

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #232

ON NOVEMBER 16, 2022

DATE OF REPORT DECEMBER 16, 2022

This report is in response to a complaint filed with our office on behalf of the student by his mother, The mother. In the remainder of the report, the student will be referred to as "the student." The student's mother is the mother and in the remainder of this report she will be referred to as "the mother," "the parent," or "the complainant." The complaint is against USD #232, Desoto Public Schools. In the remainder of the report, the "school," the "district," and the "local education agency" (LEA) shall refer to USD #232.

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 November 16, 2022 and the 30-day timeline ends on December 16, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, interviewed the parent by telephone on November 17, 2022 and Lee Hanson USD #232 Director of Special Services, Megan Turpin, Principal, Riverview Elementary, Andy Gloschen, School Psychologist, Riverview Elementary, Raina Newth, Speech and Language Pathologist, Riverview Elementary, Kristen Schwartz, Special Education Coordinator for Elementary, Jessee Altman, Early Childhood School Psychologist, Andrea West, Principal, Cedar Trails Exploration Center - Early Childhood, on December 5, 2022.

The Complaint Investigator also received emails from the parent and USD #232 between November 17, 2022 and November 30, 2022.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the complainant and district. Although additional documentation was provided and reviewed the following materials were used as the basis of the findings and conclusions of the investigation:

- Email from Parent to Melissa Radetic, Speech Pathologist, Cedar Trails Exploration Center - Early Childhood dated July 27, 2022 at 11:20 a.m.
- Email from Ms. Radetic to Parent dated July 27, 2022 at 12:40 p.m.
- Email from Parent to Ms. Radetic dated July 28, 2022 at 8:23 p.m.
- Email from Andrea West, Principal, Cedar Trails Exploration Center - Early Childhood to Parent, Raina Newth, Speech Language Pathologist, Riverview Elementary and Megan Turpin, Principal, Riverview Elementary dated July 29, 2022 at 3:20 pm
- Email from Mr. West to parent dated August 1, 2:09 p.m.
- Email from Ms. Turpin to all parents of incoming students, undated
- Email from parent to Ms. Turpin dated August 8, 2022 at 9:38 a.m.
- Email from Ms. Turpin to parent dated August 8, 2022 at 1:34 p.m.
- Email from Mr. Andrew Gloschen, School Psychologist, Riverview Elementary to parents dated August 12, 2022 at 2:10 p.m.
- Email from Ms. Newth, to Parent dated August 12, 2022 at 2:42 p.m.
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated August 12, 2022, electronically signed by the parent on August 15, 2022 giving consent
- Communication Log dated August 17, 2022

- Children’s Mercy Report from the Speech Clinic dated November 3, 2022
- Email from Cheri Eskina, Kindergarten Teacher, Riverview Elementary to Ms. Newth dated November 10, 2022 at 2:53 p.m.
- Speech/Language Screening Results for student dated November 11, 2022
- Email from Ms. Newth to Parent dated November 15, 2022 at 12:55 p.m.
- USD #232 Notice of Tier Support for Speech and Language to parents dated November 15, 2022
- Email from parent to Mr. Gloschen dated November 15, 2022 at 5:07 p.m.
- Email from Parent to Ms. Newth dated November 15, 2022 at 5:10 p.m.
- Prior Written Notice for Evaluation or Reevaluation dated November 16, 2022, signed by the parent on November 16, 2022
- Email from Ms. Newth to Parent dated November 16, 2022 at 11:44 a.m.
- Communication Log note from November 16, 2022
- Unified School District No. 232 2022-23 Calendar

Background Information

This investigation involved a kindergarten-aged student enrolled at Riverview Elementary in USD #232. He is not currently receiving special education or related services as a child with a disability per the Individuals with Disabilities Education Act (IDEA). Beginning in November he began receiving Tier III support for speech. He has been screened at yearly intervals for speech/language delays since August 2020 and has been observed for behavioral issues at community day cares prior to entering kindergarten. He was receiving speech therapy prior to kindergarten and the parent reported that his speech was not improving and impacting his behavior. In November, his parents had his speech evaluated at Children’s Mercy Speech Clinic. The child lives at home with his parents.

ISSUE ONE: The USD #232, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to complete a comprehensive special education evaluation for a child with a suspected disability within timelines.

Positions of the Parties

The complainant alleged that in August 2022 she reached out to the speech pathologist at Cedar Trails Exploration Center - Early Childhood due to no changes in her child's speech, increased frustration when he was misunderstood and other speech deficiencies that were not age appropriate. The Cedar Trails speech pathologist then reached out to Riverview Elementary staff (where the student would be entering Kindergarten later that month). Staff at Riverview Elementary stated that although they were unfamiliar with the student, they would evaluate the student based on the request. The complainant was informed that the evaluation would start the second week of school and likely not conclude until November.

On September 23, 2022 at the parent teacher conference, she learned that the teacher was unaware of the request. As of November 9, 2022 the parent alleged she had received no communication from the school about the evaluation.

The district acknowledged that the district was in violation of failing to complete a comprehensive special education evaluation for the student with a suspected disability within timelines. They responded that once they discovered this the school psychologist, Speech Language Pathologist and principal contacted the parent on November 15, 2022 to explain the error in completing the evaluation within the 60-day timeline. An option of continuing the evaluation in tandem with Tier III interventions was discussed. At that time, the parent withdrew consent for the evaluation and decided to continue with the Tier III interventions. Additionally, the parent provided the SLP and School Psychologist with an outside evaluation for her son from Children's Mercy Assessment center.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #232.

- The parent signed the PWN for an initial evaluation of her child on August 15, 2022 starting the 60-school day timeline.
- The school district calendar shows that the 60-school day timeline to complete the initial evaluation would end on November 15, 2022.
- The district acknowledges the error in completing the evaluation through documentation and interview.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f) the initial evaluation is to be completed within the 60-school-day timeline. The 60-school-day timeline begins when the agency receives written parent consent to conduct the initial evaluation.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the district failed to complete a comprehensive special education evaluation for a child with a suspected disability within timelines.

ISSUE TWO: The USD #232, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to secure parent approval to conduct an evaluation for special education and related services.

Positions of the Parties

The complainant alleged that the district did not conduct the evaluation for special education within the timeframe. Due to the focus on getting services to the student quickly it was determined to investigate this allegation to determine if this step impeded the evaluation.

The district responded that two prior written notices were provided to the parent. The first PWN dated August 12, 2022 responding to the parents request to evaluate her son for special education and related services was signed by the parent on August 15, 2022. A second PWN dated November 16, 2022 was provided to the parent to withdraw the request for evaluation and agreeing to Tier III speech services was signed electronically by the parent on November 16, 2022.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #232.

- The findings of Issue One are incorporated herein by reference.
- The PWN dated August 12, 2022 responding to the parents request to evaluate her son for special education and related services was electronically signed by the parent on August 15, 2022.

- The PWN dated November 16, 2022 was provided to the parent to withdraw the request for evaluation and agreeing to Tier III speech services was signed electronically by the parent on November 16, 2022.
- Emails from the district to the parent and interview with the district show that the district requested and received parent consent to conduct the evaluation and in November to withdraw the request.
- The parent agrees and emails show she signed both PWNs giving consent for an evaluation and later withdrawing the request and requesting Tier III interventions.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.300(a) and K.A.R. 91-40- 27(a)(1) the school must obtain informed consent from the parent of the child before conducting the evaluation. Further, parents must be provided procedural safeguards to help the family understand the process.

The signed PWNs and email exchanges between both the parent and district demonstrate that the parents consented to both actions and agreed with the actions.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to secure parent approval to conduct an evaluation for special education and related services.

ISSUE THREE: The USD #232, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent input into the evaluation process.

Positions of the Parties

The complainant alleged that the district agreed to conduct the initial evaluation for special education and related services based on her request and she signed consent to start. She was told the next steps and expected timeline but not contacted at any time other than her initial contact expressing her area of concern.

The district acknowledged that the district was in violation of failing to complete a comprehensive special education evaluation for the student with a suspected disability

within timelines. Therefore, USD #232 failed to allow parent input into the evaluation process.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #232.

- The findings of Issue One and Two are incorporated herein by reference.
- Documentation and interview confirm the parent was not contacted about the evaluation process after the initial consent.
- Documentation and interview confirm the district acknowledges that due to not completing the special education evaluation within the timeline they did not include the parent into the evaluation process.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.301 and K.A.R. 91-40-8 during the initial evaluation each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate, comply with the following requirements: (1) The evaluation team shall review existing evaluation data on the child, including the following information: (A) evaluations and information provided by the parent of the child; (B) current classroom-based, local, and state assessments and classroom-based observations; and (C) observations by teachers and related services providers. (2) On the basis of that review and input from the child's parent, the evaluation team shall identify what additional data, if any, is needed.

As the district acknowledged the evaluation was not conducted the parent was therefore not included in the evaluation. It is noted that the parent has since withdrawn her request for the evaluation of her child in favor of Tier III services.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the district failed to provide parent input into the evaluation process.

Corrective Action

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

A. Federal regulations at 34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f) specifies the initial evaluation is to be completed within the 60-school-day timeline.

In this case, the evidence supports the finding that USD #232 did not complete the student's initial evaluation within the 60-school-day timeline.

Documentation, Interview, and the District Response letter of November 29, 2022 document this. It is noted that the parent reports a good outcome for her child in spite of the noncompliance.

A. Federal regulations at 34 C.F.R. 300.301 and K.A.R. 91-40-8 specifies that parental input is required and integral to the initial evaluation for special education and related services.

In this case, the evidence supports the finding that USD #232 did not include parent input into the student's initial evaluation through documentation, Interview, and the District Response letter of November 29, 2022.

Based on the foregoing, USD #232 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #232 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f) by completing initial evaluations, and if the child is eligible, to develop and implement an IEP within the required 60-school-day timeline, unless the district has obtained written parental consent to an extension of time.
2. Further, by February 1, 2023 USD #232 will complete the following: (1) submit a written statement of assurance to Special Education and Title Services (SETS) that the district's practices and procedures for initial evaluation and parent communications have been reviewed and revised as appropriate to be responsive and compliant with evaluation procedures of the Individuals with

Disabilities Education Act (IDEA) and the Kansas Special Education for Exceptional Children Act; (2), if the district has a tracking system to comply with the timelines for the special education evaluation process, it will provide a written description of that system to SETS; (3) If the district does not currently have a tracking system to comply with the timelines for the special education evaluation process, then one will be created, and a written description of that system will be sent to SETS.

3. Within 15 calendar days after the planned December 2022 meeting to discuss the success of the Tier III interventions and whether an evaluation for special education services is warranted, USD #232 shall submit the decisions and associated signed documentation showing parent participation of this meeting.

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, Ph.D.

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)