

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #229
ON OCTOBER 24, 2022

DATE OF REPORT NOVEMBER 23, 2022

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

The complaint is against USD #229 (Blue Valley Public Schools). In the remainder of the report, “USD #229,” the “school,” the “district” or the “local education agency (LEA)” shall refer to this agency responsible for complying with the Individuals with Disabilities Education Act (IDEA).

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 and USD #229 received the complaint on October 24, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on October 25, 2022. The father provided additional information in interviews on October 28, 2022 and again on November 17, 2022.

USD #229 made the following school staff available for phone interviews on November 10, 2022:

- Mark Schmidt, Assistant Superintendent of Special Education
- Kristin Venable, Principal
- Cindy Ray, Special Education Case Manager
- Carol Lujano, School Psychologist
- Sammy Lovgren-Uribe, Speech/Language Pathologist

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:

- Evaluation Report dated October 6, 2017
- Individualized Education Program (IEP) dated October 6, 2017
- IEP dated April 16, 2020
- Reevaluation Not Necessary Agreement dated September 14, 2020
- IEP dated April 7, 2021
- IEP Goal Progress Report Summary for the April 7, 2021 IEP
- IEP dated March 24, 2022
- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent for a parent observation of a speech/language therapy session dated March 30, 2022
- PWN agreeing to an Independent Educational Evaluation (IEE) at public expense dated April 5, 2022
- Speech/Language Assessment completed by Suzanne Green Johnston, M.A. SLP, dated April 30, 2022
- PWN dated May 19, 2022 refusing the parents request to add an additional 60 minutes of speech therapy to the student's IEP
- PWN dated May 20, 2022 refusing the parent's request to provide a paraprofessional during speech therapy sessions, to increase his therapy sessions from one time per week to three times per week; and to have an outside provider collect baseline data
- Email dated May 20, 2022 at 10:47 a.m. written by the parent to school staff including Mark Schmidt, Assistant Superintendent of Special Education
- Email dated May 20, 2022 at 5:20 p.m. written by Mr. Schmidt to the parent
- PWN dated May 24, 2022 proposing to update baseline data in the IEP and to increase speech therapy services by 10 minutes from one time per week for 30 minutes to two times per week for 20 minutes.
- IEP Goal Progress Report Summary for the March 24, 2022 IEP
- Email dated October 11, 2022 written by Cindy Ray, Special Education Case Manager to the parent regarding reevaluation
- PWN dated October 12, 2022 requesting consent to conduct a reevaluation for the student.
- Emails between the father and Ms. Ray, on October 12, 2022 at 9:24 a.m., 11:39 a.m., 11:46 a.m., and 11:48 a.m.
- Emails between the father and Mr. Schmidt, on October 12, 2022 at 11:58 a.m., 12:22 p.m., 3:07 p.m., 3:23 p.m., and 5:15 p.m.

- Email written by the father to Mr. Schmidt on October 17, 2022 at 6:25 a.m.
- Email between the father and Lauren Gore, Special Education Administrator, on October 17, 2022 at 9:14 a.m., 9:43 a.m., 10:01 a.m., 10:05 a.m., 10:26 a.m., 10:30 a.m., 10:44 a.m., 11:00 a.m., and 11:07 a.m.
- Formal Complaint Request form dated October 21, 2022 written by the father
- Response to the allegations dated November 4, 2022 written by Melissa Hillman, Chief Legal Officer for USD #229

Background Information

This investigation involves an eight-year-old male student currently enrolled in the second grade at Indian Valley Elementary School (IVE) in USD #229. The student was initially found eligible for special education and related services at the age of three under the exceptionality category of Developmental Delay on October 6, 2017 while attending preschool at Oak Hill Elementary School in USD #229. His initial IEP provided specialized instruction, occupational therapy (OT), speech therapy, and language therapy. He transitioned to kindergarten at IVE in August 2020 and continued to receive specialized instruction, OT, speech therapy, and language therapy. USD #229 has continued to make these same special education and related services available to the student through the current date.

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 two issues that were investigated.

ISSUE ONE: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures to conduct a reevaluation of the student and consider the independent educational evaluation provided by the parent during the past 12 months.

Positions of the Parties

The parent reported that the school district originally evaluated the student at the age of three when the student attended preschool at Oak Hill Elementary School. The

district has not conducted a reevaluation since that date. The parent is concerned that the student will no longer be eligible for special education and related services when he turns nine years old at the beginning of third grade because he will be too old to be eligible for special education under the current exceptionality category of Developmental Delay.

USD #229 reported the student was initially evaluated on October 6, 2017 at the age of three. On September 14, 2020, the parent and the district agreed that the student continued to be eligible under the exceptionality category of Developmental Delay and continued to need special education services and that no triennial evaluation was necessary as the student transitioned into kindergarten.

The district stated:

However, the parent began expressing concern about the student's IEP and the services he is receiving under the IEP. In addition, the student is nearing age 9 and will soon lose eligibility for special education unless another qualifying exceptionality is identified. For these reasons, the IVE [Indian Valley Elementary School] team asked for parent consent to reevaluate the student early.

The district scheduled an IEP team meeting for October 27, 2022 to discuss the reevaluation process. The parent was provided with Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent for a reevaluation to review prior to that scheduled meeting. Subsequently, the parent emailed staff on multiple occasions and refused to provide consent for any reevaluation of the student. The father also refused to attend this meeting if Kristin Venable, Principal at IVE, would be in attendance. No meeting was held prior to the parent and student leaving the country for an extended absence from November 1, 2022 through mid-December 2022.

The district stated:

It is perplexing that, in light of the parent's adamant objections to reevaluation, he now seeks redress for Blue Valley's alleged failure to conduct a timely reevaluation. Blue Valley will continue to work with the parent to obtain his consent for reevaluation after he returns from his extended travel.

The parent also reported that he obtained an Independent Educational Evaluation (IEE) of the student on April 30, 2022 and provided a copy of the resulting report to the school district. However, the district failed to revise the student's IEP to include the report's recommendation to add 60 minutes per week of speech therapy.

The LEA acknowledged that the parent requested an IEE following the March 24, 2022 IEP team meeting. A PWN agreeing to the IEE at public expense and information for obtaining the IEE was provided to the parent on April 5, 2022. School staff indicated the parent obtained the IEE on April 30, 2022 and subsequently shared the report with the district. The district considered the IEE at a meeting on May 12, 2022. The parent and Mr. Schmidt agreed to amend the student's IEP to add 10 minutes per week of speech therapy to the student's IEP on May 20, 2020. USD #229 provided the parent with PWN for this change on May 24, 2022.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #229.

The student was initially evaluated and found eligible for special education and related services under the exceptionality category of Developmental Delay on October 6, 2017.

The parent signed a document titled "Reevaluation Not Necessary Agreement" on September 20, 2020. This document indicates the agreement was made between the parent and Alyssa Pengra, School Psychologist, and that a copy of the agreement was hand delivered to the parent on that same date.

The student's annual IEP was reviewed and revised at an IEP team meeting held on March 24, 2022 with the parent in attendance. During that meeting, the parent shared concerns about the special education and related services the student was receiving. The parent requested to observe the student during one of the speech therapy sessions and the parent was provided with PWN dated March 30, 2022 proposing that such an observation occur.

The parent then contacted the district on March 25, 2022 and made the following requests: 1) Assign a paraprofessional to work with the student during his speech services to keep him engaged during the session; 2) Increase the student's speech language services from one time per week to three times per week; and 3) Have an outside service provider collect IEP data for the baseline of the student's IEP goals due to a concern about inconsistent data points in the baseline. The parent then requested an IEE at public expense and USD #229 responded on

April 5, 2022 agreeing to pay for the IEE. The parent was subsequently provided with documentation outlining the IEE process and potential providers.

The IEE was completed on April 30, 2022 by Suzanne Green Johnston, M.A. SLP. The report recommended 60 minutes per week of speech therapy to address "his tongue thrust along with his articulation errors that contribute to the incorrect tongue movements."

The parent provided school staff with a copy of the IEE report at a meeting on May 12, 2022. While USD #229 did not provide a copy of the notification for this meeting, the meeting was confirmed in an email written by the parent on May 20, 2022.

School staff reported they reviewed the IEE and considered the recommendations in the report at the May 12, 2022 meeting. Several options to increase speech services were discussed but the parent only wanted the LEA to provide the full 60 minutes of speech therapy services recommended by the IEE.

As a result of the May 12, 2022 meeting, the parent was provided with a PWN dated May 19, 2022 refusing the parent's request to add an additional 60 minutes of speech therapy to the student's IEP as recommended in the IEE. The parent was also provided with a PWN dated May 20, 2022 refusing the parent's request to provide a paraprofessional during speech therapy sessions, to increase his therapy sessions from one time per week to three times per week; and to have an outside provider collect baseline data.

The parent did not agree with the actions described in the PWNs and shared his concerns in an email dated May 20, 2022. Mr. Schmidt reported that he called and spoke to the parent that same date to discuss the parent's concerns and the IEE. Mr. Schmidt indicated that he and the father agreed to amend the student's IEP to include two 20-minute speech therapy sessions per week instead of only one 30-minute therapy session as was previously discussed and offered by the school team.

Mr. Schmidt sent an email outlining the discussion and decisions to the school team on May 20, 2022 stating:

I had a chance to visit with the parent on Friday afternoon. After some discussion, the parent would like to accept the previously offered SLP [speech language pathology] services of 2 x per week for 20 minutes each time. The parent understands that these services will begin next school year. We agreed that the school would continue to monitor his progress on the IEP goals. If the student is not meeting his IEP goals at progress report time, the team will consider any changes necessary to make

progress. We also agreed that speech services would be scheduled so the student did not miss any recess time.

USD #229 provided the parent with PWN dated May 24, 2022 proposing to update baseline data in the IEP and to increase speech therapy services by 10 minutes from one time per week for 30 minutes to two times per week for 20 minutes.

Ms. Ray sent the parent an email on October 11, 2022 advising him of a meeting on October 27, 2022 which would include a goal/progress update. This email also stated:

Since the student is due for his three year reevaluation, we will also explain the reevaluation process. You will have an opportunity to ask questions during the meeting. I have attached a meeting notice, agenda, and the permission to reevaluate so you have time to read them before the meeting. You do not need to sign anything until we have the meeting and you have an opportunity to hear the explanation and to ask questions. I will send home paper copies of the meeting notice, agenda, and permission to reevaluate with the student.

The parent was provided with a PWN dated October 12, 2022 requesting consent to conduct a reevaluation for the student in the following areas: health/motor, general intelligence, academic performance, and communicative status. The purpose of the proposed reevaluation is "to determine the student's continued eligibility for special education and related services: The proposed reevaluation was based "on a review of educational records, teacher report, progress monitoring data, observations, and parent input."

The parent responded to the PWN for reevaluation on October 12, 2022 at 9:24 a.m. in an email to Ms. Ray stating, "I will not accept the reevaluation as I said in the last meeting." The parent also refused to attend any meeting with Ms. Venable in attendance. At 11:46 a.m., the father sent another email stating, "Regardless of who is going or not, I will not sign a reevaluation. So please focus on the progress not in the reevaluation."

At 11:58 a.m., the father sent an email to Mark Schmidt, Assistant Superintendent of Special Education, stating, "Please focus on just the EIP (sic) progress, I'm not going to sign any permission for reevaluation and don't insist."

Mr. Schmidt replied to the father in an email at 3:07 p.m. on October 12, 2022 stating:

I'm just reading through the emails below and I need to provide some information that may help in this situation. The federal Individuals with Disabilities Education Act (IDEA) requires schools to reevaluate kids with IEPs at least once every three years. The purpose of the triennial reevaluation is to see if a student's needs have changed and what specific services are needed to meet those needs. It's also to see if they still qualify for special education services. Mrs. Ray is simply doing what the law requires by letting you know that the student is due for this re-evaluation under this law.

In addition, when your son was originally identified for special education, his primary disability was listed as "Developmental Delay (ages 3 - 9)." Under federal law, students are not eligible for special education services with a "Developmental Delay" after their 9th birthday. The re-evaluation would be used to determine which, if any, exceptionality your son qualifies for special education. We would like to use the results of the re-evaluation to inform services for the IEP.

As Mrs. Ray noted, you would need to consent to the re-evaluation for the school to conduct a re-evaluation. While this information would be helpful, as the parent, you can decline to consent to the re-evaluation. That is your right! On the other hand, presenting this opportunity to you formally is a requirement under the law. You, as the parent, may refuse to consent. The form has a place for you to sign your refusal to assert your right.

Mrs. Venable will also be part of the IEP meeting as the building principal and a required member of the team and part of these discussions.

The parent replied to Mr. Schmidt's email on October 17, 2022 at 6:25 a.m. stating, "As I stated, I'm not going to accept to be in the meeting with Mrs. Venable. It's your responsibility to assign someone that will be covering the stakeholder (that's your choice)."

The parent reported that he requested that another school staff be assigned to take Ms. Venable's role in the IEP team meeting on multiple occasions. He further stated that he will refuse to attend any meeting where Ms. Venable is present.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.303(b) require school districts to conduct a reevaluation of a child with a disability at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

In this case, the student was initially evaluated and found eligible for special education and related services on October 6, 2017. A triennial reevaluation was required to be completed prior to October 5, 2020. Documentation and interviews show that the parent agreed with school staff on September 14, 2020 that a triennial evaluation was not necessary when the student transferred into kindergarten. The next triennial reevaluation is not required to be completed until September 13, 2023.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to conduct a reevaluation of the student at least once every three years because documentation found the parent and public agency agreed that the first triennial review was not necessary on September 14, 2020 and the next required triennial review is not due until September 13, 2023.

Federal regulations at 34 C.F.R. 300.303(a) allow reevaluation to be conducted more frequently than once every third year so long as the parent and the LEA are in agreement. In addition, federal regulations at 34 C.F.R. 300.8(b) and K.A.R. 91-40-1(k)(2) do not state that student must be younger than nine years of age to be eligible for special education and related services under the exceptionality category of Developmental Delay. Rather, these regulations state that a child may remain eligible under the category of Developmental Delay from ages "three through nine." Accordingly, a child may remain eligible under Developmental Delay through age nine, not until age nine. Age nine ends on the tenth birthday. It is on the tenth birthday that eligibility under the category of Developmental Delay must end.

In this case, the student will turn ten years of age on October 13, 2024 and USD #229 mistakenly concluded that the student would no longer be eligible under the current identified exceptionality category of Developmental Delay. Interviews and documentation show USD #229 determined that an earlier reevaluation was necessary due to the parent concerns expressed in March 2022 and the need to determine if the

student continued to be a student with a disability under another exceptionality category included in the IDEA and defined in Kansas statutes and regulations prior to aging out of the Developmental Delay category upon his next birthday (both parties have misinterpreted this timeline). The district attempted to schedule an IEP team meeting on October 27, 2022 to review and discuss the reevaluation process and obtain consent from the parent.

Based on the foregoing, a violation of special education statutes and regulation is not substantiated for conducting a reevaluation less often than the minimum of at least once every three-years.

As part of a reevaluation, 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. Federal regulations at 34 C.F.R. 300.305(b) allow this review of existing data to be conducted with a meeting or through the IEP team conferring with each other.

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; and whether any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum.

In this case, USD #229 sent an email to the parent on October 11, 2022 providing the parent with "a meeting notice, agenda, and a PWN for reevaluation". This email clearly stated that the reevaluation process would be explained and discussed and that the parent would have the opportunity to ask questions at the October 27, 2022 IEP team meeting. The email also expressly stated that the parent did not need to sign anything until after the meeting.

However, the attached PWN proposing a reevaluation with additional assessment was dated October 12, 2022 but the IEP team meeting to discuss the reevaluation was not scheduled until October 27, 2022. This mismatch in dates proved confusing to the parent and resulted in miscommunication and misunderstanding.

Subsequent emails between the father and multiple school staff document that the father interpreted the PWN dated prior to the IEP team meeting as the district's proposal to conduct a reevaluation with additional assessment and a request for his consent. The father responded by clearly stating he was refusing to provide consent for any reevaluation of the student and further complicated the situation by refusing to meet with IEP team so long as the building principal was part of the team.

Regardless of the confusion caused by the PWN being dated prior to the scheduled IEP team meeting, the October 11, 2022 email shows USD #229 intended to give the parent the opportunity to participate in an IEP team meeting to discuss the reevaluation process, including the review of existing data. The email clearly stated that the parent did not need to sign anything until after the meeting.

At this point, the father is out of the country and unavailable to attend an IEP team meeting to discuss the reevaluation of the student but the due date of the required triennial evaluation has not yet passed.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to obtain input from the parent 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; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum.

Federal regulations at 34 C.F.R. 300.502(c) require school districts to consider the results of an independent educational evaluation shared with the school district in any decision made with respect to the provision of a free appropriate public education (FAPE) to the student. In addition, federal regulations at 34 C.F.R. 300.501(b) require parents to be afforded the

opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.

According to federal regulations at 34 C.F.R. 300.324(a)(4), in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

In this case, interviews and documentation show that the parent provided a copy of the IEE to USD #229 and participated in a meeting to review the report on May 12, 2022. As a result of that meeting, USD #229 provided the parent with a PWN dated May 19, 2022 refusing the parent's request to add an additional 60 minutes of speech therapy to the student's IEP as recommended in the IEE. The parent and Mr. Schmidt held a phone conference on May 20, 2022 and agreed to amend the student's IEP to add an additional 10 minutes per week of speech therapy and USD #229 provided the parent with a PWN proposing this change on May 24, 2022.

It is noted that while USD #229 did not agree with the recommendations of the IEE, it was obviously considered at both at the May 12, 2022 meeting with the school staff and again considered at the May 20, 2022 meeting with Mr. Schmidt. Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to include the parent in the consideration of the results of the IEE conducted on April 30, 2022 in regards to the provision of FAPE to the student.

ISSUE TWO: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the student's IEP as appropriate during the past 12 months when the student failed to make progress towards the IEP goals.

Positions of the Parties

The parent stated that despite the special education services provided by USD #229, the student is still delayed as compared to his peers. The IEP goal progress reports show the student is making progress, but observations at home show he still struggles

to decode words (e.g. he reads “here” for “there”). The father is very concerned that the student will be bullied because of his reading difficulties.

The father also worried because the district told him the student would no longer be eligible for special education and related services when he turns age nine in third grade even though the IEP has failed to catch the student up with his peers. The parent believes USD #229 should have added additional services to the student’s IEP at IEP team meetings as recommended by the independent educational evaluation (IEE).

USD #229 reports the student has made progress towards his IEP goals each quarter for the past 12 months. In addition, the parent has never requested to reconvene the IEP team to discuss any lack of progress.

USD #229 acknowledged that the parent shared concerns regarding speech services at the March 24, 2022 annual IEP team meeting and requested to observe a therapy session. This request was granted and, when the parent subsequently requested an IEE, the district also granted that request. USD #229 believes they have responded appropriately to concerns shared by the parent during the past 12 months.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #229.

The findings of Issue One are incorporated herein by reference.

IEP goal progress reports for the past 12 months show the student is making adequate progress to meet his IEP goals in both the April 7, 2021 and March 24, 2022 IEPs.

No evidence was provided showing the parent ever requested an IEP team meeting to discuss concerns related to IEP goal progress.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.324(b)(1) require school districts to review a student’s IEP periodically, but at least annually to determine whether the annual goals for the student are being achieved and revise the IEP, if appropriate, in order to address any lack of expected

progress toward those annual goals, the results of any reevaluation, any information about the child provided to, or by the parents, the child's anticipated needs, or other matters.

In this case, the student's IEP team was reconvened on March 24 to review and revise, as appropriate, the annual IEP. The IEP goal progress reports indicated the student was making adequate progress towards his IEP goals so there was no requirement for USD #229 to reconvene the IEP team more frequently. Based on the foregoing, no violation of special education statutes and regulations is substantiated for failing to reconvene the IEP team because the student was not making adequate progress towards achieving the IEP goals during the past 12 months.

In addition, documentation and interviews show that USD #229 responded to the parent's concerns related to speech therapy services by granting the parent request to observe a therapy session as well as granted the parent's request for an IEE. Based on the foregoing, no violation of special education statutes and regulations is substantiated for failing to reconvene the IEP team to consider the concerns of the parent during the past 12 months.

Federal regulations at 34 C.F.R. 300.502(c) require school districts to consider the results of an independent educational evaluation shared with the school district in any decision made with respect to the provision of a free appropriate public education (FAPE) to the student. As noted in Issue One, the report resulting from the IEE was considered by the parent and school staff on May 12, 2022 and was reconsidered in the phone conference with Mr. Schmidt on May 20, 2022. Subsequently, a PWN proposing to add 10 minutes of speech therapy services was provided to the parent on May 24, 2022. Based on the foregoing, no violation of special education statutes and regulations is substantiated for failing to consider the IEE in regards to the provision of FAPE.

Federal regulations at C.F.R. 300.8(b) and K.A.R. 91-40-1 state that a student must be younger than ten years of age to be eligible for special education and related services under the exceptionality category of Developmental Delay. In this case, the student will turn nine years of age on October 13, 2023 and will remain eligible under the current identified exceptionality category of Developmental Delay.

Interviews and documentation show USD #229 decided that an earlier reevaluation was necessary due to the need to determine if the student continued to be a student

with a disability under another exceptionality category included in the IDEA and defined in Kansas statutes and regulations when the district mistakenly believed the student would age out of the Developmental Delay category upon his next birthday. The district attempted to schedule an IEP team meeting on October 27, 2022 to review and discuss the reevaluation process and obtain consent from the parent. However, the parent refused to attend the scheduled IEP team meeting and refuses to provide consent for a reevaluation or meet with the IEP team again so long as Ms. Venable is a member of the IEP team.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to comply with federal regulations at 34 C.F.R. 300.324(b)(1) as well as federal regulations at 34 C.F.R. 300.8(b) and K.A.R. 91-40-1 state regulations at K.A.R. 91-40-19(a) regarding when the IEP team must reconvene to determine eligibility for the exceptionality category of Developmental Delay.

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.

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)