In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 437
Auburn/Washburn Public Schools: FC23437-003

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on February 13, 2023, by The parents, on behalf of their child, the student. In the remainder of the decision, The parent will be referred to collectively 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 that investigation, a Complaint Report, addressing the parent's allegations, was issued on March 16, 2023. That Complaint Report concluded that there was a violation of special education laws and regulations.

Thereafter, both parties filed an appeal of the Complaint Report. Upon receipt of the appeals, an appeal committee was appointed, and it reviewed the original complaint filed by the parent, the complaint report, the district's appeal and supporting documents and the parents' 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.

DISTRICT APPEAL
The following issue in this complaint has been addressed by the Appeal Committee:

**Issue**: USD #437 appeals the investigator’s finding that a violation of special education statutes and regulations is substantiated for failing to respond appropriately to the parent request for a special education evaluation, specifically not including the parent in the review of existing data to determine additional areas of assessment.

The district’s appeal begins with three preliminary statements:

First, the district includes the investigator’s statement(s): “Parents both indicated they were not consulted, nor did they participate in any review of existing data to determine the additional areas to be assessed as part of the special education evaluation proposed in the prior written notice dated February 14, 2023.”

Second, “…parents reported and there is no documentation to show the parents were conferred with or participated in a meeting to review existing data to determine what additional areas of assessment, if any, were needed to determine eligibility for special education under the IDEA.”

and

Third, “based on the forgoing, a violation of special education statutes and regulations is substantiated for failing to respond appropriately to the parent request for a special evaluation, specifically not including the parent in the review of existing data to determine what additional areas of assessment, if any, were needed to determine eligibility for special education under IDEA during the 2022-23 school year.”

The investigator found that the parents “reported and there is no documentation to show the parents were conferred with or participated in a meeting to review existing data to determine what additional areas of assessment, if any, were needed to determine eligibility for special education under IDEA”. However, the committee finds significant evidence to support finding that the parents meaningfully participated and provided input to the district.
Under state and federal law,

as part of an initial evaluation...each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate...shall review existing evaluation data on the child, [including] evaluations and information provided by the parent of the child; current classroom-based, local, and state assessments and classroom-based observations; and observations by teachers and related services providers. (K.A.R. 91-40-8(c)(1); 34 C.F.R. 300.305(a)(1)(i)-(iii)).

Based on that review, and input from the parent(s), the team will identify any additional data, if any, that is needed. (34 C.F.R. 300.305(a)(1)(i); 34 C.F.R. 300.305(a)(2); K.A.R. 91-40-8(c)(2)). The group, “may conduct its review without a meeting.” (34 C.F.R. 300.305(b)).

In the district's appeal, the district states that “based on information regarding concerns about [the student] that [the parents] had relayed to school officials at and surrounding the February 3rd meeting (particularly related to his diagnosis of Schoolphobia/Scolionophobia),” that the school psychologist created a PWN, noting that new data regarding “social/emotional/behavioral status (among other categories)” would be addressed in the evaluation. The district also states that “school staff considered new and existing information based on concerns that the parent's relayed to school officials on February 3rd, 2023, when [the parents] made the initial request for evaluation”. The subsequent PWN, drafted February 14th, 2023, proposed “action to the parent, informing them of the proposal to conduct a comprehensive school-based evaluation.”

Further, the district, in their appeal, says that statements made to the investigator, by the parents, which “indicated [the parents] were not consulted, nor did [the parents] participate in any review of existing data to determine the additional areas to be assessed” as “demonstrably false.” In a review of the evidence of record, as provided by both the district and the parents, the committee finds that the parents were given sufficient opportunities for input and, in fact, the parents provided input as is required under state and federal laws.

On February 3rd, 2023, the investigator found, and the record supports, that the parents requested an initial evaluation during a meeting with the district.

On February 6th, 2023, following this request, the record shows that the district emailed the parents confirming the request for an evaluation. In the email the district states, “in preparation for the evaluation”...” we look forward to receiving the documentation that [the parent] indicated would be provided to us during the meeting” (referring to the February 3rd
meeting). In this email, the district also acknowledges that the parents had concerns about these documents having previously been submitted to the district but asked that the parent provide them again for purposes of this evaluation.

On February 8th, 2023, the investigator notes, and the record confirms, that the parents communicated, by email, with the district. In this email the parents stated that they had attached documentation to “clearly show that [the student] is in need of Special Education Services”. The record further shows that the parents provided an outside evaluation labeled “psychological testing results and interpretation”. In the email, the parents state that they “provided documentation to the school and worked closely with [the student’s] previous teachers, school psychologist and Ast. Principal [name omitted] to get [the student] the support and services [the student] needed to be successful”. Finally, in this same email, the parents acknowledge that they are “hesitant to provide FERPA protected information” and state, “I’ve attached enough documentation to again show [the student’s] significant mental health issues and needs related to [the student’s] education.”

On February 10th, 2023, the record shows that the district again reached out to the parents, through email, asking to “get together and begin talking about [the student’s] needs as they relate to [the parents] request for an evaluation”. The record shows that the parents responded with a list of times and dates and the date of February 15th was agreed upon for a phone conversation.

On February 14th, 2023, the investigator found, and the record confirms, that the district appropriately provided the parents with a PWN, requesting consent to conduct a special education evaluation.

On February 15th, 2023, the district and the parents spoke, via phone, regarding the student and the evaluation. The record shows that both the district, and the parents, acknowledged that during the phone conversation, the student’s social/emotional health, academic needs, bullying, and attendance issues were discussed. The parent states that “I told [the district] I would forward some emails about [the student’s] academic needs, along with the psyche scales so that [the district] could clearly see that [the student] was in need of both academic and additional social emotional services and testing”. The record shows that the parent did confirm that those documents were forwarded to the district.

When deciding whether an initial evaluation should be conducted districts have the right to meet and review existing data without holding an IEP team meeting, so long as parents are given the opportunity to provide input and that input is considered. (34 C.F.R. 300.305(a); 34 C.F.R. 300.305(b)). In their response to the district’s appeal, the parents state that they did not
have meaningful participation because the "school never attempted to reach out to [the parents] to meaningfully participate in the review of all existing data and new data any time before, during, or after the written notice was given". The committee finds this not to be the case. The record illustrates that the district and the parents communicated before, during, and after the district provided the PWN. The parents further state that, although they provided the district with examples of bullying and “reasons why the [the student] was not attending and flunking out of school”, that these statements were “irrelevant” to the district and this is “why parents feel unheard, invalidated and are not actively part of the participating team”. However, the committee finds no evidence, in the record, to support that the district discounted the parents’ concerns.

Furthermore, the committee finds that the law does not require a formal IEP meeting, including parents, to review existing data. Once the district determines an evaluation should be conducted, and what additional data, if any, is needed (based on existing data and parent input), then a district must provide the parents with a prior written notice to obtain consent for the proposed evaluation. The investigator found, and the record confirms, that this process did occur. Once consent is given, any decisions, regarding eligibility, must be made by the eligibility team, including parents, in a formal capacity.

PARENTS’ APPEAL

The following issue in this complaint has been addressed by the Appeal Committee:

**Issue:** The parents appeal the investigator’s finding that USD #437, did not violate state and federal regulations implementing the Individuals with Disabilities Act (IDEA), due to a failure to follow appropriate child find procedures during the 2022-2023 school year or by failing to evaluate the student for special education and related services or by disciplining the student due to [the student's] suspected disability.

The parents’ appeal includes four “quotations”:

**Quotation #1:** The parents disagree with the investigators statement, “The district indicated the student had just been evaluated for special education in October during the prior school year and was not found eligible for special education and related services at that time”.

The committee finds that the parents seem to take issue with the word “just”, noting in their response to the quote that “at the point of [the student's] detention in October 2022, it had been one full year since the evaluation conducted in the previous school year”. While the
record does confirm that it had been one full year since the previous evaluation, the span of time does not invalidate the investigators statement or counter the use of the word “just”. The committee finds that the length of time is the difference of one academic school year to the next academic school year, specifically, the 2021-2022 school year to the 2022-2023 school year. Therefore, the committee does not find fault with the investigator’s statement and does not find a violation of state and federal laws.

Quotation #2: The parents disagree with the investigator's statement, “The school staff reported they were implementing supports and interventions during the first semester of the 2022-2023 school year including those recommended by Children's Mercy Hospital which were described in the Evaluation Team Report dated October 22, 2021”.

In response to this quote, the parents argue that the district did not provide general education interventions and supports to the student. However, the parents also argue that if the district did provide GEI, then the district should have been on notice that the student was in need of another evaluation, triggering Child Find. Child Find is a requirement for districts to identify, locate, and evaluate students that might need special education services, not a requirement for districts to provide general education interventions. (34 C.F.R. 300.111(1)(i)). The record shows that after conducting the evaluation in October 2021, the district determined that the student was a student with a disability but did not qualify for special education because the student did not require specially designed instruction. Under the law, as noted by the investigator, “where a district may be deemed to have knowledge that a child is a child with a disability, there are notable exceptions. One of these exceptions says a school district is not deemed to have knowledge that a child is a child with a disability when the child has been evaluated and determined to not be a child with a disability under IDEA”. (34 C.F.R. 300.534(c)). Therefore, the committee does not find fault with the investigator’s statement and does not find a violation of state or federal laws.

Quotation #3: The parents disagree with the investigator’s finding, “Based on the foregoing, violation of the IDEA for failure to meet child find requirements by not suspecting that this particular student with a disability was in need of specifically designed instruction and thus eligible for disciplinary protection under IDEA is not substantiated.”

In response to this finding, the parents state that the district “was supposed to continue to monitor [the student’s] progress and intervene if the need should arise”. The parent’s further state that because “general education interventions are Child Find activities” …” regardless of disciplinary protection, [the district] was violating Child Find under the IDEA”. In their response, the parents seem to correctly acknowledge that the student did not qualify for disciplinary protections under IDEA, however, they misstate that the district “was supposed to continue to
monitor student progress and intervene” by initiating Child Find. As stated above, and as noted by the investigator, “where a district may be deemed to have knowledge that a child is a child with a disability, there are notable exceptions. One of these exceptions says a school district is not deemed to have knowledge that a child is a child with a disability when the child has been evaluated and determined to not be a child with a disability under IDEA”. (34 C.F.R. 300.534(c)). Therefore, the committee does not find an error with the investigator’s finding and does not find a violation of state or federal laws.

Quotation #4: The parents disagree with the investigator’s finding, “Interviews and documentation found that [Administrator] shared the Documented Response to the Formal Written Complaint dated January 2, 2023, along with supporting documents with members of the school board during executive session of February 6, 2023. The supporting documentation did include the Evaluation Team Report dated October 22, 2021, which describes the initial special education evaluation and the determination of eligibility for special education.”

In response to this finding the parents note that the executive session did occur on February 6th, 2023, however, continues, highlighting that “the document itself (the student's records) states that it was distributed almost 2 weeks prior to the executive session”, on January 27th, 2023. The parents further state that because their original complaint was to the Superintendent about staff members, the board had no “legitimate educational interest” in the student’s records.

In review of the district’s policy, the committee finds that the Superintendent is required “to discuss personnel issues with members of the school board in executive session”. Additionally, the policy states that school officials (including the “board of education (in executive session)), has a “legitimate educational interest” when the official needs “to review an educational record in order to fulfill his or her professional responsibility”. The committee finds that the parents argue too fine a distinction by requiring the school board to be in executive session before receiving necessary documentation pertaining to the agenda item to be discussed. It is reasonable that a school board, in preparation for an executive session, be provided the documentation necessary to make an informed decision once the board is in executive session.

Further, the parents note that because the student is not an employee of the district, the student’s records should not have been provided to the school board. However, the committee finds that the student is the student directly involved in the parents’ complaint made to the superintendent regarding USD #437 staff members. As such, the student’s records do hold a “legitimate educational interest” and are necessary in order for the school board to fulfill their professional responsibility as it relates to the parents’ January 2, 2023,
Formal Written Complaint. Therefore, the committee does not find an error with the investigator's finding and does not find a violation of state or federal laws.

**CONCLUSION - DISTRICT APPEAL**

The Appeal Committee concludes that the investigator erred in finding that the district violated special education statutes and regulations by failing to respond appropriately to the parent request for a special education evaluation, specifically not including the parent in the review of existing data to determine what additional areas of assessment, if any, were needed to determine eligibility. Under the law, a team, including the parents, and including input from the parents, must determine what additional data are needed to determine eligibility. (34 C.F.R 300.305(a)). There is not a requirement for this review to occur in a formal IEP team meeting. (34 C.F.R. 300.305(b)). The evidence showed that following the parents' request for an initial evaluation on February 3rd, 2023, the district and the parents had numerous conversations regarding the student, the evaluation, and the student's needs. Additionally, the record shows that the district did consider the parents' input, requesting consent for additional information regarding the student's “social/emotional/behavioral” needs, as addressed by the parents. The committee concludes, based on the statements above, that the district did not violate special education statutes and regulations by failing to include the parents in the review of existing data to determine additional areas of assessment.

Therefore, the Committee does not substantiate the investigator's finding of a violation of special education statutes and regulations as it pertains to the issue of failing to respond appropriately to the parents' request for a special education evaluation, specifically not including the parents in the review of existing data to determine additional areas of assessment and orders that no corrective action is required from the district on the matter.

**CONCLUSION - PARENTS' APPEAL**

The Appeal Committee concludes that the investigator did not err in her statement, “The district indicated the student had just been evaluated for special education in October during the prior school year and was not found eligible for special education and related services at that time”. No corrective action is required.

The Appeal Committee concludes that the investigator did not err in her statement, “The school staff reported they were implementing supports and interventions during the first semester of the 2022-2023 school year including those recommended by Children's Mercy Hospital which were described in the Evaluation Team Report dated October 22, 2021”. No corrective action is required.
The Appeal Committee concludes that the investigator did not err in her finding, “Based on the foregoing, violation of the IDEA for failure to meet child find requirements by not suspecting that this particular student with a disability was in need of specifically designed instruction and thus eligible for disciplinary protection under IDEA is not substantiated.” No corrective action is required.

The Appeal Committee concludes that the investigator did not err in her finding, “Interviews and documentation found that [Administrator] shared the Documented Response to the Formal Written Complaint dated January 2, 2023, along with supporting documents with members of the school board during executive session of February 6, 2023. The supporting documentation did include the Evaluation Team Report dated October 22, 2021, which describes the initial special education evaluation and the determination of eligibility for special education.” No corrective action is required.

For the reasons stated above, the committee overturns the investigators conclusion that the district failed to include the parents in the review of existing data as required by K.A.R. 91-40-8(c)(1) and 34 C.F.R. 300.305(a)(1) and (2), and removes the requirement in the report for corrective action. In all other respects, the report is sustained.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 5th day in April, 2023.

APPEAL COMMITTEE:

Brian Dempsey: Assistant Director of Early Childhood, Special Education and Title Services,

Mark Ward: Attorney, Special Education and Title Services,

Ashley Niedzwiecki: Attorney, Special Education and Title Services,

Crista Grimwood: Education Program Consultant.