

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #357
ON NOVEMBER 22, 2024

DATE OF REPORT: JANUARY 2, 2025

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ----- by -----, a school ----- employed by USD #357. In the remainder of the report ----- will be referred to as the “student” and ----- will be referred to as the “complainant”.

The complaint is against USD #357 (Belle Plaine Public Schools) who contracts with the Sumner County Educational Services Interlocal #619 to provide special education services to students enrolled in the school district. In the remainder of the report, both of these responsible public agencies may also be referred to as “the district”, “the local education agency (LEA)”, or “the school”. Individually, they will be referred to by “USD #357” and “Interlocal #619” respectively.

It is noted that the complainant is not the educational decision maker for the student.

Anna Van Boening is the student’s mother and she will be referred to as the “parent” in the remainder of the report. It is noted that the parent provided written consent to share personally identifiable information regarding the student to the complainant on December 11, 2024 and, as such, a copy of this report is being provided to the school district, the interlocal, the parent, and the complainant.

The Kansas State Department of Education (KSDE) allows for a 60-day timeline to investigate a complaint from the date on which it was filed. A complaint is considered filed on the date on which it was received by KSDE. In this case, the KSDE initially received the complaint on November 22, 2024.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all the documentation provided by both the USD #357 and Interlocal 619.

The complainant and Pete Bastain, Superintendent of USD #357, were interviewed by telephone on December 16, 2024 as part of this investigation. Mr. Bastain will be referred to as the “Superintendent” in the remainder of the report.

In addition, Amanda Lowrance, Director of the Sumner County Educational Services Interlocal #619, and Hannah Hemberger, Assistant Director of Sumner County Educational Services Interlocal #619, were interviewed by telephone on December 17, 2024. These staff will be

referred to and the “Interlocal Director” and “Interlocal Assistant Director” respectively in the remainder of the report.

The parent was interviewed by telephone on December 10, 2024 and on December 28, 2024.

The following written documentation was used in consideration of the issue:

1. Attendance Records dated between August 15 and November 22, 2024
2. Emergency Safety Interventions dated August 20, 22, and 26, September 3, and November 14, 2024
3. Behavior Documentation dated between August 20 and November 14, 2024
4. Behavior Reports dated between August 20 and October 15, 2024
5. Letters to the parent documenting out-of-school suspensions (OSS) dated August 20, 22, and 26, September 3, and October 14 and 16, 2024
6. HOPE Team Documentation Form
7. School Psychologist Call Log dated August – November 2024
8. Meeting Notes dated between August 27, 2024 and November 19, 2024
9. Email dated August 29, 2024 at 1:56 PM written by the Interlocal Assistant Director to the USD #357 administrators and Interlocal #619 evaluation staff
10. Prior Written Notice (PWN) for Evaluation/Reevaluation and Request for Consent dated August 29, 2024
11. Behavior observation dated August 29, 2024 conducted by the Interlocal Assistant Director
12. Behavior observation dated September 5, 2024 conducted by Dave Martin, Sumner County Academy Principal in Interlocal #619
13. Behavior observation dated September 6, 2024 conducted by McKenzie Stalnaker, Sumner County Academy School Social Worker in Interlocal #619
14. Behavior observation dated September 9, 2024 conducted by Crystal Willson, Sumner County Academy Elementary Teacher in Interlocal #619
15. Behavior observation dated September 11, 2024 conducted by Leah Reep, Interlocal #619 Psych Paraprofessional
16. Email dated October 22, 2024 at 4:06 PM written by the Interlocal Director to the Complainant and Superintendent
17. Notice of Special Education Meeting dated October 31, 2024
18. Proposed Initial Evaluation dated November 6, 2024
19. Request for Initial Evaluation Extension dated November 13, 2024
20. Emails dated November 18 and 19, 2024 between the Interlocal Director, Interlocal Assistant Director, and the Superintendent
21. Notice of Special Education Meeting dated November 26, 2024
22. Response to the Allegations dated December 4, 2024 written by the Interlocal Director
23. Response to the Allegations dated December 5, 2024 written by the Complainant
24. Functional Behavioral Assessment dated December 16, 2024
25. Request for Initial Evaluation Extension dated December 16, 2024

26. Proposed Individualized Education Program (IEP) and Behavior Intervention Plan (BIP) for the student dated December 16, 2024
27. Proposed PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement and/or Request for Consent
28. Email dated December 19, 2024 at 3:05 PM written by the Interlocal Director to the Investigator
29. USD #357 School Calendar for the 2024-25 School Year
30. Sumner County Educational Services Interlocal #619 Special Education Reference Manual updated in August 2024
31. Social Stories for Classroom Rules; Raising My Hand; and Waiting Patiently
32. Kindergarten Report Card for Quarter 1
33. Kindergarten Progress Report for Quarter 2
34. USD #357 Student Code of Conduct

Background Information

The student is a 6-year-old boy who is currently enrolled in kindergarten at the Belle Plaine Elementary School for the 2024-25 school year. The parent reported the student has always had “erratic behavior and was moody” even as a toddler. The parent stated that the student was initially diagnosed with emotional problems by the Sumner County Mental Health Center (SCMH) at the age of four due to “Other Trauma- and Stressor-related Disorders”. The Diagnostic and Statistical Manual – Fifth Edition lists the following disorders under this category: Acute Distress Disorder, Post-traumatic Stress Disorder, and Adjustment Disorder.

The student has received counseling services through SCMH since that time and was subsequently diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD).

Following a significant behavioral incident at school on November 19, 2024, the parent reported that law enforcement required the student to have an emergency in-patient evaluation at the Camber Children’s Mental Health Center (CCMHC). As a result of that evaluation, the parent indicated the student was referred for a Serious Emotional Disturbance (SED) waiver and additional counseling services through CCMHC. The parent noted that an eligibility meeting for the SED waiver is scheduled for January 6, 2025.

The parent reported the student has not attended the public school since November 19, 2024 at the recommendation of the CCMHC but that he continues to be enrolled so that the initial special education evaluation can be completed and an IEP developed that will provide a free appropriate public education (FAPE) to the student. The parent stated that she calls the student in absent each school day so that she will not be reported for truancy by the school district.

Issues Investigated

Based on the written complaint, two issues were identified and investigated.

Issue One

Did USD #357 and USD #619, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), fail to identify a student with a disability in need of special education and related services and to provide that student with a free appropriate public education (FAPE) by not following the appropriate procedures when conducting a special education evaluation of the student during the 2024-25 school year?

Applicable Law

Federal regulations at 34 C.F.R. 300.301 require school districts to conduct a full and individual initial evaluation of a student within 60 days of receiving parental consent to determine if a child is a child with a disability and in need of special education and related services. This evaluation may be initiated by either the parent or the school district.

Kansas regulations at K.A.R. 91-40-8(f) define the “60 days” as “60 school-days” and allow for an extension of the 60 school-day evaluation timeline if the parent consents in writing to extend the timeline.

Federal regulations at 34 C.F.R. 300.305(a)(1) require the IEP team and other qualified professionals, as appropriate, to review existing evaluation data including any evaluations or information provided by the parents of the child; current classroom-based, local, or State assessments, and classroom-based observations; and any observations by teachers and related services providers.

Federal regulations at 34 C.F.R. 300.305(b) allow for this review of existing data to be conducted in a meeting or through consultation with all required IEP team members and other professionals, as appropriate.

Federal regulations at 34 C.F.R. 300.305(a)(2) require that, based upon that review and input from the child’s parents, the IEP team must identify what additional data, if any, are needed to determine whether the child is a child with a disability and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

Federal regulations at 34 C.F.R. 300.305(c) require the school district to administer such assessments and other evaluation measures as may be needed to produce the data necessary to identify if the child is a child with a disability and in need of special education and related services.

Federal regulations at 34 C.F.R. 300.306(a-c) require that, upon the completion of the administration of assessments and other evaluation measures, a group of qualified professionals

and the parent of the child determines whether the child is a child with a disability. This eligibility determination must consider information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. The child must not be determined to be a child with a disability if the determinant factor is a lack of appropriate instruction in reading or in math or because of limited English proficiency.

Federal regulations at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the student.

Federal regulations at 34 C.F.R. 300.503(b)(1) and (6) as well as Kansas statutes at K.S.A. 72-3428(b) require that this prior written notice includes a description of any evaluation procedures the school district proposes to conduct as well as a description of other options that the IEP Team considered and the reasons why those options were rejected.

Analysis: Findings of Fact

The following findings of fact are based upon interviews and record review.

The student initially enrolled in kindergarten at Belle Plaine Elementary School on August 13, 2024. As part of the screening process, the parent completed the Ages and Stages Questionnaire (ASQ). The parent noted concerns with the student's behavior and shared the student's mental health diagnoses and services. Prior to the beginning of the school year, USD #357 placed the student with the Hope Team, the district's student intervention team as a means of providing the required multi-tiered system of support (MTSS) based the enrollment information.

The first day of school was August 20, 2024 but because of inappropriate behavior, the student was sent home at approximately 1:00 PM that day and was assigned one day of out-of-school suspension (OSS). The student returned to school on August 22, 2024 and again displayed inappropriate behavior resulting in the student being sent home at approximately 12:45 PM with another day of OSS. The student returned to school on August 26, 2024 but again displayed inappropriate behavior and was sent home at 12:25 PM. The student was then suspended for an additional two school days.

Records reflect the following inappropriate behaviors are seen in the school setting: impulsivity; running around the classroom; crawling under desks/tables; jumping or standing on chairs, tables, cabinets, walls; refuses to comply with requests and is argumentative; uses inappropriate and foul language; defiant; makes disruptive noises and sounds interrupting teaching and learning in the classroom; eloping; pretending to use guns and engages in violent play with peers; threatens to hit staff and peers; throws objects such as books, toys, rocks, etc. at peers and staff; knocks over chairs and classroom items; is physically aggressive with others including hitting, kicking, spitting, biting, pinching, and punching a staff member in the face twice.

Documentation shows the school staff spoke with the parent regarding the student's inappropriate behavior in the school setting on August 26, 2024 and the parent reported she requested an IEP for the student at that time.

The Hope Team met on August 27, 2024 regarding the student. It is noted that the Hope Team consists of the building principal, the classroom teacher, a reading interventionist, the school nurse and the school social worker from USD #357 as well as the school psychologist from Interlocal #619.

The USD #357 staff recommended an initial special education evaluation be conducted in a 45-day alternative educational setting at the Sumner County Academy because the student had been suspended on three separate occasions during the first two weeks of the school year, required an emergency safety intervention (ESI), and had never attended a full day of kindergarten due to the extreme behaviors. However, Interlocal #619 staff reported that because the student had never been in any type of a structured preschool program, general education interventions (GEI) were required to be attempted prior to moving the student to such a restrictive setting.

Interlocal #619 staff provided Crisis Prevention and Intervention (CPI) training to USD #357 staff working with the student on August 28, 2024.

An email dated August 29, 2024 written by the Interlocal Assistant Director showed that the student was "on the radar for SCA [Sumner County Academy]". The email stated:

We had a meeting this morning that included Tammy [building principal], Tearra [complainant], and parents to get consent signed for special education evaluation and to give parents documentation for suspensions and ESI paperwork. They had a SIT [student intervention team – the Hope Team] meeting for him earlier this week and one of the interventions was to move him to half days. It was agreed that he would attend mornings until lunch and leave at 11:20 a.m. His major behaviors have occurred in the afternoon, so hopefully a shortened day will help him adjust to school structure, routines, and expectations. Plan is to meet again October 1st with parents to assess his progress. A 45-day placement was discussed with the parents as an option should there be a need due to his behavior and completing the evaluation with valid and reliable results.

On August 29, 2024, the parent was provided with a prior written notice for an initial special education evaluation and request for consent. The "Action Proposed" section documents the following check marked statement:

The Sumner County Educational Services Interlocal proposes to conduct an initial special education evaluation. (Parent consent required) Based upon a review of existing data (if appropriate), the IEP team (including the LEDM [legal educational decision maker]), is proposing to conduct an initial evaluation of your child. Information will be collected in the areas checked on the following page that provide relevant information that directly assists the team in determining:

- *whether your child is a child with an exceptionality and the educational needs of your child;*
- *the present levels of academic achievement and related developmental needs of your child; and*
- *whether your child needs special education and related services.*

The following areas were marked both as having existing data and for needing new data: Health/Motor Ability; Vision; Hearing; Social/Emotional Status / Behavioral Status; General Intelligence; Academic Performance; and Communicative Status. Each of these areas includes a description of what may be included in an assessment of that particular area; however, no area includes any specific assessment tool or lists an observation of the student as a possible assessment. For example, the Academic Area description states:

May include assessment of academic or preacademic skills and achievement levels in relation to the general curriculum such as oral or written expression, reading skills or comprehension, mathematical calculation or reasoning. For a child who is blind or visually impaired, the need for Braille instruction may be assessed.

With the exception of single disciplinary e.g. “speech only” evaluations, the Interlocal Director and Assistant Director reported that their practice is to routinely mark all areas as potentially needing new data so parent consent is obtained in case additional assessment in a particular area is later found to be necessary to determine categorical eligibility. They stated that the parents were being provided with prior written notice that additional data “may” be collected in an area rather than providing the parent with prior written notice that additional data “shall” be collected in a particular area to assist the multidisciplinary team to determine categorical eligibility.

The Options Considered section of the PWN notes that not conducting an initial special education evaluation was considered but rejected because of “*Kansas guidelines and a need for information for appropriate program planning*”. The consideration of the 45-day placement option for conducting the initial evaluation discussed with the parents and documented in the August 29, 2024 email written by the Interlocal Assistant Director was not documented as being either considered or rejected.

Interviews and documentation showed that the USD #357 team and the Interlocal #619 team met at the end of October to review the evaluation data collected and discussed the student's eligibility for special education services. An email dated October 22, 2024 written by the Interlocal Director stated:

Following up from our meeting yesterday morning, I would like to start by saying that it felt like it did not go at all as planned from my perspective. I understand that there are definitely some concerns and based on the reading in the room, it felt as if the team was very upset. I want to make sure that we go through the full process to ensure complete understanding. When looking at a student and whether or not they are placed in special education, we must look at both prong one and prong two.

Prong one is "Does the student have a disability?" When looking at prong one, the student in question is coming out low average to average. We must keep in mind that while there are some low average scores, the student has been out 30% of school days from ten suspension days and three additional days of illness. This is an exclusionary factor under chronic absenteeism as he is not receiving any instruction when at home. The State of Kansas defines Chronic Absenteeism as: "Being chronically absent means a student is missing 10 percent or more of school, for both excused and unexcused reasons. This puts the student at a higher risk of not graduating high school and possibly becoming a high school dropout." Kansas Eligibility Criteria Indicators. A child must NOT be determined to be a child with an exceptionality if the determinant factor is: Exclusionary Factor: The child does not otherwise meet the eligibility criteria as a child with an exceptionality if evidence shows that the child's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, chronic absenteeism, etc.

Absenteeism is leading to the lack of exposure to curriculum and instruction in reading, math, and social/emotional learning which is an exclusionary factor. IDEA Section 1414. Evaluations, eligibility determinations, individualized education programs, and educational placements. Special rule for eligibility determination. In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is— (A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 6368(3) of this title, as such section was in effect on the day before December 10, 2015); (B) lack of instruction in math; or (C) limited English proficiency. These are all factors that go into his evaluation when we are looking at the eligibility indicators to determine placement. Based on the exclusionary factors and the low average to average scores, the student does not qualify under prong one.

Prong two states "Is the student's disability impeding his learning?" Prong one indicates no disability. Regardless, when looking at prong two as the team could see, the student scores have increased since the beginning of the year. While he did not have any prior education, he is still showing in the low average to average range with the minimal days he has been in school. He is showing growth, while his suspensions and outbursts have decreased. In the first six days of school, he had already been suspended for an accumulative of four days. We are now at the end of 10 weeks and he has only been suspended an additional six days. While I understand that the behaviors do appear extreme at times, he is showing growth, therefore, it is very important that the interventions continue with the student.

I understand that being in the middle of the situation and handling it day-to-day first hand can feel like there is no growth and like no one is supporting you and there is no assistance. Please rest assured, even though he is not qualifying for special education, Leah [Psych

Paraprofessional] will continue to work with him on social stories. We need to get with Mr. R [SCMHC Therapist] to see what he's working on and try to provide some further guidance in that area. I would suggest that we pick out two to three target behavior areas to focus on specifically with him, taking data to see how frequently these behaviors are occurring with the goal of decreasing these behaviors. At this time, he will need to remain in the HOPE team. Please note that when we provide suggestions, we are not saying you are not doing these things. We are saying that these things must continue to be done with fidelity in order to see growth which takes time. Even if the student were to be placed, he would still remain at the elementary school with his current teacher. However, the team can make decisions, such as a potential teacher change, which is not a placement change. Prek was also another option that was brought up. This is something that could occur if necessary, since PreK is play based and focused on getting acclimated with school. This is a decision the general education team can make.

We understand all of the frustrations that can arise from this situation and we did share that extinction bursts could occur when adding time. When he did have a pretty severe outburst last Tuesday, he had only been attending with the additional time of recess and math for four days. While frustrating, this is normal and expected, and is needed in order for the student to work towards growth where we want him to be. He was able to make it four days before an outburst, this is huge. I know there has been a mention of concern for his safety and the potential of breaking glass. Hannah [Interlocal Assistant Director] did train staff in Belle Plaine in CPI for assistance with any potential safety issues. It is acceptable to put him in a hold when he is being harmful to himself or others. Hannah is more than willing to assist with paperwork.

There was mention that there was concern that the students in the room are not able to learn. This is a great point that I appreciate you bringing to the table. It would be valid to look at student data for all students in the room to show progression or lack thereof. This is important data we can take into consideration when looking at eligibility.

I am concerned that it was asked when he would have a meeting to show results from special education testing. It appeared that the immediate thought was to lean towards an expulsion for this student. I understand he is challenging, however, he deserves the right to a free and appropriate public education. This includes being educated on how to behave in school. The more he is sent home, the more he misses instruction he is needing and the more he is potentially rewarded for his misbehavior. Further, even if he is expelled and sent out, he is a Belle Plaine resident and he will come back to Belle Plaine eventually. Please take this into consideration and let us know how we can assist you in moving this student forward in a positive direction.

There was a question of how long it would take for the exposure factor to no longer be exclusionary. When he has been in school and is not considered to have chronic absenteeism with no further growth in his learning, then we could possibly look at a potential IEP.

An eligibility determination meeting was held on November 6, 2024. The evaluation report only considered the disability category of Developmental Delay and concluded that the student was not eligible for special education. The parent and the USD #357 staff were not in agreement with this conclusion and Interlocal #619 requested and was granted consent from the parent on November 13, 2024 to extend the initial evaluation in order to collect the following additional data:

The team was informed at a meeting on 11/06/2024 that there were sensory and other fine motor concerns that were never discussed previously. Therefore, the Occupational Therapist needs time to work with the student to assess how these concerns impact his education. However, the student has been sick multiple times since that meeting and he is currently only attending school for half the day. The proposed, new due date is 12/20/24.

Emails between the Interlocal Director and the Superintendent dated between November 18 and 19, 2024 reflect concerns related to the need to extend the student's initial evaluation because additional assessments were needed despite the parent providing consent for additional assessment in these areas. The Interlocal Director reported they were not provided with the student's diagnosis until the November 6, 2024 meeting and that the additional concerns in the area of sensory and fine motor were never shared so testing in those areas was not conducted prior to the November 6, 2024 eligibility determination meeting. The Interlocal Director stated in an email:

We would like to further assist, though the interventions appear to not be provided on a consistent basis with fidelity. These are 357 students and it falls back on the district as to whether FAPE is being provided. Our responsibility is to ensure that we are providing the least restrictive environment as a Special Education entity. We take fault for agreeing to gain consent for an evaluation too early in the school year.

Interviews and documentation found the following GEI were provided to the student during the initial and extended evaluation periods: shortened school day; access to a paraprofessional in the kindergarten classroom; social stories; if/then options; frequent breaks; redirection; behavior charts, preferential seating, small groups, 1-1 instruction, Tier 3 interventions, etc. It is also noted that the student received counseling services at the school building from R'Darby Whitsitt, Therapist from SCMH. Despite these interventions, the student had major behavioral incidents on September 3, 9, and 27; October 3, 10, and 15; and November 14, 2024. ESI procedures were required on September 3 and again on November 14, 2024. On November 19, 2024, law enforcement became involved due to incident involving assault/battery which resulted in the student being hospitalized.

The student's grade card for Quarter 1 rated the student as needing improvement in seven of the eight Social & Emotional Development Skills: Listens & follows directions; Makes good use

of time; Waits turn; Participates in group activities; Keeps hands, feet & objects to self; Works & plays well with others; Manages emotions appropriately; and Completes work independently.

The Progress Report for Quarter 2 indicated the student was not making expected progress in reading (recognized 8/26 uppercase letters, 7/26 lowercase letters, 0 letter sounds, 2/10 color words), math (recognized 13 numbers 0-20, rote count to 12/100), and writing (unable to write last name or numbers 1-10 due to shortened school day).

Interviews with the parent and USD #357 staff indicated that an eligibility determination meeting was held on December 16, 2024. The OT evaluation and a Functional Behavioral Assessment were reviewed, eligibility was discussed, and the student was determined eligible for special education under the category of Other Health Impaired. The team then began developing a proposed IEP and BIP for the student. This meeting was stopped at approximately 4:30 PM and the IEP team is scheduled to reconvene to complete the IEP after the holiday break.

An email dated December 19, 2024 at 3:05 PM written by the Interlocal Director stated:

Eligibility was not decided in full at this meeting. A draft IEP was started and the ETR entered and reviewed as it relates to a prospective IEP due to parents and the LEA being adamant of an IEP needed though there is data missing from the parent as well as additional data with frequency, duration, and location of the target behaviors. It is listed in the draft IEP that they are considering DD or OHI . . . The meeting was stopped at 4:20 by the Belle Plaine building principal. It is my understanding that a follow up meeting has been scheduled for 2:15 on January 9th.

Interlocal #619 requested and was granted consent from the parent on December 16, 2024 to extend the initial evaluation. The justification for the extension states, *"The IEP team, including the parent, wants to do a follow-up to complete the IEP and finish discussing needed supports for the student"*. The new due date for completion of the initial special education evaluation is January 31, 2025.

Conclusion

Federal and state regulations require that school districts to conduct a full and individual initial evaluation of a student suspected of having a disability and in need of special education and related services within a 60 school-day timeline unless parents provide written consent to extend the timeline.

In this case, the parent made a request for a special education evaluation on August 26, 2024 and the school district responded appropriately by conducting a review of existing data on August 29, 2024 with the parent in attendance. On that same date, the parents provided written consent to conduct an initial evaluation of the student as described in the PWN.

Interlocal #619 requested and the parent consented to extensions to the evaluation timeline on November 13 and again on December 16, 2024 in order to conduct additional assessments

and gather additional data. The initial evaluation is now required to be completed and eligibility determined no later than January 31, 2025. It is noted that Interlocal #619 did follow the appropriate procedures to extend the 60 school-day timeline for completing the initial special education evaluation.

Interviews and documentation show that while Interlocal #619 did conduct a review of existing data as required, the only suspected area of disability considered was Developmental Delay despite the mental health diagnosis at the age of four and the significant behavioral concerns noted both at home and at school. Interlocal #619 did not develop an appropriate plan for conducting a full and individual special education evaluation by failing to consider other possible categories of disability including Other Health Impaired or Emotional Disturbance.

In addition, Interlocal #619 failed to describe the evaluation procedures to be conducted as part of the initial special education evaluation being proposed by marking that additional assessments would be conducted to obtain "new data" in all areas but then failed to collect this new data in all of the areas for the November 6, 2024 eligibility determination meeting.

Specifically, the August 29, 2024 PWN did not include a clear description of the areas to be assessed which caused miscommunication between the parent, USD #357 and Interlocal #619. While both the parent and USD #357 staff understood that the parent was consenting to additional assessments in all the checked areas, Interlocal #619 staff believed that the parent consent was only being sought because additional assessments may be needed in one or more of the areas to determine eligibility for special education. This miscommunication resulted in the need to extend the 60 school-day timeline twice and to delay the initial eligibility determination of the student.

One of the purposes of a PWN proposing to conduct an initial evaluation is to provide sufficient information to enable the parents to give consent for that proposed evaluation. Federal regulations at 34 C.F.R. 300.9 clarify that part of the definition of "consent" is *"the parent has been fully informed of all information that is relevant to the activity for which consent is sought..."* A district fails to comply with this requirement when it gives a broad description of the areas to be evaluated but does not intend to conduct assessments for which it has requested consent. In this kind of situation, parents are not fully informed of what the district is proposing. Parents should reasonably expect districts to complete all assessments specified in a PWN.

It is also noted that the August 29, 2024 PWN did not include information regarding the 45-day alternate placement to conduct the evaluation option considered and why it was rejected nor did it inform the parent of the need to conduct observations of the student as part of the evaluation

The Kansas Special Education Process Manual provides guidance regarding the need to individualize the special education evaluation on page 36 as follows:

When preparing the prior written notice of its proposal to conduct an initial evaluation, the school staff must plan which assessments and other evaluation measures may be needed to produce the data needed to meet the requirements of eligibility determination (K.A.R. 91-40-8(e)(1); 34 C.F.R. 300.305(c)). Every evaluation should be approached and designed individually based on the specific concerns of the child to be evaluated and existing data. Thoughtful planning is required to ensure the use of appropriate tools to collect the data needed, while eliminating time spent collecting information that is either unnecessary or overly time-consuming for no clear purpose. It would be inappropriate to use the same battery of assessments for all children or to rely on any single tool to conduct an evaluation. To ensure that the necessary and sufficient data will be collected as part of the evaluation, school staff are reminded of the importance of using a variety of assessment tools and strategies to collect relevant functional, developmental, and academic information about the child. There are also requirements that each child be observed in the child's learning environment which will also need to be included on the Prior Written Notice. The team must ensure that each evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs. All appropriate domains should be considered via review of screening and/or GEI data. If potential educationally related deficits are suggested by screening, then the evaluation must provide in-depth assessment in the domain. If screening suggests adequate functioning, then in-depth assessment may be wasteful and irrelevant. In addition to these considerations, the proposed evaluation must yield information needed to rule out any exclusionary criteria when making eligibility decisions, and therefore should plan to collect any needed information related to the exclusionary criteria: lack of instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency (K.A.R. 91-40-10(c); 34 C.F.R. 300.306(b)).

Documentation and interviews indicate the procedures for determining eligibility have not been followed by Interlocal #619 staff. There is confusion regarding if an eligibility determination was made at the December 16, 2024 meeting, which included the parent. Documentation provided by Interlocal #619 includes a PWN for initial eligibility and a draft IEP. However, the email dated December 19, 2024 written by the Interlocal Director states that eligibility has *"not yet been fully determined"* and that the development of the *"prospective IEP was due to parents and the LEA being adamant of an IEP needed though there is data missing from the parent as well as additional data with frequency, duration, and location of the target behaviors."*

While it is unclear whether the parent received the copy of this PWN document for initial eligibility following that meeting as parent consent is not required for this proposed action, it is clear that the parent believed initial eligibility had been determined because the team proceeded to develop an IEP and BIP for the student and a meeting is already scheduled to complete this process following the holiday break.

Documentation and interviews support that USD #619 staff have misinterpreted several eligibility requirements. First, they failed to conduct a “full and complete” evaluation to determine eligibility in all areas of suspected disability. In this case, based upon the student’s mental health diagnosis and services combined with the significant behavioral concerns which occurred prior to the review of existing data meeting with the parent, there was reason to suspect the student may be eligible under the IDEA categories of Developmental Delay, Other Health Impairment, or Emotional Disturbance. The first evaluation report dated November 6, 2024 only considered the category of Developmental Delay which resulted in an extension of the evaluation timeline to gather additional data to determine eligibility under the other categories that should have been suspected.

It is noted that the evaluation did correctly include providing GEI prior to determining eligibility for special education. These interventions were provided concurrently during the evaluation and provided data necessary for the team to consider when determining eligibility for special education.

Second, Interlocal #619 staff appear to misinterpret the exclusionary factors required to be considered during the eligibility determination. Interviews and documentation show Interlocal #619 staff believe the student is not eligible for special education because of lack of instruction in reading and math as a result of “chronic absenteeism”. However, federal regulations at 34 C.F.R. 300.306(b) require that this lack of instruction cannot be the “determinant factor” when making an eligibility determination.

Documentation and interviews support a finding that the student’s lack of instruction in reading and math is a result of the significant behaviors displayed as a result of the student’s mental health diagnoses which have resulted in OSS and never attending a full day of school during the first two weeks of the school year; partial day attendance as GEI beginning on August 29, 2024 and ending on November 19, 2024 when the student was hospitalized at the Camber Children’s Mental Health Center; and the parent keeping the student at home at the recommendation of the Camber Center until special education eligibility can be determined.

Based on the foregoing, the district is found to be OUT of compliance for this issue.

Issue Two

Did USD #357 and USD #619, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), fail to follow appropriate disciplinary procedures for a student suspected of having a disability during the 2024-25 school year?

Applicable Law

Federal regulations at 34 C.F.R. 300.534(d) state that if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the

child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services to the student for any disciplinary change of placement that occurred.

Federal regulations at 34 C.F.R. 300.530 require specific procedures to be followed when a student with a disability or suspected of having a disability are subject to a disciplinary change of placement as a result of a violation of the student code of conduct.

Federal regulations as C.F.R. 536(a) define a disciplinary change of placement as occurring when a student's educational placement has been changed for more than 10 consecutive school days or for more than 10 cumulative school days when a pattern exists due to disciplinary action resulting from a violation of the student code of conduct.

Analysis: Findings of Fact

The findings of Issue One are incorporated herein by reference.

The parent initially requested a special education evaluation for the student on August 26, 2024 when USD #357 staff sent the student home on that date with an additional two days of OSS.

On August 29, 2024, the parent agreed to GEI of partial day attendance in kindergarten with the student leaving at 11:20 a.m each school day. The parent signed consent for an initial special education evaluation on this same date.

Documentation shows the student was sent home early on September 3, 2024 and was assigned OSS due to violations of the student code of conduct on September 4, 2024; however, no other early dismissals or disciplinary actions were noted in behavior logs. As a result of the success of the GEI, the student's partial day attendance was extended to 12:40 p.m. each school day beginning on October 9, 2024.

Documentation shows the student was sent home early due to violations of the student code of conduct on the following dates: October 14 and 15, 2024. The student was then assigned five additional days of OSS starting on October 16 and ending on October 22, 2024. As a result of the behavioral concerns, the student's GEI partial day attendance was changed back to 11:20 a.m. each school day beginning on October 23, 2024.

Documentation shows the student was assigned OSS on October 30, 2024 and was sent home early on November 14, 18, and 19, 2024. The student was hospitalized and was not sent back to school by the parent at the recommendation of the Camber Children's Mental Health Center. It is noted that the student does continue to be enrolled in USD #357 awaiting the results of the initial special education evaluation.

Conclusion

In this case, the parent initially requested a special education evaluation of the student on August 26, 2024 as a result of disciplinary action resulting from a violation of the student code

of conduct and the district was required to expedite the initial evaluation of the student. As noted in Issue One, this did not occur and noncompliance has actually resulted in two extensions to the evaluation timeline. Currently the evaluation must be completed no later than January 31, 2025 which is more than five months from the date the parent signed consent for the initial special education evaluation.

It is noted that since the date of consent for the initial special education evaluation, the student has been subject to disciplinary action due to violations of the student code of conduct on 13 days between August 29, 2024 and the last day of school attendance on November 19, 2024. In addition, the student has been enrolled and waiting for the eligibility determination for 18 school days through the end of the first semester plus any additional days missed during the second semester until eligibility for special education is determined. Based on this data, the student has missed a total of 31 days due to leaving early or OSS. Because a disciplinary change of placement occurs starting on day 11, the student is found to have experienced a disciplinary change of placement for a total of 20 days during the first semester of the 2024-25 school year due to early dismissals and OSS.

Based on the foregoing, USD #357 and Interlocal #619 are found to be OUT of compliance in regards to this issue.

Summary of Conclusions/Corrective Action

ISSUE ONE: Violations of federal and state regulations are found in the following areas:

- 1) Federal regulations at 34 C.F.R. 300.301 and state regulations at K.A.R. 91-40-8(f) which require school districts to conduct a full and individual initial evaluation of a student within 60 school-days of receiving parental consent to determine if a child is a child with a disability and in need of special education and related services.
 - a) Corrective Action Required
 - i. Within 10 days of this report, both Interlocal 619 shall provide to SETS an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.301 and state regulations at K.A.R. 91-40-8(f).
 - ii. Per the most recent evaluation timeline extension, an eligibility meeting shall be held with parent participation and "full" eligibility for special education determined no later than January 31, 2025 considering, at a minimum, the eligibility categories of Developmental Delay, Other Health Impaired, and Emotional Disturbance. The parent will be provided with appropriate PWN regarding the eligibility determination and SETS will be provided with a copy of the Evaluation Report and the PWN no later than 10 days following the eligibility determination meeting date.
- 2) Federal regulations at 34 C.F.R. 300.305(a)(2) which require that, based upon that review and input from the child's parents, the IEP team must identify what additional data, if any, are needed to determine whether the child is a child with a disability and

the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

a) Corrective Action Required

- i. Within 10 days of this report, both Interlocal 619 shall provide to SETS an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.305(a)(2).
 - ii. Interlocal 619 shall review all policies, procedures, and practices to ensure that specific data is identified at all future reviews of existing data which will be needed to determine eligibility for all the areas of suspected disability. A summary of this review and the changes/edits, if any, shall be provided to SETS within 60 days of the date of this report. If changes/edits are made, the summary must include a plan to inform all relevant staff of these changes.
- 3) Federal regulations at 34 C.F.R. 300.305(c) which require that all such assessments and other evaluation measures be administered in order to obtain the necessary data in order to determine eligibility for special education.

a) Corrective Action Required

- i. Within 10 days of this report, both Interlocal 619 shall provide to SETS an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.305(c).
 - ii. No later than the last day of the 2024-25 school year, Interlocal 619 shall provide SETS with three samples of completed evaluation reports completed following the date of the review of policies, procedures, and practices which document that all assessments and other evaluation measures were administered to determine eligibility in the suspected area(s) of disability based upon the review of existing data.
- 4) Federal regulations at 34 C.F.R. 300.306(b) which require that a lack of instruction in reading and math must not be the determinant factor for making an eligibility decision.

a) Corrective Action Required

- i. Within 10 days of this report, both Interlocal 619 shall provide to SETS an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.306(b).

- 5) Federal regulations at 34 C.F.R. 300.503(b)(1,6) which require the parent be provided with appropriate PWN describing the evaluation procedures proposed to be conducted as part of the special education evaluation as well as a description of the other options considered and why those options were rejected.

a) Corrective Action Required

- i. Within 10 days of this report, both Interlocal 619 shall provide to SETS an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.503(b)(1,6).
- ii. No later than the last day of the 2024-25 school year, Interlocal 619 shall provide SETS with three PWNs requesting consent for initial evaluations for the evaluation reports provided per the corrective action ordered in 3(a)(ii) above which show the specific evaluation procedures that were proposed and the other options considered and rejected.

ISSUE TWO: A violation of federal regulations is found in the following area:

- 1) Federal regulations at 34 C.F.R. 300.534(d) which state that if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. In this case the parent requested an initial special education evaluation of the student on August 26, 2024 when informed of the student's suspension from school resulting from a violation of the student code of conduct. The district appropriately responded to the request but failed to expedite the evaluation to determine eligibility for special education and has sought two extensions to the evaluation timeline to date.

b) Corrective Action Required

- i. Within 10 days of this report, both USD #357 and Interlocal 619 shall provide to SETS an assurance statement that it will comply with federal regulations at 34 C.F.R. 300.534(d)
- ii. Per the most recent evaluation timeline extension, an eligibility meeting shall be held with parent participation and eligibility determined no later than January 31, 2025 and the parent will be provided with appropriate PWN regarding the eligibility determination. If the child is found to be eligible for special education and an IEP developed, the IEP team will offer a minimum of 20 days of services to compensate for not providing services following the disciplinary change of placement that occurred during the first semester of the 2024-25 school year. Documentation of the eligibility determination and the offer of compensatory services shall be provided to SETS no later than February 15, 2025.

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. 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)