

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: 25FC229-002

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on December 6, 2024, by -----, on behalf of her child, ----- . In the remainder of this decision, ----- will be referred to as the "complainant" or the "parent," and ----- 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 allegations, was issued on February 12, 2025. That Complaint Report concluded that there were no violations of special education statutes and regulations

Thereafter, the complainant filed an appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the original complaint, the Complaint Report, and the complainant's notice of 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.

Discussion of Issues on Appeal

From Complainant

The complaint report addressed three issues. The appeal does not specify which issues are being appealed. However, it appears that the complainant is appealing all three issues and so the committee will address each of the three issues separately.

Issue One

USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to employ an appropriately certified special education teacher to provide special education services to the student between December 6, 2023 and March 18, 2024 while enrolled at Prairie Star Middle School.

The investigator concluded that the district was in compliance with Kansas standards, reporting that, "the requirements for a special education teacher to be considered appropriately and adequately prepared and trained are found in Appendix B of the "Special Education Reimbursement Guide State Categorical Aid"," and that the teacher subject to this complaint met those requirements (Report p. 6), because the student's teacher was an appropriately certified special education teacher (Report p. 13).

Issue Two

USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the behavior intervention plan (BIP), which resulted in the student being removed from the classroom setting for more than 20 minutes between December 6, 2023 and March 18, 2024 while enrolled at Prairie Star Middle School.

The investigator cited interviews and documentation supporting that "the sensory accommodations and environmental supports described in the student's IEP and BIP dated October 16, 2023 were available to the student while enrolled at Prairie Star Middle School between the dates of December 6, 2023 and March 18, 2024," in concluding that the student's IEP and BIP were implemented (Report, p. 11).

Issue Three

USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the sensory accommodations including breaks, between December 6, 2023 and March 18, 2024 while enrolled at Prairie Star Middle School.

The investigator cited documentation and interviews with school staff members to conclude that "the student was provided with sensory breaks, both scheduled and "as needed" (Report, p. 13)."

In her appeal of this complaint report, the complainant does not describe how any of the findings or conclusions of the investigator are incorrect.

Instead, the appeal asserts:

- For a number of reasons, "the use of seclusion in the manner described within the investigation is in conflict with the foundational principles of the Individuals with Disabilities Education Act, including a Free Appropriate Education (FAPE) and Least Restrictive Environment (LRE)."
- The investigation conclusion does not adequately address how the use of seclusion may have violated IDEA's requirement for an individualized, supportive approach to education. The failure to provide timely communication with parents, inadequate documentation, and the improper use of seclusion all represent serious concerns that require corrective action, rather than a simple dismissal.
- The report seems to minimize the severity of the misuse of seclusion.
- Seclusion should never be considered a substitute for adequate training, resources, and individualized interventions tailored to each child's needs.
- Some individuals who interacted with the student daily not interviewed?
- There are specific advantages in using certified personnel.

The Appeal Committee has already noted, above, that Kansas regulations specify minimum requirements for appeal of a complaint report, namely: "Each notice shall provide a **detailed statement of the basis for alleging that the report is incorrect.**"

Again, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. The appeal process is a review of the Complaint Report. The Appeal Committee's function is to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

With regard to this appeal, the Appeal Committee notes that:

- (1) Special education complaints, such as this one must allege a violation of special education laws and regulations, 34 C.F.R. 300.153(b)(1) and K.A.R. 91-40-51(a).
- (2) Neither the federal nor state special education laws or regulations prohibit the use of seclusion in appropriate circumstances and, for that reason, complaints alleging a misuse of seclusion are more appropriately made in accordance with the Kansas regulations on the use of Emergency Safety Interventions, at K.A.R. 91-42-1 through 91-42-7.
- (3) Complainants cannot be expected to know the legal requirements for filing an appeal, such as the duty to provide a "detailed statement of the basis for alleging that the report is incorrect". It is for that reason that every complaint report includes both a statement at the

end of the report on how to file an appeal and a copy of the appeal regulation, K.A.R. 91-40-51(f).

The Appeal Committee has reviewed all of the material submitted in this appeal, and has identified no basis in this appeal to conclude that any finding or conclusion in the report is incorrect or to overturn any portion of the report. Therefore, the Appeal Committee finds that there is sufficient evidence to support the findings and conclusions in the report.

Conclusion

For the reasons stated herein, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 4th day of March, 2025.

Appeal Committee

Crista Grimwood

Brian Dempsey

Mark Ward