

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed April 1, 2024
Against Unified School District No. 443

DECISION OF THE APPEAL COMMITTEE

Background

The matter commenced with the filing of a complaint on April 1, 2024, by xxxxxxxx on behalf of her child, In the remainder of the decision, xxxxxxxx will be referred to as “the parent”, and xxxxxxxx will be referred to as “the student”. An investigation of the complaint was undertaken by complaint investigators, Donna Wickham and Lori Noto, 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 May 1, 2024. 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, and the Complaint Report. 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.

Parents’ Appeal

The parent argues the investigators erred in their finding of no violation under issue one and issue two. The parent also argues the complaint investigators failed to properly investigate all five submitted concerns. Finally, the parent argues the investigators did not provide the parent with

the opportunity to discuss the complaint as required under K.A.R. 91-40-51(c)(1). Each issue will be reviewed separately. The following investigated issues in this complaint will be addressed by the Appeal Committee:

ISSUE ONE: USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide written input from the reading teacher at the November 15, 2023, and November 28, 2023, meetings.

ISSUE TWO: USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to write the PWN specifying the dates and times the district was proposing compensatory services as specified in the February 20, 2024, Child Complaint titled 24FC-443-001.

Parent Concerns Not Addressed in the Complaint

The Appeal Committee does not review issues that have not first been investigated. Therefore, while the Committee takes this opportunity to comment on the parent's concerns, no decision will be made regarding those issues that were not investigated.

First, the parent argues the complaint investigators failed to contact her regarding the formal complaint.

Following the filing of a complaint, the complaint investigator assigned will contact the complainant, to clarify the issues and review all relevant records and documents submitted by the parties, to determine whether the facts stated in the complaint are correct and, if so, whether they substantiate a violation of the requirements of special education laws or regulations. (See Kansas Process Handbook, pg. 174). Under K.A.R. 91-40-51(c)(1), the complaint investigator is required to have "[a] discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded." There is no requirement for an investigator to contact the complainant through any prescribed method.

In this case, the record shows the investigators reviewed the parent's complaint, and then sought clarification of the issues through an email, sent on April 8, 2024, to the parent, asking the parent if she would like to continue the discussion through a phone interview. The parent did not respond to this email or address the interview request. In the appeal the parent states, "The Complaint Investigator never contacted me. Therefore, I never had an opportunity to clarify any information or discuss any matters." Based on a review of records, this statement appears to be inaccurate. While it is true that the investigators did not speak directly with the parent, they did contact the parent and ask if the parent wished to communicate further regarding the complaint. Additionally, the parent had an opportunity, at that time, to clarify any disagreement regarding the issues presented by the investigators.

Further, although the Kansas regulation does require a complaint investigator to “have a discussion” with the complainant, it does not require that discussion to occur through any specific method, be of any specific length of time, or compel the complainant to participate. Here, the parent did not respond to the email and the investigators continued to investigate the issues based on all available documentation provided by both the district and the parent. Regardless, if the parent has additional information, that was not shared with the investigators, of a possible violation of state and federal special education laws, the parent may file a new formal complaint.

Second, the parent argues the investigators failed to properly investigate all her concerns.

Here, the parent presented five concerns and two sub-concerns in the formal complaint, for a total of seven concerns. Upon review of the submitted documentation, the investigators determined that two of those concerns were new issues, one concern regarded documents utilized in the previous formal complaint, and four concerns, (including the two sub-concerns) were related to the corrective action assigned in the previously investigated Child Complaint, 24FC443-001. As noted by the investigators in the current Complaint Report, “This complaint was filed to address concerns related to some of the corrective actions [in 24FC443-001] and two new issues. Special Education and Title Services has oversight with issues related to corrective action, so these concerns were not investigated.”

A review of records shows the investigators did reach out to KSDE to verify whether parent concerns regarding corrective action should be investigated. The response from KSDE was that only new issues should be investigated and concerns related to ongoing corrective action should not be investigated. The investigators also determined the parent’s concern, about a records request, was related to documents used in the previous Child Complaint, 24FC443-001.

Specifically, the parent notes, “I requested certain educational records from the Districts that the Districts produced for the investigator as a result of the last formal complaint I filed in January 2024.” According to the Model Form, which the parent used to submit her formal complaint, “Any document submitted by either the school district or parents will be available to the other party, upon request.” In this case, the parent could have, and still can, request those documents from the complaint investigator who investigated Child Complaint 24FC443-001. Additionally, as stated above, if the parent believes there is new information regarding the submitted issues, a new formal complaint can be submitted to KSDE for review.

Issue One

USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide written input from the reading teacher at the November 15, 2023, and November 28, 2023, meetings.

Under issue one, the parent disagrees with the investigators finding for numerous reasons. Each reason will be addressed separately below.

1. The parent states, “[T]he current investigator accepted information from the district without allowing the parents an opportunity to make known the full facts.” The parent references the following statement in the current Complaint Report which she claims requires further explanation:

“...attendance sheets demonstrate that a general education teacher was present. They {the district} further state there is no requirement for a required team member to submit written input to the IEP team when they are physically present at the annual IEP meeting. Furthermore, the reading teacher was present at the March 20th, 2024, IEP.”

As stated above, the parent may file another formal complaint if the parent has new information about a possible violation of state and federal special education laws.

2. The parent states a review of the signature page alone would not have informed the investigator that “the *regular education teacher* was absent, albeit without proper excusal, for part of each of the meetings.” (Emphasis added.) As evidence of this, the parent cites the previous Complaint Report (24FC443-001), and, in part, the investigator’s statement “A general education teacher partly attended...”. In that complaint, the investigator notes that the reading teacher was not present for the meetings. However, the investigator also found that a *general education* teacher was present for part of the meetings, stating, “[T]he student’s homeroom/science teacher from the parochial school was present for part of the meeting.” (Emphasis added.) This statement pertained to both the November 15 and November 28, 2023, IEP meetings.

In response the district contends, “[T]he attendance pages at both IEP meetings (11/15/23 and 11/28/2023) clearly indicate that a general education teacher was present at each meeting.

In the Complaint Report (24FC443-002), the complaint investigators note, “The IEPs dated November 21, 2022 (in effect at the beginning of 2023-2024 school year), November 15, 2023, November 28, 2023, and March 20, 2024, showed a general education teacher signed the attendance sheet.”

Here, the investigators reviewed the IEP attendance records and noted that a general education teacher was present at each meeting in question. As defined in K.S.A. 72-3404 (u)(2), an *IEP team* means a group of individuals that includes, “at least one regular education teacher of the child, if the child is, or maybe, participating in the regular education environment...”. The investigators found that the child is participating in the general education environment and, according to the IEP attendance records, at least one general education teacher of the child was present at each meeting. Furthermore, the investigators correctly state, “[I]t is the district's obligation to provide a general education

teacher, the parent may not request a specific teacher." As noted by the investigators and confirmed by the records, a general education teacher was present at each meeting.

Furthermore, while the parent's argument that the attendance records, without further investigation, would ultimately fail to show whether the regular education teacher was present for the entire meeting *might* be correct, it is not an issue on which this Committee will decide for two reasons: 1) This argument was not a concern presented to the investigator in the formal complaint. Therefore, the investigator was not obligated to consider whether a reading teacher was present for all or part of the meeting, only whether the reading teacher was obligated to provide written input, and 2) Even if the parent had presented the issue to investigators, it would not have been investigated as part of this complaint. As discussed above, whether a regular education teacher was present for the entire meeting (both 11/15/23 and 11/28/23) was a matter already investigated in a previous complaint (24FC443-001).

3. Finally, the parent disagrees with the investigator's finding because the reading teacher "did not provide written input prior to the meeting..." (Regarding the 11/15/23 and 11/28/23 meetings). The parent cites K.S.A. 72-3429(b)(3), as the requirement for the reading teacher to provide written input before the IEP team meetings. However, the parent confuses the requirement.

K.S.A. 72-3429(b)(3) states, "A member of a child's IEP team may be excused from attending an IEP meeting when the meeting is to involve a discussion of, and possibly a modification to, the IEP member's area of the curriculum or related service, if: (A) The parent and the agency consent to the excusal; (B) the IEP member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting; and (C) the parent's consent to the excusal is in writing.

While the law does require an IEP team member to submit input in writing prior to an IEP team meeting, that requirement does not extend to every single regular education teacher who happens to have the student in class. As addressed above, the reading teacher was not the required general education teacher on the IEP team.

Further, in response, the district states, "[T]here is no requirement for required team members to submit written input to the IEP team when they are physically present at the annual IEP review."

The investigators correctly found, "The assertion the parent made that the district is obligated to submit written documentation to the parent and IEP team is in the case when a required member of the IEP team is excused from the meeting." (Emphasis added).

Finally, as the parent herself states in her appeal, "the school is strongly encouraged to seek input from the teachers who will not be attending the IEP team meeting." (*Kansas*

Process Handbook, pg. 62). Again, this was a discussion and finding in the previous complaint (24FC443-001), where it was noted that the IEP team did gather input from the reading teacher, albeit not in written form. As the record supports, the investigators in this complaint were able to determine that a general education teacher (required IEP team member) was at the meeting. Therefore, since the reading teacher's presence was not needed to fill the required role, there was no obligation for the input to be *written*. (Emphasis added).

Conclusion - Issue One

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

Issue Two

USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to write the PWN specifying the dates and times the district was proposing compensatory services as specified in the February 20, 2024, Child Complaint titled 24FC-443-001.

Again, the parent disputes the investigator's findings for numerous reasons:

1. The parent disagrees with the complaint investigator's finding because the investigator "did not contact me for additional information or clarification."

Here again, if the parent believes there is additional information, related to a possible violation of state and federal special education laws, beyond that which was already investigated, the parent may file another formal complaint.

2. The parent disagrees with the finding because, "specifically, this concern was raised in relation only to the PWNs which offered compensatory minutes", and therefore, the parent states that this issue was likely investigated by mistake. Regardless, the parent states that this is still an issue.

The parent claims that had the investigators talked with her, they would have realized that this issue "would have been kicked back to the Special Education and Title Services like the other concerns related to corrective action." However, a review of the record shows the investigators did properly investigate the concern as presented by the parent.

The parent's formal complaint does address a concern about the PWNs related to compensatory services minutes required under the corrective action assigned in Child Complaint 24FC443-001. Regarding this issue, the parent's principal concern is, "[I]f the required corrective actions are not spelled out to a "T", this district has no intention of correcting something based on only the fact that it is in the student's best interest or

already required by regulation.” The parent continues by citing the Kansas Process Handbook, specifically, sections requiring that parents be “fully informed” through a PWN.

In response to the parent’s appeal, the district states, in part, “The complainant’s primary argument is that in order to be “fully informed”, the specific dates (and perhaps times) of special education services would need to be proposed in a prior written notice document. We agree with the investigator’s finding that this is simply not the standard of performance required of schools.”

In the Child Complaint, the investigators describe the six PWNs given to the parent on March 20, 2024. According to investigators, and confirmed in the record, the PWNs address compensatory minutes, including “a total number of proposed minutes along with an offer of a specific number of minutes and the number of times offered each week, comparable to how service minutes are offered in the student’s IEP.”

The investigators found, and the record confirms, that all required information was included in the PWNs. Since the parent’s concern was whether the PWNs allowed her to be fully informed, as required under state and federal law, the investigators correctly addressed whether the PWNs included the required information. Based on the record, this issue was not investigated by mistake, but rather directly addressed the parent’s concern related to the information provided on the PWNs.

3. Conclusion - Issue Two

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

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 on this 13th day of May 2024.

Appeal Committee

Brian Dempsey; Assistant Director of Special Education and Title Services,

H. Dean Zajic; Assistant Director of Special Education and Title Services,

Dr. Crista Grimwood; Dispute Resolution Coordinator.