child; whether the child needs special education and related service.

- B. Comply with the federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.302 which requires that screening of a student shall not be considered an evaluation for eligibility for special education and related services.
 - C. Comply with the federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.322(a)(1) which requires that parents be provided written notice at least 10 days in advance of the meeting.
2. No later than the last day of the 2021-22 school year, USD #378 shall reconvene the student's multidisciplinary team to review existing data, including the ADHD diagnosis provided by the parents. In addition, the multidisciplinary team will consider all parent concerns related to attention and focus and determine if additional assessments are needed to determine eligibility. Finally, the multidisciplinary team will determine if additional assessment is needed in order to properly consider the eligibility category of specific learning disabilities, specifically classroom observations.
 3. No later than May 31, 2022, the Twin Lakes Education Educational Cooperative shall review and revise, if appropriate, its procedures and practices related to conducting the Review of Existing Data as part of the initial evaluation process. No later than June 15, 2022, Twin Lakes Education Educational Cooperative will provide a copy of the written procedures to SETS for review and approval as well as a plan for distribution of the written procedures. Within 10 school days of approval, the written procedures will be distributed to all licensed and certificated special education staff, including school psychologists, and building administrators, and written documentation of that distribution shall be provided to SETS.
 4. No later than May 31, 2022, USD #394 will arrange for TASN to conduct a training for all licensed and certificated special education staff, including school psychologists, and building administrators working in USD #394 regarding the IDEA requirements related to conducting a Review of Existing Data and planning for appropriate evaluation as part of the initial evaluation process as well as when and how to provide appropriate PWN and NOM for an initial evaluation and reevaluation. No later than 30 days after the start

of the school year, USD #378 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #378 will provide SETS with any handouts and/or a copy of the presentation.

5. Further, USD # 378 shall, within 10 calendar days of the date of this report, submit to Special Education and Title Services 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). Due to COVID-19 restrictions, appeals 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.

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

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)