

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 260
Derby Public Schools: 24FC260-003

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on October 4, 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 October 13, 2024. That Complaint Report 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 parent's appeal and any supporting documents, the original complaint filed by the parent, the complaint report, and the district's response and any 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

In the appeal the parent argues:

1. Dr. Gresham is employed by USD 260 as the Director of Special Education and not the Human Resource Director.

2. A meeting between the soccer coaches and Dr. Gresham in May of 2023 was not a personnel issue, as reported by Dr. Gresham, but rather an IEP meeting pertaining to the student.
3. The above-mentioned meeting “was hidden from [the student] and [the complainant]”.
4. If the above-mentioned meeting was a personnel issue, it should have been “reported directly to the HR director of USD 260 it was not referred to the proper department it was instead conducted by the direct[or] of special services of USD 260 thereby it was an illegal IEP meeting.”

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

Issue

The USD #260 has, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent the opportunity to participate in a meeting held with regard to the IEP of the student.

As noted by the investigator, under both state and federal law, each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or afforded the opportunity to participate, including notifying the parents of the IEP team meeting and scheduling the IEP team meeting at a mutually agreeable time. (34 C.F.R. 300.322(a); K.A.R. 91-40-17(a)). Under K.A.R. 91-40-25(a) an agency shall allow the parents of an exceptional child an opportunity to participate in any meeting concerning their child with respect to the identification, evaluation, or education placement of the child, and any meeting on the provision of FAPE to the child.

However, a meeting, shall not include:

- (1) Informal or unscheduled conversations involving agency personnel and conversations on issues including teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP; and
- (2) preparatory activities that agency personnel engage in to develop a proposal or response to a parent's proposal that will be discussed at a later meeting. (K.A.R. 91-40-25(e)).
- (3) In the appeal, the parent states that a meeting was held in May 2023, between the soccer coaches and Dr. Gresham regarding the sports para assigned to the student. The parent claims 1) the meeting was held to discuss the student, 2) this meeting was an IEP meeting, and 3) the parent and the student should have been involved. The parent points to the lack of involvement by the Human Resources Department as evidence that the meeting was an IEP meeting and not a personnel issue. Specifically, the parent argues that if this were a personnel issue, as the district claims, then HR would have conducted the meeting, and not the Director of Special Education. The parent offers no other evidence to support his conclusion.

In response, the district provides documentation of school's policy regarding complaints, specifically, that district policy states "the board encourages all complaints regarding the district to be resolved at the lowest possible administrative level." In an email to the parent, dated February 11, 2023, Dr. Gresham states, that the parent should direct all concerns related to an OCR complaint to Dr. Gresham, and says "We obviously are able and willing to discuss any other matters associated with [the student] at your request." While an OCR complaint is outside the scope of this appeal, and will not be discussed, the email does indicate that Dr. Gresham is the point of contact for the parent's concerns. In this case the Committee finds that Dr. Gresham was the appropriate person to handle a concern, brought to the district's attention by the parent in relation to the student, and that the exclusion of Human Resources does not, on its own, suggest that the meeting was an IEP meeting.

Further, emails provided by the district show that the parent did bring numerous concerns to Dr. Gresham regarding the student, the sports para, and the coaches. Most of these emails specifically address an OCR complaint, and as such are outside the scope of this appeal and will not be considered. However, in an email, dated April 18, 2023, sent from the parent to Dr. Gresham, the parent states "Tonight after game [the sports para] be informed [the student] why she is not playing on varsity as Paul is punishing her for me." Dr. Gresham responds, "As always I will investigate." The district provides further context regarding the email in their response to the appeal, stating, "During the concerns [the parent] submitted via email, entitled "Paul Burke Email", a matter was discovered that required me [Dr. Gresham] to address the behavior of the "sports para". The district also notes that the "meeting" in question is individual meetings held between Dr. Gresham, the coaches, and the sports para regarding the sports para's behavior and job expectations.

In an email, dated September 28, 2023, sent from the parent to Dr. Gresham, the parent states, in part; "Dawn there was a meeting I did not know about! The panther award? Ring a bell? You went and told [the sports para] at DNMS as she was leaving to go to the last JV game!" In response Dr. Gresham states, "As I said on the phone, I cannot discuss personnel matters." The parent responded, in part, "Fair enough". It is unclear from either the parent's appeal, or the district's response, as to whether the meeting the parent "did not know about" is in reference to the May meeting(s) in question. However, the email does provide support for the district's assertion that meetings were being held, between the sports para, the coaches, and Dr. Gresham, that were related to personnel issues, not the student's IEP. The email also supports the district's claim that the parent knew this and understood that these were personnel issues.

The Committee also notes that the investigator found, "the district and the former sports para agreed that the Special Education Director met with the sports para and revised the work expectations" of the para, and that, "the district and the former sports para agree that implementation of, changes to, or progress monitoring of the student's IEP were not discussed at

this meeting". According to the investigator, and the district's response to the appeal, this meeting was to discuss the sport para's job expectations and her behavior. Specifically, the investigator found that the meeting pertained to a "change from the initial general "team para" approach aimed at mitigating possible stigma associated with provision of special education support to a student specific and directed support method." The district further asserts, "As part of the investigation that [the parent] initiated, I [Dr. Gresham] spoke with the athletic director, Mr. Russell Baldwin, the soccer team coach, Mr. Paul Burke, and the sports para, Ms. Emma Alderson."

Under K.A.R. 91-40-25(e), an IEP meeting does not include, "informal or unscheduled conversations involving agency personnel." In this situation, the Committee finds that the meetings between Dr. Gresham, the coaches, and the sports para were informal meetings, conducted because of Dr. Gresham's investigation into a concern, communicated by the parent to Dr. Gresham, and related to personnel issues, not the student's IEP.

Therefore, because these meetings were not IEP meetings, the Appeal Committee affirms the complaint investigator's finding that the district did not violate state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to afford the parent the opportunity to participate in a meeting held with regard to the IEP of the student.

Conclusion

The Appeal Committee *affirms the investigator's finding* of no violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to afford the parent the opportunity to participate in a meeting held with regard to the IEP of the student.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 9th 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