

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT # 233

ON SEPTEMBER 19, 2023

DATE OF REPORT OCTOBER 18, 2023

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 parent.”

### **Investigation of Complaint**

On September 21, 22, and 25, 2023, the investigator spoke via telephone with Deb Chappell, Assistant Director of Special Services for USD #233. On October 5, 2023, the investigator spoke by telephone with Dr. Kim Hawkins, Principal of Harmony Early Childhood Center and Director of Early Childhood. The investigator also spoke on October 5, 2023 with Sarah Spurlock, Special Services Coordinator for the district. On September 28, 2023, the investigator spoke by telephone with the parent.

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

- Occupational Therapy Evaluation from Children’s Therapy Services (CTS) dated October 13, 2022
- Speech and Language Evaluation from CTS dated October 5, 2022
- Student in the Evaluation Process Form completed December 9, 2022
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated December 9, 2022
- HIPAA Compliant Authorization for Exchange of Health and Education Information for Children’s Therapy Services dated December 9, 2023
- AAC (augmentative and assistive communication) Evaluation for an SGD (speech generating device) dated February 15, 2023
- Notice of Meeting dated March 10, 2023
- Evaluation Report dated March 23, 2023
- Eligibility worksheet for Developmental Delay dated March 23, 2023
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated March 23, 2023
- Individualized Education Program (IEP) dated March 23, 2023
- Email dated March 23, 2023 from the speech/language pathologist to the parent
- Email dated March 23, 2023 from the parent to the speech/language pathologist

- Email dated March 24, 2023 from the parent to the speech/language pathologist
- Email dated March 24, 2023 from the speech/language pathologist to the parent
- Email dated March 26, 2023 from the parent to the director of special services
- Email dated March 26, 2023 from the director of early childhood to the executive director of special services and the assistant director of special services
- Notice of Meeting dated March 28, 2023
- Email dated April 10, 2023 from the parent to the special services coordinator
- Email dated April 11, 2023 from the special services coordinator to the parent
- Letter dated April 11, 2023 from the special services coordinator to the parent
- Report of evaluation obtained by the parent dated September 26, 2023

### **Background Information**

This investigation involves a 4-year old girl who has, by report of the parent, been diagnosed with global developmental delay and autism at a hospital outside her current city of residence.

At age 3, the student participated in an early childhood screening at a district early childhood center on November 11, 2022 and was subsequently referred for an initial evaluation of her communication, fine motor, cognitive, and social skills. Consent for that evaluation was provided by the parent on December 9, 2022. The student began attending an Early Childhood Special Education classroom at a district early childhood center one day a week between January 10 and February 21, 2023 for a classroom-based evaluation.

At the time of the evaluation, the student was also participating in a private preschool program at a local temple for four and a half hours a day, four days a week. She first attended that program in September of 2022. At the preschool, the student was provided with one-to-one adult support throughout the school day.

The student began receiving private speech/language and occupational therapy services at age two through a local hospital center. At the time of the district's evaluation, she was receiving occupational therapy for one hour per week and speech/language therapy for 30 minutes a week.

At the time of the district's evaluation, the use of a communication device was being explored through her outside speech/language therapy. A February 2023 private assessment determined that the majority of the student's daily functional communication needs could not be met with natural speech and/or low-tech communication devices. A speech generating device to achieve and/or maintain functional communication abilities in activities of daily living was recommended.

An evaluation/eligibility meeting regarding the student was held on March 23, 2023. Both parents participated in the meeting as did an early childhood special education teacher, the special services coordinator, an occupational therapist, a school psychologist, and a speech

language pathologist. At the meeting, the team determined that the student met the disability criteria for “developmental delay” (see Issue Two) and needed special education and related services. At the March 23, 2023 meeting, the district proposed an IEP for the student.

While the student’s father gave written consent for the district’s proposed services, the student’s mother (the parent in this complaint) objected to the district’s proposal. The parents ultimately decided not to enroll the student in the district, and no special education services have been provided.

## **Issues**

In her written complaint, the parent identified three issues:

### **Issue One**

The district’s failure to provide the student with one-on-one paraprofessional support during the period she was being evaluated to determine her eligibility for special education support resulted in an injury to the student’s arm.

### **Parent’s Position**

According to the parent, the student’s arm was injured while she was participating in an extended on-site evaluation through a district early childhood special education program. The parent asserts that she advised the district that her daughter required 1:1 adult support for her safety and support, but the district told her that staff was specially trained to manage the student and that having 1:1 support would inhibit the student’s socialization during the evaluation process. The parent contends that her daughter was not safe without 1:1 support but “against her better judgement” allowed the evaluation to proceed. The parent asserts that the district’s reason for refusing to provide one-to-one adult supervision was to “save money.”

### **District’s Position**

The district asserts that a one-to-one paraeducator was not required under the evaluation plan consented to by both parents. The district states that cost played no part in determining whether a one-to-one paraeducator was assigned to the student during the evaluation. It is the position of the district that the team wanted the student to be allowed to be independent in the classroom whenever possible and felt that a 1:3 ratio of staff to students could provide the support the student needed.

## **Applicable Statutes and Regulations**

A formal complaint must allege that a violation of special education laws or regulations has occurred during the 12-month period prior to the date that the complaint is received by the commissioner of education (K.A.R. 91-40-51(a) and (b)). Special education statutes and

regulations do not address the injury of a student. Therefore, the investigator does not have the authority to investigate that aspect of this issue.

Whenever a child has been referred for an evaluation, the school must provide Prior Written Notice to the parents that describe any evaluation procedures the school proposes to conduct (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.304(a)). In addition, there are standard components of content the notice must contain. The purpose of providing notice to the parents is so they understand what action the public agency is proposing (in this case, to conduct an initial evaluation) and the basis used for determining the action is necessary. The Prior Written Notice must include:

- 1) A description of the action proposed by the agency;
- 2) An explanation of why the agency proposes the action;
- 3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed action (K.S.A. 72-3428(b); K.A.R. 91-40-27(b); 34 C.F.R. 300.304(a)(1));
- 4) A statement that the parents have protection under the procedural safeguards and how a copy of the procedural safeguards can be obtained;
- 5) Sources for parents to contact to obtain assistance in understanding their procedural safeguards; and
- 6) A description of other options considered and the reasons why those options were rejected; and, a description of other factors that is relevant to the agency's proposal. (K.S.A. 72-3432, 34 C.F.R. 300.503(b)).

The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the Local Education Agency (LEA) must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication, so that the parent understands the content of the notice. The school must have written evidence that this has been done (K.A.R. 91-40-26(b), (c); 34 C.F.R. 300.503(c)).

### **Investigative Findings**

The student participated in a district early childhood screening on November 11, 2022 and was referred for an initial evaluation of communication, fine motor, cognitive, and social skills.

On December 9, 2022, both parents provided written consent for a district evaluation of the student. The prior written notice of evaluation developed by the district contained all elements required by special education statutes and regulations. The prior written notice did not require the presence of a one-to-one paraeducator for the student for the evaluation process.

The student began her on-site evaluation on January 10, 2023. The evaluation extended through February 21, 2023 with the student coming to the district's early childhood center one day a week. No evidence was presented to show that, prior to February 21, 2023, the parent objected to the absence of a one-to-one paraeducator during the period of time the student participated in the evaluation.

At the time of the evaluation, there was one early childhood special education teacher in the classroom along with two paraeducators. There were 9 students in the classroom, 3 of which were non-identified peers.

While district staff did not observe any injury to the student, the parent reports that upon arriving home from school on February 21, 2023 the student complained of arm pain which was, by parent report, subsequently diagnosed as a possible sprain. The parent opted not to send the student back to the preschool following the injury in order to complete the evaluation.

Following the IEP team meeting of March 23, 2023, the parent, on March 24, 2023, sent the speech pathologist the following email:

*"After consultation with a parent advocate I have been advised the reason for denial of a one on one aide for [the student] on Tuesday's was financial to save the district the money in paying for that when they provide services. I was told saying it's for [the student's] "social needs" was a tactic used to get a parent to back off on the request. I believe there are safety concerns necessitating that level of supervision. [The student's] private preschool prioritizes safety and socialization. [The student] still socializes and does incredibly well with adequate supervision. I have pictures of her playing and interacting one on one with her peers. Given the injury she incurred without one on one supervision during the evaluation my request is justified. The injury was well documented and I cannot worry about my child's safety in order for her to receive services she qualifies for with the state."*

No evidence was provided by the parent to support the contention that cost played any role in determining whether a one-on-one adult should have been provided for the student during her evaluation.

### **Summary and Conclusions**

The evaluation of the student was conducted in compliance with a properly developed prior written notice of evaluation. Both of the student's parents provided written consent for the evaluation of the student. The prior written notice form contains no reference to the need for one-on-one adult supervision for the student during the evaluation process. While the parent states that she was not comfortable with having the student participate in the evaluation without a one-to-one paraeducator, she acknowledges that she agreed to allow the evaluation "against her better judgement."

No evidence was provided in support of the parent's contention that the district opted not to provide on-to-one adult supervision for the student during the evaluation in order to save money.

A violation of special education statutes and regulations *is not substantiated* on this issue.

## **Issue Two**

The district failed to consider the student's autism diagnosis when considering her eligibility for special education services.

### **Parent's Position**

The parent asserts that the district referenced the student's autism on the proposed IEP but failed to fully consider her diagnosis and failed to determine her eligibility for special education services under the category of autism. According to the parent, the district then developed a "cookie cutter" IEP which did not address the student's autism-related needs.

### **District's Position**

The district asserts that the student met eligibility criteria under the category of Developmental Delay, and the proposed IEP was based on the student's needs as revealed through the evaluation process. Additionally, the district asserts that it was responsive to concerns raised by the parent and attempted to schedule a second IEP team meeting to discuss those concerns, but the parent made the decision not to enroll the student.

### **Applicable Statutes and Regulations**

When making an eligibility determination, an IEP team must ensure (1) that the child meets the definition of one of the categories of exceptionality and, (2) as a result of that exceptionality, needs special education and related services (KAR 91-40-1(k)(w); 34 CFR 300.8).

Once a child is identified as a child with a disability, determination of services to be provided is based on the child's needs, functional performance, and the impact of the exceptionality on the child's ability to access and progress in the general education curriculum – not on the child's disability category. A diagnosis of autism does not mandate the development of an autism-specific IEP.

At K.A.R. 91-40-1(q), Kansas regulations define "Developmental Delay" for children age 9 and younger as a deviation from average development in one or more of the following developmental areas to the degree that special education and related services are required:

- (A) Physical;
- (B) cognitive;
- (C) adaptive behavior;
- (D) communication; or,

(E) social or emotional development.

### **Investigative Findings**

An evaluation/eligibility meeting was conducted on March 23, 2023. At the meeting, the parents reported that the student had been diagnosed with global developmental delay and autism through an outside evaluation. No diagnostic report from that evaluation had been provided to the district by either parent at the time of the March 23, 2023 meeting.

The report of an outside evaluation conducted in September 2023 was provided to the investigator by the parent. That report states that the parents were at that time seeking “a formal evaluation to support [the diagnosis of autism]” since the previous evaluation did not include a diagnostic assessment, and the parents did not have a report to support the diagnosis.

The district’s evaluation determined that the student had delays in communication skills, cognitive skills, personal-social skills, and motor skills. The team determined that the student met the criteria to be determined to have an exceptionality under the category of Developmental Delay and needed special education services. The district did not consider eligibility for the student under the category of Autism.

Because the student had been determined to meet a categorical definition of an exceptionality and had been found to need special education services, the team proposed an IEP designed to address the educational needs of the student as determined through the evaluation process.

Annual Goals were proposed for the student in the following areas:

- Fine motor skills (bead stringing, inset puzzle completion, using a pincher grasp, and tearing paper);
- self-help (zipping and unzipping, donning and doffing a jacket);
- social skills (engaging with new toys/materials with minimal cuing or prompting);
- cognitive (imitating adult directives and engaging with objects with minimal prompts/cues);
- communication (using simple gestures, words, or pictures to communicate wants and needs); and
- language (expanding receptive and expressive vocabulary).

The school psychologist sent both parents copies of the evaluation report and proposed IEP via DocuSign on March 23, 2023. The district provided both parents with prior written notice of proposed services. As stated in the prior written notice form:

*“The team proposes to identify [the student] as a child with a Developmental Delay and implement the IEP developed on 3/23/2023 to address her delays in communication, cognition, social skills, fine motor skills, and student independence. Specifically, [the student] will attend an Early Childhood Special Education Classroom four half days per week. While*

attending the classroom she will receive speech and language therapy 20 minutes twice per week. [The student] will receive occupational therapy 20 minutes twice per week and indirect occupational therapy 20 minutes per quarter.

While [the student's] parents agree with the IEP proposed by the team, they have notified the team they intend to access most of her services privately and will partially enroll her for her to attend one session per week to receive ECSE services until 05/24/2023 (the remainder of the 22-23 school year). [The student] will fully enroll with the [district] and will be available to access all services outlined in the IEP developed 03/23/2023 for extended school year and for the 2023-2024 school year.

Evaluation data indicates that [the student] demonstrates significant delays in communication, cognitive, social and fine motor development and also demonstrates a need for the proposed special education and related services.

Parents unilaterally decided to provide most of [the student's] services privately and to partially enroll in the [district] for the remainder of the 2022-2023 school year.

[The student] will receive 190 minutes of early childhood special education 1x per week while partially enrolled. Services will resume as outlined in the IEP proposed on 03/23/2023 at any point that [the student's] family chooses to fully enroll her in the district.

On March 24, 2023, the parent sent the speech pathologist the following email:

*I would like to respectfully request the one on one aide for Tuesday be written into the IEP. For [the student] to attend safely on Tuesday's and receive services this is necessary and my request is reasonable and with my child's best interests in mind. I will need this updated version of the IEP sent to [a parent advocate] for review."*

The speech/language pathologist responded to the parent via email on March 24, 2023 writing:

*"I noticed you specifically mentioned Harmony [in your March 23, 2023 email]. The IEP specifies [the student] would receive her services in a reverse mainstream early childhood special education classroom, but the location of the classroom is not specified in the IEP. [The student] only accessing services on Tuesdays is spelled out on the Prior Written Notice on page three, but her IEP will continue to document all the services she is eligible to access even though you would only like to access services for one session (190 minutes) at this time. I am going to copy our building administrator and special services coordinator on this message as they would be able to help you with the location for [the student] to receive her services after we have consent to implement the IEP."*

*I also forwarded your [March 24, 2023] email requesting a one-on-one aide to [the director of early childhood] and [the special services coordinator] and we will get back to you regarding that."*



At 12:55 PM on March 24, 2023 – after receiving the forwarded emails from the parent – the special services coordinator sent the following email to both parents:

*“Thank you for your email and sharing your concerns. As [the speech/language pathologist] mentioned, she also shared your email about additional para support being added to the IEP. Any changes to the IEP will need to be made with the IEP team. If you’d like to continue the discussion of additional para support for [the student] we will need to meet again as a team. [The speech/language pathologist] can work with you on setting that up.*

*Regarding location, I am happy to work with you on a location that is more convenient for you to transport [the student] to/from once we have consent for services.*

*I have added [the student’s father] so he is aware we may be meeting again”*

The parent responded via email to the special services coordinator at 1:23 PM on March 24, 2023 stating:

*“I have decided against signing the IEP and proceeding. I will be adding a day of CTS/private services on Tuesday, which will result in 1.5 hours of additional service for [the student]. CTS has stated that they can add services to meet all of [the student’s] needs. I don’t think the best interests of my child were considered and the focus was on money and cost. I am appreciative of the evaluation and time given, but I will be moving forward in maintaining what is best for [the student] and ensuring her needs are met. In the future if I change my mind I will let you know and pursue services for her through the IEP.”*

The parent sent an email to the executive director of special services on March 26, 2023 outlining issues she had encountered during the evaluation of the student. The executive director then reached out to the director of early childhood, both assistant directors of special services, and a special services coordinator on March 27, 2023 to arrange for a meeting with her staff to collect additional information on the situation.

The director of early childhood responded to the executive director via email on March 28, 2023 writing:

*“I had the opportunity to visit with this parent [by telephone] today. Mom would like to reconvene the IEP team to discuss adult support and behavior consultant support for ----- (she referenced a BCBA for students with autism). We don’t have written documentation of an autism diagnosis, so I asked mom to provide that. As an update, [the student’s] father has consented to the IEP.”*

Notice of an April 13, 2023 IEP team meeting was emailed to the parent on March 28, 2023.

The parent sent an email to school staff on March 29, 2023 writing:

*“I would also like to advise that you will need to be prepared to complete an autism evaluation related to [the student’s] autism diagnosis and provide related services.*

*In addition, this will require a new and appropriate IEP to be signed and implemented, so it is probably best for [the student's father] to revoke his consent and sign the new IEP after our meeting. I am confident once we meet on 4/13/23 we will have a plan for the provision of special services that is in [the student's] best interests, can be executed by the residential parent (myself) and is legally meeting state guidelines for services.*

*I have included...my parent advocate, on this email. I just completed faxing a release form to you for [the parent advocate]."*

Later in the evening of March 29, 2023, the parent advocate sent an email to the student's parents, the director of early childhood, the special services coordinator, and the speech pathologist. The advocate wrote:

*"After having the pleasure of reviewing the district's evaluation report, I've advised the parent of her parental rights to request an IEE and informed her of the varied due process remedies available to her should she disagree with the identification and or determination of the team...*

*After reading the entire ER and realizing the eligibility determination of Developmental Delay, I asked if the team discussed the eligibility indicators of Autism and was told, "no". I noted the team documented [the student's] autism dx in medical; however, it appears the team did not reach out to McPherson as requested with HIPAA releases signed by parents in order to consider that important information necessary for appropriate identification. The ER does reference outside clinical input provided by parents and conducted by Children's Therapy Services in October of 2022: "She demonstrated a severe expressive language delay secondary to Autism spectrum disorder. " And yet the ER lacks autism specific scales/assessments. I also asked if the team included a district Autism Consultant or BCBA in the evaluation process and was informed, "no." Please note:*

*KAR 91-40-1 (f) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three but not necessarily so, that adversely affects a child's educational performance...*

*I've learned that [the student's] outside Feb 2023 AAC [assistive and augmentative communication] evaluation recommends a high tech AAC device in order for her to functionally communicate; however, I didn't note any district AT eval or any data relating to use of this modality of communication. I did see a check for AT, but no additional supports relating to its training, goals, or use.*

*Thank you for considering and noting the DAYC-2 and Sensory Profile completed by Children's Therapy Services. Considering the DAYC and the AEPS show cognition in 1% ile, team should consider additional cognitive testing such as a (WPPSI-IV) just a suggestion...to determine if there's a discrepancy in her verbal vs nonverbal IQ in order to guide her programming.*

*While I understand [the student's father] agreed to the eligibility determination and IEP placement/related services and specially designed instruction, I'm not certain if he was aware of the information I've disclosed at the time of his agreement. We haven't had the pleasure of meeting. Now that he's more informed of his daughter's and parental rights, I do hope he reconsiders his agreement so his daughter can be appropriately identified as a student with the disability of autism and requests the team to conduct a thorough evaluation in order to develop an individualized education program with explicit goals written with her precise needs addressed using modalities of instruction and communication that she can access.*

*I'm not advising the team of any expectation for our future meeting; however, as a collaborative advocate asked to participate in this important process, I'm asking the team to **consider the request** to either reopen the evaluation to completely address the parent's concerns and add McPherson's input regarding manifestations of their daughter's disability of autism impacting her development and learning progress, or grant an IEE to include AT/Autism assessment via qualified Psychologist/ Cognitive Testing...While I wasn't involved in previous meetings, I am not sure if other placements were considered in the continuum of placement other than [the proposed district early childhood special education] reverse mainstream classroom/private preschool with related services at [the designated early childhood classroom] once a week. I'd like the team to consider/ discuss those other placements on the continuum that may provide the specially designed instruction and related services needed for her to make meaningful progress in light of her unique circumstances. Again, thank you for including me in this important process. I personally appreciate all of the work completed by the team thus far! Looking forward to working with you all soon."*

On March 30, 2023, the speech/language pathologist responded to both of the student's parents and to the parent advocate via email as follows:

*"I would be happy to request records that would include [the student's] evaluation and medical diagnosis of Autism from McPherson so that our team can review that information prior to our next meeting. We do not currently have a HIPAA release for that medical provider or the neurologist that evaluated her and diagnosed her with Global Developmental Delay. The first we learned of [the student's] diagnoses was reading the reports from Children's Therapy Services that we received on March 6th followed by confirmation from parents at our last meeting. Information pertaining to those diagnoses or evaluations was not included on the health intake, family reports, or during our intake interview with parents. [To the parents], I have attached a blank release if you would like to complete and return that. I am happy to send that to you in DocuSign for electronic signatures if you can provide me the names and contact information for the medical provider(s). You are also welcome to share copies of any reports you have directly. Sometimes getting a copy of reports from parents is more efficient*

*than requesting records from medical providers. We would be happy to review additional medical reports. Please let me know how you would like to proceed."*

The parent responded via email on March 30, 2023:

*"I will be requesting records from McPherson hospital today. I will provide them upon receipt. Also, the records from CTS [Children's Therapy Services] were not requested until March 3, 2023. I signed a release in December, so therefore this further supports a lack of intention in completing a thorough and comprehensive evaluation. If you needed more time to complete further evaluation measures after receipt of the CTS records then you could have requested an evaluation extension and I would have granted it rather than coming to IEP and pushing a "cookie cutter" and non individualized plan.*

*During the initial evaluation I advised [the early childhood center] of the autism diagnosis, so apparently there was a lack of communication."*

On April 10, 2023, the parent sent the following email to the special services coordinator:

*"We had court this morning and it was determined that since [the student] is not enrolled in the [district] and already participating in a school program that adequately and appropriately meets her needs there is no point or purpose in continuing with the [district]. It was determined that a private autism evaluation will be completed by an objective 3rd party and services will be determined from there. In light of this it appears that there is no reason to continue with the [district] for anything. [The student] is not enrolled in any programs and not receiving services so we will maintain the status quo. I appreciate everyone's time and efforts, but we will not proceed with the district moving forward.*

*There is no need for the meeting April 13th due to [the student] is not considered enrolled in the [district]."*

## **Summary and Conclusions**

The district conducted an evaluation of the student and determined the student to be eligible to receive special education services under the disability category of Developmental Delay. While the parents had reported during the evaluation/eligibility team meeting that the student had been diagnosed with both a global developmental delay and autism, at the time of the meeting, no diagnostic report was made available to the district by the parents.

The district proposed an IEP for the student. Individualized annual goals were developed for the student – based not upon the category of her eligibility (Developmental Delay) but upon educational needs that had been identified through the evaluation process. Those goals targeted six different areas and were established using baseline skills exhibited by the student.

After the parent was presented with the proposed IEP, she requested that a number of changes be made to the document and requested that the student be further evaluated in the area of autism.

No evidence was presented by the parent to show that the district had refused her requests. There is, however, ample evidence of the district's continued attempts at collaboration with the parent. The district scheduled another IEP team meeting to discuss the parents requests and the district asked for the parent's consent to obtain medical records related to the student's previous evaluation.

A violation of special education statutes and regulations *is not substantiated* on this issue.

### **Issue Three**

The district obtained the student's father's consent for placement and services so that the student's mother's consent would not be needed.

#### **Parent's Position**

The parent contends that the district intended to force her into agreeing to allow "irreparable harm" to come to the student through the provision of special education services under a "cookie cutter IEP."

#### **District's Position**

It is the position of the district that even after receiving the consent of the student's father for the provision of early childhood special education services to the student, the district continued to communicate with the parent and proposed an additional IEP team meeting to facilitate further discussion of the parent's concerns.

#### **Applicable Statutes and Regulations**

The Individualized Education Program (IEP) is defined as a written statement for each student with an exceptionality, which describes that child's educational program and is developed, reviewed, and revised in accordance with special education laws and regulations. The Individualized Education Program (IEP) team is a group of people, knowledgeable about the child, who come together at an IEP meeting in order to develop or review and revise a child's IEP. Decisions regarding the development of a student's initial IEP are made by the IEP team; any proposed changes to the initial IEP should be discussed through the IEP team process. After final decisions are made regarding the content of the IEP, parents must be provided with prior written notice of the district's plan for the delivery of services to the student.

If parents are divorced, regardless of which parent has primary custody, the school must provide Prior Written Notice of any special education action to both parents, even if only one parent has the right to consent, unless a court order precludes this from happening. This applies to all special education notice requirements including notice of an IEP meeting.

Consent from one parent is sufficient. In the event that the school receives consent forms from both parents, with one parent providing consent for the action and the other denying consent, the school is deemed to have received consent and must fulfill its obligation to

provide FAPE to the student. The parent who denies consent has the right to request mediation or file for due process.

### **Investigative Findings**

At the time of the evaluation/eligibility meeting and subsequent IEP team meeting on March 23, 2023, the parents were in the process of obtaining a divorce. As required by special education statutes and regulations, the district provided both parents with prior written notice of the district's proposal to provide special education services to the student. Documents were sent to both parents via DocuSign on March 23, 2023.

On March 23, 2023, the parent sent the speech/language pathologist the following email:

*"I appreciate this and will wait for [a parent advocate] to review before I sign.*

*Also, just want to make sure the addendum is put in that we will only do Tuesday at Harmony until summer. I will see how things go on Tuesday's before agreeing to summer and beyond."*

On March 24, 2023, the parent sent the speech/language pathologist another email writing:

*I would like to respectfully request the one on one aide for Tuesday be written into the IEP. For [the student] to attend safely on Tuesday's and receive services this is necessary and my request is reasonable and with my child's best interests in mind. I will need this updated version of the IEP sent to [a parent advocate] for review."*

The speech/language pathologist responded to the parent via email on March 24, 2023 writing:

*"I noticed you specifically mentioned Harmony [in your March 23, 2023 email]. The IEP specifies [the student] would receive her services in a reverse mainstream early childhood special education classroom, but the location of the classroom is not specified in the IEP. [The student] only accessing services on Tuesdays is spelled out on the Prior Written Notice on page three, but her IEP will continue to document all the services she is eligible to access even though you would only like to access services for one session (190 minutes) at this time. I am going to copy our building administrator and special services coordinator on this message as they would be able to help you with the location for [the student] to receive her services after we have consent to implement the IEP."*

*I also forwarded your [March 24, 2023] email requesting a one-on-one aide to [the director of early childhood] and [the special services coordinator] and we will get back to you regarding that."*

At 12:55 PM on March 24, 2023 – after receiving the forwarded emails from the parent – the special services coordinator sent the following email to both parents:

*"Thank you for your email and sharing your concerns. As [the speech/language pathologist] mentioned, she also shared your email about additional para support being added to the*

*IEP. Any changes to the IEP will need to be made with the IEP team. If you'd like to continue the discussion of additional para support for [the student] we will need to meet again as a team. [The speech/language pathologist] can work with you on setting that up.*

*Regarding location, I am happy to work with you on a location that is more convenient for you to transport [the student] to/from once we have consent for services.*

*I have added [the student's father] so he is aware we may be meeting again"*

The parent responded via email to the special services coordinator at 1:23 PM on March 24, 2023 stating:

*"I have decided against signing the IEP and proceeding. I will be adding a day of [private services] on Tuesday, which will result in 1.5 hours of additional service for [the student]. [The private provider] has stated that they can add services to meet all of [the student's] needs. I don't think the best interests of my child were considered and the focus was on money and cost. I am appreciative of the evaluation and time given, but I will be moving forward in maintaining what is best for [the student] and ensuring her needs are met. In the future if I change my mind I will let you know and pursue services for her through the IEP."*

As noted above under Issue Two, the executive director then reached out to the director of early childhood, both assistant directors of special services, and a special education coordinator on March 27, 2023 to arrange for a meeting with her staff to collect additional information concerns expressed in the parent's email of March 26, 2023.

The director of early childhood responded to the executive director via email on March 28, 2023 writing noting that the parent wanted to reconvene the IEP team to discuss adult support and behavior consultant support for [the student]. The director of early childhood also reported that the student's father had, on March 28, 202, consented to the district's proposed IEP.

Notice of an April 13, 2023 IEP team meeting was sent to both parents on March 28, 2023.

As noted above under Issue Two, the parent sent an email to school staff on March 29, 2023 advising them that the team should be prepared to complete an evaluation of the student with regard to autism and to develop a new IEP based on the information obtained during that evaluation, noting that she was confident that after the April 13, 2023 IEP team meeting there would be a plan for the provision of special services to the student.

Later in the evening of March 29, 2023, the parent advocate sent an email to the student's parents, the director of early childhood, the special services coordinator, and the speech pathologist. As noted under Issue Two, the advocate asked to have additional staff included in the IEP team, mentioned the need for an AAC device and related goals for the student, suggested the team consider administering additional cognitive testing, requested explicit

goals related to autism, and asked for the district to consider additional placement options for the student.

On March 30, 2023 the speech/language pathologist sent an email to the student's parents and to the parent advocate via email seeking a release to access records from the outside evaluation. The parent responded via email on March 30, 2023 that she would obtain the records herself. (See Issue Two.)

On April 10, 2023, the parent sent an email to the special services coordinator informing her that a third party would be completing an autism assessment on the student and noting that since the student would not be enrolled in the district, there would be no need to "continue with the district for anything, including the April 13, 2023 IEP team meeting."

On April 11, 2023, the special services coordinator sent an email to both parents writing:

*"Thank you for your emailing and letting us know your plans for [the student]. I've attached a letter regarding your decision to not enroll [the student] in the [district] as well as another copy of your parent rights in special education. Please contact me with any questions. We wish the best for [the student] and your family!"*

The attached letter to both parents, also dated April 11, 2023, states:

*"Your daughter...participated in an initial evaluation for special education services with the [district]. She was determined eligible for special education and related services on March 23, 2023. [The student's father] signed consent for the IEP on 03/26/2023. On April 10, 2023, [the student's mother] informed the [school] staff, via email, that [the student] would not be enrolling in [the district] and that the family will continue to provide services privately for [the student].*

*[The student] is eligible for special education and related services through her IEP. The [district] is ready, willing and able to provide all services in [the student's] IEP should you decide to enroll her in the district. We are happy to reconvene the IEP team to discuss any concerns that you might have regarding the provision of services in the [district]."*

While there is no evidence to show that the student's father rescinded his consent for the provision of special education services, there is also no evidence to suggest that he wanted to pursue district services after the parent objected. The student's father did not respond to the district's April 11, 2023 offer to provide services to the student.

## **Summary and Conclusions**

Prior written notice of the district's proposed plan for the provision of special education services was provided to both parents who were at the time obtaining a divorce. The student's father provided his written consent for the services, but the student's mother proposed changes to the plan with regard to service location and the provision of one-on-one support.



The district provided both parents with notice of a second IEP team meeting to discuss these proposed changes. The student's mother initially declined the offer of the meeting, then agreed to reconvene but raised additional issues regarding further assessment of the student in the area of autism and the inclusion of additional staff (a BCBA) in the planning process. An advocate for the parent also contacted the district and raised the issue of assistive technology support for the student as well as proposing that the team consider other placement options for the student.

On April 10, 2023, prior to the scheduled April 13, 2023 IEP meeting, the parent notified the district that the student would not be enrolled in the district for services.

The district provided prior written notice of a proposed plan for services for the student to both parents as required by special education statutes and regulations. The student's father provided written consent for the district's proposed actions. There is evidence of additional on-going communication with the parent and her advocate as well as the student's father regarding potential changes to the IEP proposed by the district. Both parent were given notice of an IEP team meeting which had been scheduled to occur within 12 days of the date the parent first raised issues about the student's IEP.

Even though the student's father had provided written consent for the district's provision of special education services, no services were implemented pending the outcome of the second IEP meeting. The district received no communication from the student's father in response to the district's April 11, 2023 letter offering services if the parents opted to enroll the student in the district.

Under these circumstances, a violation of special education statutes and regulations *is not substantiated* on this issue.

### **Corrective Action**

Information gathered in the course of this investigation has *not substantiated noncompliance* with special education statutes and regulations on issues presented in this complaint. Therefore, no corrective actions are directed.

### **Investigator**



Diana Durkin  
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)