

**Lake Park Audubon Independent School District #2889**  
Minnesota State Educational Agency  
08-030C  
January 16, 2008

**Case Summary**

The fact that a child lived in three different foster homes during her time in kindergarten bolstered a district's decision to delay a special education referral. Noting that the district referred the child when classroom interventions proved unsuccessful, the ED found no evidence of a child find violation. The ED found no fault with the district's consideration of the child's circumstances. Not only was the child younger than many of her classmates, but she transferred to the district mid-year after being placed in a new foster home. The district believed that the child's academic difficulties stemmed from her "relatively young age" and the interruptions in her education. As such, the district recommended that the child repeat kindergarten. When Title I services proved ineffective, the kindergarten teacher requested pre-referral interventions. The district referred the child for a special education two months later based on her continued academic struggles. Recognizing that the district eventually found the child eligible as SLD, the ED nonetheless determined that the delay in the referral process was appropriate. "Given the [child's] age and multiple home placements, it is reasonable for the district to have attempted other strategies prior to initiating a special education evaluation," the ED wrote. The ED further noted that Minnesota law requires districts to attempt at least two interventions in the general education setting before referring a child for a special education evaluation.

**Full Text**

Dear Superintendent:

This letter is to inform you of the findings of the complaint entered by [Complainant] on behalf of [Student], who received services from Lake Park Audubon ISD #2889 (District). What follows is the report of the investigation, the issues, findings of fact, conclusions of law or rule, and order, where applicable. [Investigator] coordinated the investigation.

This investigation primarily consisted of a review of the Student's educational records as well as discussions with the Complainant and District staff.

Issue

The Complainant alleges the District failed to identify the Student as a student in need of special education and related services when she enrolled in the District in February 2006. The Complainant asserts the Student's lack of academic progress should have indicated to the District the Student's special education needs.

Findings of Fact

1. The Student is seven years old and was enrolled at the District until May 2007. She is no longer a resident of the District. The Complainant is the Student's former guardian.
2. The Student was enrolled in kindergarten at another district from September 2005 until late February 2006.
3. A Student Academic Improvement Plan was written for the Student on February 6, 2006. The Improvement Plan notes:

This is a new AIP February 2006. [Student] is not learning academic skills; she is making little gains in learning names of letters, letter sounds, numbers and counting. She has difficulty remembering concepts and applying them. Her behavior is very impulsive, she acts without thinking, and is constantly in motion. She is in a foster home placement and has supervised visits with parent. Foster mom reports that she has difficulty helping [Student] with homework because she is not cooperative and her attention is so short. Her behavior is very impulsive, she acts without thinking, and is constantly in motion. Because of her home situation, it was felt that [Student] needed time to adjust and maybe she would begin learning skills later in the year. This has not happened so this AIP is started in February 2006. It may be in [Student's] best interests to repeat the Kindergarten year so that she can acquire the skills necessary for first grade success.

4. On February 16, 2006, the Student left her home placement, was transferred to the Complainant's care, and enrolled in District. According to District records, she attended 29 days of the possible 33 remaining in the 2005-06 school year.
5. Upon her enrollment, the District instituted additional services for the Student under a Title 1 grant. Title 1 is a federal grant available to districts with a high rate of students in poverty.

6. According to District staff:

By the end of the year, [Student] was showing improvement in listening & following directions promptly, demonstrating adequate attention span, using writing and drawing tools with confidence, using tools to gather information, following classroom rules and routines, but she still needed to work on letter, sound and number recognition. She had satisfactory progress in social, science, health, Phy. Ed., music, art and handwriting. Retention in Kindergarten was recommended due to her skill levels, relatively young age (born in June 2000), as well as the interruptions in her academic learning due to her many life transitions (two foster homes, in different parts of the state, within six months).

7. The Student repeated kindergarten for the 2006-07 school year with a new kindergarten instructor.
8. The Student's new kindergarten instructor reported the Student began the 2006-07 school year knowing three uppercase and lowercase letters. At the start of the year, the kindergarten teacher reported the Student was learning new academic skills, but that later evaluations indicated a lack of retention.

9. Title 1 services were reinstated for the Student on November 7, 2006, which consisted of small group and one-on-one instruction for 20 minutes two or three days a week.
10. The Student's kindergarten teacher referred the Student to the teacher assistance team for possible special education pre-referral interventions in January 2007.
11. The Student's home placement was changed from the Complainant's home to another foster setting on January 12, 2007.
12. According to the District:

Two systematic interventions were completed with the Student from 2/1/07 until 3/5/07. By February 27, she knew all but five upper case letters and all but 6 lower case letters. She knew all but nine sounds. She was able to identify numbers 1-10, and some two-digit numbers. By March 13, 2007 she learned more numbers, learned two more upper case letters (but missed one she already knew) and learned four new sounds. It was then determined she needed an evaluation to determine if she was a child with a disability.
13. The Student's then-guardian agreed to the District's evaluation plan on March 19, 2007.
14. An evaluation of the Student was completed on April 30, 2007. The evaluation indicated the Student met eligibility criteria for a specific learning disability. The Student was disenrolled in May 2007.

### Conclusions

1. Districts have an obligation to identify students with disabilities residing within their borders. 34 C.F.R. § 300.111(a).
2. Minnesota law requires districts to attempt, if possible, at least two pre-referral strategies while the student is still in the regular education setting. Minn. Stat. § 125A.65(a).
3. Here, the District initially provided the Student with Title 1 services based on her academic and behavioral needs. When that strategy proved unsuccessful, the Student's kindergarten teacher obtained pre-referral interventions in January 2007. While the interventions were helpful, the District requested permission to evaluate by March 2007, and completed the evaluations within the allowed timeframe.
4. Given the Student's age and multiple home placements, it is reasonable for the District to have attempted other strategies prior to initiating a special education evaluation.

### Decision

The District did not violate 34 C.F.R. § 300.111(a) when it evaluated the Student for possible special education eligibility within a reasonable amount of time.

The authority to review complaints is given in the federal regulations to the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. § 300.151-153. Questions about this decision should be directed to the [complaint investigator]. Since no violations are found during the course of this investigation, this file is hereby closed. Nothing further is required of either party.

**Regulations Cited**

34 CFR 300.111(a)