

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 402
Augusta Public Schools: 25FC402-003

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on April 22, 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 May 22, 2025. That Complaint Report concluded that there were violations of special education statutes and regulations

Thereafter, the district filed an appeal of the Complaint Report. Upon receipt of the appeal, an appeal committee was appointed and it reviewed the original complaint filed by the parent, the Complaint Report, the 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 Parents

The report identified two issues, and concluded that the district failed to comply with legal requirements related to each of the two issues.

Issue One

Did USD #402 consider and respond to the parent's request for a reevaluation on March 12, 2025?

The investigator concluded that the district properly responded to the request for a reevaluation, stating that: "After considering all of the relevant information, a PWN was issued within the timeframe established by IDEA and included the required information." However, as the investigator proceeded with the investigation, the evidence presented to her led her to conclude that the district acted contrary to law on a separate matter that was not alleged in the complaint. It is this separate matter that the district appeals.

The Appeal Committee notes that federal regulation 34 C.F.R. 300.600(d) places a "general supervision" responsibility on state departments of education to monitor compliance of their schools with law. Under this general supervision requirement, a state department of education cannot ignore clear indications of a district's failure to comply with law. When an investigator discovers, during an investigation, that the district has failed to comply with law, even when said violation was not alleged in the complaint, the investigator must either address that issue in the report or otherwise notify the state department of education of the violation. When an investigator finds an apparent violation that was not alleged in the complaint, that will be addressed in the investigation, the investigator should notify the school district of the additional issue. That provides the district with the opportunity to respond to the new allegation, as required by 34 C.F.R. 300.152(a)(3).

In this instance, the investigator apparently did not notify the district of the additional issue, which prevented the district from submitting a response to the new allegation during the investigation. The appeal process, however, does provide the district with the opportunity to respond to new allegations discovered, and addressed, in a complaint investigation. With this appeal, the district has exercised that right to respond to the separate allegation and the Appeal Committee will give the district's response a full consideration.

The additional allegation under appeal is whether the district's refusal to conduct an Independent Educational Evaluation (IEE) was a violation of law.

The pertinent facts are presented in the report's findings of fact, as follows:

1. 10. Email from parent to the school psychologist, principal and classroom teacher requesting a reevaluation, dated March 12, 2025 (Report, p. 2)
2. 15. Email from the school psychologist to the parent with the PWN refusing a reevaluation, dated April 8, 2025 at 11:07 a.m. (Report, p. 3).
3. 30. Email from parent to assistant director, assistant superintendent, principal and school psychologist requesting an independent education evaluation at public expense (IEE), sent April 11, 2025 at 2:03 p.m.
4. 36. PWN refusing to conduct an IEE, dated April 14, 2025

In short, the investigator found that the parents requested an IEE and the district responded with a PWN refusing that request. The investigator concluded that this interaction was in violation of federal regulation 34 C.F.R. 300.502(b)(2) that says:

*If a parent requests an independent educational evaluation **at public expense**, the public agency **must**, without unnecessary delay, **either**—*

*(i) **File a due process complaint** to request a hearing to show that its evaluation is appropriate; or*

*(ii) **Ensure that an independent educational evaluation is provided at public expense...***

The investigator correctly noted that the district did not do either. Instead, the district chose a third option, to deny the request for an IEE. That option, the investigator concluded, was not legally available to the district.

In its appeal of this issue, the district first asserts that the district had already considered the IEE the parent had obtained privately. With regard to evaluations obtained at parent expense, however, the pertinent regulation (see above) does not apply. The pertinent regulation applies only to requests for an IEE at “public” expense.

Secondly, the district asserts that a parent has a right to an IEE at public expense only when the parent disagrees with the current evaluation and that this parent had no disagreement with the current evaluation. the pertinent regulation is 34 C.F.R. 300.502(b)(1), which says:

*A parent has the right to an independent educational evaluation at public expense **if the parent disagrees with an evaluation obtained by the public agency** (emphasis added),*

The district correctly notes that the parent must disagree with the current evaluation in order to have a right to an IEE. Courts have noted that an IEE is not available when no evaluation has been conducted because then there is nothing to disagree with M.S. v. Hillsborough Township Public School District, 75 IDELR 212 (3rd. Cir. 2019), or, when a district has already provided an IEE and the parent has requested another IEE to contest the same evaluation, because parents are entitled to only one IEE per evaluation Alex W. v. Poudre Sch. Dist., 124 LRP 7692 (10th Cir. 2024).

Neither of these court approved exceptions apply in this situation. Here there is an existing evaluation and the parent is making the first request for an IEE under this evaluation. Moreover,

federal regulations, at 34 C.F.R. 300.502(b)(4), say that a district may ask why the parent disagrees with an evaluation, but may not require an explanation. So the fact that the parent did not explain what part of the existing evaluation she disagrees with does not mean she agrees. The parent is not, under this regulation, obligated to provide an explanation of her disagreement.

This parent obtained her own private independent evaluation which indicated a diagnosis of dyslexia and dysgraphia, neither of which were considered in the most recent school evaluation. On the basis of the conclusions in that private evaluation, the parent requested a reevaluation regarding her child's reading difficulties. It is clear to the Appeal Committee that the parent requested a reevaluation because she disagreed with the most recent district evaluation, which according to district personnel indicated "there were no concerns with" the student's reading skills (see, finding of fact 1 on p. 8 of report).

The Appeal Committee finds that the investigator's conclusion that a violation occurred when the district refused the parent's request for an IEE at public expense without initiating a due process hearing should be, and is, sustained.

Issue Two

Did USD #402 amend the student's record to correct the information in a PWN issued on April 8, 2025 upon parent request or notify the parent of the refusal?

The district's appeal on this issue asserts that: (1) the district attempted to meet with the parent, but the parent refused to meet; (2) on April 18, 2025, the district provided a copy of the Parent's Rights with the PWN notifying the parent of its refusal to amend the record; and (3) the district's refusal to amend the record was due to the parent's failing to give sufficient details about what she wanted amended and upon receiving those details the records were amended as requested.

Even accepting all of these district statements in this appeal as true, the district still did not comply with the law. The complaint investigator did not find that the district failed to respond to the parent's request to amend records in a timely or inadequate manner. The conclusion of the investigator was that, on April 24, 2025, the district gave the parent a PWN refusing to make amendments to the students records, but that PWN did not advise the parent of the right to a hearing.

The district's appeal does not address this conclusion.

The relevant regulation is 34 C.F.R. 300.618. The investigator cited this regulation in her conclusion on this issue, on page 20 of the report. The relevant portion of this regulation is section (c), which says:

(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under Sec. 300.619."

It is not enough to simply give parents a copy of the parent's rights document. This regulation clearly requires a district that refuses a parent's request to amend an education record, to also advise the parent of a specific right, the right to a hearing. The district did not provide that information with its April 24, 2025 PWN refusing to make amendments to the students records.

Subsequent events corrected this error, but the investigator was correct to conclude that the error occurred. This was a procedural error, and the corrective actions ordered in connection with this error reflect the concerns of the investigator regarding the non-compliant procedure the district used to process the parent's request to amend the student's records.

Sufficient evidence exists to support the findings and conclusions in the Complaint Report regarding this issue. Therefore, the conclusion in the report that a violation of law occurred with regard to this issue is sustained.

Appeal Committee

Crista Grimwood
Melissa Valenza
Mark Ward