

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 229,
Blue Valley Public Schools: 23FC229-001

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on October 24, 2023, by Parent on behalf of his child, Student. In the remainder of this decision, The parent will be referred to as "the parent," and The student 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 parent's allegation, was issued on November 23, 2023. That Complaint Report concluded that there were no violations of special education statutes 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 original complaint filed by the parent, the complaint report, the parent's appeal and supporting documents, and the district'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.

ISSUES ON APPEAL

There are two issues on appeal:

ISSUE 1: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures to conduct a reevaluation of the student and consider the independent educational evaluation provided by the parent during the past 12 months.

There are two parts to Issue 1. Issue 1 alleges that the district:

- (a) failed to follow appropriate procedures to conduct a reevaluation; and
- (b) failed to consider the IEE provided by the parents

Part (a) of Issue 1

Regarding (a), the allegation that the district did not follow appropriate procedures to conduct a reevaluation of the student, the parent's appeal does not say how the district failed to follow appropriate procedures.

The relevant facts, as recorded in the decision, are as follows:

The child was identified as a child with a disability on October 6, 2017 (Report, p. 5). Accordingly, a reevaluation was due by October 5, 2020.

The parent signed a document titled "Reevaluation Not Necessary Agreement on September 14, 2020 (See Exhibit 5b). The report said the parent signed this document on September 20, 2020, and the parent was appealing that statement.

Because the parties agreed that a reevaluation was not needed, a reevaluation was not conducted (Report, p. 6).

In his appeal, the parent says: "I (parent) , did not sign any document..." In his appeal, the parent attaches Exhibit 1a, the Reevaluation Not Necessary Agreement, without a signature. Mark Ward spoke with this parent on the phone on 12/8/22 and the parent stated that he had signed the agreement, and what he was contesting was the statement in the report, on page 6, that he had signed the document on September 20, 2020. He is correct. That is not the date he signed the document. That was an error in the report, but it does not alter the fact that he signed the Reevaluation Not Needed Agreement at the time it was presented to him.

For the Committee, this event is of only passing interest because even if this document was not signed, it is too late to now file a complaint on this event because it occurred more than one year prior to the filing of this complaint. Moreover, no evidence was presented to indicate that either side contested this "agreement" over the next two years. Nor is there any evidence that either party requested a reevaluation until the district made a request to reevaluate on October 12, 2022. Again, none of this is really relevant to this complaint because the agreement or lack of agreement happened in 2020, more than one year ago. The parent also stated in his phone conversation with Mark Ward that he felt threatened and forced to sign the agreement to not reevaluate the student. The parent added to his complaint that "every meeting in the past with Mrs. Venable and Mr. Cullinan was held in an intimidating environment, hostile and forcing myself to sign papers on these meetings..." This alleged intimidation is a matter that is beyond the scope of this appeal.

Added to all this, it was the district that eventually proposed to conduct a reevaluation and requested consent on October 12, 2022. The parent refused to give consent for the proposed reevaluation in two separate e-mails. (Report p. 8).

On that same date, October 12, Mr. Schmidt (the director) sent the parent an e-mail explaining the evaluation process for children with Developmental Delay, the need for consent to proceed, and that the parent could decline to give consent. (Report p. 9 and Exhibit 5c).

On October 17, 2022, the parent replied to Mr. Schmidt's e-mail, again declining to give consent. (Report p 9).

With regard to the parent's right to participate in the review of existing data, the investigator said:

Regardless of the confusion caused by the PWN being dated prior to the scheduled IEP team meeting, the October 11, 2022, email shows USD #229 intended to give the parent the opportunity to participate in an IEP team meeting to discuss the reevaluation process, including the review of existing data. The email clearly stated that the parent did not need to sign anything until after the meeting. (Report, p 12)

Under these circumstances, where consent to conduct the reevaluation was denied, the district was precluded by law from conducting any further step in the reevaluation process. The district's PWN proposing a reevaluation and the willingness to talk about what the proposed reevaluation would include are the only reevaluation procedures the district was legally able to do, and the district did complete those procedures.

Based on the foregoing, the Committee finds that the information in the parent's appeal on this part of Issue 1 is insufficient to overturn any of the findings or conclusions of the investigator in the report, except for the error regarding the date the parent signed the agreement that a reevaluation was not needed. The Committee also finds that the error regarding the date the agreement was signed is immaterial to the final decision.

Part (b) of Issue 1

The district failed to consider the Independent Educational Evaluation provided by the parent.

With regard to the IEE portion of this issue, the facts are:

The IEE was completed on April 30, 2022 (Report, p. 6).

The parent provided the district with a copy of the IEE on May 12, 2022 (p 6).

The IEE was considered by the district in a meeting on the day the report was received by the district: May 12, 2022. (Report p 6).

On page 13 of the report, the investigator says: "In this case, interviews and documentation show that the parent provided a copy of the IEE to USD #229 and participated in a meeting to review the report on May 12, 2022." On the same page, the investigator said: "It is noted that while USD #229 did not agree with the recommendations of the IEE, it was obviously considered at both at the May 12, 2022, meeting with the school staff and again considered at the May 20, 2022, meeting with Mr. Schmidt."

On May 12, 2022, the IEP team notified the parent with a PWN that it was refusing the parent's request for more services, as recommended in the IEE. (Report, p 7).

After some negotiations, the district offered a more modest increase in services with a PWN, dated May 24, 2022.

As for the district's willingness to pay for the IEE, which came up in this appeal but was not an issue presented in this complaint, the letter from Chris Cullinan, dated April 5, 2022, says: "The district agrees to pay up to \$1,000.00 for the evaluation. If the cost will exceed this amount, please notify us prior to proceeding with the evaluation to discuss."

The report says that: "The parent then requested an IEE at public expense and USD # 229 responded on April 5, 2022, agreeing to pay for the IEE."

In his appeal, the parent objected to this statement, saying that he had never agreed to pay for the IEE. The Committee believes the parent was misreading this statement in the report. Where the report says the district responded, "agreeing to pay for the IEE," means the district agreed to pay for the IEE, not that the parent had agreed to pay for the IEE.

The issue in this appeal is not whether the parent offered to pay for the IEE. The issue in this appeal is whether the district considered the IEE? As indicated above, on page 13 of the report, the investigator said, "In this case, interviews and documentation show that the parent provided a copy of the IEE to USD #229 and participated in a meeting to review the report on May 12, 2022 (emphasis added)." On the same page, the investigator said, "It is noted that while USD #229 did not agree with the recommendations of the IEE, it was obviously considered at both at the May 12, 2022, meeting with the school staff and again considered at the May 20, 2022, meeting with Mr. Schmidt." The parent did not, in this appeal or in the initial complaint, provide any evidence that the district failed to consider the IEE. The district did provide evidence to the investigator that the district considered the IEE.

The Committee finds that the conclusion of the investigator on both parts of this issue should be sustained.

ISSUE TWO: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the student's IEP as appropriate during the past 12 months when the student failed to make progress towards the IEP goals.

This issue was addressed on pages 15 through 19 in the report. On page 17, the investigator said: "IEP goal progress reports for the past 12 months show the student is making adequate progress to meet his IEP goals in both the April 7, 2021, and March 24, 2022. That appears to be the basis for the investigator's conclusion that there was no violation on this issue. In his appeal, the parent does not dispute this finding. The parent does say he has concerns regarding "articulation errors on a variety of phonemes" and on "another type of learning disability that has normally been diagnosed at the stage of his developmental delay..." The parent does not identify this other "type of learning disability." The parent also adds in his appeal that he is most concerned that the speech service provider has been changed four times. These are

legitimate concerns, of course, but these continuing concerns presents no challenge to the finding that two sets of progress reports show the student is making adequate progress toward IEP goals. The issue presented is lack of progress, not that the parent is free from concerns.

In Endrew F. v. Douglas County School District, 117 LRP 9767, 137 S. Ct. 988 (2017), the United States Supreme Court said that the duty of a school district to provide a free appropriate public education (FAPE) to a child with a disability is to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. In light of this FAPE standard set by the U.S. Supreme Court, it is appropriate progress that is required, not relief from concerns.

The Committee finds that the investigator's report should be sustained on this issue.

CONCLUSION

The Appeal Committee concludes that the complaint report is sustained in its entirety.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 21st day of December, 2022.

APPEAL COMMITTEE:

Crista Grimwood

Brian Dempsey

Ashley Niedzwiecki