

In the Matter of the Appeal of the Report

Issued in Response to a Complaint Filed January 11, 2024 and January 17, 2024

Against Unified School District No. 229

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on January 11, 2024, 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 February 9, 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, 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.

Parents' Appeal

The parent argues the investigator erred in her finding of no violation under issue one, issue two, and issue three. Each issue will be reviewed separately. The following issues in this complaint have been addressed by the Appeal Committee:

Issue One: The UDS #229 in violation of state and federal regulations implementing the Individuals with Disabilities Act (IDEA), failed to provide the parent progress reports on January 10, 2024. [Pg. 2]

Issue Two: The UDS #229 in violation of state and federal regulations implementing the Individuals with Disabilities Act (IDEA), failed to address the student's lack of progress on two IEP goals specifically by creating and using "mitigation plan and report". [Pg. 4]

Issue Three: The UDS #229 in violation of state and federal regulations implementing the Individuals with Disabilities Act (IDEA), failed to provide FAPE by implementing the IEP, specifically "did fail on addressing two [IEP] goals on 2 consecutive quarters of the 2023-24 school year". [Pg. 6]

Issue One

The UDS #229 in violation of state and federal regulations implementing the Individuals with Disabilities Act (IDEA), failed to provide the parent progress reports on January 10, 2024.

Under issue one, the parent argues the progress report "were stated to be released by 12/20/2023." He further contends that he had no "interaction when maintenance from the school needs to be done or when uncertain weather related will affect or interfere [with the] school's operations". Additionally, the parent argues the district called the parent a "liar in email interactions when the parent did not access the system they referred [ParentVue] on the date 1/09/2024", stating that "it is the job from the district to send hardcopy documentation on every [IEP] report."

In response the district states, "snow days happen", further contending that IDEA is silent on a district's responsibility to maintain previously announced grade/progress report releases when inclement weather closes school. Finally, the district notes that progress reports were released to the parent in the same manner and time as all general education grades.

In the report, the investigator found the parent was alerted, along with all school students and families, that grade reports/progress reports would be available for view on January 12, 2024, rather than the originally set release date of January 10, 2024. The change in date occurred because of a technology glitch, prompting the district to notify all families. Documents further reveal that on January 17, 2024 (following two snow days and one holiday) the district sent the parent a personal email again explaining that the student's progress report was available in ParentVue, along with a pdf version of the student's progress report and notification that a hard

copy would be sent home with the student that day. A reply from the parent showed the parent received the email.

Under IDEA, an IEP must include a description of how the student's progress toward meeting IEP goals will be measured and when periodic reports will be given to the parent. (34 C.F.R. 300.320(a)(3)). In this case, according to documents, the student's IEP states, "Progress on goals will be reported with the same frequency as the general education report cards." Report cards were presented on January 12, 2024, including the student's progress report. Further, as stated by the investigator, the district is not obligated to provide the progress reports in any manner the parent dictates. Yet, in this case, the district did comply with the parent's request for a hardcopy as soon as school resumed following two snow days and a holiday. Therefore, the Appeal Committee finds the district did provide the parent with progress reports as stated in the student's IEP and 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*.

Issue Two

The UDS #229 in violation of state and federal regulations implementing the Individuals with Disabilities Act (IDEA), failed to address the student's lack of progress on two IEP goals specifically by creating and using "mitigation plan and report".

Under issue two, the parent argues the district never mentioned "the syllable types in a mixed format", or new methodology in meeting Goal 1 (writing) of the student's IEP. Additionally, the parent argues that the student dropped in average accuracy on Goal 3 (reading) from 89% at the end of the 2022-2023 school year to 88% at the end of the 2nd quarter of the 2023-2024 school year.

The district did not provide a specific response to this appeal issue.

The parent's first argument, that the district failed to mention a new methodology in meeting Goal 1 is not an issue that was addressed in this report, and as such will not be considered by the Appeal Committee.

Regarding the second part of the parent's argument, in the report, the investigator lists each of the student's IEP goals and details progress made by the student. The investigator noted that following ESY 2023, the student went from being assessed on isolated syllable type format to a more challenging mixed syllable type format. Although the format used to assess the student's progress changed, the student's goal did not change. As noted in the report, following the presentation of a more difficult format, the student's accuracy did momentarily decline. However, documents show

that following continued work on Goal 1, the student's accuracy on the more challenging mixed presentation format lists rose to 81% at the end of the 2nd quarter and then to 86% on February 2, 2024. Therefore, the student did make progress toward Goal 1.

For Goal 3, documents show the student was similarly tested using isolated syllable types and then subsequently tested using a more challenging mixed syllable presentation list. The student's scores rose from 80% accuracy when first presented with the mixed syllable type list to 88% accuracy when retested on February 2, 2024. Therefore, the student did make progress on Goal 3.

Under 34 C.F.R. 300.324(b), an IEP team must meet, at least annually, to determine whether the annual goals are being achieved and revise the IEP, as appropriate, to address any lack of expected progress. In this case, there is ample evidence in the record to support the investigator's finding that the district monitored the student's progress, adjusted the testing of the goals as appropriate given the student's progress, and that the student made progress. Additionally, while the student did have a momentary decrease in accuracy when presented with a more challenging format, the student's overall progress toward the goal did progress. 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*.

Issue Three

The UDS #229 in violation of state and federal regulations implementing the Individuals with Disabilities Act (IDEA), failed to provide FAPE by implementing the IEP, specifically "did fail on addressing two [IEP] goals on 2 consecutive quarters of the 2023-24 school year".

Under issue three, the parent presents the same argument as under issue two, that the district never mentioned "the syllable types in a mixed format", or new methodology in meeting Goal 1 (writing) of the student's IEP, and that the student dropped in average accuracy on Goal 3 (reading) from 89% at the end of the 2022-2023 school year to 88% at the end of the 2nd quarter of the 2023-2024 school year.

The district responded, in part, by stating that methodologies are not a parent consent item.

As stated above, the parent's first argument is not an issue that was addressed in this report and as such will not be considered by the Appeal Committee.

Regarding the second part of the parent's argument, the investigator noted the student did make progress toward all Goals in the 2nd Quarter of 2023-2024 school year. Documents further reveal that the student's special education teacher created extensive lesson plans that included writing, letter sounds, blending sounds, phonemic awareness, syllabification, reviewing reading words and

teaching new words, reading phrases, spelling, multisensory new concept or focused reteaching, oral reading, sentence dictation, and a reflection lesson. In this case, the investigator found that not only was the district providing specialized instruction to the student, but that the student was, and is, making progress toward goals listed in the IEP. There is nothing in the record to show that the district was not addressing the student's IEP goals. Therefore, the Appeal Committee affirms the investigators finding under issue three.

Conclusion Issue Three

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*.

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, two, three.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 28th day of February 2024.

Appeal Committee

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

Mark Ward: Attorney, Special Education and Title Services,

Ashley Niedzwiecki: Attorney, Special Education and Title Services,

Dr. Crista Grimwood: Dispute Resolution Coordinator