

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 512
Shawnee Mission Public Schools: 24FC512-003

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on October 19, 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, Diana Durkin, 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 November 17, 2023. That Complaint Report concluded that there were no violations 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 parent's appeal and supporting documents, the original complaint filed by the parent, the complaint report, 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 parent presents numerous arguments as to why the investigator erred in her finding of no violation under issue one and issue two. Each argument will be reviewed separately. The following issues in this complaint have been addressed by the Appeal Committee:

Issue One: By failing to appropriately address the student's limited progress in reading and math, the district has denied the student a Free Appropriate Public Education (FAPE).

Issue Two: The district has failed to provide the student with Occupational Therapy and Assistive Technology services needed to enable the student to make progress toward meeting IEP goals related to handwriting.

Issue One

The parent argues the following under Issue One:

1. Page 11, Paragraph 2 of the Complaint Report:

The parent claims the Complaint Report includes incorrect information, specifically that the investigator "misread the PLAAFP in the goal section and not the actual goal" for the February 2022 IEP. The parent also argues a 2% increase in performance "should not be considered "meaningful progress." The parent insists the student's "progress reports vs. data in the present levels of academic achievement and functional performance are inconsistent and do not support meaningful progress forward." The parent further notes that "a lack of meaningful progress is a denial of a free and appropriate public education." The parent claims the investigator failed to consider "data, raw data, and consider a longitudinal look at specifically designed instruction since 2019."

In response, the district states, "the IEP team met and made substantial changes to services in January and February 2023." The district further contends that following each change the student continued to make progress, as noted in the record provided to the complaint investigator.

Discussions with the complaint investigator, and a review of the record, reveal the student did make progress toward goals, albeit in small increments. As noted by the investigator, a comparison of the current and previous IEPs, PLAAFPs, progress reports, and goals, along with a substantial amount of historical data, show the student has made progress. Additionally, documents confirm that, following IEP team meetings, with parent involvement and consent, the district did implement changes to the student's IEP as necessary.

As stated by the investigator, "The IEP must be reasonably calculated to enable the child to make "progress appropriate in light of the child's circumstances" (*Endrew F. v. Douglas County School District* (137 S. Ct. at 999) and should aim to enable the student to make progress toward the student's IEP goals and in the general education curriculum, but there is no guarantee of progress." As such, progress may look different for each student.

In this case, the parent states, in the formal complaint, "[the student] should be reading at least at a 7th grade level to be functional in the community and work setting. He should also be able to do basic math at a 7th-grade level to function appropriately as an adult with managing money, bills, etc." While the Appeal Committee understands the parents' desire for his child, it is necessary to

consider each student, and their specific circumstances independently. Progress needs to be appropriate *in light of the child's circumstances*, therefore, a predetermined "grade level" achievement may not be appropriate.

To comply with *Endrew F.*, a district must develop, monitor, and revise a student's IEP as necessary to ensure the student's IEP is appropriately individualized and ambitious. In this case, as shown in the record, and confirmed by the investigator, the district had routinely adjusted the student's IEP goals and targeted various skills, as appropriate, to provide the student with an IEP reasonably calculated to enable the student to make progress in light of the student's circumstances. Further, the record shows the student did make progress, albeit in small increments, in reading and in math, as noted by the investigator.

The parent also argues the investigator failed to look at the longitudinal data, specifically the student's specially designed instruction since 2019. However, the Complaint Report shows that the investigator, in fact, did examine longitudinal data well beyond 2019, dating back to the student's kindergarten year. As confirmed by the investigator, well over 200 documents, including past and current IEPs, emails, progress reports, meeting notes, and PWNs were examined during the investigation. As related to this argument, the Appeal Committee affirms the investigators finding.

2. Page 18, Paragraph 2 of the Complaint Report:

The parent claims the investigator's statement, "again this school year, accommodations/modifications have been provided to the student in all elective classes", is not a true statement.

The district states it provided requested information to the investigator, including the student's IEP, with additional documentation, which outlines specific accommodations/modifications implemented within the general education setting.

A review of the record shows the student was able to continue to participate in, and pass, electives "with modifications and accommodations" during the period in question. Further, as noted in the report, "when the student was not being successful in two of those elective classes after the first quarter of the 2023-24 school year, the IEP team promptly began exploring additional accommodations."

As indicated by the record, the student received accommodations and modifications in elective classes, and the IEP team monitored the student's progress pertaining to those classes. When the student was not being successful, the IEP team met to revise and modify the student's accommodations. As such, the record does not support the parent's contention that the investigator's statement is untrue. As related to this argument, the Appeal Committee affirms the investigator's finding.

3. Page 1, paragraph 2 of the Complaint Report:

The parent claims to have requested IEP team status updates regarding the consulting services provided by Stacy Cates, the Dyslexia Consultant for the district, but the IEP team has yet to provide that information.

In response the district states, "the accommodation outlines that the case manager will share a recap of a meeting with dyslexia consultant to the parent 1x per semester. This has been provided to the parents." The district also notes the student is currently under evaluation by an outside agency, being paid for by the district and selected by the parent, "to obtain further clarity on the current student needs."

The only information in the record, pertaining to Ms. Cates, the Dyslexia Consultant, is a notation by the investigator indicating that she was present for an interview (Page 1, Paragraph 2), as well as a reference to a PWN, sent on March 9, 2023, signed by the parent, which gave the district permission to move "consult with Dyslexia Specialist" from the accommodations section of the IEP to the support for personnel section of the IEP. Conversations with the investigator further confirm the Dyslexia Consultant does not work directly with the student, but rather is utilized by the IEP team to give general guidance on understanding dyslexia. Finally, "status updates", pertaining to the Dyslexia Consultant was not an issue the parent identified prior to filing this appeal. As such, the Appeal Committee will not address it now.

4. Page 7, Paragraph 3 of the Complaint Report:

The parent disagrees with the investigator's statement, "it was the position of the parent that the district failed to provide the student with a free appropriate public education (FAPE) during the Covid-19 pandemic." Specifically, the parent states, "we the parents made the position that when [the student] was transferred to the middle school (before Covid) he was placed in an inappropriate class, with inappropriately designed curriculum."

In response the district contends the parent *did* request private placement during the Covid-19 pandemic but was denied because the district was able to provide services as required by the student's IEP. Further, the district claims that a private institution would not have been the LRE for the student. Finally, the district adds, "as a resolution to the formal complaint, the parent requested the following: private placement or a check for \$250,000.00." In response to that request the district again considered private placement, but the private placement location rejected the student's enrollment.

Documents show, and conversations with the investigator confirm, that information pertaining to services provided to the student during the Covid-19 pandemic was used to establish a timeline of events leading up to the current complaint issues. This historical data was relevant to determine the progression of the student's education but was not a finding made by the investigator. Also, nothing in the record indicates placement "in an inappropriate class, with inappropriately designed curriculum" (before Covid-19), was an issue the parent identified prior to filing the appeal. Even if

the parent had identified this issue, the investigator would not have been able to make a finding about the district's placement decision (prior to the Covid-19 pandemic) as this event occurred outside the 12-month look back time frame in which formal complaints are permitted. As such, the Appeal Committee will not address this issue.

5. Page 13, Paragraph 2 of the Complaint Report:

Within the Final Report, the investigator includes a concern, addressed in meeting notes, from IEP team meetings held in April 2023. The investigator's notes, "the parent also expressed concern regarding the districts ability to place the student in the "least restrictive environment" (LRE) although the meeting notes do not specify what that environment would be." The parent argues that it is not their responsibility to determine LRE but emphasize that they "made it clear multiple times that [the student] continues to be misplaced in inappropriate classes." The parent further states, "[the student] is being served curriculum design[ed] for Down Syndrome and Autistic children. Most recently, this year [the student] was placed in a Careers class with children on the spectrum."

In response the district states "the district has an obligation to serve students individually based on their individual identified needs and cannot guarantee the students eligible for special education have the same disabilities. In the alternative assessment classroom, [the student] receives individualized services designed to meet his unique needs."

According to documents, on April 4, 2023, the parents expressed concern about the student's placement in certain classes because they were "restricting his involvement with his peers." To address this concern, the district stated it would "search for other students *with needs similar* to those of the student in the area of math so that the student would be able to interact with peers." Additionally, the district rejected the idea of having the student participate in an AA class (Intensive Resources class) because data showed the student was functioning at a higher level than his peers in that class. As the district correctly states, "the district has an obligation to serve students individually based on their individual identified *needs*", and as such, a district cannot guarantee that a student will be exposed only to peers with the exact same disabilities, nor would such an attempt at segregation be appropriate. Also, once again, this issue was not identified by the parent in the original complaint. As such, the Appeal Committee will not address it now.

6. Page 13, Paragraph 3 in the Complaint Report:

The parent states they have not received any information on data from the Dyslexia Consultant even though the IEP states that updates will be given.

This issue has been addressed above under argument number three. As previously stated, "status updates", or information pertaining to the Dyslexia Consultant was not an issue the parent identified prior to filing this appeal and the Appeal Committee will not address it now.

7. Page 13, Paragraph 4/5 in the Complaint Report:

The parent argues two issues under this section. First, the parent claims to have requested information pertaining to after-school resources/clubs multiple times before information was provided.

The district responds by claiming it, “strives to ensure ALL students have access to extra-curricular opportunities and provides necessary support when an IEP team determines the student requires support.” The district further contends, following an IEP meeting with the parent, they did provide information to the parent pertaining to extra-curricular activities, via multiple emails.

In this case, the record shows that during a team meeting, held April 4, 2023, the district addressed parent concerns by exploring options for the student to work with animals in the Environmental Ed class, providing the parent with information on how the student could become involved with the Stage Crew for plays, and noted the student was participating in a Ping Pong Club. The IEP team also determined the student would not need any services to participate in the clubs or extra-curricular activities. Regardless, this issue was not addressed prior to filing this appeal, and therefore the Appeal Committee will not address it now.

Second, the parent claims there are “still issues with staffing and para coverage” and that paras have been replaced in [the student’s] history class. The district provides no response to this allegation.

Documents confirm the parent did report concern to the IEP team regarding staff shortages on April 4, 2023. The parent voiced concern, in part, about para involvement in both the general education and special education classrooms, specifically that “each year [the student’s] team turns over and consistency is important.” The parent also expressed concerns about the qualifications of the student’s teachers.

According to documents, the district acknowledged staff shortages have occurred. However, the student’s service minutes have been delivered as stated in the student’s IEP. There is nothing in the record to indicate otherwise. Conversations with the investigator further confirm that, after reviewing well over 200 documents, no evidence was found to indicate the student had not received services as required. Documents also show the student’s math teacher was a certified long-term substitute teacher in the building, and the Directed Reading teacher is a certified Special Education teacher who has undergone specialized training.

While the Appeal Committee understands the parent’s concern about staff inconsistency, it is important to note that decisions regarding personnel utilized to deliver services is a discretionary decision for the district to make. Documents show the district did ensure the student continued to receive services and that appropriately certified staff were utilized to deliver those services.

Further, there is nothing in the record to indicate this has a significant impact on the student’s progress. As related to this argument, the Appeal Committee affirms the investigator’s finding.

Conclusion - Issue One

Based on a review of the above, the Appeal Committee affirms the investigator's finding that a violation of special education statutes and regulations *is not substantiated*, and that the district has met its responsibility regarding the provision of FAPE.

Issue Two

The parent argues the following under Issue Two:

1. Page 22, Paragraph 2 in the Complaint Report:

The parent claims there is "zero data backing the district's position" that the student did receive Occupational Therapy Services to address handwriting. The parent requests that the investigator "look deeper into IEP docs, emails, and meeting notes" because "it will show the parents have been raising this issue for years."

The district contends documentation and interviews, provided to the complaint investigator, support that appropriate OT services have been provided to the student and that the student has made adequate handwriting progress.

The record confirms the IEP team met in January of 2023 and developed a goal to increase the overall legibility of the student's handwriting for written assignments. To help achieve this goal, the Occupational Therapist created a 7-point writing checklist. Additionally, the OT stated that the student was able to generate adequate writing samples during therapy sessions and inconsistently demonstrated adequate writing techniques. Further, documents indicate the district monitored the student's progress in March, May, and October of 2023, and that OT service minutes were changed during a September 2023 IEP meeting, following the parent's expressed concern over the student's progress toward letter formation and line spacing. At that meeting, the parent consented to move the OT services from the general education setting to a special education setting. Continued monitoring revealed the student improved from requiring "a minimum of 7 verbal prompts to initiate using the writing checklist" (May 2023) to "one verbal prompt to initially use the checklist" (October 2023). May 2023 progress monitoring also notes, "after corrections have been made using the checklist [the student's] overall legibility does improve."

In this case, there is ample evidence in the record to support the investigator's finding that the district provided OT services and assistive technology, as specified in the student's IEP, enabling the student to make progress toward IEP goals. Therefore, the Appeal Committee affirms the investigator's finding under issue two.

Conclusion - Issue Two

Based on a review of the above, the Appeal Committee affirms the investigator's finding that a violation of special education statutes and regulations *is not substantiated*, and that the district did

provide the student with Occupational Therapy and Assistive Technology services needed to enable the student to make progress toward meeting IEP goals related to handwriting.

Summary of Conclusions

The Appeal Committee affirms the investigator's finding of no violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) under issue one and issue two.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 15th day of December 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: Dispute Resolution Coordinator