In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 322
Onaga Public Schools: 25FC322-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on April 3, 2025, by ---------, on behalf of her child, ---------. In the remainder of this decision, --------- will be referred to as "the complainant," 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 April 3, 2025. That Complaint Report concluded that there were violations of special education statutes and regulations

Thereafter, both the school district and the parent filed an appeal of the Complaint Report. Upon receipt of the appeals, an Appeal Committee was appointed and it reviewed the original complaint, the Complaint Report, the district's notice of appeal, the parent's notice of appeal, the district's response to the parent's appeal and the parent's response to the district's 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 (issues not a part of the original complaint) will be addressed 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 district appeals the decision in Issues 3, 4 and 6. The parent appeals the decision in Issues 1 and 4, and additional fact findings.

The Appeal Committee first addresses the district's appeal.

District's Appeal of Issues 3, 4 and 6

Issue Three

> USD #322, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop measurable goals and benchmarks to address the areas of need identified in the present level of performance in the student's IEP during the past 12 months.

The investigator concluded that the district did "include a measurable goal which includes a timeframe, a description of the conditions, a description of the behavior, and the criterion for measuring achievement of the goal (Report, p. 15). In her conclusion on this issue, the investigator added:

However, there is also sufficient evidence to support a finding that the district failed to review the IEP at least annually and to revise the IEP based on information provided by the parent at the IEP team meetings held on December 19, 2024 and January 28, 2025. (Report, p. 16)

It is this additional conclusion that the district appeals.

The district's appeal summarizes the following from pertinent findings in the report:

1. The student's functioning IEP was developed on January 17, 2024 (Report, p. 12)
2. An annual IEP review meeting was held on December 19, 2024 (Report, p. 7)
3. At the December 19, 2024 IEP meeting, the district gave the parent a Prior Written Notice (PWN) proposing to change services from direct to indirect services (Report, p. 13, 17, 27 and 28).
4. The parent refused to give the necessary consent to make the proposed change from direct to indirect services (Report, p. 13, 16, 27 and 28).
5. On January 16, 2025, the Special Education Teacher then provided the parent with another copy of the PWN, still dated December 19, 2024, which now stated, "This action [changing from direct services to indirect services] is proposed but rejected because parents want to continue with the current IEP and meet again at the beginning of the 2nd semester after Pre-Ets (sic) and Voc-Rehab services are in place". (Report, p. 13, 28)
6. In the January 16, 2025 email, the Special Education Teacher stated, "*As I look at the calendar and the IEP, I notice that we will be out of compliance if we cannot meet on or before the 17th. In order to stay in compliance, I need your signature on the IEP I fixed after our last meeting using that date. I can create a new IEP when we meet again*". (Report, p. 14).

7. On January 17, 2025, the parent refused explaining that,
"*In terms of your request for me to sign the IEP, I understand the need for compliance deadlines, however, the proposed plan does not include the required transition plan or services. Signing the IEP is an indication that we agree with it, which does not reflect our position. As we plan to meet to address the concerns, we are choosing to exercise the "stay put" provision of IDEA to maintain the student's previous IEP until a new one is developed by the team that includes a transition plan and services*" (Report, p. 14).
8. On January 28, 2025, the IEP team met again(Report, p. 14). The parent again refused to sign the PWN and, subsequently, the Special Education Teacher and the parent exchanged multiple emails during February and March 2025, trying to come to an agreement on what needed to be changed in the draft version of the IEP and PWN. On March 6, 2025, the Special Education Teacher provided the parent with another copy of an IEP and a PWN, both still dated December 19, 2024. The student turned age 18 on March 6, 2025 and, on March 12, 2025, she requested the IEP team be reconvened to review and revise the IEP, as needed. On March 14, 2025, the parent sent an email to the Special Education Teacher again refusing to sign the PWN as written and sharing another list of concerns for the different draft versions of the IEP provided to the parent between January and March 2025 , all of which are dated December 19, 2024. Another IEP meeting was scheduled for April 10, 2025, but did not take place because the parent canceled the meeting on April 8, 2025. (Report, p. 15).

On page 17 of the report, the investigator says:

> *The Special Education Teacher requested the parent sign the updated IEP and PWN, and on January 17, 2025, the parent refused to sign and then provided the district with a list of all the things that needed to be changed in the draft IEP dated December 19, 2024. This started the ongoing cycle of draft versions of IEPs and PWN, all of which were dated December 19, 2024, which were responding to the multiple lists of concerns from the parent.* ***However, in looking at the IEP and PWN provided to the parent on January 16, 2025, there was no need to obtain written parent consent as the district was proposing nothing that changed from the student's previous IEP*** *(emphasis added).*

The district's appeal asserts that an IEP review that starts within the annual review date is a timely review even when the review continues after the annual review date. The district's appeal goes on to say that the time is extended "UNTIL we obtain consent from the parent."

Neither the statute nor regulation directly addresses this question of whether the annual review requirement means the district must "start" the annual IEP review within one year of the date it completed its last review or whether it must "complete" the annual review within that timeline. Accordingly, we must look to the courts for guidance. The highest court to consider this question is the United States Circuit Court of Appeals in the 9th Circuit. In Doug C. V. State of Hawaii, 61 IDELR 91 (9th Cir. 2013), the court was faced with a situation where the parent became ill and could not attend a scheduled IEP meeting. Faced with a situation where resetting the meeting would mean missing the annual IEP review date, the district elected to meet the required meeting date by conducting the meeting without the parent.

In that case, 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." It answered its own question stating, "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).

In this circuit court case, the court ruled that the district erred when it chose to meet the annual IEP review date rather than accommodate a parent's request for continued discussion. The court said, "the Supreme Court and this court have both repeatedly stressed the vital importance of parental participation in the IEP creation process...Under the circumstances of this case, the Department's decision to prioritize strict deadline compliance over parental participation was clearly not reasonable (Emphasis added).

With this authoritative guidance, the Appeal Committee will allow the district reasonable latitude in making that same kind of determination, and finds that there was nothing unreasonable about the districts actions. This is particularly the case because this is not a case where the district negligently lost track of time and failed to even schedule a meeting on or before the annual IEP review date. The initial IEP meeting was held on December 19, 2024, almost a full month before the annual review date. Subsequent meetings were scheduled to address parent concerns, and, as noted in Finding of Fact 5 of this decision, on page 3, "On January 16, the Special Education Teacher then provided the parent with another copy of the PWN, still dated December 19, 2024, which now stated, "*This action [changing from direct services to indirect services] is proposed but rejected because parents want to continue with the current IEP and meet again at the beginning of the 2nd semester after Pre-Ets (sic) and Voc-Rehab services are in place*". (Report, p. 13, 28). This PWN issued on January 16, was within the annual review period and effectively ended any further required action by the district in conducting the annual review of this student's IEP because there was no further consent requirement that would prevent implementation of that IEP.

This PWN removed the proposal that required parent consent. Of course, that does not mean the parent agreed with the IEP that was presented, but the law does not require parent agreement with every portion of the IEP. The IEP is developed by the IEP team. The IEP team must give due consideration to the concerns of parents, but is not required to adopt everything that is proposed by parents. The evidence presented supports a finding that this IEP team carefully and fully considered the concerns of the parent, and disagreed with the parent's position that direct services were needed. In the end, the parent exercised her right to refuse to provide the necessary consent to change service delivery from direct to indirect services, and the district provided a PWN withdrawing that proposal.

The Appeal Committee acknowledges that discussions continued after the district provided the January 16, 2025, PWN described in Finding of Fact Nos. 5 & 6. Even so, those additional discussions appear to the Appeal Committee to be an attempt by the district to provide additional participation opportunities to the parent and remains within the "reasonable latitude" we owe districts on this issue.

The Appeal Committee also notes that conducting a timely annual IEP review was not an issue brought by the parent. It was added by the investigator, apparently without notice to the district. When this happens, deference is given to reasonable explanations provided by a district in an appeal, like this one. However, no deference was needed for this decision because the Appeal Committee finds that the district timely began its review of the January 17, 2024 IEP on December 19, 2024, well within the annual review date. The fact that there was disagreement among the parties that led to subsequent meetings to continue the review of the IEP does not negate the fact that this student's IEP review began well within the annual timeline and was extended in order to address continuing concerns of the parent.

For the reasons, cited above, the conclusion in the report on this issue is overturned. There is no violation of law on this issue.

Issue Four

USD #322, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop and implement an IEP with appropriate transition services, specifically by failing to conduct appropriate transition assessments, failing to involve external agencies in transition planning with parent consent, and failing to create an appropriate course of study aligned with the student's post-secondary goals during the past 12 months.

The investigator noted that the current IEP being used, dated January 17, 2024, included an appropriate transition plan, that the district did invite external agencies to the student's IEP meetings, with parent consent, and the student received transition assessments both in the general education and special education setting through the use of Xello and Charting Your Life Course (Report, p. 21) Nevertheless, the investigator found a violation, saying:

> *However, as noted in Issue Three, noncompliance was identified for the district reviewing and revising the student's IEP at least annually. This delay has impacted the development of an appropriate post-secondary transition plan for the student and the district is found to be OUT of compliance with 34 C.F.R. 300.320(a)(2).*

The district appeals this conclusion on the same basis as its appeal of Issue 3: that its review of the IEP was within the annual time period and was extended only because of continuing discussions with the parents and continuing meetings to resolve disagreements.

The Appeal Committee finds that those continuing meetings may, as the investigator noted, have resulted in "a delay in developing an appropriate post-secondary transition plan for the student," but the delay resulted from disagreements between the parent and other members of the IEP team, including disagreements that arise when a parent exercises his/her right to refuse to give consent for proposed IEPs. That refusal, by this parent, to provide consent resulted in subsequent meetings that contributed to the delay in developing this student's IEP. As we noted in the appeal of Issue 3, this is not a situation where the district failed to conduct a timely IEP review, but where an IEP team struggled over time to complete its review because of disagreements about what services were needed by the student. That struggle is consistent with the role each member of an IEP team sometimes faces when trying to develop an IEP designed to meet the unique needs of an individual student.

Unfortunately, these struggles may result in a delay of needed services, but it is part of the legal process in developing an appropriate IEP. In the circumstances presented in this complaint, the Appeal Committee finds that any delay in providing transition services to this student is the result of the IEP team operating in accordance with law (offering multiple meetings and providing multiple PWNs) and the parents exercising the rights provided to them by that same law.

The conclusion of a violation of law on this issue is reversed. There is no violation of law on this issue.

Issue Six

> USD #322, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with the opportunity to participate in the development of the student's IEP and to provide appropriate prior written notice regarding parent requests made during IEP team meetings during the past 12 months.

The Investigator found that: " interviews and documentation show that the parent attended every IEP team meeting held during the past 12 months either in person or virtually and thus had the opportunity to participate in the development of the student's IEP (Emphasis added.)" (Report, p. 27).

However, the investigator concluded that the district's PWNs failed to "clearly explain to the parent what action is being proposed or rejected and the rationale for why the district made that determination (Report, p. 28)."

The reason provided by the investigator for this conclusion is that all of these PWNs were dated December 19, 2024. The investigator said: "The various versions of these PWNs did contain information that was discussed and proposed or rejected in an effort to respond to the parent's listing of concerns dated January 17 and March 14, 2025. However, by having every PWN continue to be dated December 19, 2024, the more recent versions of the PWNs contained information that was unavailable and incongruous with the date of the document This has created a very confusing situation and has led to ongoing misunderstandings between the parent and the district (Report, p. 29)."

The Appeal Committee agrees that using the original date on subsequent PWNs is confusing to the investigator (and to this Appeal Committee), but the report cites no evidence establishing that this process confused the parent. Each PWN in the series of PWNs was in response to specific parent requests and included an explanation of why the district was making each proposal. The Appeal Committee finds no legal requirement on how PWNs are to be dated, except that they must be dated before any proposed action or refusal to act occurs. Apparently, the district wanted to keep track of the original PWN date.

As noted by the investigator, that kind of dating of subsequent documents can result in confusion, at least with regard to those conducting a review of the proceedings, including investigators, Appeal Committees, and, possibly hearing officers and judges. However, keeping the original date on a series of PWNs is not, by itself, a violation of law. The Appeal Committee finds there is insufficient evidence to support the investigator's conclusion that by using this dating method the district, "failed to clearly explain to the parent what action is being proposed or rejected and the rationale for why the district made that determination."

The conclusion that the district failed to provide the parent with "the opportunity to participate in the development of the student's IEP and to provide appropriate prior written notice regarding parent requests made during IEP team meetings during the past 12 months," is factually incorrect, and is overturned.

Clearly these parents were provided the opportunity to participate in the development of the student's IEP, and were provided appropriate prior written notice regarding requests made during IEP team meetings (despite the same date provided on each PWN).

The Parent's Appeal

The first part of the parent's appeal does not identify a particular issue being appealed. Instead, the first part of the parent's appeal contests a finding in issue 1 of the report that: "The report states that the parent and the district identified the last agreed-upon IEP as January 17, 2024." Accordingly, the Appeal Committee will treat this portion of the parent's appeal as an appeal of Issue 1, which is that the district: "failed to implement the student's IEP, specifically the accommodation to allow the use of a stress pass during the past 12 months.

The parent bases the appeal on the following assertions :

- The report states that the parent and the district identified the last agreed-upon IEP as January 17, 2024.
- That statement is incorrect because the parent did not give informed consent for the January 17, 2024 IEP.
- The last IEP for which the parent provided informed consent was developed on March 23, 2023. while the student was in a PRTF.

- The district has never provided the parent with a PWN seeking consent for a material change in services or a substantial change in placement. As such, the student has not received the special education services outlined in the IEP since 2023.

Based on the above, the parent asserts that:

> *"It is not an allegation that falls outside the one-year investigation window when the student has not received the services required by the last consented IEP. The district never issued a PWN informing us that they were reducing services by 77% or that there was a change in placement. Since the district never took those steps, the student should have continued to receive the services under the last consented plan. That is not a past violation. It is a continuing failure that persisted through every school day since. We understand that to consider the appeal, the committee must determine which IEP is in effect and how it applies to each issue in the report and the provision of FAPE.*

The Appeal Committee notes that the investigator correctly determined that a complaint investigation, such as this one has a "one-year window", but did not cite the applicable regulation. The applicable federal regulation is 34 C.F.R. 300.153(c). That federal regulation states that a special education complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the state department of education. Accordingly, the parent may allege a violation going back to one year from the date this complaint was filed, (April 3, 2025), but no further back regardless of whether the current IEP was developed or implemented in accordance with law.

The issue presented by the parent in this appeal is within the one-year timeline. However, the Appeal Committee may only consider issues submitted in an original complaint and addressed in a complaint report. in this complaint, the allegation in Issue 1 is that the district: "failed to implement the student's IEP, specifically the accommodation to allow the use of a stress pass during the past 12 months." That issue is the limit of what is reviewable by this Committee. Because this portion of the parent's appeal raises a separate allegation (that the parent did not give informed consent for the January 17, 2024 IEP), the Appeal Committee cannot consider this issue.

Next, the parent's appeal asserts that corrective actions were inadequately addressed in the report because: "Graduation does not extinguish the district's obligation to remedy violations that occurred while the student was eligible." The Appeal Committee agrees that graduation does not extinguish the district's obligation to remedy violations that occurred while the student was eligible, but finds this has no application to this complaint for two reasons:

1. No violation of a failure to allow the use of a stress pass was substantiated that would merit a remedy; and
2. The only regulation authorizing an appeal of a complaint decision is K.A.R. 91-40-51(f), and that regulation permits appeal of only the "findings or conclusions" of a complaint report. There is no appeal process with regard to corrective actions. Corrective actions may be

removed only, as in this case, when an Appeal Committee considers an appeal and overturns a complaint report conclusion that there was a violation of law.

Next, the parent's appeal challenges the complaint investigator's conclusion that there was sufficient evidence, "to support a finding that the current IEP dated January 17, 2024 does include an appropriate transition plan as determined by the IEP team, which included the parent."

In this portion of the appeal, the parent asserts that, a claim that a service is

> *"not needed" must be supported by timely, individualized data. The district cannot rely on a blanket statement in the IEP while failing to conduct assessments to determine whether services are necessary. Doing so reverses the required process. A determination of need must be based on data gathered and reviewed by the IEP team, not made in its absence.*
>
> *Although we participated as IEP team members, our repeated concerns about independent living were disregarded, and the district failed to gather or present any data to support its determination. A team cannot make a legally sound decision without data, and parental participation does not imply agreement with an unsupported conclusion from the outset.*
>
> *The investigation findings appear to excuse that failure by citing absence in the IEP. However, services were not excluded because they were unnecessary. They were omitted because the district failed to gather the data required to make that determination.*

The Appeal Committee disagrees with the parent's assertion that the IEP team made its decision on transition services without any supporting data. On page 19 of the report, the investigator makes the following finding regarding the January 17, 2024 IEP:

> *This IEP documents that two transition assessments were administered to the student and the results considered in the development of the transition plan. Charting Your Life Course and Xello are both programs designed to allow students to assess and explore interests and strengths for potential vocational paths. Xello is used district-wide to develop each student's Individual Plan of Study (IPS) and the Charting Your Life Course is used by students in the special education program for obtaining data to assist IEP teams in developing post-secondary transition plans.*

The Appeal Committee was provided with no information with which it could assess the adequacy of the assessments the district used as transition assessments, but the parent's appeal assertion that transition services were not supported by data is contrary to the evidence provided to the investigator by the district and included in the report. The conclusion of the investigator on this issue is sustained.

The parent also appeals, by contesting the investigator's finding that::

"There is also evidence that the district did invite external agencies to the student's IEP meetings held during the 2024 – 2025 school year with parent consent."

In the appeal, the parent asserts that:

> *The investigator's finding that the district obtained parental consent for outside agency participation based on the Notice of Meeting dated November 26, 2024, is inaccurate. The Notice included the statement: "If necessary, and with your consent, staff from other agencies that may be able to provide appropriate transition services/linkages will be invited to our meeting. The agencies they represent are shown below: Voc-Rehab, Pre-ETS." This language does not constitute informed consent. It refers to a possible future action and does not provide a means for the parent to give or withhold actual permission before invitations are made.*
>
> *Consent must be obtained before inviting an outside agency to an IEP meeting. The requirements cited in the Kansas Special Education Handbook, all KSDE secondary transition training courses, the Indicator 13 checklist, the KSDE website, guidance from the Kansas Disability Rights Center, and resources from Families Together. In this case, the district invited Pre-ETS on December 13, 2024, to a December 19, 2024 meeting. The IEP meeting was 9:00 a.m. - 10:00 a.m. The district sent us the Pre-ETS authorization form after the meeting at 10:19 a.m. We did not sign and return the form until 12:02 p.m.*
>
> *A Notice of Meeting—even with a parent's signature—does not constitute consent. The district could have used its agency consent form or the one available from KSDE, but any valid consent must include authorization to disclose education records. The district's Notice of Meeting did not include that condition.*

The Appeal Committee agrees with the analysis provided by the parent. However, even relying entirely on the facts as presented by the parent in this appeal, any potential violation is only a procedural violation with no substantive effect because the parent did give consent for the outside agency participation shortly after the meeting.

Accordingly, the Appeal Committee concludes that it will not disturb the conclusion of the investigator on this issue.

Other:

On page eleven of the report, the investigator wrote, "The parent attached a "fixed" copy of the IEP moving the proposed services back to direct because the parent was concerned with this proposed change in placement."

Please note the clerical error. It should state, "The Special Education Teacher attached a "fixed" copy..." (Evidence #23), which is an important distinction.

The Appeal Committee does note that this statement in the report is a clerical error, as it was the Special Education Teacher that changed the proposed indirect IEP services back to direct services, not the parent. Accordingly, the Appeal Committee concludes that this statement in the report is error, and is removed from the report.

Finally, the parent's appeal states that:

> *The report omitted key details about the April 10, 2025 IEP meeting circumstances. As stated in the report, the district emailed the draft IEP but omitted a PWN. In addition, they never sent an invitation with a meeting link. Without access to the meeting, meaningful participation was not possible. We asked multiple times for documentation that a meeting link had been sent and did not receive a response. On April 14, 2025 the special education director responded, "Since you had canceled your attendance, you were removed from the invitation, and we did not conduct an IEP meeting." To our knowledge, an IEP meeting did not occur that day, so any reference to such in the report should be removed.*

The Appeal Committee declines the parent's request to remove this information from the report. The committee believes this information provides meaningful context to the conclusions of the investigator, and this Committee, regarding the district's on-going attempts to resolve differences and the parents participation concerns.

Conclusion

For the reasons stated herein, the conclusions in Issues 3, 4 and 6 are overruled and the corrective actions ordered in connection with these issues are rescinded. The corrective actions related to Issue 5 in the report, on page 37, remain in force.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 5th day of June, 2025.

Appeal Committee

Crista Grimwood
Brian Dempsey
Mark Ward