This report is in response to a complaint filed with our office on behalf of ------------------ by ------------------, a former school employee at USD #260. In the remainder of the report, ------------------ will be referred to as “the complainant” and ------------------ will be referred to as “the student.”

The student is the son of ------------------. They will be referred to as “the parents” or “the father” or “the mother” respectively. It is noted that the parents chose not to provide written consent for personally identifiable information contained in this investigation report to be shared with the complainant.

The complaint is against USD #260 (Derby Public Schools). In the remainder of the report, “USD #260,” the “school,” the “district” or the “local education agency (LEA)” shall refer to this responsible public agency.

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 #260 received the complaint on May 25, 2023 and the timeline to investigate the allegations was extended by seven days to allow the parents to participate in the investigation process.

**Investigation of Complaint**

Nancy Thomas, Complaint Investigator, interviewed the Director of Special Education, Dawn Gresham, by telephone on May 26, 2023. The parents were interviewed by telephone on June 5, 2023 as part of the investigative process. The complainant was interviewed by telephone on June 13, 2023.
In addition to interviews, the Complaint Investigator reviewed documentation provided by the complainant, the parents and the LEA. While all of these documents were used to provide background and context, the following materials were used as the basis of the findings and conclusions of the investigation:

- Email dated August 23, 2022 at 12:56 p.m. written by Kaitlyn Simmonds, School Psychologist, to Dawn Gresham, Director of Special Education, regarding assistance with a hearing assessment for the student during the initial evaluation
- Email dated August 23, 2022 at 3:06 p.m. written by Ms. Gresham to Ms. Simmonds with such arrangements
- Prior Written Notice for Initial Evaluation or Reevaluation and Request for Consent dated August 23, 2022 and signed by the mother on August 29, 2022.
- Notice of Special Education Meeting dated September 23, 2022 scheduling an eligibility determination and IEP team for October 3, 2022
- Initial Evaluation/Eligibility Team Report dated October 3, 2022
- Individualized Education Plan (IEP) dated October 3, 2022
- Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated October 3, 2022 and signed by the parents on the same date

Background Information

This investigation involves a four-year-old male who attends the Park Hill Early Childhood Program in USD #260. The student was initially referred for a special education evaluation at the beginning of the 2022-23 school year due to speech and hearing concerns noted during an IDEA child find screening conducted for children ages three through five in the district in April 2022.

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, the complainant raised one issue that was investigated.
**ISSUE ONE:** The USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct a full and individualized special education evaluation of the student during the 2022-23 school year.

**Positions of the Parties**

The complainant reported the student was denied early childhood special education and related services for a hearing impairment. The complainant stated:

The student is suspected of having a hearing loss but to my knowledge has not had an audiological evaluation. He showed delays in 2 developmental areas, meeting the exceptionality of DD [Developmental Delay] but received only related services.

The complainant said that she did the initial screening for the student. She indicated that she was told by a co-worker that the student was not offered early childhood special education services.

USD #260 reported that all the steps in the initial special education evaluation process were followed appropriately for the student during the 2022-23 school year. School staff noted the parents provided written consent for an initial evaluation on August 29, 2022 and the student was subsequently assessed in all areas of suspected disability. The multidisciplinary team determined the student was eligible for special education and related services under the exceptionality category of Developmental Delay (DD) in the areas of communication and physical. An IEP was then developed to provide the student with a free appropriate public education (FAPE) and the parents’ written consent for services and placement was obtained on October 3, 2022.

**Findings of the Investigation**

The following findings are based upon a review of documentation and interviews with the parents of the student, the complainant, and LEA staff in USD #260.

The student participated in a routine early childhood screening through USD #260 for articulation, vision and hearing screening on April 11, 2022. At that time he passed the vision screening but failed the hearing and articulation screenings.
Booth evaluation was conducted on April 21, 2022 by Kayla Eldridge, School Audiologist, and indicated a mild to moderate hearing loss bilaterally. The parents sought medical care and obtained hearing aids for the student during the summer of 2022.

The LEA proposed an initial evaluation of the student in all areas on August 23, 2022 and the parents provided written consent that same day. An arena style evaluation was conducted on August 29, 2022. In addition, individual assessments were conducted in the areas of gross/fine motor, communication, and cognition.

This evaluation also included an observation by Molly Pourhussin, Teacher for the Deaf and Hard of Hearing in USD #260. She stated:

When observing his auditory needs, I notice when Kaitlyn [school psychologist] asked the questions, he didn't need to look at her. He was looking at the pages in front of him. I made a series of noises outside his three foot speech bubble. He did not turn his head or indicate in any way that he heard the sounds. Usually, kids of his age will ask, “What's that?” Based upon my observation, the student would qualify for an FM system in the classroom. Outside of his listening bubble, he indicated that he could hear noise 0 out of 5 times.

The multidisciplinary team met on October 3, 2022 and determined the student met the eligibility criteria to be identified as a child with a developmental delay in the areas of communication and physical/motor skills. An IEP was developed on that same day which required physical therapy (PT), occupational therapy (OT), speech/language therapy, and the use of an FM system in the preschool setting. USD #260 provided the parent with PWN for initial eligibility, a significant change in services and a substantial change of placement. The parents provided written consent on that same date and the IEP has been implemented as written since that date.

An interview and email written by the mother on June 5, 2023 showed that the parents believed the student’s initial evaluation and subsequent IEP were appropriate, provided FAPE to the student, and USD #260 had included them in the evaluation and IEP process. The mother stated:

This allegation referencing our son, student, is false. On April 11, 2022, I took the student to the Carlton Learning Center to be tested to see if he qualified for speech therapy services through the school district. It was at this evaluation that it was determined that he had some hearing loss, but would need further testing to be more accurate. On April 21, 2022, I took him back to the Carlton Learning
Center for a full hearing evaluation inside an audiologist booth, we were then referred to Via Christi for further evaluations. It was determined on May 6, 2022 that he had permanent hearing loss in both ears and would need to wear hearing aids for the rest of his life, and they were unable to tell if it will increasingly get worse over time or if it will remain consistent with those findings.

During this process I was in communication with the districts audiologist, and as soon as the student had his hearing aids he was put back in the evaluation process for available services through the district. The testing identified that he qualified for speech therapy as well as occupational and physical therapy. In the 2022-2023 school year, the student went once a week for occupational and physical therapy and twice a week for speech therapy. This schedule was set during an in person meeting with 5-7 special service employees, the principle of Park Hill Ms. Gretchen Pontious, my husband and myself.

If it were not for Derby’s special services programs, he would not of gotten hearing aids as soon as he did nor would he have made the strides to catch up to his peers prior to reaching kindergarten, 2024-2025 school year. All of the teachers and specialist that we have worked with have been nothing but wonderful throughout the entire process.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.301(c)(2) require school districts to conduct initial evaluations to determine if the child is a child with a disability and to determine the educational needs of the child.

In this case, USD #260 conducted child find activities through routine screening in April 2022 when the student was three years of age. At that time, USD # determined the student may be a student with a disability and in need of special education and related services. The parents sought medical care for hearing concerns and obtained hearing aids for the student during the summer of 2022.

USD #260 provided the parents with PWN for an evaluation in all areas on August 23, 2022 when school resumed for the 2022-23 school year. An arena style evaluation and individual assessments were completed. The multidisciplinary team, including the parents, met on October 3, 2022 and determined the student met the eligibility criteria to be identified as a child with a developmental delay in the areas of communication and physical/motor skills. An IEP was developed on that same day which required PT, OT,
speech/language therapy, and the use of an FM system in the preschool setting. USD #260 provided the parents with a PWN for initial eligibility, initial services, and initial placement on October 3, 2022 and the parents provided written consent.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to conduct a full and individualized special education evaluation of the student during the 2022-23 school year.

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. 91-40-51(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)