

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 501,
Topeka Public Schools: 25FC501-003

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on January 15, 2025, by -----, on behalf of her child, ----- . In the remainder of this decision, ----- will be referred to as "the parent," and ----- will be referred to as "the student." An investigation of the complaint was undertaken by a complaint investigator on behalf of the Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on February 14, 2025. That Complaint Report concluded that there were violations of special education statutes and regulations

Thereafter, the school district filed an appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the original complaint, the Complaint Report, the school district's notice of appeal, and the parent's response to the appeal. 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.

Discussion of Issues on Appeal

From Complainant

The appeal addresses the findings and conclusions for Issues 1, 3, 4, and 5.

Issue One

Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to schedule an IEP meeting at a mutually agreeable time. K.A.R. 91-40-17(a)(b1)(b4)(c)(e), K.A.R. 91-40-21, K.A.R. 91-40-25; 34 CFR §§ 300.328, 300.322(a-d), 300.501(b)(c).

The investigator concluded that, in violation of Kansas regulation K.A.R. 91-40-17(a)(1) and federal regulation 34 C.F.R. 300.322(a)(2) the district failed to schedule an IEP meeting at a “mutually agreed upon time.”

The findings of fact, from finding 41 on page 20 of the report to finding 49 on page 23 adequately supports that conclusion.

This a perplexing area of the law, where legal requirements clash. The IEP meeting scheduled for January 28, 2025 was indisputably not an agreed upon time. Yet, it is clear from the report findings (41 to 49) that school officials were willing to be flexible on the meeting date, as long as the meeting took place within the timeline of another regulation that requires IEP meetings to occur at least annually. Finding-of-fact 47, on page 23 illustrates the district’s good faith attempt to comply with both the requirement to meet at a mutually agreed upon time and to meet within the annual timeline, quoting the principal’s January 13, 2025 e-mail, saying,

We will take the meeting off of that date since it doesn't work with your schedule. We look forward to talking with you about a date and a time that works for you and [the Student's] school team. ... We are obligated by law to schedule a meeting 10 days before the IEP is due, and as you noted, we can definitely create a Notice of Meeting to waive those 10 days, if necessary, we just have to show the state that we are following the law on our end. We will do our best to have the meeting on a day/time that works best for you. Reach out by phone or email when you are able to and we will go from there.

What are school officials to do when these two legal requirements clash? The regulations do not address that question. When there is ambiguity in the law, we look to how the courts have interpreted the ambiguity. That is precisely how the investigator handled this conflict in the investigation report. On page 26 of the report, the investigator cited the highest level court (the United States Circuit Court of Appeals) to ever rule on this exact issue: choosing between parent participation in an IEP meeting or meeting the annual IEP review requirement. There the investigator explained that:

*The statutes and regulations are also silent on whether parents and districts may agree to extend an annual IEP review... However, the courts that have considered this question, have ruled that when meeting the requirement for an annual IEP review date would interfere with the right of a parent to meaningfully participate in the decision making process, the better choice for the district is to give preference to the parent's right to participate. For example, in *Doug C. V. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013), the United States Circuit Court of Appeals addressed a situation where a district held an IEP meeting without the parents in order to meet the annual review requirement. The court said, "The more difficult question is what a public agency must do when confronted with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP.*

This court answered its own question, saying:

*When confronted with the situation of complying with one procedural requirement of the IDEA or another, we hold that the agency must make a **reasonable** determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE. In reviewing an agency's action in such a scenario, we will allow the agency reasonable latitude in making that determination (emphasis added)."*

The court added:

*"the Supreme Court and this court have both repeatedly stressed the vital importance of parental participation in the IEP creation process. We have further held that delays in meeting IEP deadlines do not deny a student a FAPE where they do not deprive a student of any educational benefit. See *A.M. v. Monrovia*, 627 F.3d 773, 779 (9th Cir. 2010) ("Whether or not Defendant exceeded the thirty-day limit, A.M. suffered no deprivation of educational benefit and therefore has no claim."). Under the circumstances of this case, the Department's decision to prioritize strict deadline compliance over parental participation was clearly not reasonable."*

Based on this guidance, the investigator concluded that the district made the wrong choice by proceeding with scheduling the IEP meeting to meet the annual IEP review date instead of scheduling the meeting at a mutually agreed upon time. The Appeal Committee has reviewed all the evidence it received from these parties and agrees with the conclusion of the investigator.

Although, the Circuit Court instructed that school districts are to be given "reasonable latitude" when making this decision, the background for that instruction is that the agency must "make a **reasonable** determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE." The Appeal Committee interprets this instruction to mean that the better choice for school districts is to give reasonable preference to the parent's right to participate. Thus, when balancing these two requirements, the greater weight must be

applied to parent participation. This means that the “reasonable latitude” to be afforded to school districts that choose the option of meeting the annual review date over parent participation rights applies only when districts have given parents multiple options to participate and the parents have unreasonably rejected all the options presented to them. That is not what happened in this case.

The report indicates that the district proposed an IEP meeting by e-mail on December 17 and 18, 2024, but makes no further reference of that request (Finding 45(f). On January 13, 2024, a Notice of Meeting was issued indicating a meeting to develop, review, or revise the IEP had been scheduled for January 28, 2025, the day before the annual review date (Finding 41 & 44).

Thereafter, on the same date (January 13, 2024), there were a series of e-mail exchanges ending with the district agreeing to remove the scheduled meeting (Finding 46, 47). Nevertheless, on January 22 and 23, the district contacted the parent to confirm the meeting agenda (Finding 48), and the meeting was held on January 28, 2025.

The Appeal Committee believes the district officials acted in good faith. They did what they believed they were legally required to do under difficult circumstances. However, the Appeal Committee finds that the district erred by placing greater weight to the IEP timeline requirement than to the parent participation requirement when it scheduled this IEP meeting without first giving parents multiple options to participate and the parents unreasonably rejected all the options presented to them. Under the specific facts of this case, the Appeal Committee concludes that the district did not meet the requirements for “reasonable latitude” in making its decision.

*The Appeal Committee is aware that the relevant regulations, K.A.R. 91-40-25(b)(1) and 34 C.F.R. 300.322(a)(2) require that districts are to schedule IEP meetings at a “mutually” agreed upon time, not at the parent’s sole discretion. The conclusion on this issue reflects the Committee’s view that the district failed to sufficiently try to find a “mutually” agreed to meeting date, and not that parents have sole discretion over the decision.

*The Appeal Committee also agrees with the investigator’s note on page 27 of the report, where she advises:

*When school officials are confronted with this “difficult situation” of meeting both the annual IEP review requirement and the parent participation requirement, they may attempt to meet both requirements by offering **(and requesting agreement)** to schedule an IEP meeting that meets the annual review requirement and also agrees, in writing, to promptly schedule another full or supplemental IEP meeting at a later date upon request of the parent.*

Issue Three

Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to convene an IEP meeting requested by the Parent to consider their concerns for the Student's needs. *K.S.A. 72-3429(f); 34 C.F.R. § 300.324.*

The investigator determined that the district was in violation of federal regulation 34 C.F.R. § 300324(b)(i) and state statute K.S.A. 72-3429(f), which requires periodic review of the IEP to determine whether IEP goals are being met and to address “any lack of expected progress toward the annual goals and in the general education curriculum.” This requirement is in addition to the annual review requirement and is conditioned on the extent to which a student is making appropriate progress.

The reason given in the report for concluding that the district was in violation of this additional requirement was,

*While the Parent didn't overtly communicate, “Please schedule an IEP meeting to address my Student's needs,” the information communicated to the school by the Parent and the School's internal communications around the **Student's behaviors, grades in math and ELA, along with the Student's attendance clearly indicated a need for a review and revision of the Student's IEP prior to the January 2025 annual review deadline**(emphasis added). See p. 28 of Report.*

The district's appeal cites multiple attempts it made to help the student catch up on his school work. Ultimately, the plans were not successful, in large part because of excessive absences.

Finding 51, on page 24 of the Report says:

1. According to a 2024-2025 Period Student Attendance Profile, the Student was absent:
 - a. “Unexcused absences -10 times.”
 - b. “Left early absences - 5 times.”
 - c. “Late arrival absences - 32 times.”
 - d. “Unexcused absences - 9 times.”
 - e. “Excused absences - 135 times.” (D93-D94)

Finding 36, on page 18 of the report says:

1. According to a grade book update with a date range of December 18, 2024 through December 20, 2024, the Student scores were listed:
 - a. Math 8, F.
 - b. Science 8, F.
 - c. FACS 8, C and D.
 - d. Phys Ed 6, A.

e. Language Arts 8, D. (P2-P3, P17)

The Appeal Committee agrees with the investigator's conclusion that the combination of severe absenteeism and poor grades were ample cause for early intervention by this student's IEP Team well in advance of the annual IEP review date.

Issue Four

Whether USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP for the Student that met their behavioral needs. *K.A.R. 91-40-18(b); 34 C.F.R. § 300.320.*

The student's behavior was addressed in Finding of Fact 4(d) as follows:

- a. The Student was given the [District] Public Schools Social Emotional Skills Assessment (TPS SESA). The assessment had five domains. The Student scored:
 - i. "Behavior with adults-78%, and 48% for special education students with social work."
 - ii. "Behavior with peers-76% for a general education, and 48% for a special education student with social work."
 - iii. "Emotional regulation -80% for a general education student, and 40% for a special education student with social work."
 - iv. "Engagement -80% for a general education student, and 42% for a special education student with social work."
 - v. "Social skills-80% for a general education student, and 42% for a special education student with social work."
 - vi. "Overall Average- 80% for a general education student and 46% for a special education student with social work." (D16-D17)
 - vii. "The Student's behavior impedes their learning, that of others, and the Student's ability to access the general curriculum." (D18) (Emphasis added).

Finding of Fact 6 is as follows:

The Special Education Instructor described the Student's academic skills and behaviors in an interview. They indicated that the Student had strong math scores and average reading scores. They shared that the Student was capable of independent work. However, the Student exhibited task avoidance behaviors, which sometimes required encouragement to complete assignments. The Special Education Instructor shared that last year they noticed work refusal behaviors and the Student withdrawing, and noted that those behaviors, "seemed a lot more intense this year." Additionally, the Special Education Instructor noticed that this year, "[The Student] was not arriving on time. [The Student] was showing up very late. [The Student] [would] miss half the class, or sometimes [The Student] [would] miss all of the class. I do remember there were days where [the Student] would show up and [they] would not want to go to math class in the morning because it had already

started and it has started so long ago that [the Student] was like, 'I can't go.'" (Special Education Instructor Interview, P5, 10:29; 14:33) (Emphasis added).

Finding of Fact 34 (in relevant part), is a portion of an undated e-mail from the parent to the principal as follows:

"there is an urgent need to address [the Student's] educational and behavioral needs in accordance with [the Student's] IEP (Emphasis added). As you know, I have been advocating for an alternative to [the Home Middle School], as [the Student] has made it clear that [they] would refuse to attend, which I fear would lead to ongoing issues. ... I have raised these concerns in multiple communications but have not yet seen a viable solution that considers [the Student's] behavioral needs."

The district's appeal says that "The evidence suggests the student did not have behavioral needs and that when he attended school, his behavior was appropriate." The Appeal Committee disagrees. Instead, the evidence supports the investigator's finding on page 29 of the report that, "Despite implementing the January 2024 IEP, the District failed to convene an IEP meeting to address the Student's evolving needs. This failure occurred even after the Parent provided information regarding the Student's academic, behavioral, and attendance challenges during the 2024-25 school year, and the **District itself documented an increase in the intensity of the Student's behaviors** (emphasis added)."

The Appeal Committee agrees with the investigator's conclusion that, "the District failed to develop an IEP for the Student that met their behavioral needs (Report, p. 29).

Issue Five

Whether USD #501 in violation of state and federal regulations implementing the individuals with disabilities Education Act (IDEA) failed to offer the student an alternate school arrangement [placement] and the parent an opportunity to participate in decision making regarding the school the student would attend.

The alternate school arrangement involved whether the student would attend school at either the school of origin or the "current middle school" (Report, p. 13, 17, 18, 30). The investigator treated this issue as a "change of placement" issue that included least restrictive environment (LRE) components, and concluded that "the district should have proactively convened an IEP meeting (Report, P. 30). The district appeals this conclusion, characterizing the request as a "building transfer" request.

The Appeal Committee agrees with the district. This was not a placement or LRE dispute because it did not involve educational environment issues such as whether the student would be educated in a regular education or a special education environment. It involved only physical location issues,

principally what school building the student will attend. That kind of decision, relating only to the physical location of attendance, is made by school administration officials, not by IEP teams.

The report is reversed on this issue.

Conclusion

For the reasons stated herein, the conclusions in the Complaint Report are sustained on issues one, three and four.

The conclusion in the Complaint Report is overturned on Issue five. Corrective Action ordered for Issue 5 is rescinded, meaning any corrective action related to the placement issue is rescinded. That specifically includes the “placement” considerations in Corrective Action 1, paragraph d. of Corrective Action 2, and Line-d. of Corrective Action 3. All other Corrective Actions remain in effect.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 4th day of March, 2025.

Appeal Committee

Crista Grimwood

Brian Dempsey

Mark Ward