

**KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES**

**REPORT OF COMPLAINT**

**FILED AGAINST**

**UNIFIED SCHOOL DISTRICT # 512**

**ON SEPTEMBER 27 AND OCTOBER 10, 2023**

**DATE OF REPORT NOVEMBER 22, 2023**

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ----- by her mother, ----- . In the remainder of the report ----- will be referred to as "the student." ----- will be referred to as "the complainant", "the mother", or "the parent".

The complaint is against USD #512 (Shawnee Mission Public Schools). In the remainder of the report, this public agency may also be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE received first complaint on September 27, 2023, 2023 and the second complaint on October 10, 2023. The KSDE combined these two complaints and the timeline was extended to allow for the parent to provide additional information / documentation and was subsequently extended due to the illness of the investigator.

### **Evidence Reviewed**

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issue:

1. Email dated April 1, 2022 written by the parent to Stephanie Booth, First Grade Teacher at Lenexa Hills Elementary School, regarding gifted testing
2. Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated April 18, 2022 and signed by the parent on May 2, 2022
3. Email dated September 7, 2022 at 9:14 AM written by Lauren McConnell, School Psychologist, to the parent scheduling the IQ testing
4. Email exchange dated October 14, 2022 between 12:21 and 3:46 PM written by the parent and Ms. McConnell regarding the notification to eligibility determination meeting
5. Confidential Educational Evaluation of the student dated September 20, 2022
6. Gifted Evaluation Summary dated September 30, 2022
7. PWN for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent dated September 30, 2022

8. Letter dated November 17, 2022 written by Sherry Dumolien, Director of Special Education, to the parent regarding the request for an Independent Educational Evaluation (IEE)
9. Log of weekly math interventions dated between November 29, 2022 and March 17, 2023
10. Email dated October 11, 2023 at 2:35 PM written by Michael Brewer, Principal of Lenexa Hills Elementary School, to the parent regarding a referral to the Student Intervention Team (SIT) due to academic achievement
11. Email dated November 6, 2023 at 7:33 PM written by Mr. Brewer to the parent regarding accelerating math instruction for the student
12. Independent Educational Evaluation Summary dated February 6, 2023 written by Karen Jorden, Licensed Psychologist
13. Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent dated March 24, 2023
14. Email dated September 24, 2023 at 5:12 PM written by the parent to the school principal requesting an evaluation for gifted in the area of math
15. Formal Complaint Request Forms signed by the complainant on September 27 and October 10, 2023
16. Email dated October 11, 2023 at 2:35 PM written by the school principal to the parent regarding single subject acceleration
17. Response to the Allegations dated October 20, 2023 written by Ms. Dumolien
18. Interview with Ms. Dumolien on October 20, 2023
19. Interview with the complainant on November 3, 2023
20. Email dated November 6, 2023 at 3:53 PM written by the complainant to the investigator regarding the incomplete independent educational evaluation
21. Email dated November 17, 2023 at 1:03 PM written by the complainant to the investigator regarding grade acceleration for math
22. Administration and Scoring Manual for the Wechsler Intelligence Scale for Children – 5th Edition (WISC-V)
23. USD #512 School Calendar for the 2021-22 School Year
24. USD #512 School Calendar for the 2022-23 School Year
25. *The Kansas Special Education Process Handbook*
26. *The KSDE Eligibility Indicators Guidance Document*

## **Background Information**

The student is currently enrolled in the third grade in USD #512 and attends Lenexa Hills Elementary School. The student attended Raintree Montessori School for kindergarten prior to enrolling in the first grade in USD #512. The student scored significantly higher than her peers during first grade and, at the end of the school year, the first grade teacher encouraged the parent to request an evaluation for the gifted program. The student scored at the 98th percentile in math and the 89th percentile in reading in the fall of 2022 in second grade. Interviews and documentation reflect the student has consistently performed at or above grade level in the area of mathematics to date.

## **Issues Investigated**

Based on the written complaints, three issues were identified and investigated.

### **Issue One**

USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures when conducting an evaluation of the student for special education and related services during the past 12 months.

### **Applicable Law**

Federal regulations at 34 C.F.R. 300.301(a) and state regulations at K.A.R. 91-40-7(c)(3) allow for parents to refer a student for an initial evaluation for special education. Federal regulations at 34 C.F.R. 300.301(c) require school districts to complete initial evaluation for special education within 60 days of receiving parental consent. State regulations at K.A.R. 91-40-8(f) clarify the timeline to complete the initial evaluation and determine eligibility is 60 school days.

Federal regulations at 34 C.F.R. 300.304(c) and state regulations at n K.A.R. 91-40-8(f) require the student to be assessed in all areas of suspected exceptionality using valid and reliable measures of student performance. Based upon the comprehensive evaluation, federal regulations at 34 C.F.R. 300.306 and state regulations at K.A.R. 91-40-10 require school districts to determine if the student meets the eligibility criteria to be considered a child with a disability and in need of specialized instruction because of that exceptionality.

### **Analysis: Findings of Fact**

Documentation and interviews show the parent initially requested a gifted evaluation on April 1, 2022. USD #512 responded to this request by requesting parental consent to conduct such an evaluation on April 18, 2022. The parent signed consent for the initial evaluation on May 2, 2022.

The last day of the 2021-22 school year was May 19, 2022 and the first day of the 2022-23 school year was August 11, 2022. The initial eligibility determination meeting was held on September 30, 2022. Based on these dates, the initial evaluation was completed in a total of 35 school days.

Chapter Three of the *Kansas Special Education Process Handbook* states:

*“Gifted” as defined in K.A.R. 91-40-1(bb) means performing or demonstrating the potential for performing at significantly higher levels of accomplishment in one or more academic fields due to intellectual disability, when compared to others of similar age, experience, and environment.*

The KSDE Eligibility Indicators Guidance Document requires that a student scores not less than the 95th percentile on national norms on a standardized, norm-referenced achievement test in one or more of the academic fields (mathematics, language arts (including reading), science, and social science), or evidence that such test scores do not adequately reflect the child's excellence in academics. In the area of general intelligence, the student needs to score a composite rank of not less than the 97th percentile on an individually administered, standardized, norm referenced test of intellectual ability, or evidence that the child's standardized, intelligence test score does not adequately reflect the child's high intellectual potential.

The Gifted Evaluation Summary completed on September 30, 2023 states:

*Gifted Education is part of Special Education and follows Special Education processes and procedures. That means we must be able to answer yes to 2 separate questions: 1) Does the student have an exceptionality? (in this case, gifted) 2) Does the child require special education services because of the exceptionality?*

The Confidential Educational Evaluation of the student dated September 30, 2022 reflects that a comprehensive evaluation was conducted to determine eligibility for the gifted exceptionality. The area of academics was evaluated through a record review, the Measures of Academic Progress (MAP), interviews and observations as well as the student's response to general education interventions. The area of general intelligence was evaluated through the administration of the Wechsler Intelligence Scale for Children – 5th Edition (WISC-V). The summary of the student's evaluation results states:

*Based on current evaluation results, the student's most recent academic abilities, as indicated on the fall MAP assessment, are at the 89th percentile (reading) and 98th percentile (math) when compared to same-grade peers. The student's cognitive ability, as measured by the WISC-V, is at the 94th percentile when compared to same age peers (WISC-V GAI [General Ability Index] Standard Score: 123). The student's total score on the eligibility rubric is 109 out of a possible 240 points. At this time, the student does not meet eligibility criteria as a student with an exceptionality (Gifted).*

## **Conclusion**

Federal regulations at 34 C.F.R. 300.301(a) and state regulations at K.A.R. 91-40-7(c)(3) allow for parents to refer a student for an initial evaluation for special education. In this case, the parent made a referral for a gifted evaluation on April 14, 2022.

Federal regulations at 34 C.F.R. 300.301(c) require school districts to complete initial evaluation for special education within 60 days of receiving parental consent. State regulations at K.A.R. 91-40-8(f) clarify the timeline to complete the initial evaluation and determine eligibility is 60 school days. In this case, the documentation shows the initial evaluation was completed within 35 school days from the date of written parental consent.

Federal regulations at 34 C.F.R. 300.304(c) and state regulations at n K.A.R. 91-40-8(f) require the student to be assessed in all areas of suspected exceptionality using valid and reliable measures of student performance. Based upon the comprehensive evaluation, federal regulations at 34 C.F.R. 300.306 and state regulations at K.A.R. 91-40-10 require school districts to determine if the student meets the eligibility criteria to be considered a child with a disability and in need of specialized instruction because of that exceptionality.

In this case, the student was evaluated in all areas required to determine eligibility for the gifted exceptionality. The assessment results found the student met the criteria for academics by scoring at the 98th percentile in the area of mathematics; however, the student did not meet the eligibility criteria for general intelligence by scoring at the 94th percentile using the GAI score on the WISC-V.

Based on the foregoing, it appears USD #512 *complied with the federal and state regulations* required in order to conduct an appropriate educational evaluation of the student for the gifted exceptionality during the past 12 months.

## **Issue Two**

USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately consider an independent education evaluation (IEE) of the student during the past 12 months.

## **Applicable Law**

If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, federal regulations at 34 C.F.R. 300.502(c)(1) and state regulations at K.A.R. 91-40-12(e) require the public agency to consider the results and recommendations of that independent educational evaluation in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child so long as the evaluation meets the agency criteria.

## **Analysis: Findings of Fact**

The findings in Issue One are incorporated herein by reference.

The parent disagreed with the results of the special education evaluation conducted on September 30, 2022 when USD #512 determined the student did not meet the eligibility criteria as a student under the exceptionality category of gifted. Interviews and documentation show the parent first requested mediation as means of resolving this dispute. USD #512 and parent agreed that the district would conduct an independent educational evaluation and that the student would receive targeted intervention through either an instructional coach or innovations specialist in the area of math weekly for the duration of the independent educational evaluation.

The district sent a letter to the parent on November 17, 2022 which documented that USD #512 agreed to pay for an independent educational evaluation in the areas of academic achievement and general intelligence. This letter also described the required agency criteria for the independent educational evaluation including providing contact information for at least two providers who met the examiner credentials, the cost of the exam, and the timeline to complete the independent educational evaluation.

USD #512 provided a log documenting weekly math interventions between November 29, 2022 and March 17, 2023.

The parent contacted Karen Jordan, Clinical Psychologist, to conduct the evaluation. Records show the student was administered the Stanford Binet Intelligence Scale – 5th edition (SB5) by Dr. Jordan on February 6, 2023. Test results found the student’s level of cognitive functioning fell in the average range when compared to other children her age (FSIQ = 106 with average scores falling between 85 and 115. The report included a recommendation that *“Given the student’s strength in math, differentiation in this area should be considered. She may benefit from enrichment opportunities and possibly even consideration of single-subject grade acceleration”*.

The multidisciplinary IEP team met again on March 24, 2023. A Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent dated March 24, 2023 shows that multidisciplinary IEP team reviewed and considered the independent educational evaluation results from Dr. Jordan and determined the student did not meet the eligibility criteria for special education services under the exceptionality category of gifted. The explanation of why the action is proposed states:

*Consideration of the Independent Evaluation findings indicate that the student’s Full Scale IQ, as measure by the Stanford-Binet Intelligence Scales – Fifth edition is at the 66th percentile. Based on consideration of independent evaluation findings, SMSD [USD #512] evaluation findings, and the special education (gifted) eligibility criteria, no changes in the student’s eligibility for special education are proposed. The student continues to progress through the general education curriculum with enrichment and differentiation opportunities in place.*

The parent believes the original intelligence testing conducted is not a valid and reliable measure of the student's true abilities because the student was not fully recovered from the emergency room visit and illness when the original IQ testing was conducted.

The parent also believes the second IQ testing conducted on February 6, 2023 as part of the independent educational evaluation is flawed and not a valid and reliable measure of the student's true ability level because the SB5 is not the "gold standard" of IQ tests. It is noted that Dr. Jordan was precluded for using the WISC-V because it had been previously administered to the student during the September 30, 2022 evaluation for initial eligibility.

Records show the original intelligence testing was administered on September 8, 2022. The September 30, 2022 Evaluation Report notes that the testing session lasted about one hour, with the student being described as well-rested, cooperative, and comfortable in the testing environment. Records show the student displayed good effort and engagement during the testing and that she *"tolerated the testing session well and demonstrated no evidence of fatigue."* This second IQ test was considered to be "an accurate measure of her current level of functioning" by the psychologist administering the test on February 6, 2023.

According to the American Psychological Association (APA), the WISC-V and the SB-5 are both commonly used standardized tests designed to be measures of general intelligence when administered according to the test publisher's guidelines. The Administration and Scoring Manual for the WISC-V recommends at least one year between test administrations to ensure valid test results.

The parent also believes USD #512 failed to conduct the academic testing as part of the independent educational evaluation. Subsequent to the filing of this child complaint, the parent requested the district complete the academic testing as part of the independent educational evaluation since it was not completed in February 2023.

The parent reported the Student Intervention Team (SIT) met to review the student's academic progress on November 6, 2023. It was determined that the student would benefit from grade acceleration in the area of math. The parent indicated that the student was moved from the third grade math class up to the fourth grade math class beginning November 13, 2023. The student is doing well and earning 100% on multiple assignments since the switch in classes according to the parent.

## **Conclusion**

Federal regulations at 34 C.F.R. 300.502(c)(1) and state regulations at K.A.R. 91-40-12(e) require the public agency to consider the results and recommendations of an independent educational evaluation in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child so long as the evaluation meets the agency criteria.

In this case, the parent requested an independent educational evaluation for the student on November 16, 2022 in the areas of academic achievement and general intelligence resulting from a mediation agreement. The district responded on November 17, 2022 explaining the process and providing the agency criteria. The student was tested in the area of general intelligence by Dr. Jordan on February 6, 2023 using the SB5. The multidisciplinary IEP team met on March 24, 2023 to review and consider the information from the independent educational evaluation and determined the student did not meet the eligibility criteria to be identified as gifted. USD #512 provided the parent with appropriate PWN describing this decision and the rationale.

While the parent reported the district has accelerated the student from the third grade to the fourth grade math class as was recommended in the February 6, 2023 evaluation report from Dr. Jordan, the independent educational evaluation did not include testing in the area of academic achievement as required. For this reason, the independent educational evaluation of the student has not yet been completed, reviewed, or considered by USD #512. Based on the foregoing, USD #512 *failed to consider the results and recommendations* of an independent educational evaluation in any decision made with respect to the provision of a free appropriate public education (FAPE).

### **Issue Three**

USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures for conducting an independent education evaluation (IEE), specifically by placing a timeline on when the IEE could be completed, during the past 12 months.

### **Applicable Law**

If an independent education evaluation is at public expense, federal regulations at 34 C.F.R. 300.502(e)(1) and state regulations at K.A.R. 91-40-12(g) require the criteria under which the independent educational evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the public agency uses when it initiates and evaluation. However, federal regulations at 34 C.F.R. 300.502(e)(2) prohibit a public agency from imposing any other conditions or timelines related to obtaining an independent educational evaluation at public expense.

Chapter 3, Section H of the *Kansas Special Education Process Handbook* states:

*If an independent educational evaluation is provided at public expense, the criteria under which the evaluation is obtained must be the same as the criteria that the school uses when it initiates an evaluation. These criteria may include the location of the evaluation and the qualifications of the examiner. The credentials of the independent evaluator or evaluators must be comparable to the school's evaluators. The school may set reasonable limitations on*



*the costs for which it will be responsible. The school may have to exceed those costs if necessary to ensure that the independent educational evaluation meets the child's unique needs.*

### **Analysis: Findings of Fact**

The findings of Issue Two are incorporated herein by reference.

The parent reported USD #512 imposed a timeline on the completion of the independent education evaluation she requested on November 16, 2023. Because of this timeline, the academic portion of the independent educational evaluation was not completed which resulted in the student being denied the opportunity to be accelerated one grade level in the area of mathematics during the 2022-23 school year.

The Director of Special Education sent a letter acknowledging the parent's request for an independent educational evaluation in the areas of academic performance and general intelligence on November 17, 2023. The letter stated:

*The district agrees to pay up to \$1,500.00 for the evaluation. If the cost will exceed this amount, please notify us prior to proceeding with the evaluation to discuss. Dr. Karen Jordan, Jordan Psychological Assessment Center or Responsive Center for Psychology and Learning both are located in Overland Park and are two options for evaluation. Sometimes there are extended waiting periods for a particular facility to be able to conduct the IEE. You may want to check with those I have listed to see if one can accommodate the request more quickly than the others. If you desire to have the IEE done somewhere other than the options listed above, please let me know prior to making arrangements so that I can ascertain their credentials. In any case, payment will be made directly to the evaluator and/or their facility. Once the results of the IEE are received by the district, they will be considered. Please note unless notified to further discuss an extension, the IEE results need to be received by the school district by Thursday April 13, 2023.*

### **Conclusion**

Federal regulations at 34 C.F.R. 300.502(e) and state regulations at K.A.R. 91-40-12(g) require the criteria under which the independent educational evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the public agency uses when it initiates and evaluation. However, a public agency is prohibited from imposing any other conditions or timelines related to obtaining an independent educational evaluation at public expense. The *Kansas Special Education Process Handbook* clarifies that a school district may set reasonable limitations on the costs for which it will be responsible; however, the school may have to exceed those costs if necessary to ensure that the independent educational evaluation meets the child's unique needs.

In this case, USD #512 informed the parent of the agency criteria for the independent educational evaluation in a letter dated November 17, 2022. One of the criteria was a requirement for the independent educational evaluation results to be received by the school district by Thursday April 13, 2023 unless the parent notifies the district to discuss an extension. This constitutes a timeline and implies that the district makes the decision of whether an extension to the timeline is granted.

Based on the foregoing, USD #512 *failed to follow appropriate procedures* for conducting an independent education evaluation (IEE), specifically by placing a timeline on when the IEE should be completed, during the past 12 months.

### **Summary of Conclusions/Corrective Action**

1. **ISSUE ONE:** It appears USD #512 complied with the federal and state regulations required in order to conduct an appropriate educational evaluation of the student for the gifted exceptionality during the past 12 months; therefore no violation is substantiated.
2. **ISSUE TWO:** A violation of federal regulations at 34 C.F.R. 300.502(c)(1) and state regulations at K.A.R. 91-40-12(e) require the public agency to consider the results and recommendations of the independent educational evaluation in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child so long as the evaluation meets the agency criteria. Corrective action is required as follows:
  - a. **CORRECTIVE ACTION:**
    - i. USD #512 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will review and consider the results of the entire independent educational evaluation when making any decision with respect to the provision of a free appropriate public education (FAPE).
      1. No later than December 31, 2023
    - ii. USD #512 shall ensure the parent has been provided with agency criteria for conducting an independent educational evaluation in the area of academic achievement. Once the district receives the results of that independent educational evaluation, the multidisciplinary IEP team shall meet to review and consider those results in any decision with respect to the provision of a FAPE to the student.
      1. No later than December 31, 2023
      2. No later than 30 days from the date USD #512 receives the academic testing from the independent educational evaluation
3. **ISSUE THREE:** USD #512, in violation of federal regulations at 34 C.F.R. 300.502(e) and state regulations at K.A.R. 91-40-12(g) is substantiated because the district failed to follow appropriate procedures for conducting an independent education evaluation

(IEE), specifically by placing a timeline on when the IEE should be completed, during the past 12 months. Corrective action is required as follows:

a. CORRECTIVE ACTION:

- i. USD #512 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will follow appropriate procedures for conducting an independent educational evaluation, specifically not placing any additional requirements other than those allowed in the IDEA.
  1. No later than December 31, 2023
- ii. USD #512 shall review the policies, procedures, and practices related to criteria for providing an independent educational evaluation. Based on that review, the template letter for responding to parent requests for an independent education evaluation shall be updated to remove any criteria related to a timeline for completing the evaluation. USD #512 shall develop a plan to share this updated form and explanation regarding the change with all special education case managers and school psychologists within the district. USD #512 will provide SETS with a copy of the updated form as well as documentation this information has been shared with special education case managers and school psychologists throughout the school district.
  1. No later than January 31, 2024

**Investigator**

*Nancy Thomas*

Nancy Thomas, M.Ed., 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](mailto: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)