In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No.305
Salina Public Schools: 23FC305-001

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on January 26, 2023, by the parents, on behalf of their child, The students. In the remainder of this decision, the parents will be referred to as "the parents," and the student will be referred to as "the student." An investigation of the complaint was undertaken by complaint investigators 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 allegations, was issued on March 1, 2023. That Complaint Report concluded that there were no violations of special education statutes and regulations.

Thereafter, the parents 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.
The parents’ appeal begins with two preliminary statements:

First: “Shortly after delivery of the complaint report, CKCIE contacted the parent to indicate that all OT services will be removed from the student’s IEP.” This is not an issue in this complaint. Accordingly, the appeal committee will not address this statement.

Second: “We further have concerns about CKCIE violating our mediation agreement.” This statement is also not an issue in this complaint, and will not be addressed by the appeal committee.

The following are concerns are issues in this complaint and they have been addressed by the appeal committee as follows:

**Concern #1:** The issue presented in the complaint was: “**Information in the IEP is incorrect.**”

The parents’ appeal says, “Nowhere in the report are factual inaccuracies addressed.” It adds “Is there no law that prohibits inaccurate documentation?”

The extent to which information is accurate is often subject to differing viewpoints of the participants. For that reason, the federal regulations regarding special education describe a process, that is separate from the complaint process, to address questions of accuracy. That process is described in federal regulations 34 C.F.R. 300.618 through 300.621, which the Committee will attach to this decision. In short, the process for resolving complaints regarding the accuracy of information is to initiate a request to the district to amend education records due to alleged inaccurate or misleading information, and if that is not successful, to request a hearing in the manner specified in the Family Educational Rights and Privacy Act (FERPA).

This concern should have been addressed in the complaint report by declining to investigate this concern, with the explanation provided above. To not address this issue in the report was error, but the error did not affect the ultimate outcome of this issue because, even if the information cited in the complaint was inaccurate (and the committee makes no finding regarding alleged inaccuracies of information), inaccurate information is not a violation of special education laws and regulations, and is not subject to the special education complaint process.
**Concern #2:** The issue presented in the complaint was: **The 02/01/2022 IEP, with a print date of 4/25/22 has no goal under “Adaptive Behavior/Daily Living.”**

This concern was addressed briefly in the report on page 22. However, the reference to the Adaptive Behavior composite from the January 25, 2023 evaluation report does not address how adaptive behavior and daily living was applied in the 2/1/22 IEP.

In their appeal, the parents correctly point out that the “Adaptive Behavior/Daily Living” portion of the 2/21/23 IEP states that the student has needs in this area that require special education and related services, and that those services include Positive Behavior Supports and Accommodations and Modifications.

The allegation is not that these services were not provided. Rather, the allegation is that there was no IEP goal related to Adaptive Behavior and Daily Living. Perhaps a goal should have been established in this area, but the law does not require a goal for every service offered through an IEP (See Federal Register, August 14, 2006, p. 46662, where the Office of Special Education Programs, an office within the U.S. Department of Education, clarifies that “The Act does not require goals to be written for each specific discipline...”

Moreover, the committee notes that the 1/26/23 IEP states that, “Based upon the most recent evaluation and ongoing data collection” the student does not have needs in the area of Adaptive Behavior/Daily Living that require special education or related services. Accordingly, the committee finds that the lack of a goal in this area in the 2/1/22 IEP did not have an adverse impact on the student’s educational performance. For the reasons stated above, the committee concludes that omitting a goal in the IEP of this student in the area of “Adaptive Behavior/Daily Living” is not a violation of law.

**Concern #3:** The issue presented in the complaint was: **Shoe tying.**

In the statement of facts regarding this issue, the parents state that they made multiple requests for assistance for the student to learn to tie his shoes and put the assistance in the IEP, but the district verbally declined our request to add it to the IEP.

This issue was not directly addressed in the complaint report.
The committee notes that in a document, dated 10/27/22, titled Conference Summary IEP Team Considerations, there is an account of the IEP meeting that took place on 10/27/22. With regard to shoe tying, it says:

(Parent) said that she is concerned that he has not learned to tie his shoes. Programs have been sent home and he is not making any gains. It was explained that shoe tying is not part of the curriculum or prevents him from learning. He needs practice and it would help if he would practice several times a day. (Student) has the skills needed to tie his shoes.

This note supports the parents’ statement that they made a request for assistance to help the student learn to tie his shoes, that the support be put into the IEP, and that the request was verbally denied. The verbal denial, and accompanying verbal explanation is not a violation of law as long as it is accompanied with a Prior Written Notice (PWN) stating the request has been denied, and providing a written explanation for the denial. The accompanying PWN does not address the denial of the parents’ request that the IEP include assistance to help the student learn to tie his shoes.

Accordingly, the committee concludes that the school district is in violation of 34 C.F.R. 300.503, which requires that a PWN be provided to parents anytime an IEP team refuses to make changes to an IEP requested by parents.

**Concern #8:** The issue presented in the complaint was: Lack of transparency/collaboration in testing/sharing results.

The initial complaint provides the following facts: The parents requested a copy of the results of an evaluation on 4/21/21. On 4/23/21 this request was denied because the information being sought was on copyrighted test protocols. On 11/1/22, the parents made a written request for the written results of the reevaluation testing to be provided to a Dr. Morris and that information was provided to Dr. Morris immediately upon the parents providing their signature to release the records.

The issue presented in the complaint was whether the district timely provided the results of the evaluation upon the parents’ 4/21/21 request. The committee corresponded with the complaint investigators on this issue. The complaint investigators indicated they did not address this allegation in the report because they were only permitted to address allegations that occurred within the past year. The date the parents’ request was denied (4/23/21) was more than one year from the date the
complaint was filed (1/26/23). This timeline precluded the investigators from addressing this issue in the complaint.

While the committee believes the investigators should have advised both parties that this allegation would not be investigated, the committee also agrees that the investigators did not have jurisdiction to include this allegation in their investigation. Accordingly, the committee concludes that it also does not have jurisdiction over this issue and cannot, therefore, make any conclusions regarding whether a violation occurred based on the facts of this concern.

**Concern #9:** The issue presented in the complaint was: **Incorrect IEP sent home.**

The facts stated in the complaint to support this allegation were that an IEP was put in the student’s backpack on 9/21/22 and apparently this IEP contained incorrect information indicating a reduction in services. In correspondence with the investigators, they stated that they did not address this concern in the report because it was mere error. That is, a mistake was made by either a teacher or the Occupational Therapist, or both. The parent caught the error, refuted it and it was corrected.

Again, the committee believes that the investigators should have advised both parties that they were not going to address this concern in the investigation. However, the committee agrees that the allegation, standing on its own, does not allege a violation of any legal requirement of special education. Therefore, the committee concludes that a violation of law did not occur under these facts.

**Concern #10:** The issue presented in the complaint was: **Incorrect information to parents about signing complaint.**

Under the title “What are the facts?,” the parents state that, on 2/21/22, the student’s classroom teacher told the father that the IEP must be signed by the due date, or the student would be placed into a regular classroom. In a panic, the student’s father signed the paperwork.

The investigators told the committee that they did not address this concern in the complaint report because there was no written documentation to validate the different statements made by both parties. They concluded it was a matter of judgment as to
which party gave a more accurate description of events, and they determined that the
description provided by district officials was likely more accurate.

The committee understands that in some instances where there is no writing to support
an allegation, an investigator must make a credibility judgement. In general, an appeal
committee will usually sustain a credibility judgement made by an investigator, unless
the facts of the case clearly do not support that judgement.

In this case, the appeal committee believes that the weight of the evidence does not
support the parents’ allegation. In the notes of the 2/1/22 IEP meeting, titled
“Conference Summary IEP Team Considerations,” there is no mention of a proposal to
change the placement of this student. There is, however, a long paragraph dealing with
the IEP team’s proposal to change OT services to a consultation model. That paragraph
notes that Kristin Prophet, OTR/L recommended this change and added that it would be
a material change in services that would require parent consent. These notes, referring
to the parents, state:

“If they do not want to give permission, the No should be checked and they
should sign the placement page denying consent. She let them know that if they
choose not to agree to consultation that she would be decrease OT time by less
than 25% so that (the student) would receive 18 minutes of OT services 1 time a
week in his special education classroom. This is recommended by the school
team as (the student) has the fine motor skills to participate in classroom
instruction."

This is another instance in which the committee believes the investigators should have
included this concern in their report and explain why they did not substantiate the
allegation. However, the committee concludes that this allegation is not substantiated
for two reasons: (1) the investigators report that they were not able to confirm the
parents’ allegation that they were told to sign the IEP or their child would be put into a
regular classroom; (2) a complaint must allege that a violation of law has occurred, not
that a district has said it would do something that would potentially violate the law. In
other words, to proceed with a complaint, the violation must have actually occurred.
Here, if the school district had actually placed the student in an environment
inconsistent with the student’s IEP for more than 25% of the school day, without the
parents’ consent, there would be a violation of law. That did not occur.
At this point in the parents’ appeal, the parents address some concerns they have with the report itself, as follows:

Report concern #2

On page 6 of the report, the investigator says, “The district describes another instance with the January 25, 2023 Notice of Meeting document that inaccurately indicated that the Notice of Meeting was hand delivered, when in fact it was delivered by the mediator.”

In the appeal, the parents state that “NO Notice of Meeting form was delivered to us. The November 22, 2022 Notice of Meeting form that was indicated is also curiously missing from the list of documents provided by USD 305/CKCIE.”

The committee has obtained a copy of the Notice for the 1/25/23 meeting. There are no signatures indicating the notice was received. However, under the title “Documentation of Delivery,” the notice shows two separate deliveries. One by the IEP team – hand delivered on 11/22/22 and another sent by mail on 1/9/23 by Lynette Lorenson. Based on this written documentation, the committee concludes that there is sufficient documentation to support the investigator’s finding that the notice was delivered.

Report concern #3, on page 8 and 9:

The report says: “Further, their evaluation shows that the student is functioning adequately at school and does not interfere with his educational participation.”

The parents state they believe this statement to be a lie and believe the teacher “has been intimidated into silence on the topic.”

However, the parents do not provide any support for this view. This appears to be a matter of opinion. In the Conference Summary IEP Team Consideration for the meeting held on 10/27/22, this issue is addressed in the “Description of Conference Discussion.” There it is noted that the student’s mother stated she did not believe the information in the IEP was accurate because she believed that the student’s bathroom activities were not age appropriate, including washing his hands and wiping himself. However, Kristin Prophet expressed a different view, stating that the student “has a full range of motion for these tasks” and, although he needs prompts to remember to complete the steps of these tasks, “he can do them.”
The committee finds that the investigator based her decision that the student is functioning adequately at school and that any difficulty completing bathroom tasks does not interfere with his educational participation, on information provided by school personnel and information obtained from the previous evaluation of the student. Accordingly, the committee will not disturb this finding.

**Report concern #5 continued lack of communication**

The report, on page, 9, says: “The district reports that they continued providing 30 minutes of direct occupational therapy service weekly for the remainder of the 2021-2022 school year to provide the student and family with consistency.”

In this report concern, the parents state that this information was never communicated to them. The committee sees a concern here greater than a failure to communicate. According to this finding, a PWN, dated April 29, 2022, proposed reducing occupational therapy (OT) for the student to 23 minutes, which did not require parent consent. However, the district stated to the investigators, and the OT records confirmed that OT services continued at 30 minutes of direct services through the end of the 2021-2022 school year. This may have been done for a good reason (consistency), but the district was not free to deviate from the student’s IEP. Federal regulations, at 34 C.F.R. 300.323(c)(2) and 300.17 with 300.101 require school districts to provide special education and related services in conformance with a student’s IEP. In this instance, by its own reporting, the district failed to do that. Accordingly, the committee finds that a violation of law has occurred with regard to this issue.

**Broad concerns regarding Report of Complaint**

The parents state that they have not received a copy of the COTA logs indicated in the Conference Summary and IEP team considerations on October 27, 2022 documents provided by USD 305/CKCIE for this complaint. That, along with the district’s response to this complaint will be addressed in the corrective action portion of this decision.

**List of specific concerns regarding Report of Complaint.**

**Report concern #1**

The parent cites the report, on page 6, saying there was one known instance in which the district did not provide a 10-day notice, and then, when the parents refused to waive their right to the 10-day notice, the district halted the meeting and rescheduled for a
later date. In this appeal, the parents ask why that finding was made, asking “Because we made them stop, it means the district is compliant?”

In order to hold an IEP meeting, a district must provide at least a 10-day advance written notice, unless the parent waives the right to that notice. It is not a violation of this regulation for a district to schedule a meeting for less than 10 days out and ask the parents if they would be willing to waive the 10-day portion of the notice. There is nothing in the regulations that prohibits this kind of practice. Had the district scheduled the meeting less than 10 days in advance and proceeded to hold the meeting without the requested waiver, the district would have failed to comply with this requirement. That did not happen.

As part of this concern, the parents appeal also addresses their understanding that the district told them they would continue to provide amendments every 9 weeks until it reduced the students OT services to consult. Once again, a statement of district personnel that something inconsistent with law might occur does not, by itself, result in a violation of law. The district did not reduce OT services every nine weeks.

As part of this concern, the parents also state that the continuation of OT services at a greater rate than specified in the IEP was never communicated to them. This issue is addressed in this decision in Report concern #5 continued lack of communication, and corrective action will be required.

**Report concern #6: Outright lies**

In this portion of the appeal, the parents state that the statement in the complaint report on page 11, that “During the interview the district reported that they agreed to not reduce the service as the parent requested mediation for occupational therapy services.” This is not a statement of fact. Here, the investigator is stating that this was reported to the investigator during the interview. While the report made by the district may, or may not, have been incorrect, there is no evidence that the report was not made to the investigator. Moreover, in this appeal, the parents provide the committee with no evidence that this statement was less than factual or even the relevance of the statement to the issue being investigated.

Conducting this kind of investigation often requires judgement as to the credibility of those being interviewed. The investigator actually speaks with the parties and is in a superior position to the committee when exercising such judgment. Therefore, the committee makes no finding on this issue.
Cursive, accommodations, challenging math goals.

In this portion of the appeal the parents question how ESY was eliminated in the original IEP, but reinstated when the parents objected, and failed to mention this in documentation given to the investigator.

The parents, however, do not give a date for when this occurred. Presumably, because it was eliminated from the original IEP, it occurred more than one year ago and so it not something the appeal committee can address.

Report concern #7: District continues to harass us.

The parents indicate they are repeatedly “threatened” to remove services. This may be the parents’ perception, but there has been no documentation of any reduction in services for this student that was done without the necessary consent. The committee concludes that the parents have not substantiated a violation of law on this issue.

Report concern #8

The parents cite the complaint report, on page 21:Issue 5 as follows: “District staff at the October 27, 2022 IEP amendment meeting stated that shoe tying is not a part of the school curriculum when the parent asked for assistance.” The parent follows with “As a parent, when we ask for an IEP goal, are we supposed to be told “no” by the district?” This issue is addressed in the committee’s final comment to this appeal.

Report concern #9

The parents cite a comment made by the investigator on page 24, Issue 5, as follows: “Based on a review of the planned evaluation described in the November 3, 2022 PWN and the evaluation conducted in the January 25, 2023 Evaluation/Eligibility Team Report it is found that the district did conduct a comprehensive evaluation that addresses the needs of the student.”

The parents’ statement with this citation is that “The school ONLY conducted evaluations at the request because we asked for it. They proposed service elimination multiple times before conducting full evaluations. Is this acceptable? Compliant with the spirit of our special education laws?”

The issue presented in the complaint was whether the district conducted a comprehensive evaluation that addresses the specific needs of the student, specifically
the reevaluation dated January 25, 2003. The committee finds that the investigators based their decision on relevant facts and that the conclusions of the investigator on this issue are supported by those facts.

As a final comment, the committee notes that the first full paragraph in the parents' appeal states:

“We are glad the complaint investigator thoroughly looked at the paper trail, but feel that the team missed the heart of our complaint: mainly that USD 305/CKCIE does not add items that we as parents request to the IEP and that they repeatedly ignore our wishes for services.”

The committee agrees with the parent that the heart of their complaint is that the IEP team sometimes does not add items to the IEP that are requested by the parent. The committee, however, disagrees that the team repeatedly ignores the parents’ wishes for services. As the committee reviewed the “Conference Summary IEP Team Considerations” document, dated 10/27/22, it appeared to be notes on the discussion that occurred at the 10/27/22 IEP meeting. Those notes included:

- Parent shared that she was having medical issues and may ask a lot of questions and asks for patience.
- Parent clarified that this was an IEP amendment meeting, not an annual IEP meeting.
- Parent expressed concern about consistency for the student and his need for things to be kept the same.
- Parent stated she would like the student to have OT services so the student can learn to write on a smaller line.
- Parent stated the student needs prompts to continue to work on motor skills and keyboarding.
- Parent stated that she does not feel like the information in the IEP is accurate.
- Parent stated that she is concerned that the student has not learned to tie his shoes.

To each of these inquires, the notes indicate that all of the parents’ concerns were discussed and explanations given. As the committee reviewed this document, it was apparent that the IEP team addressed each of the issues presented by the parents, and did not ignore the parents.

Parents have a right to meaningful participation in IEP meetings [34 C.F.R. 300.322] and IEP teams have an obligation to consider the concerns of the parents [34 C.F.R. 300.324], but decisions are made by the IEP team. Of course, reasonable minds can
disagree. When an IEP team refuses to adopt a parent’s proposal, that does not, by itself, mean the parents did not have meaningful participation nor that the IEP team failed to consider the concerns of the parents.

CONCLUSION

The Appeal Committee concludes that the complaint report did not address multiple issues presented by the parents in their initial complaint. That was error, although as explained above, in all instances the evidence does not support a violation of law except for concern #3. The committee concludes that because the PWN presented at the 10/27/22 IEP meeting did not include the required information for refusing the parents’ request for “shoe tying” assistance to be added to the IEP, the school district is in violation of 34 C.F.R. 300.503. That regulation requires that a PWN be provided to parents anytime an IEP team refuses to make changes to an IEP requested by parents.

In addition, Federal regulations, at 34 C.F.R. 300.323(c)(2) and 300.17 with 300.101 require school districts to provide special education and related services in conformance with a student’s IEP. The district failed to provide services in conformance with this student’s IEP when, with a PWN dated April 29, 2022, it reduced the student’s OT services from 30 minutes to 23 minutes, but continued to provide 30 minutes of service.

Therefore, the committee orders the district to take the following corrective actions:

1. Within 15 days of the date of this decision, schedule an IEP meeting to reconsider putting supports in the IEP to help this student learn to tie his shoes.

2. If the parents agree to attend the scheduled meeting, within five days after the meeting, the team shall make a determination as to whether to add shoe tying assistance to the student’s IEP and shall provide the parents with a properly completed PWN stating whether shoe tying assistance will be added to the IEP, including an explanation as to why the decision was made.

3. Within 15 days of the date of this decision, the district shall draft a written message regarding the legal requirement to: (a) respond to any request of a parent to add or remove a service to the IEP with a PWN; and (b) to provide services in conformance with the IEPs of its students. Within the timeline specified in this paragraph, the district shall disseminate that message to all special education personnel at Heusner Elementary School, and provide a copy of that message to SETS.
4. The district shall notify Special Education and Title Services (SETS) when each of above actions have been completed, including whether the parents agree to attend the IEP meeting required in corrective action 1, and provide a copy to SETS.

5. Within 15 days of the date of this decision, the district shall provide the parents a copy of the COTA logs indicated in the Conference Summary and IEP team considerations on October 27, 2022 documents provided by USD 305/CKCIE to the investigator for this complaint, and notify SETS when that has been accomplished.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 4th day of April, 2023.

APPEAL COMMITTEE:

Crista Grimwood

Brian Dempsey

Ashley Niedzwiecki

Federal Regulations regarding a challenge to the accuracy of special education records.

Sec. 300.618 Amendment of records at parent’s request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

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

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

Sec. 300.620 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent’s right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must--

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

Sec. 300.621 Hearing procedures.

A hearing held under Sec. 300.619 must be conducted according to the procedures in 34 CFR 99.22.