

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 305,
Goddard Public Schools: 24FC305-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on September 29, 2024, by -----, on behalf of her children, ----- and ----- . In the remainder of the decision, ----- will be referred to as “the parent”, and ----- will be referred to collectively, as the “the students”. 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 October 26, 2024. That Complaint Report concluded that there was a violation of special education laws and regulations.

Thereafter, the district filed an appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed, and it reviewed the district’s appeal and supporting documents, the original complaint filed by the parent, the complaint report, and the parent’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.

Districts’ Appeal

The district claims the investigator erred in her finding of a violation under Issue One. The district argues the following on appeal:

“The investigator erred (1) by going beyond the scope of the concerns stated by the parent in the complaint; (2) by essentially conducting a file review audit on an evaluation that was 2 ½ years old without informing the District of the need to have the school psychologist available for interview;

and (3) making assumptions regarding the parent's need for an interpreter and regarding the alleged lack of evaluation of the students in Spanish, as well as English."

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

Issue

USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly develop the students' IEPs, specifically, by designing IEPs that would meet the students' needs, thereby denying them FAPE.

In the appeal, the district argues the investigator erred in her finding under Issue One for three reasons, as stated above. The Appeal Committee will address reasons 1 and 2 collectively, and reason 3 separately.

1. **Going beyond the scope of the concerns stated by the parent in the complaint; and**
2. **Essentially conducting a file review audit on an evaluation that was 2 ½ years old without informing the district of the need to have the school psychologist available for interview.**

In support of their argument, the district claims "the statement of the issues by the investigator were so broad and went so far beyond the statement of concern made by the parent in this matter as to place the district at a disadvantage on responding to the complaint." The district further contends that due to the broad nature of the investigation, they did not realize "it would be necessary to have the school psychologist who conducted the 2021 evaluation present for interviews." Additionally, the district argues "the reevaluation conducted on [the students] was conducted 2 ½ years ago."

The parent offered no response to this argument.

The original complaint submitted by the parent states, "they have them in the Special Education room all day and not in a regular classroom just because they can't speak." The parent further alleges the students are "being kept in a classroom with children who need more attention", and "they are being prevented from going into a regular classroom and getting the education they need."

To address the parent's concern, the investigator partly determined an issue was whether the 2023-2024 IEPs were properly developed. The investigator then correctly notified the district of the issue. The district claims this was "broad and went so far beyond the statement of concern made by the parent." The Committee disagrees. Whether an IEP is properly developed would address the parent's concern that her children are not being served in the correct classroom.

The district also argues, due to the broadness of the issue, they were unaware "it would be necessary to have the school psychologist who conducted the 2021 evaluation present for interviews." It is common, during an investigation, that issues or concerns may arise requiring an investigator to probe further than originally considered. This is not "broadening the scope of the investigation", but rather, "following the evidence". Furthermore, the district is not confined to only one interview, nor are they prohibited from requesting the investigator speak to school staff they

feel would provide relevant information. This is evidenced in the investigator's formal complaint notice to the district, where she states, "I would like to schedule a phone interview with any school staff you, [the district], believe has pertinent information to share regarding the allegations." It is not the investigators responsibility to guess which staff members may have pertinent information.

Finally, the district argues "the reevaluation conducted on [the students] was conducted 2 ½ years ago." While that may be true, it does not mean the investigator is prohibited from looking at the re-evaluation. In the Final Report, the investigator states three areas relevant to determining whether the 2023-2024 IEPs were properly developed. This included parent participation, including native language interpretation, proper native language assessments, and proper development of the IEPs. During the investigation, the investigator did examine parent participation, assessments done in native language, including evaluations done in 2021, and the students' enrollment record. The investigator compared these documents to the current IEPs' development to establish what would constitute a "properly developed" IEP. The investigator did not make any finding on the development of any IEP, or evaluation, dated outside the 12-month look-back period, as required under the law.

It is important to note that investigators are given discretion as to what information they believe will be relevant to the complaint. At no time did the investigator go "beyond the scope of the parent's concern" or "essentially conduct a file review audit", but rather, examined the history of the students, their evaluations, and the parents' role in the process to better understand the current needs of the students. The investigator appropriately utilized this data to determine whether the current IEPs were properly developed.

When a parent, or district, submits a formal complaint, it is KSDE's responsibility to examine all relevant information. Sometimes, this includes historical or underlying data. A review of this data does not mean an investigator is conducting a file review, nor does it mean the investigator is broadening the scope of the investigation beyond the 12-month look back period. At times, fidelity to the process, and fairness to both parties, require an investigator to understand the historical situation before deciding on the issue at hand. Here, the district confuses historical relevance with making a finding on an issue that is beyond the 12-month look-back period. The 12-month restriction is in place to confine allegations to acts that occurred within the 12-month period, not to limit an investigator's understanding of the circumstances.

3. Making assumptions regarding the parent's need for an interpreter and regarding the alleged lack of evaluation of the students in Spanish, as well as English.

The district disagrees with the investigators statement, "Given the parent's clear reaction when she learned that her children were in the K-1 self-contained special education classroom, it is likely that she did not understand the change of placement when the IEP meeting was held and upon signing the PWN", claiming that the investigator "clearly made an assumption." The district further argues the parent is not upset because she did not know the placement for her children, but rather, "was upset because she saw that her students are with special needs children". The district also argues, "the parent refused an interpreter" at the 10/19/2023 IEP team meeting.

The district claims, in part, that the parent does not understand English based on the students' enrollment records indicating English spoken at home, and states that there is a difference between, "a parent who does not understand language due to difficulties and a parent who does not want to understand due to denial of the severity of the child's disability." The district further states the parent, "switched to Spanish whenever she wanted to make side comments that she did not want school staff members to understand."

In response to this the parent provides a statement, saying, "I understand most of the English language when it is spoken to me but when it comes to the written part, I have trouble understanding it." She also states, "I was not the one who did the enrollment, my oldest daughter enrolled my children in school as we have mentioned before I spend most of the summer in Mexico." The parent further claims, "I can assure you I never said anything bad about anyone. That is just me when I get frustrated because I feel the school does not understand me." To confirm this, the parent also submitted a document provided by the Child Advocacy & Parenting Services, Inc. (CAPS). In this document, Mr. Fernando Rodriguez, a parent advocate who accompanied the parent to the IEP meeting on 10/19/2023, stated "during the meeting, [the parent] did express frustration with statements such as "See how they lie?" and "They won't answer my question." However, I want to emphasize that, at no point, did I hear [the parent] use any profanity or engage in insulting behavior towards any individual present."

The preponderance of evidence standard is the standard used in an investigation. This standard gives investigators discretion to determine if, after reviewing all relevant evidence, it is more likely than not, a violation occurred. This standard provides room for investigators to give deference, when need be, to either party based on the evidence.

In the Final Report, the investigator notes, "while the parent asserted that she did not understand what the elementary school placement would be, she was provided with documentation of this change by the district, which she signed giving her consent." The investigator continues, "However, no native language interpretation occurred at the meeting (March 30, 2023, meeting) and the parent immediately protested the placements upon visiting the elementary school." From this, the investigator concludes "it is likely that she did not understand the change of placement when the IEP meeting was held and upon signing the PWN." Here, the district finds fault with the investigator's inclusion and assessment of, the parent's reaction to learning her children were in a self-contained classroom. The district counters the investigator's "assumption" with assumptions of their own, mainly that the parent "does not want to understand", "switched to Spanish" during meetings to discuss school staff, and "was upset because she saw that her students are with special needs children." The district also notes that the parent "refused an interpreter" during the 10/19/2023 IEP team meeting, indicating that the parent does not actually need an interpreter. However, the parent was supported by a parent advocate from CAPS at that meeting, who has alluded to speaking Spanish. While the Committee will not determine whether this negated the need for an interpreter, without further evidence as to why the parent refused, the Committee will also not draw a conclusion based solely on fact that the parent did not utilize an interpreter at the 10/19/2023 meeting.

In this case, the Final Report reveals the investigator examined historical data, the parents' reaction to learning her children were in a self-contained classroom, the development of the IEPs, IEP meeting notes, whether assessments were conducted in the students' native language, what the parents' native language is, who spoke English and who spoke Spanish inside the home, the districts assumptions and claims about the parents' English proficiency level, and the students' enrollment records, among other things. Given a review of all evidence, the investigator found it was more likely than not the district violated state and federal special education laws. The Committee finds the evidence supports the investigator's finding and affirms the finding.

Conclusion

The Appeal Committee affirms the investigator's finding of a violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), specifically, by failing to design IEPs that would meet the students' needs, thereby denying them FAPE. No corrective action required.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 27TH day of November 2024.

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: Dispute Resolution Coordinator