

In the Matter of the Appeal of the Report  
Issued in Response to a Complaint Filed February 26, 2024  
Against Unified School District No. 337

## DECISION OF THE APPEAL COMMITTEE

### **Background**

This matter commenced on February 26, 2024, with the parents,xxxxxxxxxx, filing a complaint on behalf of their child, xxxxxxxxxxxx. This decision will refer to xxxxxxxxxxxx as "the parents," and xxxxxxxxxxxx as "the student." A complaint investigator completed the complaint investigation on behalf of the Kansas State Department of Education (KSDE) Special Education and Title Services team. Following the investigation, KSDE issued a complaint report, addressing the parents' allegations, on April 4, 2024. The complaint report concluded that there were two violations of special education law under one issue and ordered corrective action.

On April 5, 2024, the district filed an appeal of the complaint report. Upon receiving the appeal, KSDE appointed an Appeal Committee, and it reviewed the district's appeal, the email from the complaint investigator to the district where the complaint investigator frames the complaint issues, and the complaint report. The Appeal Committee now issues this Appeal Decision.

### **Preliminary Matters**

KSDE included the text of regulation regarding filing an appeal, K.A.R. 91-40-51(f), with the complaint report. That regulation states, in part, "Each notice [of appeal] 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 for the statement, the Appeal Committee does not attempt to locate the missing support.

The Appeal Committee does not decide new issues as part of the appeal. The Appeal Committee reviews the complaint report and determines whether the appealed findings or conclusions are correct. The Appeal Committee does not conduct a separate investigation. The Appeal Committee's function is to determine whether sufficient evidence exists to support the complaint report's appealed findings and conclusions.

### **Districts' Appeal**

The district argues the investigator erred in the finding of two violations under complaint report issue one. The Appeal Committee will review each appealed finding separately. The Appeal Committee addressed the appeal of the following complaint report findings:

**Issue One:** USD #337, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP designed to provide a free appropriate public education (FAPE) to the student, specifically by not reviewing and revising the IEP, as appropriate, during the past 12 months.

**Sub-Issue A:** Did the investigator correctly conclude that USD #337 violated 34 C.F.R. § 300.320(a)(3) because USD #337 failed to include in the student's IEP an adequate description of how the student's progress toward meeting the annual IEP goals would be measured?

**Sub-Issue B:** Did the investigator correctly conclude that USD #337 violated 34 C.F.R. § 300.324(b)(1) because USD #337 failed to reconvene the student's IEP Team to address the lack of expected progress toward the student's functional daily living skills goal across two consecutive IEP goal reporting periods in December 2023?

## **Issue One**

USD #337, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an IEP designed to provide a free appropriate public education (FAPE) to the student, specifically by not reviewing and revising the IEP, as appropriate, during the past 12 months.

### **Sub-Issue A**

Did the investigator correctly conclude that USD #337 violated 34 C.F.R. § 300.320(a)(3) because USD #337 failed to include in the student's IEP an adequate description of how the student's progress toward meeting the annual IEP goals would be measured?

Each student's IEP must include "[a] description of . . . [h]ow the child's progress toward meeting the annual goals will be measured . . ." 34 C.F.R. § 300.320(a)(3). The district's appeal indicates that "the [student's] IEP goal and evaluation procedures adequately describes how the progress towards the goal will be measured through the four elements of a goal (time frame, condition, behavior, criteria). We also include an additional element on our goal page by providing information to the parents on the evaluation procedure (what tools/method)." (*District's Written Notice of Appeal* 1, Apr. 5, 2024.) The complaint investigator states the following in the conclusion section of the complaint report:

Federal regulations at 34 C.F.R. 300.320(a)(3) IEPs require school district [sic] to include a description of how the child's progress toward meeting the annual IEP goals will be measured . . . . It is noted that the evaluation procedures to gauge the student's progress were inconsistent across the IEPs and may have resulted in an inaccurate record of student progress [on the student's math and reading goals] and confusion as to whether the student was making adequate progress to achieve the goal . . . . Across the three IEPs, the

goal for [functional daily living skills] includes between three and four specific behaviors measured through observations and the IEP goal progress reports across the three IEPs do not address each of the specific behaviors being measured. Again, this may have resulted in an inaccurate record of student progress and confusion as to whether the student was making adequate progress to achieve the goal.

*(Complaint Report 9–10, Apr. 4, 2024.)*

The Appeal Committee determines that the complaint report finding that the student’s “evaluation procedures to gauge the student’s progress were inconsistent across the IEPs” does not support the conclusion that the district violated 34 C.F.R. § 300.320(a)(3) because this regulation does not require that evaluation procedures to gauge a student’s progress be consistent across IEPs. 34 C.F.R. § 300.320(a)(3) requires that the description of how a child’s progress toward meeting an annual goal be consistent with the measurement of the goal because that is how the IEP Team will know whether the student is making progress. However, the investigator does not provide legal support for the determination that the description of how progress will be measured must be consistent across IEPs. Additionally, the investigator’s finding regarding the lack of specificity in the student’s progress reports is not detailed enough to give the Appeal Committee sufficient information to support the conclusion that the district violated the requirement to describe how the student’s progress toward meeting the annual IEP goals will be measured.

The Appeal Committee agrees with the district that the complaint report finding that the district violated 34 C.F.R. § 300.320(a)(3) because USD #337 failed to include in the student’s IEP an adequate description of how the student’s progress toward meeting the annual IEP goals would be measured is not supported by the complaint report analysis. The district is not required to complete corrective action 1.a.i. as the Appeal Committee has overturned the related finding. The district is also not required to complete corrective action on training for writing measurable goals as the complaint report does not contain a finding that the district violated 34 C.F.R. 300.320(a)(2)(i) on measurable annual goals.

### **Sub-Issue B:**

**Did the investigator correctly conclude that USD #337 violated 34 C.F.R. § 300.324(b)(1) because USD #337 failed to reconvene the student’s IEP Team to address the lack of expected progress toward the student’s functional daily living skills goal across two consecutive IEP goal reporting periods in December 2023?**

34 C.F.R. § 300.324(b)(1)(ii) requires the district to ensure that each child’s IEP Team revises the child’s IEP, “as appropriate, to address . . . [a]ny lack of expected progress toward the annual goals . . . .” The district’s appeal does not dispute the investigator’s finding that the student was not making progress so the Appeal Committee will just focus on whether the district ensured that the IEP Team revised the student’s IEP to address the lack of progress. *(District’s Written Notice of*

*Appeal*, Apr. 5, 2024.) The district's appeal states, "[The district] advise[s] our staff that if a student does not make progress for two reporting periods in a row, we need to meet as an IEP team to review and revise as appropriate." (*District's Written Notice of Appeal 1*, Apr. 5, 2024.) The district asserts it timely brought the student's IEP Team together to discuss the student's lack of progress:

The functional daily living goal had a target criteria of 80%. The October 2023 progress report revealed a drop to 73%, but the team believed the student could still meet the 80% by February with no revision necessary. Then the student dropped to 69% on December 20, 2023 - the day students were dismissed for winter break. [The district] returned to school on Wednesday, January 3, 2024. The school had snow days on January 8, 9, and 10th. The Notice of Meeting was sent on January 11, 2024 [sic] to review and revise the IEP at a mutually agreeable time with the parents. The school had more snow days on January 12, 16, and 23. The IEP team met to review and revised the IEP on January 31, 2024. (*District's Written Notice of Appeal 1*, Apr. 5, 2024.)

The complaint investigator concludes, "that the evaluation procedures to gauge the student's progress were inconsistent across the IEPs and may have resulted in an inaccurate record of student progress and confusion as to whether the student was making adequate progress to achieve the goal." (*Complaint Report 10*, Apr. 4, 2024.) The complaint investigator further concludes, "Had the IEP goal progress reporting been more specific at the time of the two reporting periods of October 13, 2023 [sic] and December 20, 2023, the continued lack of progress across two reporting periods would have triggered the need to reconvene the IEP team to consider the student's lack of progress towards the functional daily living skills IEP goal." On March 23, 2024, the district sent the parents a Prior Written Notice proposing to change the student's October 13 and December 20, 2023, progress reports, on his functional living skills goals from making progress to not making progress.

The Appeal Committee finds that the investigator supported the conclusion that the district did not timely ensure that the student's IEP Team addressed the student's lack of progress by making findings that the progress reporting was not specific enough to accurately record the student's lack of progress, which then impeded the district's ability to ensure the student's IEP Team would convene to address any lack of progress. The Appeal Committee finds that the investigator supported the conclusion that the district did not timely ensure that the student's IEP Team addressed the student's lack of progress through the finding that the district proposed to change the student's progress reports to indicate the student did not make progress on his functional living skills goals. Because the district did not initially accurately record the student's progress, the district was unable to meet its obligation to timely convene the student's IEP Team to address the student's lack of progress.

## **Issue One-Conclusion**

Based on a review of the above, the Appeal Committee overturns the investigator's finding that the district violated 34 C.F.R. § 300.324(b)(1) and removes the related corrective action and affirms the investigator's finding that the district violated 34 C.F.R. § 300.324(b)(1), leaving the related corrective action in place.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued April 29, 2024.

## **Appeal Committee**

Brian Dempsey: Assistant Director of Special Education and Title Services

Dr. Crista Grimwood: Dispute Resolution Coordinator

Stacie Martin: State Transition Coordinator