

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #231
ON NOVEMBER 1, 2024

DATE OF REPORT: DECEMBER 2, 2024

This report is in response to a complaint ----- filed with our office, on behalf of their child, --
----- For the remainder of this report ----- will be referred to as "the student." ----- will
be referred to as "the parent." USD 231 will be referred to as "the district."

Investigation of Complaint

The parent filed a complaint on November 1 and an amended complaint on November 4. Because the amended complaint was filed early enough in the investigation to give the opportunity for the complaint investigator to investigate the additional issues and the district to respond to all issues, the investigator combined all issues from the initial and amended complaints into this investigation. K.A.R. § 91-40-5(c)(5) requires that the complaint investigation include "[a] discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded." Laura Jurgensen, complaint investigator, held this discussion with the parent through a November 4 phone call, gathering additional information and verifying the specific allegations to be investigated. Laura Jurgensen provided the specific allegations to be investigated to the parent and the district via email on November 7. The parent did not dispute how the complaint investigator framed the issues to be investigated by the date the complaint investigator set and so the complaint investigator provided the issues to be investigated to the district on November 11. The parent and investigator also exchanged multiple emails. The district provided the investigator with a response to the issues the investigator identified, as well as all documentation the investigator requested. On November 20, the investigator interviewed the district special education director, school psychologist, IEP case manager, special education coordinator, assistant principal, and attorney for the district.

Kansas regulations require that a complaint "allege a violation that occurred not more than one year before the date the complaint is received " K.A.R. § 91-40-51(b)(1).

Therefore, this complaint investigator did not consider any information either party submitted dated prior to November 1, 2023, except for the indicated purpose. The parent's initial and amended complaints included allegations that occurred prior to November 1, 2023, and this complaint investigator did not investigate those allegations as they did not meet the requirements of K.A.R. § 91-40-51(b)(1).

Additionally, the parent alleged a violation of 34 C.F.R. § 300.324(a)(1), indicating the district changed the student's draft IEP between the November and December 2023 meetings without parent consent. The investigator informed the parent in the November 11 email identifying the issues to be investigated that this is not an allegation of a violation of special education law as there is no requirement for a district to obtain parent consent when revising draft documents.

In completing this investigation, the complaint investigator reviewed all information the parties provided to determine its relevance to the issues being investigated. The investigator relied on the following information in analyzing the issues in this complaint investigation:

- Draft Evaluation Team Report, Oct. 23, 2023. (Reviewed and questioned parties as part of determining the date of the determination that the student needed special education and related services.)
- Email Exchange Between Parent and District School Psychologist, Oct. 24–Nov. 15, 2023. (Emails reviewed prior to Nov. 1, 2023, only to gain context into ongoing events.)
- Notice of Nov. 15, 2023, Meeting from District to Parents, Nov. 3, 2023.
- Email Exchange Between District and Parent Regarding November 15, 2023, IEP Team Meeting to Develop Student's IEP, Nov. 3–7, 2023.
- Email Exchange Between Parent and District School Psychologist, Nov. 10–Dec. 25, 2023.
- Evaluation Team Report, Nov. 15, 2023.
- Prior Written Notice and Request for Consent, Nov. 15, 2023.
- Evaluation, Eligibility, and IEP Team Meeting Notes, Nov. 15, 2023.
- Email Exchange Between Parent and School Psychologist, Nov. 20, 2023.
- Notice of Dec. 8, 2023, Meeting from District to Parent, Dec. 5, 2023.
- IEP Agenda, Dec. 8, 2023.
- IEP Team Considerations, Dec. 8, 2023.
- IEP, Dec. 8, 2023.
- IEP Meeting Notes, Dec. 8, 2023.
- Prior Written Notice and Request for Consent for the Initial Provision of Special Education Services, Dec. 8, 2023.
- IEP Team Meeting Notes, Dec. 8, 2023.
- Email from District Case Manager to Parent with Draft IEP, Notice of Meeting, Excusal from Attendance, Parent Consent for Release of Information and Medicaid Reimbursement, and Prior Written Notice and Request for Consent for the Initial Provision of Special Education Services, Dec. 12, 2023.
- Email from IEP Case Manager to Parent, Dec. 14, 2023.
- Emails from IEP Case Manager to Parent, Jan. 5 and 11, 2024.

- Email from Special Education Coordinator to Parent, Jan. 23, 2024.
- Letter from Parent to District Request Neuropsychological Evaluation of Student, Jan. 25, 2024.
- Email from IEP Case Manager to Special Education Coordinator and Special Education Director with Attached Letter from Parent to District Requesting Neuropsychological Evaluation of Student, Jan. 25, 2024.
- Email from District Special Education Director to Parent Responding to Parent's Request for a Neuropsychological Evaluation of the Student, Jan. 25, 2024.
- Email from District to Special Education Director to Parent Confirming Feb. 1 Meeting to Discuss Parent's Request for Additional Testing, Jan. 29, 2024.
- Email Exchange Between Special Education Director and Parent Regarding Parent's Jan. 25, 2024, Letter, Feb. 6–10, 2024.
- Notice of Mar. 4, 2024, Meeting from District to Parents, Feb. 22, 2024.
- Email Exchange Between District Special Education Director and Parent Regarding District's Request to Mediate, Feb. 29–Mar. 2, 2024.
- Notice of Mar. 7, 2024, Meeting from District to Parents, Mar. 7, 2024.
- Meeting Notes, Mar. 7, 2024.
- Email from Parent to District Special Education Director, Mar. 19, 2024.
- Letter from District to Parent Granting Parent's Request for an Independent Educational Evaluation, Mar. 22, 2024.
- Email Exchange Between Parent and District Special Education Director Regarding Parent's Request for a Neuropsychological Assessment, Apr. 2, 2024.
- Notice of May 9, 2024, Meeting from District to Parents, Apr. 29, 2024.
- Email Exchange Between Parent and District Special Education Director Regarding Student's 2024–25 Enrollment and Consent for Initial Provision of Special Education and Related Services, May 20–Oct. 14, 2024.
- Email Exchange Between Parent and District Special Education Director Regarding Evaluation Request, Consent for the Initial Provision of Special Education Services, Mediation, and Due Process, May 17–22, 2024.
- Prior Written Notice to Parent Denying Request for Neurological Evaluation, June 10, 2024.
- Email Exchange Between District Special Education Director and Parent, Jul. 16– 29, 2024.
- Email Exchange Between District Staff Tracking Whether Student Had Enrolled for the 2024–25 School Year, July 27–Sept. 1, 2024.
- Automatic PowerSchool Email from District to Parent with Student's Aug. 15 and 16, 2024, Attendance, Aug. 19, 2024.
- Email Exchange Between Principal and Parent, Sept. 5–Oct. 28, 2024.

- Email Exchange Between Parent and Special Education Director Regarding Parent's Request for IEP Team Meeting, Sept. 26–30, 2024.
- Parent's Complaint, Nov. 1, 2024.
- Screenshot of Student's 2024–25 Registration Status, Nov. 1, 2024.
- Parent's Amended Complaint, Nov. 4, 2024.
- District's Response to the Complaint, Nov. 18, 2024.
- Emails from District's Attorney to Complaint Investigator, Nov. 25 and 29, 2024.

Background Information

This complaint focuses on a student in the tenth grade during the 2023–24 school year, the main period covered by this complaint investigation. The period for this complaint investigation began toward the end of the initial evaluation of the student.

Issues

Through the complaint, the amended complaint, and the complaint investigator's discussion with the parent, the parent alleges eight issues upon which this investigation will focus:

Issue One: Whether the district properly obtained informed consent from the parent before the initial provision of special education and related services to the student. 34 C.F.R. §§ 300.9, .300(b)(1); K.A.R. §§ 91-40-1, -27(a)(2), (f)(4).

Issue Two: Whether the district held a meeting to develop an IEP for the student within 30 days of the determination that the student needed special education and related services. 34 C.F.R. § 300.323(c); K.A.R. § 91-40-8(f)(2).

Issue Three: Whether the district obtained informed parental consent, in accordance with 34 C.F.R. § 300.300(a)(1), prior to conducting a December 2023 reevaluation of the student. 34 C.F.R. § 300.300(c); K.A.R. § 91-40-27(a)(1).

Issue Four: Whether the IEP Team and other qualified professionals, as appropriate, reviewed existing evaluation data on the student, as part of the December 2023 reevaluation. 34 C.F.R. § 300.305(a)(1); K.A.R. § 91-40-8(c)(1).

Issue Five: Whether the district accurately provided the purpose of the December 2023 meeting in the notice of meeting. 34 C.F.R. § 300.322(b)(1)(i); K.A.R. § 91-40-17(b)(1).

Issue Six: Whether the district responded to the parent's request for a neuropsychological evaluation of the student with a prior written notice in a reasonable time. 34 C.F.R. § 300.503(a); K.S.A. § 72-3430(b)(2).

Issue Seven: Whether the district used the parent's refusal to consent to the district's offer of special education and related services to the student to deny the student's enrollment in the district for the 2024–25 school year. 34 C.F.R. § 300.300(d)(3); K.A.R. § 91-40-27(h).

Issue Eight: Whether the district's alleged failure to develop an IEP for the student within 30 days of the determination that the student needs special education and related services denied the student a free appropriate public education (FAPE). 34 C.F.R. § 300.101(a); K.S.A. § 72-3410(a)(2); K.A.R. § 91-40-2(a)(1), (e).

Issue One

Parent Consent for the Initial Provision of Special Education Services Applicable Law

The regulations implementing the Individuals with Disabilities Education Act (IDEA) define consent as, “(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication; (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.” (34 C.F.R. 300.9(a)–(c)(1).) The regulations implementing the IDEA also require, “A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.” (34 C.F.R. § 300.300(b)(1).)

Analysis: Findings of Fact

The beginning of the timeline for this complaint investigation coincides with the end of the student’s initial evaluation. On October 23, 2023, the student’s evaluation and eligibility team met to review the draft Evaluation Team Report. This occurred prior to the timeline for this complaint investigation, but the complaint investigator reviewed this as part of determining the date of the evaluation and eligibility team’s determination that the student needed special education and related services. The parent requested that district staff gather additional information as part of the initial evaluation and so the district agreed to gather the information and meet again. (Email Exchange Between Parent and District School Psychologist, Oct. 24–Nov. 15, 2023.)

On November 15, 2023, the student’s evaluation and eligibility team, including the parent, met to review the evaluation report and determine whether the student had a disability and needed special education services. (Notice of Nov. 15, 2023, Meeting from District to Parents, Nov. 3, 2023; Evaluation Team Report, Nov. 15, 2023; Prior Written Notice and Request for Consent, Nov. 15, 2023; and Evaluation, Eligibility, and IEP Team Meeting Notes, Nov. 15, 2023.) All evaluation and eligibility team members, including the parent, signed that they agreed that the student is eligible for special education services. (Evaluation Team Report, Nov. 15, 2023.)

The district explained, both in its response to the complaint and in the interview with the complaint investigator, that the district provides a Prior Written Notice to the parent regarding student eligibility and seeks parent consent, despite this not being required by federal or state special education law. In the Prior Written Notice the district gave to the parent to request the parent’s consent for eligibility for services, district staff checked the box for the “IDENTIFICATION/ELIGIBILITY” section and indicated in that section that the student is eligible for special education. (Prior Written Notice and Request for Consent, Nov. 15, 2023.) The district also checked the “INITIAL SERVICES & PLACEMENT” section and indicated, “As explained below, an Individualized Education Program (IEP) proposing appropriate Special Education and

related services and an appropriate instructional environment for delivering special education and related services was written for your child." (Prior Written Notice and Request for Consent, Nov. 15, 2023.) There is not any explanation below regarding an IEP. (Prior Written Notice and Request for Consent, Nov. 15, 2023.) All explanation in this Prior Written Notice focused on eligibility. (Prior Written Notice and Request for Consent, Nov. 15, 2023.) Again, despite parent consent not being required for eligibility, the district sought and obtained parent consent on the November 15, 2023, Prior Written Notice that mostly referenced the student's eligibility with one statement, and no explanation, of the initial provision of special education services to the student. (Prior

Written Notice and Request for Consent, Nov. 15, 2023.) District staff acknowledged during the investigation that the box next to the "INITIAL SERVICES & PLACEMENT" section should not have been checked as the district did not intend for this Prior Written Notice and Request for Consent to request the parent's consent for the initial provision of services and did not include any information on the initial provision of services. (Email from District's Attorney to Complaint Investigator, Nov. 25, 2024.) Because district staff checked this box by mistake, district staff did not treat the parent's consent for eligibility as consent for the initial provision of special education services and made clear in nearly all communication to the parent from December 2023 through October 2024 the parent had not consented to the initial provision of special education services.

The team could not come to consensus on the content of the student's IEP and so the team ended the November 2023 meeting and scheduled a December 2023 meeting. (Initial Discussion with the Parent, Nov. 4, 2024; Interview with District Staff, Nov. 20, 2024; Notice of Dec. 8, 2023, Meeting from District to Parent, Dec. 5, 2023.) Between the November and December 2023 meetings, the district incorporated all items the parent requested into the draft IEP that the district provided for discussion at the December 2023 meeting. (Email Exchange Between District Special Education Director and Parent, July 16–18, 2024.) The notes from the December IEP Team meeting indicate that the team reviewed the draft IEP, and the team could not come to consensus as the parent had multiple concerns. (IEP Team Meeting Notes, Dec. 8, 2023.) Following the December 8, 2023, IEP Team meeting, the district provided the parent with a Prior Written Notice for the initial provision of special education services which delineated the services discussed at the December 8, 2023, IEP Team meeting, a Request for Consent, and the draft IEP the IEP Team discussed at the December 8, 2023, IEP Team meeting. (Email from IEP Case Manager to Parent, Dec. 14, 2023.) This investigation did not come across any evidence that the parent ever signed this request for consent for the initial provision of special education services for the student or that the district provided the student with special education services.

Following its offer for the initial provision of special education services for the student, the district made numerous efforts from January through October 2024 to obtain the parent's consent for the initial provision of special education services. Nearly every communication referenced in the Investigation of Complaint section of this report from the district to the

parent during this period included a reminder of and encouragement to consent to the district's offer of the initial provision of special education services. The district held additional meetings with the parent in March and May 2024 to continue to listen to the parent's concerns and encourage the parent to consent to the initial provision of special education services. (District's Response to the Complaint, Nov. 18, 2024.) On multiple occasions, the district also provided the parent with information on the parent's right to request special education mediation or file for a due process hearing to come on the initial provision of special education services to the student. (Email Exchange Between District Special Education Director and Parent Regarding District's Request to Mediate, Feb. 29–Mar. 2, 2024; Email Exchange Between Parent and District Special Education Director Regarding Consent for the Initial Provision of Special Education Services, Mediation, and Due Process, May 17–21, 2024; Email Exchange Between District Special Education Director and Parent, Jul. 16– 29, 2024.)

Sometime in the summer of 2024, despite the district's consistent communication that the parent had not consented to the initial provision of services, the parent seemed to get the impression that the parent had at least partially consented to the initial provision of services, including pointing to the errant checkmark in the November 2023 Prior Written Notice. The district special education director's response to the parent is very clear that a parent may not provide partial consent to the initial provision of special education services and that the parent had not provided consent to the initial provision of special education services, as those services are described in the December 2023 Prior Written Notice. (Email Exchange Between District Special Education Director and Parent, July 16–18, 2024.)

Conclusion

District staff inadvertently checking the box next to the "INITIAL SERVICES & PLACEMENT" section in the November 2023 Prior Written Notice was unfortunate and confusing to the parent but does not represent properly obtained consent for the initial provision of special education services. To obtain proper consent, the Prior Written Notice must, ". . . fully [inform the parent] of all information relevant to the activity for which consent is sought " The November 2023 Prior Written Notice does not provide any information at all on the initial provision of special education services and, therefore, must not be interpreted as a proper method of obtaining consent for the initial provision of special education services.

The December 2023 Prior Written Notice fully explains the district's offer of the initial provision of special education services to the student. The district requested the parent's consent in writing through the IEP case manager's December 14, 2023, email to the parent and numerous following instances. Neither party provided any documentation to show that the parent consented to the initial provision of special education services. Because the November 2023 Prior Written Notice was not a proper method of obtaining consent for the initial provision of special education services, the parent's consent on this Prior Written Notice does not constitute consent for the initial provision of special education services. The December 2023 Prior Written Notice fully informed the parent of all information relevant to the initial provision of special education services and the parent never consented. Therefore, this investigation

concludes that the district *did not violate* its obligation to ensure that it obtained parent consent prior to the initial provision of special education services under 34 C.F.R. § 300.300(b)(1). As there is no violation, no corrective action is needed.

Issue Two

Meeting to Develop IEP Within 30 Days of Eligibility Determination

Applicable Law

The regulations implementing IDEA require each public agency to ensure that, “A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and [a]s soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.” (34 C.F.R. § 300.323(c).)

Analysis: Findings of Fact

The relevant findings from Issue One are incorporated here by reference. On November 15, 2023, the student’s evaluation and eligibility team, including the parent, met to review the evaluation report and determine whether the student had a disability and needed special education services. (Notice of Nov. 15, 2023, Meeting from District to Parents, Nov. 3, 2023; Evaluation Team Report, Nov. 15, 2023; Prior Written Notice and Request for Consent, Nov. 15, 2023; and Evaluation, Eligibility, and IEP Team Meeting Notes, Nov. 15, 2023.) All evaluation and eligibility team members, including the parent, signed that they agreed that the student is eligible for special education services. (Evaluation Team Report, Nov. 15, 2023.) The district then had 30 days from the date of the determination that the student needed special education and related services to develop an IEP for the student. For this student, the district was required to develop an IEP by December 15, 2023.

The team could not come to consent on the content of the student’s IEP at the November 2023 meeting and so the team ended the meeting and scheduled a December 2023 meeting. (Initial Discussion with the Parent, Nov. 4, 2024; Interview with District Staff, Nov. 20, 2024; Notice of Dec. 8, 2023, Meeting from District to Parent, Dec. 5, 2023.) Between the November and December 2023 meetings, the district incorporated all the items the parent requested into the draft IEP that the district provided for discussion at the December 2023 meeting. (Email Exchange

Between District Special Education Director and Parent, July 16–18, 2024.) The notes from the December IEP Team meeting indicate that the IEP Team reviewed the draft IEP and could not come to consensus as the parent had multiple concerns. (IEP Team Meeting Notes, Dec. 8, 2023.) Following the December 8, 2023, IEP Team meeting, the district provided the parent with a Prior Written Notice for the initial provision of special education services which delineated the services discussed at the December 8, 2023, IEP Team meeting, a Request for Consent, and the draft IEP the IEP Team discussed at the December 8, 2023, IEP Team meeting. (Email from IEP Case Manager to Parent, Dec. 14, 2023.)

Conclusion

The student's evaluation and eligibility team found the student eligible for special education at its November 15, 2023, meeting. At the November and December 8, 2023, meetings, the IEP Team reviewed and discussed the student's draft IEP. On December 14, 2023, the district provided the parent with a Prior Written Notice outlining its proposal for the initial provision of special education and related services to the student, within 30 days from the date of the determination that the student needed special education and related services. Therefore, this investigation concludes that the district *did not violate* the requirement to develop an IEP for this student within 30 days from the date of the determination that the student needed special education and related services under 34 C.F.R. § 300.323(c) and K.A.R. § 91-40-8(f)(2). As there is no violation, no corrective action is needed.

Issue Three

Parent Consent for Reevaluation

Applicable Law

The regulations implementing IDEA require that a public agency meet the following requirements for parental consent for reevaluations. "(1) Subject to paragraph (c)(2) of this section, each public agency—(i) Must obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability. (ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section. (iii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation. (2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that—(i) It made reasonable efforts to obtain such consent; and (ii) The child's parent has failed to respond." (34 C.F.R. § 300.300(c).)

Analysis: Findings of Fact

In the parent's amended complaint, it is alleged that in December 2023, the district reevaluated the student without the parent's consent. In the complaint investigator's initial discussion with the parent, the parent explained their understanding of the events as the student's initial evaluation concluded in November 2023 with a meeting of the evaluation and eligibility team. The team came to consensus on the student's eligibility but could not come to consensus on the content of the student's IEP, so the team ended the November meeting and scheduled a December 2023 meeting. Based on the information the parent said the district shared at the December 2023 meeting, the parent believed that the district reevaluated the student without parent consent. In the initial discussion with the parent, the parent indicated the documentation from the November and December 2023 meetings would support the assertion that the district reevaluated the student without parent consent. The parent submitted a great deal of information during the investigation. This complaint investigator

reviewed all of it and none of the information supported that the district conducted a December 2023 reevaluation.

In the district's response the district asserts that it "did not conduct a reevaluation of Student in December 2023." During the complaint investigator's district staff interview, district staff explained that the district did not complete further evaluation of the student after the team agreed in November 2023 that the student was eligible for special education services. District staff indicated that they made some changes to the student's draft IEP based on the parent's requests at the November 2023 meeting.

Review of the information associated with the November and December 2023 meetings does not show any indication that the district reevaluated the student in December 2023.

Conclusion

Because the parent could not provide any documentation to support the assertion that the district reevaluated the student in December 2023 and the documentation both parties submitted showed no indication of a December 2023 reevaluation, this investigation concludes that the district *did not violate* its obligation to ensure that it obtained parent consent prior to conducting a reevaluation under 34 C.F.R. § 300.300(c) and K.A.R. § 91-40-27(a)(1). As there is no violation, no corrective action is needed.

Issue Four

Reviewed Existing Evaluation Data As Part of Reevaluation

Applicable Law

The regulations implementing IDEA require, "As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—(1) Review existing evaluation data on the child, including—(i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers." (34 C.F.R. § 300.305(a)(1).)

Analysis: Findings of Fact

The findings from Issue Three are incorporated here by reference. As the investigation showed that the district did not conduct a December 2023 reevaluation, there can be no violation of the regulations applicable to this allegation.

Conclusion

Because the parent could not provide any documentation to support the assertion that the district reevaluated the student in December 2023 and the documentation both parties submitted showed no indication of a December 2023 reevaluation, this investigation concludes that the district *did not violate* its obligation under 34 C.F.R. § 300.305(a)(1) and K.A.R. § 91-40-8(c)(1). As there is no violation, no corrective action is needed.

Issue Five

Whether Purpose Was Included in December 2023 Notice of Meeting

Applicable Law

The regulations implementing IDEA require that the notice for an IEP Team meeting, “[i]ndicate the purpose, time, and location of the meeting and who will be in attendance.” (34 C.F.R. § 300.322(b)(1)(i).)

Analysis: Findings of Fact

In the parent’s amended complaint and the initial discussion with the complaint investigator, the parent alleged that the district misrepresented the purpose of the December 8, 2023, IEP Team meeting. The parent claimed that the request for the December 8, 2023, IEP Team meeting was to discuss the parent’s confusion with the November 15, 2023, IEP Team meeting. The parent claimed this request was clear to the district at the November 15, 2023, meeting and again in emails following the meeting. The parent indicated that based on the Notice of Meeting for the December 8, 2023, meeting the parent believed that the IEP team would discuss the parent’s confusion from the November 2023 meeting, but then the parent claimed that the December 8, 2023, meeting did not include any discussion of the parent’s questions.

The Notice of Meeting for the December 8, 2023, meeting indicated that the purpose of the meeting was to “develop an individualized education program (IEP) for your child and determine the appropriate placement.” The district provided an agenda from the December 8, 2023, meeting that included the following items: “Introductions, Review draft IEP, General Education Teachers Comments, Questions/Concerns for Gen. Ed.

Teachers from parents/guardians, Sign forms, present copy of parental rights.” The district also provided a document from the December 8, 2023, meeting titled IEP Team Considerations that included the following concerns from the parent, “Mom expressed concern with [the student’s] overall attitude toward school. [The student] has struggled significantly academically the past year, Reading and Math are both areas that [the student] would like to see addressed. [The parent] would also like to see [the student] improve [their] self-advocacy.” The December 8, 2023, meeting notes provide several examples of the parent expressing concerns.

Conclusion

In the Notice of Meeting for the December 8, 2023, meeting the district’s provided purpose of developing the student’s IEP logically followed the conclusion of the November 2023 meeting that ended when the IEP Team could not come to consensus on the initial provision of services for the student. The December 8, 2023, IEP Team meeting agenda provided an opportunity for the parent to express concerns. The December 8, 2023, meeting notes and documentation of IEP Team considerations include multiple instances of the parent expressing concerns. Along with expressing concern, the parent could have raised questions on any items of confusion from the November 2023 meeting. The parent did not provide any documentation that

showed the district prevented the parent from raising questions on the November 2023 meeting. The evidence showed that the district followed the next step in the process for a student determined eligible for special education, to convene the IEP Team to develop an IEP for the student. The district's documentation shows ample opportunity for the parent to raise questions on the November 2023 meeting. Because the parent could not provide any documentation to support the assertion that the district misrepresented the purpose of the December 2023 IEP Team meeting and the district documentation showed it provided the parent with the opportunity to ask questions about the November 2023 IEP Team meeting, this investigation concludes that the district *did not violate* its obligation under 34 C.F.R. § 300.322(b)(1)(i) and K.A.R. § 91-40-17(b)(1). As there is no violation, no corrective action is needed.

Issue Six

Response to Parent's Request for a Neuropsychological Evaluation

Applicable Law

When a parent requests an independent educational evaluation, the regulations implementing IDEA require that the public agency must provide the parent with "information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in 34 C.F.R. § 300.502(e)." (34 C.F.R. § 300.502(a)(2).) When a parent makes a request regarding initiating or changing the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, the public agency must respond with a notice that meets the requirements of 34 C.F.R. § 300.503(b). (34 C.F.R. § 300.503(a).) The regulations implementing IDEA define evaluation as, "procedures used in accordance with [34 C.F.R.] §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs." "When parents make a request for an evaluation (whether oral or written), KSDE has determined that, unless there is an unusual circumstance, 15 school days is a reasonable time for providing parents with a Prior Written Notice of the district's proposal to conduct the evaluation or the district's refusal to conduct the evaluation." (KSDE Memo, 'Reasonable Time' to respond to parent request for evaluation, January 8, 2002, at <https://www.ksde.org/Portals/0/SES/legal/forms/ReasonableTimeMemo-20020108.pdf>.)

Analysis: Findings of Fact

The parent wrote a January 22, 2024, letter that the IEP case manager indicated the student dropped off at the very end of the day on January 24, 2024. (Letter from Parent to District Request Neuropsychological Evaluation of Student, Jan. 22, 2024; Email from IEP Case Manager to Special Education Coordinator and Special Education Director with Attached Letter from Parent to District Requesting Neuropsychological Evaluation of Student, Jan. 25, 2024.) The letter requested "*a psycho-neurological educational evaluation be conducted for*" the student. On January 25, 2024, the IEP case manager emailed the parent's letter to the district special education coordinator and special education director. That same day the special education

director emailed the parent stating, “We are a bit confused by your request for another educational evaluation since you signed that you were in agreement with the results of our evaluation. I am happy to meet with you to discuss this request and to ensure you are aware of and understand your procedural rights.” The parent and special education director agreed to meet on February 1. The special education director emailed the parent on January 29 to confirm the meeting and stated, “*The purpose of this meeting is to go over your parent rights, discuss your options, discuss your request for additional testing and to explain the districts [sic] response to your request. This is not an IEP meeting and no educational decisions will be made.*” The district’s attorney indicated that on February 1 the parent, special education director, and school psychologist met and reviewed the parent’s rights, district staff referred the parent to Families Together to obtain additional assistance on understanding parent rights, and to clarify the parent’s request from the January 25, 2024, letter. (Email from District’s Attorney to Complaint Investigator, Nov. 29, 2024.) District staff concluded that meeting believing that the parent agreed with the district’s evaluation, did not have a request for another initial evaluation or an independent educational evaluation, and the next step was to schedule another IEP Team meeting. (Email Exchange Between Special Education Director and Parent Regarding Parent’s Jan. 25, 2024, Letter, Feb. 6– 10, 2024; Email from District’s Attorney to Complaint Investigator, Nov. 29, 2024.) The district memorialized its understanding of the parent’s January 25, 2024, letter and February 1, 2024, meeting with the parent in an email to the parent on February 6, 2024, stating, in part, “As we stated last week, you agreed with our evaluation and the determination that [the student] is eligible for special education. You signed that you agree, what seems to be the hold up is that you do not agree on the recommended services. We have invited you back to the table to continue discussion on the services to be provided to [the student] We want to provide services to [the student]. What do you want the district to do at this time?” The parent responded to this email on February 10, 2024, but did not clarify the January 25, 2024, request or correct the district’s understanding that the next step was to schedule another IEP Team meeting.

The district then made multiple efforts to schedule an IEP Team meeting. (Email from District’s Attorney to Complaint Investigator, Nov. 29, 2024.) These efforts culminated in a March 7, 2024, IEP Team meeting. (Email from District’s Attorney to Complaint Investigator, Nov. 29, 2024.) The March 7, 2024, IEP Team meeting notes reference multiple requests from the parent for additional testing. In response to these requests, the district sent a March 22, 2024, letter that granted the parent’s request for an independent educational evaluation and provided the parent with information on how to obtain one. On April 2, 2024, the parent emailed the district special education director and stated:

The requests that I made for an evaluation was in the form of a letter and was hand delivered at my child’s school . . . and the request was not for an the comprehension [sic] educational evaluation that you are referring to. I was told that [the student] had already received that from the evaluations conducted by the school. The problem here is that they have not been able to identify [the student’s] specific areas of need and can not [sic] be used alone to do so. My child requires a more in depth thorough evaluation conducted by a

neuropsychologist that is experienced in the educational field and can identify specific areas of need and provide recommendations and tailored supports for [sic] those specific identified areas. I believe it's called a neuropsychological assessment by a neuropsychologist who has experience in the education field and can provide insight and recommendation [sic] specific to my child's learning processes and abilities.

The special education director responded the same day and stated, "We have offered you a IEE for a comprehensive educational evaluation."

On May 17, 2024, the parent emailed the district special education director and stated, "I recommend . . ." a "[n]europsychological evaluation could provide valuable data on cognitive profile and appropriate eligibility category." On May 22, 2024, the parent again emailed the district special education director and requested that the district, "provide and fund a neuropsychological evaluation for [the student] to collect data that will identify [the student's] areas of need and provide recommendations that are tailored to [the student's] individual needs, abilities, [sic] and learning style, specifically targeted to meet [the student] where [the student] is at." The parent's change in language from "recommend" in the May 17, 2024, email to "provide and fund" in the May 22, 2024, email led the district to respond with a June 10, 2024, Prior Written Notice that stated, "The [LEA] refuses to conduct an initial evaluation." As explanation for this refusal the Prior Written Notice stated:

[The district] is refusing to conduct another initial evaluation of [the student]. The District conducted an initial evaluation of [the student] in the Fall of 2023, and [the student] was determined to be eligible for special education services. Parent agreed with that evaluation but has declined to provide consent to initiate services despite numerous attempts by the District. Parent informed [the district] [the student's] doctor has recommended that [the student] be referred to a neurologist and has requested the District to pay for a neurological assessment. Parent previously requested an independent educational evaluation. The District granted the request for an IEE but, to date, the parent has not obtained one. Parent continues to request that [the district] authorize and fund a neuropsychological evaluation. To the extent that the parent's request is for the District to conduct another initial evaluation of [the student], that request is being refused.

Conclusion

The district indicated in writing to the parent that district staff were unclear on the parent's January 22, 2024, request. The district met with the parent to clarify the request on February 1, 2024, and believed the parent agreed with the district's evaluation. District staff memorialized this understanding in writing to the parent on February 6, 2024. During this investigation, the parent did not provide any documentation that showed the parent disagreed with district staff's understanding and the parent's response to the district does not show that the parent corrected district staff's understanding regarding the parent's January 22, 2024, request. Based on the definition of evaluation in the regulations implementing IDEA, district staff could have interpreted the parent's January 22, 2024, request as a request that required a response with a

Prior Written Notice, but district staff were clear in writing to the parent that district staff did not fully understand the parent's request and wanted to meet to discuss. Following that meeting, district staff again clarified in writing what they believed the parent's request to be (i.e., not an evaluation request, but an IEP Team meeting request) and the parent did not dispute district staff's understanding. Based on the correspondence between the parties, this investigation determines that the parent's January 22, 2024, request, as clarified at the February 1, 2024, meeting and February 6, 2024, email was not a request regarding evaluation that required the district to respond with a Prior Written Notice.

The March 7, 2024, IEP Team meeting notes include multiple instances of the parent requesting further assessment and the district responded with a March 22, 2024, letter granting the parent's request for an independent educational evaluation. The regulations implementing IDEA require that when a parent requests an independent educational evaluation that the district provide the parent with information on obtaining one and the district's criteria and the district does that in its March 22, 2024, letter. The district's response came 15 calendar days following the parent's request.

These 15 calendar days included four weekend days, meaning the district's response was within the 15-school day timeline KSDE has established as reasonable for such requests.

The parent's May 17, 2024, email included the word "recommend," which is not a clear request regarding evaluation. The parent's May 22, 2024, email included the words "provide and fund," a clearer request regarding evaluation and the district responded with a June 22, 2024, Prior Written Notice refusing the parent's request. The district's response came 19 calendar days following the parent's request. These 19 calendar days included six weekend days and one holiday, meaning the district's response was within 12 business days. The 2023-24 school year likely ended within this timeline.

KSDE has indicated that "unless there is some unusual circumstance, a reasonable time in which to provide such notice to the parents is 15 school days." (KSDE Memo, 'Reasonable Time' to respond to parent request for evaluation, January 8, 2002, at <https://www.ksde.org/Portals/0/SES/legal/forms/ReasonableTimeMemo-20020108.pdf>.) The district waiting to respond until the next school year would not have been reasonable and so the district understandably responded within a reasonable time of receiving the parent's request.

Because the parent's January 22 and May 17, 2024, requests were not requests for an evaluation, the district was not required to respond with a Prior Written Notice. The parent's March 7, 2024, request was for an independent educational evaluation and the district responded appropriately, within a reasonable time. The parent's May 22, 2024, request was a request for an evaluation and the district responded with a Prior Written Notice, within a reasonable time. Therefore, this investigation concludes that the district *did not violate its* obligation under 34 C.F.R. § 300.503(a) and K.S.A. § 72-3430(b)(2). As there is no violation, no corrective action is needed.

Issue Seven

Student's 2024–25 Enrollment

Applicable Law

The regulations implementing IDEA require that a public agency “not use a parent’s refusal to consent to one service or activity under [34 C.F.R. § 300.300](a), (b), (c), or (d)(2) . . . to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.” (34 C.F.R. § 300.300(d)(3).)

Analysis: Findings of Fact

The parent’s amended complaint included the allegation that the district placed conditions on the student’s 2024–25 enrollment. In the initial discussion with the parent, the parent indicated that they had completed the district’s online enrollment requirements and received several automatic emails from the district’s student information system regarding the student’s 2024–25 absences and grades. The parent provided the automatic emails from the district’s student information system regarding the student’s 2024–25 absences and grades but did not provide any documentation showing that the district prevented the student’s 2024–25 enrollment.

The district indicated that each school year it requires students continuing into the next school year to enroll. (District Response to Complaint, Nov. 18, 2024.) On July 17, 2024, the special education director emailed the parent to ask if the parent planned to enroll the student for the 2024–25 school year. (Email Exchange Between District Special Education Director and Parent, July 16–18, 2024.) From late July through early September, district staff exchanged emails about whether the student had enrolled.

This email exchange did not indicate the district was preventing enrollment. The special education director, registrar, and special education data clerk communicated regarding the student’s lack of enrollment and attendance and attempted and successful communication with the parent regarding student’s enrollment.

On September 5, 2024, the principal emailed the parent and outlined that the: (1) district registrar called the parent multiple times about the student’s enrollment; (2) clearly informed the parent that the student was not enrolled and encouraged the parent to enroll the student; and (3) informed the parent that if the student enrolled in another district to contact this district so district staff could facilitate a records transfer. The parent and principal continued to exchange emails through October 28, 2024, in which the principal navigated multiple parent questions and consistently encouraged the parent to enroll the student. As part of the district’s response to the complaint, district staff provided a November 1, 2024, screenshot of the student’s 2024–25 enrollment which showed the status as “In Progress,” started on August 14, 2024, by the parent and the same date, also by the parent, for the most recent activity. During the complaint investigator’s district staff interview, the complaint investigator asked why the parent received automatic emails from the district’s student information system if the student was not enrolled. District staff explained that there were some issues with the rollover of the

student information system from the 2023–24 to 2024– 25 school year and thought the automatic email feature may have been turned on for students who attended in the 2023–24 school year even if those students had not enrolled for the 2024–25 school year.

Conclusion

The parent had not provided consent to the district’s offer of the initial provision of services under 34 C.F.R. § 300.300(b). 34 C.F.R. § 300.300(d)(3), which prevents the district from using the parent’s refusal to consent to the initial provision of special education services to deny the student any other district service, benefit, or activity, such as enrollment. Because the parent did not provide any information showing the district denied the student’s 2024–25 enrollment and the district provided multiple internal communications and communications with the parent that showed no evidence of supporting this student’s 2024–25 enrollment, this investigation concludes that the district did not violate its obligation under 34 C.F.R. § 300.300(d)(3); K.A.R. § 91- 40-27(h). As there is no violation, no corrective action is needed.

Issue Eight

Free Appropriate Public Education

Applicable Law

For students with a disability determined to be eligible for special education services and whose parent has consented to the initial provision of special education services, the regulations implementing IDEA require that the public agency make available a free appropriate public education. (34 C.F.R. § 300.101(a).) However, 34 C.F.R. 300.300(b)(3) clarifies that when parents have not provided consent for the initial provision of special education services, a district’s failure to provide services in an offered IEP is not a failure to provide a free appropriate public education.

Analysis: Findings of Fact

The findings from Issue One are incorporated here by reference. As the investigation showed that the parent did not consent to the initial provision of special education services, there can be no violation of the regulations applicable to this allegation as the district has no obligation to provide the student with a free appropriate education without parent consent.

Conclusion

Because the investigation into Issue One determined that the parent did not consent to the initial provision of special education services, this investigation concludes that the district *did not violate* its obligation to provide a free appropriate education under 34 C.F.R. § 300.101(a), K.S.A. § 72-3410(a)(2), and K.A.R. § 91-40-2(a)(1), (e). As there is no violation, no corrective action is needed.

Laura N. Jurgensen

Laura N. Jurgensen 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)