

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT 22FC469-001

FILED AGAINST

UNIFIED SCHOOL DISTRICT # 469

ON APRIL 5, 2022

DATE OF REPORT: MAY 4, 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. _____ be referred to as “the student’s mother,” “the complainant” or “the parent.”

Investigation of the Complaint

Jana Rosborough, Complaint Investigator, spoke by telephone with the parent on April 12, 2022. On April 13, 2022, the investigator spoke by telephone with Mary Alice Schroeger, Special Education Director and Daniel Wessel, Superintendent of USD 469 public schools . The investigator corresponded by email on subsequent dates with Ms. Schroeger to request and confirm receipt of materials.

In completing this investigation, the complaint investigator reviewed the following materials:

- Emails to and from parent with USD 469 staff sent on or around May 18, 2021
- Independent dyslexia evaluation
- Request for reevaluation with parent consent dated May 24, 2021
- Notice of evaluation and eligibility meeting dated September 27, 2021
- Evaluation and eligibility records from October 1, 2021 meeting, including eligibility report and signature pages
- Correspondence around 504 plan, including request for parent referral dated October 27, 2021
- Email from Ms. Schroeger to USD 469 special education team concerning the reevaluation dated November 5, 2021
- Consent for 504 plan dated December 6, 2021
- Request for reevaluation with parent consent dated November 16, 2021
- District Calendar for the 20-21 and 21-22 school year
- Email from MIS clerk indicating snow days and other school cancellations affecting the 21-22 school year dated April 6, 2022

Background Information

This investigation involves a student who is currently enrolled in the sixth grade in his neighborhood middle school. The student has been identified as gifted and is receiving special education services related to that identification.

Issue

In her complaint, the parent alleges the following:

The district has failed to meet two sixty (60) school day re-evaluation timelines.

Applicable Statutes and Regulations

Federal regulations at 34 C.F.R. 300.304 , require the public agency to provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct. State regulations at K.A.R. 91-40-8(f) require that unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g), the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child: (1) Conduct the evaluation of the child; (2) conduct a meeting to determine whether the child is an exceptional child and, if so, to develop an IEP for the child. The agency shall give notice of this meeting to the parent as required by K.A.R. 91-40-17(a); and (3) implement the child's IEP in accordance with K.A.R. 91-40-16. K.A.R. 91-40-8(g) states that an agency shall not be subject to the time frame prescribed in subsection (f) if either of the following conditions is met: (1) The parent of the child who is to be evaluated repeatedly fails or refuses to produce the child for the evaluation. (2) The child enrolls in a different school before the evaluation is completed, and the parent and new school agree to a specific date by which the evaluation will be completed.

Parent's Position

The parent contends that she twice signed consent for a reevaluation of the student and both reevaluations were not fully completed within the 60-school day timeline. Furthermore, the parent contends that the first reevaluation only considered existing data with no additional testing conducted which led to an incorrect evaluation of the student and potential eligibility of services to address needs related to the dyslexia diagnosis. The parent also contends that the second reevaluation was never fully conducted, including up until the filing of the complaint, exceeding the 60-school day timeline.

District's Position

The district stipulates that the second reevaluation did exceed the 60-school day timeline. The district does not agree that the first reevaluation was not timely. The district also contends that the implementation of a 504 plan for the student during the timeframe for the second reevaluation provided necessary supports for the student to continue to advance even with the reevaluation delay.

Investigative Findings

On May 18, 2021, the parent emailed USD 469 Special Education team and other school professionals involved in the student's education an independent evaluation the parent had procured that indicated the student has a dyslexia diagnosis. In the subsequent email exchange, Dayna Browne, school psychologist, communicated to the parent that for consideration of the new dyslexia diagnosis, including whether the student would be eligible for special education services, that a reevaluation would be necessary. There was agreement from both the parent and the school that the reevaluation could wait until school was back in session for the next (21-22) school year. The parent signed consent for the reevaluation of the student on May 24, 2021 in the area of academic performance.

On September 27, 2021, the parent received notice of a meeting to review the reevaluation and determine eligibility in additional areas. The meeting was agreed to by the parent. The evaluation and eligibility meeting was held on October 1, 2021, within the 60-school day timeline.

Parents of the student and student's advocate indicated disagreement with the evaluation and eligibility report which did not find that the student was eligible for special education services in the area of specific learning disability. The potentiality of the development of a 504 plan to meet the needs of the student that were indicated in the external evaluation related to the dyslexia diagnosis, was noted in the report.

On October 27, 2021, Ms. Schroeger emailed the parent forms related to development of a 504 plan. The parent agreed to a 504 evaluation on November 3, 2021 with supporting notes indicating the 504 plan eligibility and plan being developed while a "full" IDEA reevaluation was conducted.

On November 16, 2021, the parent signed consent for a reevaluation of the student in the areas of health/motor ability, vision, hearing, social emotional, general intelligence, academic performance, communicative status, transition skills, and sensory profile. As of the filing of the complaint on April 5, 2022, the reevaluation has not been completed, no evaluation and eligibility meeting has taken place, and subsequently no additional services and supports, if identified as eligible, have been implemented.

Summary and Conclusions

The first reevaluation that consent was signed for on May 24, 2021 and was completed with a meeting held on October 1, 2021 was within the 60-school day timeline. The parent has noted concerns about the adequacy of that evaluation, and it is not within the purview of this complaint investigation to address those concerns. The investigator will note that the second reevaluation to which the parent consented to on November 16, 2021 seems to indicate that the parent's concern about the limited scope of the first reevaluation was not without basis.

The district stipulates that the second reevaluation that was consented to by the parent on November 16, 2021 is still not completed and the writing of the report is beyond the 60-school day timeline. 504 plan supports have been place for the student, as related to the dyslexia diagnosis, but there is a marked discrepancy between the areas the second reevaluation is considering, with a note that it is referred to as the "full" evaluation by the USD 469 team, and the limited scope of the current 504 in place.

Furthermore, there remain considerable concerns about the delay in second reevaluation with the end of the 21-22 school year quickly approaching and possible eligibility for additional services and supports not yet determined for the student.

Corrective Action

Information gathered during the investigation has substantiated a violation of special education statutes and regulations. Specifically, violations have occurred with regard to K.A.R. 91-40- 8(f) which requires that unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g), the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child: (1) Conduct the evaluation of the child; (2) conduct a meeting to determine whether the child is an exceptional child and, if so, to develop an IEP for the child; and (3) implement the child's IEP in accordance with K.A.R. 91-40-16.

Therefore, USD #469 is directed to take the following actions:

1. Submit to Special Education and Title Services (SETS), within 15 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(f) timelines for evaluation and reevaluation.
2. Within 15 calendar days of the date of this report, USD #469 shall develop and submit to SETS for approval, a plan to complete the reevaluation with the student named in the complaint before the end of the 21-22 school year. The plan must include an offer of compensatory services if the student is determined eligible for special education and related services in additional areas not already identified. The offer of compensatory services shall be based on a calculation of the number of school days from November 16, 2021 to the date that the 60 school-day timeline to complete the reevaluation occurred. Then, beginning on that date, USD #469 shall calculate the number of school days remaining in the current school year and offer at least one hour of compensatory services for each of those school days up to and including the day the eligibility determination is made with regard to disability. The compensatory services offered under this plan may be provided during the summer months.
3. Within 5 school days of the date the district receives approval of the plan described above under Corrective Action 2, the district shall contact the parent to schedule a meeting to present the approved plan to the parent. The parent shall have the option of either accepting the plan as written, accepting a portion of the plan, or rejecting it. The district shall notify SETS of the parent's decision regarding the plan and shall report back once the reevaluation and subsequent actions, if any, based on the reevaluation are determined as needed.
4. Within 40 calendar days of this report, USD #469 shall provide to SETS an updated policies, practices, and procedures as it relates to timely evaluation, including how such policies, practices, and procedures will be communicated and trained with all necessary staff.

5. Further, USD #469 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 conclusion in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(F), which can be found at the end of this report.

Jana Rosborough

Complaint Investigator