In the Matter of the Appeal of the Report
dd

Issued in Response to a Complaint Filed

Against Unified School District No. 229,

Blue Valley Public Schools: 23FC229-005

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on June 29, 2023, by xxxxx, xxxxxxxxxxxx on behalf of his child, xxxxx xxxxxxxxxxxx. In the remainder of the decision, Mr. xxxxxxxxxxxx will be referred to as “the parent”, and xxxxx xxxxxxxxxxxx will be referred to as “the student”. An investigation of the complaint was undertaken by complaint investigator, Nancy Thomas, 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 July 29, 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, the parent’s appeal and supporting documents, and the parents’ and districts responses to the appeals. 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 ONE: The USD#229, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to implement the student’s IEP as written, specifically the extended school year (ESY) services and transportation as a related service during the 2023 ESY program.

The Investigator found that a violation did occur. In response, the district argues that,

1. the complaint investigator’s conclusion is flawed because USD #229 “offered bus transportation on the two days at issue”, and
2. a “mere two days” of missed bus service were at most a “de minimus failure to implement the IEP, which resulted in no impact at all to the student’s receipt of FAPE.”

The district argues that “while there is no dispute that the student did not ride Blue Valley’s bus to school on June 12 and June 26, 2023, that focus obscures the relevant circumstances” and does not “ask the right question.” The district further argues that although it is obligated to offer the services stated in a student’s IEP, the district “cannot force students or parents to accept or cooperate with the services offered”.

As noted by the investigator, ESY means special education and related services that “are provided to a child with a disability beyond the normal school year; in accordance with the child’s IEP.” (34 C.F.R. §300.106(b)(1)(i) & (ii)). Under Kansas law, a district is required to provide all services listed in a student’s IEP, including related services, which are deemed necessary for a student “to advance appropriately toward attaining the annual goals”; and “to be involved in and make progress in the general education curriculum.” K.S.A.72-3429.

In the complaint report, the investigator noted, and documents confirm, that the IEP team recommended the student’s ESY services be discontinued for summer 2023, however, the student’s parent would not consent to the change in services. Therefore, the student remained eligible for ESY services during the summer of 2023. Also, as stated by the investigator, and confirmed by documentation, the student’s IEP does not include transportation services. In the report, the investigator did note that, according to the district, “all students with an IEP who attend the 2023 ESY session are offered, and if accepted and registered, provided with transportation.” As a result, the student was offered, and the parent did accept and register for, bussing to and from home.
The Committee agrees with the district that it is “obligated to offer the services stated in a student’s IEP”. However, in this case, the Committee finds that transportation is not included in the student’s IEP, and therefore, the district was not required, under IDEA, to provide that service. According to the 10th Circuit, services are to be provided to a student with a disability, in accordance with the student, IEP. In Sytsema v. Academy Sch. Dist. No. 20, 538 F.3d 1306, 50 IDELR 213 (10th Cir. 2008), the court has stated that the IEP is the written offer, and the court will only consider the written IEP, not verbal offers made by the school district. Here, the district admits that it offers bussing to students with an IEP, and if the parent accepts, and registers, for the bussing, that transportation will be provided to the student. Conversations with the district reviled that the district did not provide this service as an added service under the student's IEP, nor did the district enter into the amendment process in order to do so. Further, the district states that the IEP team had determined that the student was not eligible for transportation services during the regular school year. In this case, the Committee finds that bus service was an optional service offered to the parent and not a service the IEP team had determined was necessary for the student to benefit from their special education services.

The district further argues that missing two days of bus service is, at most, a “de minimus failure to implement the IEP”, and not a denial of FAPE. The Committee notes that even if a failure to implement the IEP had occurred, the 10th Circuit has stated that “deviations do not amount to a clear failure” and “do not violate IDEA”. (L.C. and K.C. ex rel. N.C. v. Utah State Bd. Of Educ., 105 LRP 12668) (Where slight deviations from one of the student's IEP provisions did not mean that the student's IEP was “clearly failing” and did not amount to a denial of FAPE). The Committee acknowledges that, beyond the two dates in question, neither the parent, nor the district, indicated that the district failed to provide bussing services to the student at any other time during the school year, or during the ESY 2023 summer session. Therefore, the Committee agrees that such deviations would likely not be a violation of FAPE. However, it is also worth noting that the investigator, in this case, did not find that a denial of FAPE had occurred due to the two missed days of bussing service. She did, however, find a procedural violation and assigned corrective action accordingly.

Regardless, the Committee finds that because transportation services are not specified in the student’s IEP, the investigator did err in finding that there was a violation due to a failure to implement the IEP and overturns the investigator's finding for both the June 12, 2023, and June 26, 2023, incidents.

**PARENT APPEAL**

The following issue in this complaint has been addressed by the Appeal Committee:
ISSUE TWO: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with the IEP goal progress reports following the 2023 extended school year (ESY) Program.

The investigator found that a violation did not occur. In response, the parent argues that,

1. the investigator’s conclusion “is flawed because Blue Valley did not offer or work on the category “Language” on 3 Annual Goals.”

The parent argues that “Blue Valley violated IDEA by failing to provide progress on the Category of Language on 3 Annual Language to the student during the student’s attendance of the district’s extended school year (ESY).”

As noted by the investigator, 34 C.F.R. 300.320(a)(3) requires districts to include a statement in a student’s IEP describing how the student’s progress toward meeting annual goals will be measured and when periodic reports will be provided to the parent. In this case, the investigator found, and documents confirm, that the student’s current IEP “required IEP goal progress reports at the end of each grading period, in this case, after June 29, 2023, when the 2023 ESY session ended.” Documentation also shows that the student’s IEP required two goals to be addressed between June 5, 2023, and June 29, 2023: reading and writing. Further, documents show that the parent was notified of this, and email correspondence between the parent and district directed the parent to the two goals (page 11 of the student’s IEP) that the student would work on during the ESY 2023 summer session, as required by the student’s IEP. Finally, the Committee finds that these are the same goals the district reported on, following the ESY 2023 session. Regarding a progress report for Category 3 Language, the Committee finds, and the student’s IEP confirms, that this was not a goal addressed during the summer ESY session and therefore, a report was not required.

In conclusion, the Committee finds that the goals worked on during the ESY 2023 summer session where the goals indicated in the student’s IEP. Further, the Committee finds that the district provided goal progress reports, as required, to the parent on the appropriate goals. Therefore, the Committee finds that the Investigator did not err in her conclusion on issue two and sustains the finding.
CONCLUSION – DISTRICT’S APPEAL

The Appeal Committee concludes that the investigator did err in her finding that, “a violation of special education statutes and regulations is substantiated for failing to provide transportation as a related service to the assigned school on two dates during ESY summer 2023 services”. All corrective action related to issue one is reversed.

CONCLUSION – PARENT’S APPEAL

The Appeal Committee concludes that the investigator did not err in her finding that, “a violation of special education statutes and regulations is not substantiated for failing to provide the parent with the IEP goal progress reports following the 2023 extended school year (ESY) program.” No corrective action is required.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 25th day in August 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,

Dr. Crista Grimwood: Education Program Consultant.