

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON APRIL 15, 2025

DATE OF REPORT: MAY 14, 2025

This report is in response to a complaint filed with our office by ----- on behalf of one of her students, ----- as well as four other students in her classroom. For purposes of this investigation, the five students identified by the complainant will be identified as "Student One," "Student Two," "Student Three," "Student Four," and "Student Five" for the remainder of this report. ----- will be referred to as "Student Four." ----- will be referred to as "the complainant." USD #259 will be referred to as "the district."

Investigation of Complaint

Any individual or organization may file a formal complaint if they believe that - within the 12-month period prior to the receipt of that complaint by KSDE - a school district did not comply with federal or state laws or regulations relating to special education.

If the complaint involves a specific child, the formal complaint must include

- the name and address of the child;
- the name of the school the child is attending;
- a description of the problem involving the child; and
- a proposed resolution to the problem, if a possible resolution is known and available to the complainant (K.A.R. 91-40-51).

The complainant is a teacher in a district middle school. She has been assigned to teach a "Mixed Abilities" class. The complainant provided the name of one of her students to the Education Program Consultant at the Special Education and Title Services (SETS) division of the Kansas State Department of Education (KSDE). That student is identified in the appointment letter sent by the consultant to the parties and to the complaint investigator on April 14, 2025 as "Student 1 of 5."

The complainant did not, however, include the name of any of the other four students referenced in her formal complaint nor did she provide any contact information regarding the parents of the students.

Additionally, the facts provide by the complainant provide few specifics to direct the investigator toward any individual student. While Student One is identified by name in this complaint, the facts listed under Student One in the written complaint show that the family of

Student One "speaks Vietnamese" which the family of the student named as Student One does not.

While she included copies of prior written notice documents in support of her complaint, all student-specific information had been redacted. A screen shot of a text included in the submitted complaint contained the first name of one student but no other identifying information.

The investigation of a formal complaint requires the investigator to contact the complainant in order to gather additional information and verify specific allegations of noncompliance that may be relevant to the investigation. To that end, the investigator spoke by telephone with the complainant on April 17, 2025.

During the telephone conversation, the investigator requested that the complainant provide the names of the five students referenced in her complaint so that each specific case could be investigated. The investigator also requested that the complainant share contact information regarding the parents of each of these students so that the investigator could reach out to those individuals regarding issues specified in the complaint.

The investigator received an email from the complainant on the evening of April 17, 2025, stating that

"After receiving legal counsel on this matter today, I have been advised not to share parents names to you (sic). I can provide contact information to parents if you would like. This would allow you to speak with you if they feel safe to. I believe there was enough information provided including the attachments sent to the district. If your office decides that an investigation is necessary, I can only imagine that USD 259 will fully cooperate...I do not have any further vested interest in this district, therefore, I have no other reason to communicate with you."

The investigator responded to the complainant via email telling the complainant she could share the investigator's contact information, but the investigator received no follow up call from any of the parents. The mother of one of the students (the student identified in the complaint as "Student 1 of 5") did, however, send an email to the Director of Special Education and Title Services (SETS) providing her contact information.

On April 17, 18, and 23, and on May 1 and 8, 2025, the complaint investigator spoke via telephone with the Mediation/Due Process Supervisor for the district. With input from the investigator and the Mediation/Due Process Supervisor, the district was able to determine the identity of Student One, Student Two, and Student Four. Student Three and Student Five could not be positively identified.

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

- Documents related to Student One:
 - Consideration for Waiver Review dated March 28, 2025

- Waiver of Reevaluation Agreement Form dated March 28, 2025 (English language version)
- Waiver of Reevaluation Agreement Form dated April 1, 2025 (Vietnamese language version)
- Special Ed Student Contact log regarding this student covering the period of August 22, 2017 through April 25, 2025
- Child Study Team (CST) agendas for February 4, 11, and 25 and March 4, 11, and 25, and April 1 and 8, 2025
- Documents related to Student Two:
 - Consideration for Waiver Review dated January 29, 2025
 - Waiver of Reevaluation Agreement Form dated March 28, 2025
 - Special Ed Student Contact log regarding this student covering the period of March 12, 2018 through April 23, 2025
 - Email exchange dated April 23, 2025 between the school social worker and the student's mother
 - CST agendas for January 28, February 4, 1, and 25, March 4, 11, and 25, and April 8, 2025
- Documents related to Student Four:
 - Consideration for Waiver Review dated February 11, 2025
 - Waiver of Reevaluation Agreement Form dated February 11, 2025
 - Special Ed Student Contact log regarding the student covering the period of August 27, 2016 through April 23, 2025
 - Email dated April 15, 2025 from the mother of Student Four to the Director of SETC
 - Email exchange dated April 22, 2025 between the school social worker and the mother of Student Four
 - Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 23, 2025
- Email dated April 15, 2025 from the mother of Student to the Director SETS
- Evaluation and IEP Procedures Chart dated August 2024
- Triennial Reevaluation Waiver Process guidelines dated August 2024
- Consideration for Waiver Review (sample form)

Issues

In her complaint, the complainant identified two issues related to the reevaluation of students:

Issue One

The district has failed to obtain the informed written consent of parents when waiving the three-year reevaluation.

Position of the Complainant

The complainant asserts that the district sent the parents of four of her students documents requesting their written consent to waive the triennial reevaluation of their child. Affixed to these documents were "sticky notes" and/or arrows pointing to the signature line indicating where the parent was to sign the form.

According to the complainant, the parents of two of these students had previously told her that they wanted their child to be reevaluated. The complainant reports that she was told by these parents that no one from the district had discussed the waiver of reevaluation form with them before the form was sent home. The complainant states that these parents (one whose primary language is Vietnamese) told her that they did not understand the form and were not aware that by signing the form they were waiving the student's right to a reevaluation.

The complainant further contends that district documents related to the waiver of reevaluation showed that she had participated in a meeting regarding the waiver and agreed with the recommendation. It is the position of the complainant that she neither participated in that meeting nor agreed with the recommendation to waive the reevaluation.

Applicable Statutes and Regulations

An evaluation that is conducted for a child currently identified with an exceptionality, is considered a reevaluation. The reevaluation process is required in order to determine

- (1) If the child continues to be a child with an exceptionality;
- (2) whether the child continues to need special education and related services;
- (3) the educational needs of the child;
- (4) the present levels of academic achievement and functional performance (related developmental needs) of the child; and
- (5) 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.

Schools must ensure that a reevaluation of each child with an exceptionality is conducted if conditions warrant a reevaluation, or if the child's parents or teacher requests a reevaluation, but at least once every three years. Reevaluations may not occur more than once a year, unless the parent and the school agree otherwise. New requirements also allow the parent and the school to agree that a three year reevaluation is not necessary (K.S.A. 72-3428(h)(2)(B); 34 C.F.R. 300.303(b)(2)). The district and the parents must agree that a child's triennial reevaluation can be waived.

Documentation of this agreement must be maintained (Federal Register, August 14, 2006, p. 46640, 46641).

At K.S.A. 72-3428, Kansas statutes state:

"(k) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be an exceptional child and the child's educational needs, the agency:

(1) Shall notify the child's parents of:

(A) That determination and the reasons for it; and

(B) the rights of such parents to request an assessment to determine whether the child continues to be an exceptional child and the child's educational needs; and

(2) shall not be required to conduct such an assessment unless requested by the child's parents."

The agreement to waive reevaluation extends the date for the next three-year evaluation to three years from the date when the last signature is placed on the agreement, whether that is the district's signature or the parent's signature.

Position of the District

The district asserts that it has complied with special education statutes and regulations regarding special education reevaluations, has established a process to be followed by staff when determining whether or not to waive a triennial reevaluation, has provided written guidance that instructs teams on how to correctly follow that process, and has provided targeted training to staff regarding the process. It is the position of the district that, in the case of Student One, Student Two, and Student Four, the district's established process was correctly implemented, and the informed written consent of the parents of each of these students was obtained before the three-year reevaluation of these students was waived.

Investigative Findings

As of August 2024, the district had established a "Triennial Reevaluation Waiver Process" to "be used...at the middle and high school levels...[That process may] be considered for student with the sole exceptionality of Gifted in grades K-12." The process is summarized in a district-developed document which states that

"A reevaluation is to occur at least once every three years, unless the parent and the school agree that a reevaluation is unnecessary (K.S.A. 72-3428(h)(2)(B); 34 C.F.R. 300.303(b)(2)). Prior to conducting a reevaluation the parent and the school shall determine whether a reevaluation is needed. They must consider the child's educational needs, which may include whether the child is participating in the general education curriculum and being assessed appropriately. The parent and the school will discuss the advantages and disadvantages of conducting a reevaluation, as well as what effect a reevaluation might have on the child's

educational program (Federal Register, August 14, 2006, p. 46640, 46641). Documentation of this agreement must be maintained."

In August 2024, the district also developed a document entitled "Evaluation and IEP Procedures Chart" which was intended to provide guidance to staff regarding the organization and maintenance of special education student records. The chart specified what forms were to be utilized in various situations (Initial Evaluation, Reevaluation, Annual IEP, IEP Amendment, etc.) The chart includes a section entitled "Waiver of Reevaluation." In that section, staff was directed to use two forms:

- Consideration for Waiver Review Form, and
- Reevaluation Waiver Agreement Form.

Signature pages from these forms are to be "submitted to IEP Support." Teams are directed to "begin [the] review process a minimum of 2 months before the reevaluation due date" and to "make sure both Parent and School Representative sign the Waiver Agreement Form" utilizing electronic signatures when possible.

Beginning in August 2024, the district put in place the following written guidance to assist school staff in making decisions regarding reevaluation.

"1. Team completes the Consideration for Waiver Review Form in [the student information system] as part of the process for determining whether a triennial reevaluation is needed.

- *If the team determines a reevaluation is needed, see the Reevaluation Process document.*
- *If the team determines a waiver of reevaluation is appropriate, proceed with step 2.*

Consideration for Waiver Review Form Notes:

- *The Consideration for Waiver Review form should be started well in advance (recommended 6 to 8 weeks) of the student's triennial reevaluation due date.*
- *The Consideration for Waiver Review form does not require signatures or entry of all IEP team members. You only need to include the names of CST members completing the form.*
- *Formal teacher reports are not required as part of the Consideration for Waiver Review Process. CST should work with the student's IEP manager to discuss information relevant to whether a reevaluation is needed and if teacher reports are needed to make the determination.*
- *Teams should finalize the Consideration for Waiver Review form when completed. There is no need to wait for parent signature on the Waiver of Reevaluation Agreement Form.*

2. Team collaborates with parent. Parent input is a critical part of determining whether a triennial reevaluation is needed. CST should discuss information on the Consideration for Waiver Review Form with parents well in advance of the reevaluation due date.

- *If parent agrees to waive reevaluation, proceed to step 3.*
- *If parent does not respond or does not agree to waive reevaluation, prepare PWNE for reevaluation and send to parent with copy of Parent Rights.*

Parent Collaboration Notes:

- *Parent signature is not required on the Consideration for Waiver Review Form, only on the Reevaluation Waiver Agreement Form.*
- *Teams do not need to give a copy of the Consideration for Waiver Review Form to parents but can do so if parents request or if it would help the parent meaningfully participate in determining whether a triennial reevaluation is needed.*

3. Obtain parent signature (paper or electronic) on Waiver of Reevaluation Agreement Form in [the student information system] via one of the following:*

- *Regularly scheduled IEP meeting if before reevaluation due date*
- *Conference between parent and designated support staff*
- *Phone call between parent and designated support staff with Waiver of Reevaluation Agreement Form mailed or emailed and returned.*

**You must have parent signature and school representative signature on the Waiver of Reevaluation Agreement Form. If unable to obtain parent signature, pursue Reevaluation Process.*

4. Finalize Waiver of Reevaluation Agreement Form and send signature page (if paper signature) to IEP Support.

5. Waiver is complete."

According to district practices, the Consideration for Waiver Review does not require a formal convening of a student's IEP team. Instead, it is the Child Study Team that reviews information regarding the need for reevaluation. Formal teacher reports are also not required as a part of the waiver review process. However, when completing the Consideration for Waiver Review document, the CST is expected to work with the student's IEP manager to discuss information relevant to the decision-making process.

At the building where the students identified in this complaint are assigned, the CST is made up of one or more counselors, one or more social workers, a school psychologist, the building principal, the assistant principal and other individuals such as a school nurse and classroom and/or special education teachers who may have relevant information. The CST reviews the possibility of a reevaluation waiver for any given student over a period of several weeks beginning well before the reevaluation due date.

The review process forms allow for the listing of individuals who contributed information regarding the need for a reevaluation but does not require the signatures of those individuals. The date on the waiver review form reflects the CST meeting date when the team has determined from the school's perspective that a reevaluation is not needed. That date does not reflect all the meetings wherein the possible waiver was discussed.

After the CST has completed the Consideration for Waiver Review form and the team has made the determination that it would be appropriate to consider waiving a reevaluation, the CST collaborates with parents to gain their input in making the final decision regarding whether or not a reevaluation is needed. A designated CST member reviews the information on the Consideration for Waiver Review Form with parents in advance of the reevaluation due date. If the parent also feels that it would be appropriate to waive the reevaluation, the parents are sent a Waiver of Reevaluation Agreement Form for their signature. A CST representative must also sign off on the form to show agreement regarding the waiver of the reevaluation.

The district-created Waiver of Reevaluation Agreement Form contains all of the components of the Kansas State Department of Education (KSDE) sample form (see the "Re-evaluation Not Needed Agreement Form 8-05" at <https://www.ksde.gov/Default.aspx?tabid=544>) including the statement that "both parties understand that a reevaluation may be requested by either party at any time in the future".

Special education statutes and regulations do not specify a timeline for when the consideration for waiving a reevaluation process must begin. The district has determined that two of its guidance documents are inconsistent in statements directing teams when to begin the consideration process ("2 months" vs. "6-8 weeks" prior to the due date of the reevaluation) and is taking steps to amend its guidance for consistency. (The timing of the implementation of the waiver process is not at issue in this complaint.)

Training with School Psychologists (a school psychologist serves on this school's CST) on waiver procedures was conducted in January of 2024. Additional staff training was provided in both October 2024 and January 2025.

Student One:

This student was determined eligible for special education services under the category of Autism. He currently receives support for math, ELA, social studies, and science through the Mixed Abilities program and also receives speech and language services. Student One requires adult assistance to move to and from classes and to walk from his last hour class to the bus. The IEP team met for the student's annual IEP review on March 11, 2025.

This student's reevaluation due date was May 12, 2025. CST agendas produced by the district show that, on February 4, 2025, the CST began discussing a potential waiver for the student's reevaluation. Additional discussions of the need for reevaluation were documented on February 11 and 25, and March 4, 11, and 25, 2025. In completing the Waiver Review form,

the CST received input from the school psychologist, speech/language pathologist, and social worker. The CST consulted with the student's IEP Manager (who is not the complainant) in the Consideration for Waiver Review process, completing the form on March 28, 2025, at which time the Principal accepted and signed the Waiver of Reevaluation Agreement form.

The school social worker was assigned responsibility for contacting the student's mother to solicit her input regarding the waiver of reevaluation. Although the student information system for the school shows that the parent designated English as the primary language of the home, the district states that the school has routinely used a Vietnamese translator service when communicating with the parent and has provided written notice to the parents in both English and Vietnamese.

On April 1, 2025, the social worker called the student's mother via the district's Multilingual Educational Services (MES) translator. In the course of the call, the parent agreed to the waiver process in lieu of conducting a reevaluation and asked for paperwork to be sent home with student. On April 1, 2025, the social worker sent home copies of the waiver of reevaluation agreement via the student's backpack. One version of the form was in English, the other in Vietnamese. On April 2, 2025, a second Vietnamese version of the form was sent home to the student's mother who signed the form that same date and returned it to the school.

The CST kept the student on their meeting agendas for April 4 and 11, 2025 to discuss and update the team about receiving the parent signature on waiver and finalizing the process.

In an effort to ensure that the student's mother had clearly understood that she had agreed to waive the triennial reevaluation of the student, the school social worker placed a call to the parent via the MES translator the morning of April 25, 2025. The school psychologist sat in on the call. The parent told staff that she wished to proceed with the waiver of the reevaluation as previously agreed and had no questions or concerns at that time. The school social worker again told the student's mother that parents have the right to request a reevaluation at any time.

Student Two:

This student was determined eligible for special education services under the category of Intellectual Disability. He receives core instruction in the Mixed Abilities program and attends elective classes with paraprofessional support. He also is supported by a paraprofessional for lunch/recess. The IEP team met for the student's annual review on March 11, 2025.

This student's reevaluation due date was May 9, 2025. His last previous reevaluation was completed on May 10, 2022. According to CST meeting agendas provided by the district, the CST began discussing a potential waiver for the student's reevaluation on January 28, 2025 (although the Consideration for Waiver Review form is dated January 29, 2025). Additional discussions of the need for reevaluation were documented on February 4, 11, and 25 and March 4, 11, and 25, 2025. In completing the Waiver Review form, the CST received input from

the school psychologist. The IEP Manager (the complainant) was - according to the waiver review form - consulted on January 30, 2025. No specific input from the complainant is, however, documented on the waiver review form. Based upon the documentation provided by the district, it is unclear when the waiver review was finalized. The Principal accepted and signed the Waiver of Reevaluation Agreement form on March 28, 2025.

A district-produced contact log for this student shows that the school social worker placed a call to the student's mother on April 1, 2025 regarding the waiver of reevaluation. When the parent did not answer, the log notes that the social worker left a voicemail message regarding "paperwork." The social worker placed a second call to the student's mother on April 2, 2025 at 10:10 AM to discuss the potential waiver of reevaluation. The school psychologist also sat in on the call. According to the contact log, the student's mother stated that she had "not yet listened to the voicemail" left the previous day by the social worker. The parent reported that "she just got off the phone with the IEP manager [the complainant] who "relayed incorrect information about the waiver process." According to the contact log, the parent had "no concerns for [the student] at [that] time, other than [his] transition to high school. "Mother states that she is happy with the placement and services he is currently receiving...and states that she would like him to remain in that program through high school."

The contact log shows that the "mother confirmed that she [was] willing to proceed with waiver, [and] asked social worker to resend waiver paperwork home with [the student]." The parent electronically signed the waiver of reevaluation agreement form on April 2, 2025.

An April 23, 2025 entry in the contact log shows that the school social worker placed another call to the student's mother on that date to discuss the waiver and confirm that the parent was comfortable with the district's recommendation that a formal reevaluation be waived. The parent stated that she had been "confused by additional information given/sent by the IEP manager [complainant]." The social worker reviewed the waiver process, the reasons for a reevaluation, and the CST's reasons for recommending that a reevaluation be waived. According to the log, the social worker told the parent that she could request a reevaluation at any time.

The parent agreed to send an email to the district confirming her agreement with the waiver. That confirmation email from the parent was sent at 10:40 PM on April 23, 2025.

Student Three:

The complainant did not identify this student by name. While her written complaint included the statement that "all documents are available upon your request and clearance," the complainant did not provide any documents to support her contention that the parents of Student Three had repeatedly asked for a reevaluation of the student.

No evidence was provided by the complainant to show that this student had not had a reevaluation report "put into the IEP since the child was 6" or to support the complainant's

contention that the student had "not been reevaluated since age 6; she [emphasis added] is now 14." In an effort to determine the identity of this student, the district reviewed the files of all female students on the complainant's caseload who were scheduled to be reevaluated during the 2024-25 school year. All had been reevaluated after the age of 6.

Because this student could not be identified, circumstances surrounding Student Three were not investigated further.

Student Four:

This student was determined eligible for special education services under the category of Autism. He receives core instruction in the Mixed Abilities program and attends elective classes with special education support. He also is supported for lunch/recess. The IEP team met for the student's annual review on March 21, 2025.

This student's reevaluation due date was March 7, 2025. His last previous reevaluation was completed on March 8, 2022. CST agendas provided by the district show that on January 14, 2025, the CST began discussing a potential waiver for the student's reevaluation. Additional discussions of the need for reevaluation were documented on January 28, and February 4 and 11, 2025. In completing the Waiver Review form, the CST reviewed data from the student's previous IEP and considered the student's current grades. Input was provided by the school psychologist who had previously consulted with the IEP Case Manager. The Consideration for Waiver Review process was completed on February 11, 2025, at which time the Principal accepted and signed the Waiver of Reevaluation Agreement form.

According to the contact log provided by the district, the school social worker contacted the student's mother on February 11, 2025 regarding the reevaluation waiver. The contact log shows that the parent "agrees to waiver process and states she can sign electronically.

On February 22, 2025, the mother of Student Four electronically consented to waive the triennial reevaluation of Student Four. The Waiver of Reevaluation Agreement Form signed by the parent states

"Special Education law requires a re-evaluation of a child with an exceptionality at least once every three years, unless the school and the parents(s), or other legally authorized education decision maker, of the student agree that a re-evaluation is unnecessary. The above named parent(s)/legal decision maker and the school representative, representing the consensus of the Child

Study Team, agree that a re-evaluation for the above named student is not necessary at this time, and therefore no reevaluation will be conducted. Both parties understand that a reevaluation may be requested by either party at any time in the future. The above named student will continue to be considered a student with an exceptionality and will continue to receive the special education services identified in the Individual Education Plan."

On February 25, 2025, the CST again reviewed Student Four, confirming parental agreement with the reevaluation waiver and finalizing the waiver process.

The mother of Student Four sent an email to the Director of SETS on April 15, 2025 stating

"It has come to my attention that I signed the waiver form for re-evaluation. It was NOT my intention to sign the waiver form as I want my child...to continue with the re-evaluation every 3 years."

The school social worker placed a call to the student's mother on April 22, 2025 to discuss the reevaluation waiver. When the parent did not answer, the social worker requested a return phone call. The parent subsequently called the social worker. In their conversation, the contact log states that the parent

"...reports that she was confused by additional paperwork that was sent home by IEP manager at the same time and states that she was under the impression that in signing the waiver form, she was exiting her child from the Mixed Abilities program [but] after social worker explained the purpose and the reevaluation process and clarified the waiver process, parent reports that she better understands the waiver process and agrees with the team's original recommendation that a reevaluation is not necessary at this time."

On April 22, 2025, the school social worker sent an email to the mother of Student Four summarizing their telephone conversation regarding the waiver process. The social worker wrote

"If you wish to proceed with the team's proposal to waive the reevaluation at this time, please copy and paste this statement in your reply email:

"I [parent's name] agree to waive the triennial reevaluation as originally proposed on February 11, 2025."

The parent responded to the social worker via email on April 22, 2025 including the above statement.

On April 23, 2025, the district sent the parent a prior written notice form summarizing the history of the district's request for parental consent to waive the reevaluation of Student Four as follows:

"On 4/22/25 social worker spoke to mother...Social worker informed mother that this worker was calling to touch base about the concern submitted to clarify any confusion and answer any questions about the waiver process. Mother reports that she was confused by additional paperwork that was sent home by IEP manager at the same time and states that she was under the impression that in signing the waiver form, she was exiting her child from the Mixed Abilities program. Social worker explained that schools are required to conduct a reevaluation every three years unless the parent and the school agree that a reevaluation is unnecessary. [Student Four] was due for a reevaluation this school year. After reviewing his

special education file, previous evaluations, and current performance, the team felt a reevaluation to determine if [Student Four] continues to need special education and related services under the exceptionality of Autism was not warranted at this time and [Student Four] continues to qualify under this exceptionality and placement within the Mixed Abilities program. The team believes that any changes needed in the IEP can be made by the IEP team without standardized assessments or the reevaluation process. Mother and social worker spoke via phone previously on 2/11/25 about this waiver process. Social worker relayed to mother that as a parent, she can request a reevaluation at any time. After social worker explained the purpose of the reevaluation process and clarified the waiver process, parent reports that she better understands the waiver process and agrees with the team's original proposal that a reevaluation is not necessary for [Student Four] at this time. Mother stated that she wants her son to remain in the Mixed Abilities program and to continue to receive the services he is currently receiving in his IEP. Mother also responded via email on 4/22/25 that she agreed to waive the triennial reevaluation as originally proposed on 2/11/25 and agreed for [Student Four] to remain in the Mixed Abilities program and continue to receive services provided in his current IEP."

The investigator spoke by telephone with the mother of Student Four on May 6, 2025. During that conversation, the parent confirmed that she was in agreement with the decision to waive the reevaluation of the student, stating

"I got myself confused and thought that [the student] would be excluded from the Mixed Abilities class if he didn't have a reevaluation."

According to the parent, the student has been very successful in the program, and she didn't want him to be removed from it. The parent stated that she sent the email to KSDE because the complainant had encouraged her to do so. The parent reported that she didn't remember getting a call regarding the waiver from the school in February 2025 but noted that the call from the school in April had helped her fully understand the waiver process. The parent acknowledged that she was told that her son did not have to be reevaluated at this time in order to continue in the Mixed Abilities program but that she could request a reevaluation in the future should she want to do so.

Summary and Conclusions

The complainant alleged that the district failed to obtain the consent of the parents of four students before waiving those student's triennial reevaluation. Only three of those four students could be positively identified through information provided by the complainant.

The investigation of those three students determined that the district has established and published procedures regarding the process to be implemented when determining whether or not to waive a student's triennial reevaluation. Staff training has been provided on this process

which requires teams to obtain the written agreement of the parent before the reevaluation can be waived.

The parents of all three of these students agreed to the waiver of their children's triennial reevaluation prior to the date this complaint was received by KSDE, and these same parents subsequently confirmed that earlier decision after the complaint was made.

The district has provided documented evidence to show that the written agreement of the parents of the three students who were able to be definitively identified in this complaint was obtained before waiving the triennial evaluations of those students. A violation of special education statutes and regulations *is not substantiated* on this issue.

Additional Comments

The complainant contends that she did not participate in any meeting regarding the waiver of reevaluation for Student Four, did not provide information to anyone regarding such a waiver, and was unaware that such a waiver was being considered.

The Consideration for Waiver Review form for Student Four provided by the district identifies the "IEP Manager" for the student as the complainant and notes that "Communication with IEP Manager" occurred on February 11, 2025, but the complainant asserts that she was not working on that date and could not have communicated with the CST on that date.

The waiver review form documents input from a "Special Education Teacher" other than the complainant, but the complainant is not cited as the source of any of the information that the team reviewed.

Special education statutes and regulations require only that the parent and the school reach an understanding that a triennial reevaluation is not needed before such reevaluation is waived (Federal Register, August 14, 2006, p. 46640, 46641). The law does not specify how such an understanding is to be reached, who will participate in the process of reaching such an understanding, or how such an agreement should be documented. Therefore, because special education statutes and regulations do not include any requirements that would address this aspect of the complaint, the participation of the complainant in the determination of waiver of reevaluation for this student was not investigated.

No corrective actions are required because a violation of special education statutes was neither investigated nor substantiated. However, in the interest of accuracy, the district is encouraged to review the Consideration for Waiver Review form for this student and to make any changes needed to ensure that the participation of this complainant is correctly represented.

Issue Two

The findings of the reevaluation of Student Five were not available to the team when that student's IEP meeting was held.

Position of the Complainant

The complainant asserts that while the annual IEP review meeting for Student Five was held several weeks following the completion of that student's reevaluation, the results of the reevaluation were not made available to the team when revising the student's IEP.

Applicable Statutes and Regulations

The information gathered as a result of the reevaluation provides valuable information about child progress and needs. In addition to using the information to determine whether the child continues to be eligible for special education and related services, this information should be used to review the IEP, revising it if necessary, in accordance with K.S.A. 72-3428(h)-(l), as well as 34 C.F.R. 300.301 through 300.311: K.S.A. 72-3428.

As noted above under Issue One, the results of a student's reevaluation are to be used by the IEP team to determine

- (1) the educational needs of the child;
- (2) the present levels of academic achievement and functional performance (related developmental needs) of the child; and
- (3) 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.

Investigative Findings, Summary and Conclusions

The complainant did not provide any specific identifying information regarding Student Five aside from stating that the "IEP reevaluation Meeting was postponed due to scheduling." The district made a good faith effort to try to identify this student and provided the investigator with a response to allegations regarding a student who was deemed "probable" to be Student Five. However, the district also confirmed that the IEP meetings for other students have been postponed due to scheduling. Because the identity of this student could not be definitively determined, *this allegation was not investigated.*

Corrective Action

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

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.gov. 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)