

In the Matter of the Appeal of the Report  
Issued in Response to a Complaint Filed  
Against Unified School District No. 229  
Blue Valley Public Schools: 24FC229-001

## DECISION OF THE APPEAL COMMITTEE

### **Background**

This matter commenced with the filing of a complaint on August 7, 2023, by ----- on behalf of his child, ----- . In the remainder of the decision, ----- will be referred to as "the parent", and ----- will be referred to as "the student". An investigation of the complaint was undertaken by complaint investigator, Gwen Beegle, on behalf of the Special Education and Title Services Team at the Kansas State Department of Education. Following that investigation, a Complaint Report, addressing the parent's allegations, was issued on August 16, 2023. In the Complaint Report, the investigator concluded that there was not a violation of special education laws and regulations.

Thereafter, the parent filed an appeal of the Complaint Report. Upon receipt of the appeal, an appeal committee was appointed, and it reviewed the original complaint filed by the parent, the complaint report, the parent's appeal and supporting documents, and the district's response and supporting documents. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

### **Preliminary Matters**

A copy of the regulation regarding the filing of an appeal [K.A.R. 91-40-51(f)] was attached to the Complaint Report. That regulation states, in part, that, "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support.

No new issues will be decided by the Appeal Committee. The appeal process is a review of the Complaint Report. The Appeal Committee does not conduct a separate investigation. The appeal committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

## **Parent's Appeal**

The following issue in this complaint has been addressed by the Appeal Committee:

### **Issue One**

The USD#229, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to provide prior written notice for refusing to hold an IEP meeting at the request of the parent.

The Investigator found that a violation did not occur. In response, the parent argues that,

1. The district "violated IDEA regulations by failing to provide progress on the Category of Language on 3 Annual Language to the student during the student's attendance of the district's extended school year (ESY) session in summer 2023",
2. Category Writing showed a baseline "in writing five part retell [w]ith 0% accuracy with date 5/26/2023 48% avg accuracy on 4/5 opportunities, this goal was not in progress during ESY services", and
3. There was no meeting provided or PWN served to the parent because the parent "noticed on my door about a package was tried to leave" but that the district had not said they would "send a package."

First, the parent argues the district failed to provide a progress report on Category 3 of Language. This is not an issue that was addressed in the original complaint. It was, however, an issue previously addressed by the Committee in Appeal 23FC229-005. In that appeal the Committee affirmed the investigator's finding that a violation was unsubstantiated. Therefore, because this is not an issue in this complaint the Committee will not address it.

Second, the parent argues that the student did not make progress in Category Writing. Again, this was not an issue in the original complaint and the Committee will not address it now.

Finally, the parent argues that, following a parent request for a meeting, the district failed to provide the parent with a PWN and refused to hold an IEP meeting.

Both parties agree that on July 19, 2023, the parent called the district. The parent asserts that this call was to ask for an IEP team meeting. Documents in the record show that the district responded to this call on the date it was received, July 19, 2023, with an e-mail asking if the parent "was requesting a meeting, and if so, the district would respond by law".

Following this correspondence, the district and the parent then agree that the parent called the district again on August 4, 2023, leaving a message for the Special Education Director. Documents further establish that the Special Education Director followed up that same day, August 4, 2023, in an e-mail to the parent, stating that "the meeting would be scheduled by the principal when school was back in session after the summer break."

On August 7, 2023, documents show that the district sent another e-mail to the parent, again acknowledging the parent's request for a meeting and informing the parent that the district would hold the requested meeting within 13 business days. This response was one school day following the parent's request for a meeting.

On August 14, 2023, documents show that the principal once again contacted the parent, by e-mail, offering multiple dates for a meeting.

On August 19, 2023, documents show a Notice of Meeting was sent via email to the parents.

The district states that on August 21, 2023, a notice of meeting was sent to the parents through certified mail and was rejected by the parent on August 23, 2023. In the appeal, the parents acknowledges that a "package" was left at their door, but because the district had not informed them that a letter was coming, the parent refused to receive the package. The district further reports that the parent was personally presented with the Notice of Meeting at a back-to-school night on August 24, 2023, and documents show that the parent signed that notice on the aforementioned date.

When a parent makes a request for an IEP meeting, certain steps must be followed by a district. First, a district has a reasonable amount of time in which to respond to the parent. KSDE has interpreted a "reasonable time" as 15 school days. Also, a Notice of Meeting (NOM) must be provided, in writing, at least 10 days prior to a scheduled meeting. (K.A.R. 91-40-17(a)(2)). Finally, as noted by the investigator, a Prior Written Notice (PWN) is required, as a procedural safeguard, when certain proposed special education actions either occur or are refused. Under K.S.A. 72-3430(2)(A)-(B), a PWN must be provided to the parent, "whenever an agency: (A) Proposes to initiate or change; or (B) refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child." KSDE has determined that the PWN must be provided in a reasonable time, which again, has been interpreted as 15 school days from the date of the parent's initial request regarding identification, evaluation, placement, or the provision of FAPE, unless unusual circumstances exist. In this situation, at the time of the formal complaint, there had not been any proposed change, or refusal of change regarding the student's IEP. In fact, the Committee finds that the district was in the process of attempting to schedule a meeting.

In the original complaint, and in the appeal, the parent argues that the district refused to schedule a meeting. The investigator found no violation regarding that allegation. The Investigator stated that "the district did not refuse a meeting request by the parent", and that, "the district communicated to the parent in a reasonable period of time that it intended to schedule a meeting when school staff would be available." Documents in the record support these statements, and upon review, the Committee agrees with the investigator's findings. Here, documents show that the district did respond to the parent in a reasonable amount of time (1 school day following the initial request for a meeting, and then again 6 school days after the request).

As noted above, when a parent requests an IEP meeting, the district has a reasonable amount of time to respond (15 school days). The records shows that the district did respond to the parent on the same day the parent contacted the district about a meeting (on both July 19th and August 4th). Following clarification from the parent that they wanted a meeting, the district properly sent a Notice of Meeting to the parent. Documents show that the district provided a NOM to parents at least 10 days prior to the meeting, first through email on 8/19/2023 (12 days prior), then, according to the district, through certified mail (8/23/2023), and finally presented personally to the parent on back-to-school night (8/24/2023).

The parent also alleged that the district failed to provide a PWN. Again, the investigator found no violation and the Committee agrees. In this case, there is evidence that the district attempted to send a Notice of Meeting to the parents on several occasions, but no evidence that a meeting date had yet been agreed to by the parent. Further, there was no evidence presented by either party that a request regarding identification, evaluation, placement, or the provision of FAPE had occurred. Therefore, because the district was not implementing a change, or refusing to implement a change, the Committee finds that the district was under no obligation to provide a PWN to the parent. The Committee sustains the investigator's finding that the district did not violate IDEA by failing to provide a PWN.

### **Conclusion**

The Appeal Committee sustains the investigator's finding that, "it is not substantiated that the district failed to provide prior written notice for refusing to hold an IEP meeting at the request of the parent." No corrective action is required.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 21 day in September 2023.

### **Appeal Committee:**

Brian Dempsey: Assistant Director of Early Childhood, Special Education and Title Services,

Ashley Niedzwiecki: Attorney, Special Education and Title Services,

Dr. Crista Grimwood: Education Program Consultant.