

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #233
ON MAY 15, 2024

DATE OF REPORT JUNE 19, 2024

This report is in response to a complaint filed with our office by ----- on behalf of their foster child, ----- . For the remainder of this report, ----- will be referred to as “the student.” ----- will be referred to collectively as “the complainants.” ----- will be referred to individually as “the student’s foster father.” ----- will be referred to individually as “the student’s foster mother.” USD #233 will be referred to as “the district.”

Investigation of Complaint

On May 23 and June 13, 2024, the complaint investigator spoke via telephone with Ashley Niedzwiecki, Assistant Director of Special Services for the district. On June 13, 2024, the investigator spoke again in a separate conference call with the Assistant Director and with Andy Heinecke, Special Services Coordinator for the district. On June 3, 2024, the investigator spoke by telephone with the complainants.

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

- Assessment report dated November 8, 2021
- Confidential Psychological Evaluation dated April 13, 2022
- Email dated September 8, 2022 from the building principal to the complainants
- Email dated September 9, 2022 from the foster mother to the building principal
- Evaluation report dated October 7, 2022 from the student’s developmental pediatrician
- Email exchange dated February 22, 2023 between the general education classroom teacher and the complainants
- Email dated February 23, 2023 from the building principal to the complainants
- Diagnostic report dated February 24, 2023 from the student’s developmental pediatrician
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated February 24, 2023
- Letter dated February 26, 2023 from the student’s developmental pediatrician
- Email dated February 27, 2023 from the complainants to the building principal
- Email dated March 1, 2023 from the building principal to the complainants

- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated March 28, 2023
- Neuropsychological Assessment dated March 27 through April 20, 2023
- Notice of Meeting dated May 4, 2023
- Evaluation Report dated May 23, 2023
- Eligibility Determination Other Health Impairment dated May 23, 2023
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated May 23, 2023
- 504 Evaluation Report dated August 29, 2023
- 504 Accommodation Plan dated August 29, 2023
- Email exchange dated May 2-6, 2024 between the complainants and a special services coordinator
- Email exchange dated March 1 through March 8, 2024 between the complainants and the student's general education classroom teacher
- Email dated March 8, 2024 from the school counselor to the complainants and district staff
- Elementary Progress Report for the student for the 2023-24 school year
- Attachments to the complainants' formal complaint but not specified in the above listing including the following:
 - A timeline covering the period of June 2015 to May 15, 2024
 - Undated letter from a private speech/language pathologist who had evaluated the student
 - Memorandum dated January 21, 2011 from the Office of Special Education and Rehabilitative Services
 - Letter dated January 29, 2019 from the Office of Special Education and Rehabilitative Services

Background Information

This investigation involves an 8-year old girl who has just completed the 3rd grade in her neighborhood elementary school. According to the complainants, the student was exposed to alcohol, amphetamines, benzodiazepines, and opiates in utero. Records provided by the district and the complainants indicate that the student has an early history of neglect, instability, and stress.

The student was first placed with the complainants through the foster care system in September 2019 and was accepted into the district's preschool program for at-risk children. The student lived with the complainants and their biological daughter until July of 2020 when she moved out of state to live with a paternal aunt who planned to adopt the student. The biological mother's rights were officially terminated in July 2021. In April 2022, while still in the

care of her aunt, the student was diagnosed with Post-Traumatic Stress Disorder (PTSD) and Autism Spectrum Disorder (ASD).

The aunt's plan for adoption did not work out, and the student was returned to the foster care system. In August 2022, she was once again placed with the complainants who report that their adoption of the student is to be finalized on June 20, 2024.

The student was reenrolled in her current school district for the 2022-23 school year. The complainants were designated as educational decision makers for the student on September 8, 2022. In their complaint, the complainants state that they anticipated that "an IEP evaluation" would be in the student's future because of the student's medical history and behaviors, but they wanted to wait on that evaluation "to see how [the student] did during her transition."

The building principal sent an email to the complainants on September 8, 2022 stating that the student's classroom teacher had "shared...that you are inquiring about a possible sped evaluation for [the student]." The building principal reported that the classroom teacher was "collecting data" on the student's performance. According to the email, the student was "settling in and with her peer (sic) in performance and stamina. We will continue to watch and will reach out should anything arise. Please let me know if you have any questions or would like to discuss further."

In an email response to the building principal dated September 9, 2022, the student's foster mother wrote:

"...I don't see a reason to put her through IEP testing right now because she is doing fine at the moment. I wasn't planning on requesting services at the moment. I do think we're still honeymooning right now, so we'll see how things go as the months go by."

In October 2022, the student was seen by a developmental pediatrician who recommended additional testing for the student and told the complainants that she would "likely need continued support in school."

The complainants report that on February 9, 2023, they made a request for an initial special education evaluation of the student. On February 22, 2023, the student's general education classroom teacher sent an email to the complainants notifying them that the building level general education intervention team would be meeting on March 1, 2023 to share with the complainants "some additional ideas to support [the student] with focus and organizing in the classroom, discussing your concerns and we will together determine next steps."

The complainants responded via email on February 22, 2023 to say that they would not be available at the scheduled time and writing:

"Further, an hour-long meeting doesn't seem to be the best use of anyone's time as our concerns have been thoroughly documented in previous emails and conversations with [the

classroom teacher] and other staff...out of respect for everyone's time, it makes sense to us to forego the meeting and proceed directly with full IEP testing.

We were the ones who declined testing earlier in the year in hopes that we could manage [the student's] needs more conservatively, but over the last 6 months it has become clear that the measures we've already taken have been inadequate...I understand that some of her recent testing has been more encouraging, but...given her other diagnoses...she needs to be tested...We will not be swayed that she needs anything less than a full evaluation; please send consent for testing so we can proceed and complete the process before the end of the school year."

On February 23, 2023, the building principal sent an email to the complainants to inform them that they would be receiving a prior written notice that the district had declined their request for an initial special education evaluation. The district provided the complainants with prior written notice of refusal to conduct an evaluation on February 24, 2023.

The prior written notice form indicated that the student's second grade teacher had stated that:

"...[the student] has made significant gains in her interventions in her classroom. [The student] started off the beginning of the year being flagged for 1st grade phonics support. She began [general education] interventions, and she passed the 95% interventions for skills 4 and 5 before winter break. She was a point away from passing skill 6, and it was determined to transition to fluency and comprehension group on grade level."

According to the prior written notice form, a number of accommodations had been put in place for the student in her classroom including repeating directions, preferential seating near a peer model, extending time for assignments to be completed, and shortening assignments when the student had shown mastery of a skill. The student was making appropriate progress with the supports available to her in the general education setting. District reading assessments placed her above the 50th percentile in reading during both Fall and Winter assessments. While the student had placed at the 1st percentile in math on the Fall district assessment, her score on the Winter assessment placed her at the 76th percentile. According to the prior written notice form, the student's first and second quarter grades for the 2022-23 school year placed the student at level 3 (progressing) in all areas (reading, writing, speaking and listening, math, science, and social studies).

The February 24, 2023 prior written notice of refusal form shows that the team rejected the option of conducting an evaluation because:

"...the team currently is not providing supports at a level that indicate the need for specialized instruction and therefore don't indicate the need for a special education evaluation."

As stated in the prior notice of refusal, the district planned to continue to implement general education interventions, adding a visual schedule, a check list for the end-of-the-day routine, access to noise canceling headphones, and chunking of work with frequent check-ins with her teacher to the existing list of accommodations.

After being provided with prior notice of the district's refusal to evaluate the student, the complainants engaged the services of an advocate.

The student was seen by a developmental pediatrician on February 24, 2023. The physician diagnosed "concern with working memory or other executive functioning deficits" and "central auditory processing disorder."

On February 27, 2023, the complainants sent an email to the building principal writing:

"...to be clear on her needs, [the student] needs an IEP evaluation...Again, we acknowledge that a 504 may be adequate after all the data is available, but given [the student's] diagnosis...we are still of the opinion that [the student] legally needs a formal IEP evaluation, ideally before the end of the school year."

The building level general education intervention team met on March 1, 2023 to review the student's progress under general education interventions. The complainants had been invited to participate in the intervention team meeting, but they were not available on the date the meeting was scheduled.

The building principal sent the complainants an email on March 1, 2023 writing:

"I am sorry to have missed you during today's scheduled meeting...if you would like to come in and discuss other possible options [in light of the district's refusal to conduct an initial special education evaluation], I will do what I can to accommodate your schedule."

The student was first seen by a private neuropsychologist on March 27, 2023. The neuropsychologist completed an evaluation of the student and diagnosed her with ADHD and a reading disorder. The neuropsychologist rejected the previous diagnosis of ASD but in a summative report recommended that she be provided services through an Individualized Education Plan (IEP) and stated:

"[The student] qualifies [for special education services] based on her history of in utero exposure and its effect upon neurocognitive development which likely greatly contributed to her diagnosis of ADHD, combined presentation. Given the deficits seen in the present evaluation, accommodations will likely be necessary to assist him (sic) academically. However, [the student's] educational committee, of which her caregivers are members, is the ultimate authority regarding eligibility. As such it is recommended that the results of the present evaluation be shared with her school so further discussion regarding eligibility of services is possible."

Issue

In their complaint, the complainants raise the following issue:

The district has failed in its Child Find obligation because it has refused to develop an IEP for the student.

Complainants' Position

The complainants assert that the district failed to timely evaluate the student and provide appropriate special education services even after being told by a neuropsychiatrist and other outside professionals that the student would need an IEP. The complainants state that the student failed most of her spelling tests and was typically last among her peers to complete an assignment in the classroom. The complainants contend that the district delayed the assessment of the student in order to first complete general education interventions.

District's Position

It is the position of the district that the student was appropriately evaluated during the 2022-23 school year and, upon completion of that initial evaluation, was determined not to need special education services. The district asserts that it has proposed to administer another evaluation of the student in view of the student's progress during the 2023-24 school year, and the complainants have given consent for that evaluation.

Applicable Statutes and Regulations

At K.A.R. 91-40-51, Kansas regulations state that, when filing a formal complaint, the complainant must allege that a violation state of federal special education laws or regulations has occurred during the 12-month period preceding the date the complaint is received and filed with the commissioner of education.

This complaint was received on May 14, 2024. While information related to the complainants' assertion that the district did not timely and appropriately respond to their February 2023 request for a special education evaluation of the student is included in the background section of this report, no determination regarding this alleged violation was made by this investigator because the circumstances surrounding that allegation fell outside the 12-month window of this complaint.

At K.A.R. 91-40-7, Kansas regulations state that districts must adopt and implement policies and procedures to identify, locate, and evaluate all children with exceptionalities residing in their jurisdiction. Parents or other legally appointed educational decision makers may refer a student for an initial evaluation. A district must respond to that request within a reasonable period of time, which has been interpreted by the Kansas State Department of Education (KSDE) as being no more than 15 school days, unless there are unusual circumstances. The district may refuse to conduct the initial evaluation; under that circumstance, the requesting party must be provided with prior written notice of the district's refusal.

Under Kansas and federal regulations, as part of an initial evaluation, the district first meets to review existing data to determine whether it is appropriate to conduct an evaluation (34 C.F.R. 300.305(a)). As stated in Appeal of Formal Complaint, FC12437-003; USD N. 437 (Auburn Washburn Public Schools) 123 LRP 19114, "*When deciding whether an initial evaluation should be*

conducted districts have the right to meet and review existing data without holding an IEP team meeting, so long as parents are given the opportunity to provide input and that input is considered (34 C.F.R. 300.305(a); 34 C.F.R. 300.305(b)).”

If the district decides to move ahead with an initial evaluation in response to a request from an appropriate party, the written consent of the educational decision-maker must first be obtained (K.S.A. 72-3430b)(2); 34 C.F.R. 300.304(a)).

Once consent has been obtained, a team is formed who will have the responsibility of carrying out the evaluation process. The members of the evaluation team are the same as those who would serve on the student’s IEP team should the child be found eligible. Parents or other educational decision-makers are included in the evaluation team.

An initial evaluation is generally to be completed within a 60-school-day timeline from the date the written consent for the evaluation is obtained from the educational decision-maker unless special circumstances apply (K.A.R. 91-40-8(f)).

Eligibility decisions are made by a team of qualified professionals and the educational decision-makers for the student who has been evaluated (K.A.R. 91-40-10(a)(1)). At the time the evaluation is completed and information is compiled, a team meeting should be convened in order to make the determination regarding eligibility for special education services. In order to determine that a student is eligible for special education services, the team must ensure that he/she meets the definition of one of the categories of exceptionality, and that, as a result of that exceptionality, needs special education and related services (K.A.R. 91-40-1(k), (w)). If the student meets the definition of an exceptionality category but does not need special education and related services, the child will not be determined to be eligible.

Special education means specially designed instruction (K.A.R. 91-40-1(kkk)), adapting the content, methodology or delivery of instruction to address the unique needs of a student that result from his/her exceptionality in order to ensure that the student has access to the general education curriculum in order to meet the educational standards that apply to all children (K.A.R. 91-40-1(III)). This implies that in order to have a need for special education, the student has specific needs that are so unique as to require specially designed instruction in order to access the general education curriculum. If the student only needs accommodations or modifications that do not require specially designed instruction, the student’s needs may be met through a Section 504 Accommodation Plan or other means instead of an IEP.

If the educational decision-maker presents written or in-person information from an outside source (i.e., a medical doctor) stating the need for an IEP, the district is obligated to consider that information when determining the student’s eligibility. However, the district is not required to implement the recommendations of an outside source.

The eligibility team should try to reach consensus about the eligibility decision. Parents who disagree with the conclusions of the evaluation team may, but are not required to, submit a

separate statement. However, if the team cannot reach agreement, the final decision rests with the person who serves as the LEA representative at the eligibility determination meeting.

If the district determines that the student is not eligible for special education services, parents must be provided prior written notice informing them of the decision (K.S.A. 72-3430(b)(2)(b)).

Investigative Findings

On March 28, 2023, in what the complainants describe as “a spirit of collaboration,” the district provided the complainants with prior written notice of a proposed initial special education evaluation and requested the complainants’ consent. The complainants provided written consent for the evaluation on that same date.

On May 23, 2023, thirty-nine school days after the complainants gave written consent, the results of the district’s evaluation were reviewed in a team meeting which was attended by the complainants and the neuropsychologist who had conducted the then recent evaluation of the student. Because of the student’s ADHD diagnosis, the team considered the student’s eligibility for special education services under the category of “Other Health Impairment” which is defined under K.A.R. 91-40-1(uu) as:

“...having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment and that meets the following criteria: (1) is due to chronic or acute health problems, including asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and (2) adversely affects a child’s educational performance.”

According to the Eligibility Determination form completed on May 23, 2023, the team considered the student’s grades, work samples, medical reports, individual achievement test results, school records, psychological evaluations, classroom observations, results of individual intelligence testing, reports by the complainants, and a report from the classroom teacher and determined that the student was not eligible for special education services as a child with a disability under the category of Other Health Impairment. While the team acknowledged that the student’s “strength, vitality, or alertness [was/were] significantly different from peers” and her educational performance was negatively impacted, the student did not at that time demonstrate a need for “special education (specially designed instruction) and related services.”

The complainants were, on May 23, 2023, provided with prior written notice of the district’s determination that the student had “an exceptionality but does not need specially designed instruction, and therefore is not eligible for special education.”

According to the prior written notice form, “the team discussed moving forward with a 504 evaluation by the end of August 2023.” It was noted that the student “benefits from

accommodations in the general education classroom” and “the general education classroom is her least restrictive environment at this time.”

The complainants enrolled the student in private tutoring and private Occupational Therapy during the summer of 2023. The complainants acknowledge that standardized testing reflected “a bit of a rally in fall of 2023.”

On August 29, 2023, the district completed a 504 evaluation, determined the student to be Section 504 eligible, and developed a 504 Plan which was then implemented during the 2023-24 school year. That plan included a number of accommodations including the following:

- Model and encourage use of visual, organizational, and technological tools (highlighting, sticky notes, talk-to-text);
- frequent checks for understanding with the teacher and/or student repeating directions;
- provision of a copy of teacher or peer notes or permission to take a photo on her iPad;
- reduction or chunking of work as needed to allow time to process or show knowledge;
- preferential seating near a peer model or near the teacher during whole group instruction and work time;
- permission for breaks for self-regulation in or out of the classroom (sensory room, counseling office, therapy dog);
- provision of a separate location for district or state tests when appropriate;
- communication with the complainants when the student showed changes in self-regulation;
- allowing the use of noise reducing headphones and a privacy screen to aid in focus;
- allowing extra time to complete assigned work and tests within the day, week, or chapter unit; and
- use of a home/school planner to record assignments or tasks.

The Elementary Progress Report for the student shows that for the first three quarters of the 2023-24 school year the student demonstrated B level (very good or 80-89%) performance in writing and math. Reading performance fell at the C level (satisfactory or 70-79%) for the first quarter and at B level for quarters 2 and 3. The student’s speaking and listening skills were at B level for the first quarter and A level for quarters 2 and 3. The student performed at A level (excellent or 90-100%) for quarters 1-3 in science and quarter 1 and 2 in social studies with B level performance in social studies for the third quarter. The student exceeded expectations (E) for quarters 1-3 in physical education, music, and visual arts. The grade report showed that progress was needed in the area of spelling during quarters 1 and 3; her performance fell at B level for quarter 2. The student showed strengths in all areas of learning and work habits (attentive, cooperative, organized, productive, respectful, and responsible) over quarters 1-3. The student’s classroom teacher repeatedly commented on the student’s strong effort to complete her school work.

Over the period of March 1 through March 8, 2024, the complainants exchanged emails with the student's classroom teacher. In an email dated March 8, 2024, the complainants wrote:

"We want her to have enough support during the day to accomplish a more typical amount of work, which again would be in the realm of an IEP. At this point we think it would make sense to schedule a meeting and chat more about revising her 504 or moving forward with an IEP. Happy to sign a consent ASAP if that will be needed to move forward. We know we met last spring to discuss these concerns and did an evaluation. The concerns that were stated at that time with [the student's] educational performance are now happening with her decrease in ELA scores as well as needing additional individualized support and instruction. We would like to discuss what options there are for [the student] to get the additional help she needs. Do we need to schedule a meeting or formally request another evaluation? Also, apologies if all of this seems sudden. As we implied at conferences, [the student's] foster case has gone off the rails, so we had to hire an attorney, spend an absurd amount of money, and get DCF involved to keep her from getting moved out of our home, and that nearly happened a few times. So now that that threat is less imminent, we have slightly more margin to try and address her schooling."

On March 8, 2024, the building counselor sent an email to the complainants, their advocate, and district staff including the building principal, the student's classroom teacher, and a special services coordinator. The counselor stated that the student had expressed to her that she was "stressed" about school work. The counselor wrote that "we will look things over and one of us will reach out to you about scheduling a team meeting after Spring Break."

A meeting was held on April 11, 2024 to discuss the complainants' continued concerns with the student's reading fluency and comprehension as well as the impact of executive functioning deficits. According to the complainants, the classroom teacher reported that the student was taking longer to complete her assignments and was "one of the last students to finish her state assessments," noting that "it doesn't seem to bother" her. The district offered to grade the student on five of ten spelling words, but the complainants state that they were not "interested in lowering the bar, but rather giving her the support and additional exposure she needs to produce her best work." The team decided to meet again in a few weeks after Spring district assessment results were available.

The student's fourth quarter grades were as follows:

- Reading – B
- Writing – B
- Spelling – C
- Speaking and Listening – A
- Math – B
- Science – A
- Social Studies – A

- Physical Education – E
- Music – E
- Visual Art – E

The student continued to display strength in all areas of learning and work habits.

While the student had demonstrated gains on district aReading testing over the first few months of the 2023-24 school year, performance began to evidence a downward trend the second semester. CBM reading measures remained relatively flat throughout the school year. However, the student's scores have trended downward from her return to the district in the fall of 2022.

On May 2, 2024, the complainants sent an email to a special services coordinator for the district stating:

"If [the student's school] plans on denying the request for an IEP, then we would request a separate/private meeting with you and [the parent advocate] to review data and discuss how [the student] does not meet eligibility criteria."

The coordinator responded via email on May 3, 2024 writing:

"...I just had the chance to catch up on emails from today and see that the [school] team is looking to provide you with the consent document to start an evaluation for SPED eligibility. The team would need to conduct this evaluation to determine eligibility and, if eligible, would then develop an IEP for [the student] with you. Please let me know if you have any other questions."

The complainants wrote back to the coordinator on May 5, 2024, stating:

"Thank you so much for your response. We understand that there is a procedure we need to follow according to IDEA, however we believe we already have all the data necessary to warrant an evaluation determination. Can you please help us understand what testing is going to inform us beyond the testing completed last May and the data collected throughout this year from assessments such as Fast Bridge [a district assessment tool]?"

The concern last May was that there was progress being made according to the assessment data and we could not implement an IEP if the MTSS and 504 supports were allowing [the student] to make progress. The data from this year has shown that with those supports in place, she has been declining in percentile and she is showing minimal (at best) growth in all academic areas. Her historically higher scores show she is capable of higher achievement. She also continues to have significant issues with executive functioning skills.

We are extremely concerned that this has been drawn out for almost two years and we still have a little girl who is not making progress in educational performance. We spent the entire last year implementing a 504 and MTSS supports that have proven to be inadequate.

We are concerned that this is a denial of FAPE and we would appreciate the team and [the district] to take the urgency of these concerns seriously."

On May 6, 2024, the coordinator responded:

"I understand your frustration with our educational process. I'd be glad to answer any questions for you. I can see from your perspective that conducting an evaluation seems like an inefficiency. Please know that it is vital to conduct the evaluation to determine eligibility. Even more importantly, if she is eligible, the evaluation data is the foundation upon which her Individualized Education Plan would be built."

On May 8, 2024, the complainants spoke by telephone conference call with a special services coordinator for the district. The complainants' advocate also participated in the call.

A meeting was held on May 13, 2024. At that time, the district proposed an evaluation of the student and presented the complainants with prior written notice of a proposed evaluation, requesting the complainants' consent. The complainants provided consent for the evaluation on May 13, 2024 and filed this complaint the following day.

Summary and Conclusions

The initial evaluation completed by the district during the 2022-23 school year was conducted appropriately. The district timely responded to the complainants' request for evaluation following the student's evaluation by an outside neuropsychologist in March 2023, requested and obtained the complainants' consent for the evaluation, and completed the initial evaluation within the 60-school-day timeframe.

All data, including input provided by the complainants and the neuropsychologist and others, was considered by the evaluation team. While the neuropsychologist who participated in the evaluation team meeting and other outside evaluators have expressed their opinions that the student could benefit from additional supports, special education statutes and regulations only require a district to consider such recommendations. The Individuals with Disabilities Education Act (IDEA) does not require the district to implement those recommendations. Rather, IDEA is clear that decisions are to be made by the team, not a single voice on that team. Child Find was not violated simply because the student was found ineligible or because an evaluation team did not follow a physician's recommendations.

No evidence was presented to show that the district delayed the student's initial evaluation during the 2022-23 school year in order to first implement general education interventions. These interventions were implemented early in the school year well before the complainants had requested an evaluation of the student. The student's response to those interventions ultimately provided data that was used in making decisions about the student's need for specially designed instruction, but the implementation of general education interventions did not cause a delay in the assessment of the student.

Decisions regarding a student's eligibility to receive special education services must be made based on current data collected through the district's evaluation. In May of 2023, the district

agreed that the student demonstrated a categorical disability, one of the two prongs required for the student to be considered eligible to receive special education services. However, despite that disability, the student was at the time of the evaluation able – with the provision of commonly provided general education accommodations – to access and progress in the general education curriculum. Special education – specially designed instruction – had not been required in order for the student to make progress, and, therefore, the district could not deem the student eligible for special education services. The district properly provided the complainants with prior written notice of the decision not to provide those services.

At the beginning of the 2023-24 school year, the district conducted a Section 504 evaluation and subsequently developed a 504 Accommodation Plan for the student. The student continued to be provided with a number of general education accommodations throughout the school year.

While the student's district assessment scores have declined relative to her overall performance level at the time she returned to the district in 2022, a determination of need for specially designed instruction cannot be made based on these test scores alone. If it is ultimately determined that the student is eligible for and needs special education services, the IEP describing those services must be based on current data, not data collected through the evaluation conducted during the 2022-23 school year. The district properly proposed an evaluation of the student once the student's Spring district assessment scores were available. The complainants have given written consent for the proposed evaluation.

A violation of special education statutes and regulations *is not established* on the issues presented in this complaint.

Corrective Action

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

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 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)