

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #379
ON APRIL 1, 2024

DATE OF REPORT MAY 1, 2024

This report is in response to a complaint filed with our office by -----, on behalf of her daughter, -----. For the remainder of this report, ----- will be referred to as "the student." ----- will be referred to as "the complainant," or "the parent."

Investigation of Complaint

Laura Jurgensen, complaint investigator, exchanged multiple emails with the parent and offered to interview her as part of this investigation. Because of the parent's schedule she requested the complaint investigator email her question to which she would respond. On April 25, 2024, the complaint investigator emailed the parent questions, and the parent responded the same day. On April 23, 2024, the investigator spoke, via Zoom, with Matt Weller, principal of student's school; Leah Knitter, student's kindergarten teacher; Jennifer Swihart, kindergarten reading intervention teacher, and Jennifer Begnoche, school psychologist. The complaint investigator also exchanged multiple emails with district staff collecting and clarifying information. For the remainder of this report, Mr. Weller will be referred to as "principal," Ms. Knitter will be referred to as "kindergarten teacher," Ms. Swihart will be referred to as "kindergarten reading intervention teacher," and Ms. Begnoche will be referred to as "school psychologist."

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

- Parent Provided ASQ-3 on Student Completed by Student's Doctor, undated.
- Documentation of District Policies, Practices, and Procedures.
- Parent Provided Book Chapter on Phonological Skills, Literacy, and Dyslexia, Feb. 24, 2016.
- Student Progress, Quarters 1-3, 2021-22 School Year.
 - This document is not relevant to the current investigation as it is outside the investigation timeframe.
- Prior Written Notice Proposing to End Special Education Services, Parent's Refusal, and Student's Individualized Education Program (IEP), May 4, 2022.
 - This document is not relevant to the current investigation as it is outside the investigation timeframe.
- District 2023-24 Calendar, Jan. 9, 2023
- Student IEP Team Meeting Summary, Apr. 27, 2023.
- Reevaluation of Student, Apr. 27, 2023.

- Prior Written Notice Proposing to End Special Education Services and Parent's Consent, Apr. 27, 2023.
- Prior Written Notice Refusing Parent's Request for Initial Evaluation, May 3, 2023.
- Emails from Parent to Teacher Regarding Dyslexia Screening, Jan. 2 and 9, 2024.
- Email from Principal to Parent and Teacher Responding to Parent's Request for Dyslexia Screening, Jan. 12, 2024.
- Parent Provided Student's Doctor's Referral for Outside Evaluation of Student, Including Dyslexia, Jan. 15, 2024.
- Dyslexia Screener Results for Student, Feb. 9, 2024.
- Parent Provided Examples of Student Work, Feb. 16, 2024, and undated.
- Email from Parent to Principal Regarding Dyslexia Screening, Feb. 26, 2024.
- Student's aimswebPlus 2023–24 Reading Scores, Feb. 29, 2024.
- Student Progress, Quarters 1–3, 2023–24 School Year.
- Attachment to Parent's Feb. 26, 2024, Email to Principal, Chapter 3 of the Kansas Special Education Process Handbook with Parent's Comments and Highlights.
- Prior Written Notice Refusing Parent's Request for Initial Evaluation, Mar. 18, 2024.)
- Email from Principal to Parent with Notes from Feb. 22, 2024, Student Intervention Team Meeting, Mar. 19, 2024.
- Email from Parent to Principal Notifying District of Formal Complaint, Apr. 1, 2024.
- District's Response to Formal Complaint, Apr. 12, 2024.
- Student's aimswebPlus 2023–24 Phoneme Segmentation Scores with Teacher Note to Parent, Apr. 17, 2024.
- Student's aimswebPlus 2023–24 Phoneme Segmentation Scores, Apr. 23, 2024.
- Student's aimswebPlus 2023–24 Early Literacy Score Snapshot, Apr. 23, 2024.
- Dyslexia Screener Results for Student, Apr. 24, 2024.
- Websites from Parent on Dyslexia, Apr. 25, 2024.

Background Information

The student is a kindergartener that has attended school in her current school building since preschool. (District Staff Interview, Apr. 23, 2024.) In preschool, the student was on an IEP focused only on the area of speech and language. (Student IEP Team Meeting Summary, Apr. 27, 2023.) At the end of the 2022–23 school year, the student's IEP Team decided that she was no longer eligible for special education services and the parent consented to ending the student's special education services. (Prior Written Notice Proposing to End Special Education Services and Parent's Consent, Apr. 27, 2023.) The IEP Team decided to end the student's services, based on a reevaluation of the student that assessed the student in the areas of health/motor, vision, hearing, communication, social/emotional, and academic and noted no cognitive concerns and found the student to demonstrate age-appropriate skills in all areas. (Reevaluation of Student, Apr. 27, 2023.) School staff describe the student as sweet, kind, and capable. (District Staff Interview, Apr. 23, 2024.)

In the written complaint, the parent presented one issue:

Issue One

Did USD 379 follow child find requirements with this student? 34 C.F.R. § 300.111(a)(1)(i); K.A.R. §§ 91-40-7(a), (b)(2)–(3), (c).

Applicable Law

The regulations implementing the Individuals with Disabilities Education Act (IDEA) require that each state, “must have in effect policies and procedures to ensure that . . . [a]ll children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated.” 34 C.F.R. § 300.111(a)(1)(i). Kansas fulfills this responsibility through K.A.R. § 91-40-7, which requires each local board of education to “adopt and implement policies and procedures to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction” K.A.R. § 91-40-7(a). This regulation also requires each local board to have “policies and procedures that include age-appropriate screening procedures that meet the following requirements for children from ages five through 21, observations, instruments, measures, and techniques that disclose any potential exceptionality and indicate a need for evaluation, including hearing and vision screening as required by state law; and implementation of procedures ensuring the early identification and assessment of disabilities in children.” K.A.R. § 91-40-7(b)(2). A local board is required to refer a child who is enrolled in public school if “[s]chool personnel have data-based documentation indicating that before the referral or as a part of the referral, all of the following conditions were met:

- (A) The child was provided with appropriate instruction in regular education settings that was delivered by qualified personnel.
- (B) The child’s academic achievement was repeatedly assessed at reasonable intervals that reflected formal assessment of the student’s progress during instruction.
- (C) The assessment results were provided to the child’s parent or parents.
- (D) The assessment results indicate that an evaluation is appropriate.” K.A.R. § 91-40-7(c)(2).

Analysis: Findings of Fact

The district has adopted policies and procedures that K.A.R § 91-40-7(a) requires, “to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction.” (Documentation of District Policies, Practices, and Procedures.) The district has also adopted the screening policies and procedures that K.A.R. § 91-40-7(b)(2) requires. (Documentation of District Policies, Practices, and Procedures.) As part of its screening policies and procedures, the district uses a dyslexia screener. (District Staff Interview, Apr. 23, 2024.)

On January 2 and 9, 2024, the parent emailed the student’s kindergarten teacher requesting a dyslexia screening for the student. (Emails from Parent to Teacher Regarding Dyslexia

Screening, Jan. 2 and 9, 2024.) The kindergarten teacher forwarded the parent's email to the principal and the principal responded to the parent and the kindergarten teacher on January 12 providing information on the school's dyslexia screener and indicating he was seeking more information from the school psychologist and would get back to the parent and the kindergarten teacher. (Email from Principal to Parent and Teacher Responding to Parent's Request for Dyslexia Screening, Jan. 12, 2024.) The parent stated in an email to the complaint investigator that the parent considered this request to be for an initial evaluation to determine whether the student had an exceptionality and, because of that exceptionality, needed special education and related services. (Parent Email to Complaint Investigator, Apr. 25, 2024.) The district did not consider this request from the parent to be a request for an initial evaluation as the parent's request focused only on a screening and the district screening procedures for school-aged children included a dyslexia screening. (District Staff Interview, Apr. 23, 2024.)

On February 9, the kindergarten reading intervention teacher administered the school's dyslexia screening to the student. (District Staff Interview, Apr. 23, 2024.) The dyslexia screener instructions indicate that the student fails the screener if the student fails the Phonological Awareness section or any two sections. (Dyslexia Screener Results for Student, Feb. 9, 2024.) The screener indicates that if a student misses 12 or more out of 48 items, the student fails the Phonological Awareness section. (Dyslexia Screener Results for Student, Feb. 9, 2024.) The student failed the Phonological Awareness section by missing 34 items. (Dyslexia Screener Results for Student, Feb. 9, 2024.) School staff believe that "the failure of the [Phonological Awareness] section was due to lack of exposure" to the concepts assessed. (District's Response to Formal Complaint, Apr. 12, 2024.)

As part of the school's system of general education interventions all kindergartners participate in small group reading intervention. (District Staff Interview, Apr. 23, 2024.) The kindergarten team looks at Pathways to Reading data (kindergarten reading curriculum) and AimsWeb data (screening data) to establish the reading intervention groups. (District Staff Interview, Apr. 23, 2024.) School staff move students between these groups throughout the school year as the student's performance changes and varying student needs arise. (District Staff Interview, Apr. 23, 2024.) The student started the school year in a reading intervention group with higher performing students, then moved to the reading intervention group with the lowest performing students who are not receiving special education services, and is now in the reading intervention group of students performing at grade level. (District Staff Interview, Apr. 23, 2024.) The information district staff provided in the interview is supported by the district's written policies and procedures on its general intervention system. (Documentation of District Policies, Practices, and Procedures.)

An additional part of the school's system of general education intervention is to hold monthly student intervention team meetings, where school staff can bring data on students where staff are concerned with the student's progress. (District Staff Interview, Apr. 23, 2024; Documentation of District Policies, Practices, and Procedures.) Because the parent had raised

concerns about the student to the kindergarten teacher, the kindergarten teacher decided to bring those concerns to the student intervention team and to invite the parent, acting as the student's spring parent teacher conference. (District Staff Interview, Apr. 23, 2024.) The kindergarten teacher did not have her own concerns about the student that she would have otherwise brought to the student intervention team meeting but wanted to give the parent a place to discuss her concerns with other school staff. (District Staff Interview, Apr. 23, 2024.) At this meeting the student intervention team discussed the student's data and school staff provided the parent with the results of the February 9 dyslexia screening. Notes from that meeting indicate, "[Student] is still needing support with sounding out words. However, she has made great progress in sounding out the end of words." (Email from Principal to Parent with Notes from Feb. 22, 2024, Student Intervention Team Meeting, Mar. 19, 2024.)

On February 26, the parent emailed the principal with the subject "[Student] -dyslexia screening" and requests that the student "be screened because she may need additional assistance." (Email from Parent to Principal Regarding Dyslexia Screening, Feb. 26, 2024.) The parent attaches the chapter on initial evaluation and eligibility from the Kansas Special Education Process Handbook with the parent's highlights and comments and indicates in the email that "I don't necessarily want her in special education but would like her to be screened because she may need additional assistance." (Email from Parent to Principal Regarding Dyslexia Screening, Feb. 26, 2024.) Because this was the parent's second request for a dyslexia screening and the district had screened the student for dyslexia, district staff treated this email as a request for an initial evaluation and responded with a Prior Written Notice. (Prior Written Notice Refusing Parent's Request for Initial Evaluation, Mar. 18, 2024.) The school psychologist followed the district's procedures for reviewing student data, discussing student data with staff knowledgeable about the student, including the student's kindergarten teacher and reading intervention group teacher, and coming to a decision about whether to propose an initial evaluation or refusing the parent's request for an initial evaluation. (District Staff Interview, Apr. 23, 2024.) The district refused the parent's request for an initial evaluation, based on a review of student's data ("progress of kindergarten standards, aimsweb data, lexia, and classroom data") and determined that those data indicated the student was on target and did not indicate an evaluation was appropriate. (Prior Written Notice Refusing Parent's Request for Initial Evaluation, Mar. 18, 2024.) The district responded to the parent's request for an initial evaluation within a reasonable amount of time, 11 school days from the date the parent made the request. (34 C.F.R. § 300.503(a); Kan. State Dep't of Educ., Kan. Special Educ. Process Handbook 6 (2022), <https://www.ksde.org/Portals/0/SES/PH/PH-complete.pdf?ver=2022-09-14-115937-777>; District 2023–24 Calendar, Jan. 9, 2023.)

District policies and procedures do not require more frequent measures of progress monitoring to collect child progress data unless a child is not responding to the core instructional procedures. (Documentation of District Policies, Practices, and Procedures.) This student was responding to the core instructional procedures, so district policies and

procedures did not require more frequent measures of progress monitoring, but school staff decided to take this on to ensure it was responding to the parent's concerns. (District Staff Interview, Apr. 23, 2024.) During this complaint investigation and following the district's decision to refuse the parent's request for an initial evaluation, progress monitoring data showed that the student reached the established phoneme segmentation goal, and the kindergarten teacher shared this data with the parent. (Student's aimswebPlus 2023–24 Phoneme Segmentation Scores with Teacher Note to Parent, Apr. 17, 2024.) The student's aimswebPlus Early Literacy Composite Score is above 80%, which means that the student has "greater than 80% chance of achieving spring performance goals" in the areas of Letter Naming Fluency, Letter Word Sounds Fluency, Phoneme Segmentation, and Nonsense Word Fluency. (Student's aimswebPlus 2023–24 Early Literacy Score Snapshot, Apr. 23, 2024.) Based on this Early Literacy Composite Score, the student's risk level is considered low. (Student's aimswebPlus 2023–24 Early Literacy Score Snapshot, Apr. 23, 2024.) The kindergarten reading intervention teacher administered the dyslexia screening to the student again on April 24, 2024. (Dyslexia Screener Results for Student, Apr. 24, 2024.) The student again failed the phonological awareness section by missing 28 items. (Dyslexia Screener Results for Student, Feb. 9, 2024.)

Conclusion

This investigator's review of district policies and procedures on child find and screening confirm that the district has adopted the policies and procedures that K.A.R. § 91-40- 7(a) and K.A.R. § (b)(2)–(3) require. (Documentation of District Policies, Practices, and Procedures.) The district carries out its child find and screening procedures through its general education intervention process. (Documentation of District Policies, Practices, and Procedures.)

The district's interpretation of the parent's January 2 and 9 emails requesting a dyslexia screening for the student as not being a request for an initial evaluation for special education services is reasonable. The focus of the parent's request is only on screening for dyslexia, not at all on whether, if the student had dyslexia, the student might need special education and related services. (Emails from Parent to Teacher Regarding Dyslexia Screening, Jan. 2 and 9, 2024.) The district had followed its established process for screening, including screening for dyslexia, to respond to the parent's request and to screen the student for dyslexia. (Documentation of District Policies, Practices, and Procedures; Dyslexia Screener Results for Student, Feb. 9, 2024.) Kansas statutes indicate that the "screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation" (K.S.A. § 72-3428.) The kindergarten reading intervention teacher screening the student in response to the parent's request is not an evaluation. Because this screening is not an evaluation, the district was not required to give the parent a Prior Written Notice. (K.S.A. § 72-3430(b)(2).) The district's interpretation of the parent's February 26 email requesting a dyslexia screening as a request for an initial evaluation for special education as the district had, by that time, completed a dyslexia screening of the

student and the parent provided an annotated copy of the Kansas Special Education Process Handbook chapter on initial evaluation and eligibility, with the parent's comments about how she believed those requirements pertained to the student. (Email from Parent to Principal Regarding Dyslexia Screening, Feb. 26, 2024.) The district met its obligation to respond to the parent's request for an initial evaluation with a Prior Written Notice. (Prior Written Notice Refusing Parent's Request for Initial Evaluation, Mar. 18, 2024.)

The district provided sufficient evidence to support its refusal of the parent's request for an initial evaluation and to show it met its child find obligations under K.A.R. § 91-40-7(c)(2). This regulation requires that school staff must "have data-based documentation indicating that before the referral or as a part of the referral, all of the following conditions were met " First, the student must have been provided with appropriate instruction in regular education settings that was delivered by qualified personnel. (K.A.R. § 91-40-7(c)(2)(A).) The district provided its procedures for carrying out appropriate instruction, provided information in the district interview that explained how school personnel carried out appropriate instruction, and submitted student progress data showing the results of the provided instruction. (Documentation of District Policies, Practices, and Procedures; District Staff Interview, Apr. 23, 2024; Student's aimswebPlus 2023–24 Reading Scores, Feb. 29, 2024.) Second, the district must have repeatedly assessed the student's academic achievement at reasonable intervals. (K.A.R. § 91-40-7(c)(2)(B).) The district provided data and information to support its monitoring of the student's progress. (Student's aimswebPlus 2023–24 Phoneme Segmentation Scores, Apr. 23, 2024; Student's aimswebPlus 2023–24 Early Literacy Score Snapshot, Apr. 23, 2024; District Staff Interview, Apr. 23, 2024.) Third, the district must have provided the student's results to the parent. (K.A.R. § 91-40-7(c)(2)(C).) The district provided information showing this data was provided to the student's parents, as well as the results of the student's dyslexia screening. (District Staff Interview, Apr. 23, 2024.) The final step of the district's obligations under K.A.R. § 91-40-7(c)(2) is for the district to decide whether the student's assessment results indicate that an evaluation is appropriate. (K.A.R. § 91-40-7(c)(2)(D).) These discussions and decisions require district staff to look across all of the student's data and determine whether an evaluation is appropriate. District staff did that with this student and explained the data reviewed, the district's decision, and the basis for that decision in its Prior Written Notice refusing to evaluate. (Prior Written Notice Refusing Parent's Request for Initial Evaluation, Mar. 18, 2024.) Based on the foregoing, this investigation concludes USD 379 *did not violate* its obligations under K.A.R. §§ 91-40-7(a), (b)(2)–(3), (c)(2).

Investigator

Laura N. Jurgensen

Laura N. Jurgensen
Complaint Investigator

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).

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)