

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: 25FC229-003

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on February 17, 2025, by -----, on behalf of their child, ----- . In the remainder of this decision, ----- will be referred to as "the parents," 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 March 14, 2025. 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, the Complaint Report, the parents' notice of appeal, 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.

Discussion of Issues on Appeal

From Complainant

The report identified three issues:

1. **ISSUE ONE:** Did USD #229 implement the student's IEP by providing special education services, accommodations or other requirements of the student's IEP? (page 6)
2. **ISSUE TWO:** Did the district meet the IEP team in response to the parents' concern voiced at the October 2024 parent teacher conferences and the student's lack of progress in mathematics with the current IEP? (page 14)
3. **ISSUE THREE:** Did the district provide proper PWN in response to parental requests for accommodations or services? (page 18)

The parents appeal the findings and conclusion of the investigator on each of the three issues. The Appeal Committee has addressed the issues separately, below.

Issue One

Did USD #229 implement the student's IEP by providing special education services, accommodations or other requirements of the student's IEP?

The investigator concluded that the district did implement the student's IEP by providing special education services, accommodations or other requirements of the student's IEP (report, p. 14). This conclusion was based on:

- A contact log showing that the student received services as required by her April 24, 2025 IEP;
- Interviews with school staff members;
- Use of a "systematic plan" to provide paraprofessional support in the form of two, three and four paraprofessional classroom schedules;
- Use of accommodations provided by general education classroom teachers; and
- Use of additional staff members when staff shortages occurred. (Report, p. 14)

The parents' appeal of this issue is divided into three "subsections" listed as Subsection A, Subsection B, and Subsection C. the Appeal Committee will address each subsection separately.

Subsection A

The parents assert that the district failed to implement "direct" services as specified in the student's IEP by using paraeducators to provide a portion of those services, and thereby implementing a material change of services without IEP Team consideration, prior written notice, parent consent, or least restrictive environment (LRE) concerns.

The basis for the parents' assertions in Subsection A is that: "Per federal and state guidance, paraprofessionals *may assist under supervision* but may *not independently deliver* SDI or substitute for credentialed special educators (Notice of Appeal, p. 5)."

The Appeal Committee disagrees with this assertion.

The applicable law regarding the use of paraprofessionals in providing special education and related services is in federal regulation 34 C.F.R. 300.156(b)(2)(iii), which states:

(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--

(iii) Allow **paraprofessionals and assistants** who are appropriately trained and supervised, in accordance with **State law, regulation, or written policy**, in meeting the requirements of this part to be used to **assist in the provision of special education and related services** under this part to children with disabilities.
(Emphasis added).

Whether described in an IEP as a “direct service,” or otherwise, this federal regulation permits paraprofessionals who are appropriately trained and supervised, in accordance with state written law or policy to assist in the provision of special education and related services. There is nothing in this regulation that prohibits such assistance from being independently delivered by a paraprofessional or other assistant, as long as the assistance is in accord with state law or written policy.

Kansas policy describing the use of paraprofessionals is stated in the Kansas Special Education Reimbursement Guide (KSERG), and includes the following:

Paraeducators **provide instructional or related services** under the supervision of licensed or certified special education professionals in an accredited or approved special education program. Examples of allowable activities include: • instructional support under the supervision of a professional; • participation in IEP meetings; • parent-teacher conferences; • staff development; and • student data collection and record-keeping, such as maintaining observational and anecdotal records; • assisting the special teacher with paperwork related to support provided to students with exceptionalities for whom the para is responsible; • supporting students with exceptionalities in a general education program if the paraeducator is supervised by a special teacher. (KSERG, P. 27, emphasis added).

There are specified limits:

Paraeducators must not be: • Responsible for selecting or administering formal diagnostic or psychological instruments or for interpreting the results of those instruments; • Responsible for selecting, programming, or prescribing educational activities or materials for the students without the supervision and guidance of the special teacher; • Solely responsible for preparing lesson plans

or initiating original concept instruction; • Assigned to implement the IEP for students with exceptionalities without direct supervision and involvement from the professional; • Employed in lieu of certified or licensed special education personnel. Staff claimed as paraeducators but employed as professionals to avoid licensing issues will not be reimbursed; • Used as substitute teachers, unless paraeducators possess the appropriate Kansas license; • Performing nursing procedures or administering medications without appropriate supervision/training from an approved health care professional. (KSERG, p. 27).

The supervision requirement is described as follows:

Unless otherwise indicated, instructional **paraeducators must be directly supervised a minimum of 10% of the time they are working with students** (emphasis added). (KSERG, p. 29).

Accordingly, although there are limits, paraprofessionals in Kansas are authorized to provide a wide range of direct IEP services to children with disabilities, provided that they are directly supervised at least 10% of the time they are working with a student. No evidence has been presented to the Appeal Committee that paraprofessionals providing direct services to this student were not supervised in accordance with the Kansas Special Education Reimbursement Guide.

Subsection B

(Notice of Appeal p. 6-7) asserts that there were “multiple failures to provide mandated services and to accurately report or notify parents about changes in service delivery.”

Subsection B asserts that the parents were not notified of missed services on February 21 and February 24 or how those services would be made up, that the cumulative reduction in services over these dates exceeded 25% (constituting a material change in services that required consent, not provided by the parents) and that special education services were provided by a general education teacher.

A material change in services means, “an increase or decrease of 25 percent or more of the duration or frequency of a special education service, related service, or supplementary aid or service specified on the IEP of an exceptional child (K.A.R. 91-40-1(mm)). **This increase or decrease means the IEP has been changed to increase or decrease the frequency or duration of a service over the time-period of the IEP, not over the time period of a single service.** The Appeal Committee finds that the parents failed to provide sufficient information in this appeal as to how missed services on February 21 and February 24 (if correct) constituted a material change in services that required consent or a PWN.

The Appeal Committee also finds that the Notice of Appeal does not explain why a change in service delivery (presumably due to a change in service providers) requires a prior written notice. The Appeal Committee has already addressed the issue of using paraprofessionals to deliver direct special education and related services in Subsection A, but re-states here that changes of personnel who are qualified to provide services does not constitute a change of services. A change in the delivery or educational methodology of services (when, as here, the delivery or educational methodology is not specified in the IEP) is not a change in the frequency or duration of any service and so does not require a PWN or consent.

Finally, a failure to provide services in an IEP does not, by itself, change the IEP or require a PWN. A missed service may be a failure to implement the IEP, but failing to implement the IEP is not the same thing as changing the IEP (which would require a PWN). With regard to implementation of an IEP, not every failure to implement an IEP is a failure to provide a Free Appropriate Public Education (FAPE). The Office of Special Education Programs (OSEP) is the office in the United States Department of Education that both writes and enforces the federal special education regulations. OSEP has issued guidance stating that the IDEA statute and regulations do not address whether a school district must make up for missed services. That guidance advised that whether a missed service needs to be made up is a matter of FAPE and must be addressed on a case by case basis with emphasis on the impact of the missed service on the child's ability to continue to progress and meet the annual goals in the IEP (See, Letter to Clarke, 48 IDELR 77 (OSEP 2007)).

The courts that have considered the impact of missed services agree that an IEP implementation failure must be material to be actionable. See, *Abigail P. v. Old Forge School District*, 124 LRP 21769 (3d. Cir. 2024), joining the 4th, 5th, 8th, 9th, and 11th Circuits, saying: "Several of our sister courts have held that "a party challenging the implementation of an IEP must show more than a de minimis failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." This court went on to explain that perfection is not the standard for implementation of an IEP, and that "a requirement of perfect adherence would ignore the realities and the challenges that the IDEA was built to accommodate...A materiality standard affords local agencies some flexibility while still holding those agencies accountable for **material failures** and for providing the disabled a meaningful education benefit."

The Appeal Committee finds that the evidence does not support the parents' contention that there was a material failure to implement the student's IEP or that the district failed to provide a required PWN.

Subsection C

This subsection of issue 1 is stated as: "Misapplication of IEP accommodation and Misrepresentations."

The Appeal Committee first addresses the "misrepresentations" portion of this subsection. The parents state that the investigator "relied solely on district accounts and failed to fully represent parent statements submitted during interviews and in documentation." The Appeal Committee finds no basis for that assertion in either the report or the parents' appeal.

The report shows that the investigator used information from the parent to conduct a comprehensive investigation into this issue. Most of the report dealing with this issue describes the district's responses to the investigator's inquiries. That is typical for these kind of reports where an investigator is tasked with substantiating allegations made against the district. That investigative technique does not indicate that the investigator "relied solely" on district accounts. Moreover, these reports are not intended to be exhaustive to the extent that they "fully represent parent statements submitted during interviews and in documentation." That kind of procedure would require the same application to statements of school officials and result in unnecessarily long and difficult to read reports that include significant amounts of irrelevant information. Instead, investigators are trained to identify in the report only the pertinent facts needed to explain and support their conclusions.

As for the "Misapplication of IEP accommodation" portion of this subsection, the Appeal Committee agrees that there is evidence that the student's IEP may not have been perfectly implemented. However, as already addressed above, perfect implementation is not required, and there is no showing of a material failure to implement the IEP.

Finally, the complaint report states that: "progress monitoring of the student's IEP goals and related academic testing showed that the student made progress in the areas addressed by the IEP," thus meeting the FAPE standard articulated by both OSEP and the 3rd Circuit, cited in Subsection B. (Report, p. 7), and finding that December 10, 2024 progress reports showed the May 5, 2023 goals in reading and writing were met with percentages at 80% and 90% (Report, p. 8).

For the reasons stated above, the conclusion in Issue 1 of the report is sustained in full.

Issue Two

Did the district meet the IEP team in response to the parent's concern voiced at the October 2024 parent teacher conferences and the student's lack of progress in mathematics with the current IEP? (page 14)

This issue is awkwardly stated, but alleges that the district failed to convene an IEP meeting in response to concerns of the parents and the student's lack of progress in math. This involves several undisputed facts, including:

- The parents voiced concerns at an October, 2024, Parent/Teacher conference regarding the student's lack of progress in mathematics;
- The parents did not ask for an IEP meeting at that time;
- District personnel indicated they would conduct routine checks and report any noted regression to parents; and
- No IEP team meeting was held to address this concern until three months later, on January 24, 2025, at which a math goal and service were added to the IEP.

The investigator found no violation because the investigator judged the quarterly test scores, at the time of that Parent/Teacher conference, did not indicate a need for special education nor for additional general education intervention (Report, p. 17).

Subsection A

This subsection of the of the parents' appeal cites statutes and regulations requiring school districts to revise an IEP to address a lack of student progress based on information provided by parents, specifically 34 C.F.R. 300.324(b)(1) and K.S.A. 72-3429(f).

Subsection A omits important language in both the cited federal regulation and Kansas statute. Both 34 C.F.R. 300.324(b)(1) and K.S.A. 72-3429(f) require an IEP team to revise the IEP, **as appropriate**, to address information provided by parents. These provisions involve the use of judgment in determining whether an IEP needs to be revised, and do not require IEP teams to revise IEPs whenever a parent requests a revision or brings up a concern.

The investigator included, in her findings, that the October, 2024 meeting was a parent-teacher conference. At that parent-teacher conference the parents expressed concern about the student's mathematics performance (Report, p. 16). The report also noted that the parents and school officials agreed that the parents did not ask for an IEP meeting at that time (Report, p. 16). In addition, the investigator reviewed the student's Fall iReady Diagnostic Assessment (dated August 21, 2024), saying it, "showed that the student scored 450 in the 57th percentile nationally, with math domain scores as follows: Numbers and Operations: 442, grade 3, one grade level below; Algebra and Algebraic Thinking: 435, grade 3, one grade level below; Measurement and Data: 456, grade 3, one grade level below; Geometry: 475, early grade 4, on grade level." (Report, p. 16), and, based on these scores, in the judgement of school officials, the student did not need special education services nor Tier 2 general education interventions in math.

The investigator concluded that, at the time of the October parent-teacher conference, "the student's beginning of the year quarterly test scores did not indicate a need for special education or additional general education intervention." (Report, p. 17).

Parties sometimes, as here, disagree with how data should be interpreted. As noted in the "Preliminary Matters" portion of this decision, the Appeal Committee does not conduct a separate investigation, but instead, determines whether sufficient evidence exists to support the findings

and conclusions in the Complaint Report. The Appeal Committee agrees that the evidence (see paragraph immediately above) supports the conclusion by the investigator that, under these facts, the district was not compelled by law to convene an IEP meeting or revise the student's IEP.

Subsection B

This subsection alleges a violation of "child find" requirements. While the law uses the term "child find," there is no definition for the term "child find" in the law. These "child find" provisions, requiring the evaluation and identification of children who may have a disability and be in need of specially designed instruction, apply to unidentified children, not those, such as this student, who have already been identified as eligible for special education. This student has had an IEP in place since at least May of 2022 (Report, p. 5). Accordingly, these "child find" requirements have no application to this student.

The pertinent Federal regulation is 34 C.F.R. 300.324(b), which requires public schools to review and revise IEPs at least annually and **as appropriate to address: "any lack of expected progress toward annual IEP goals** (Emphasis added)." The Appeal Committee's finding in Subsection A of this issue applies equally to this subsection. The evidence supports the conclusion by the investigator that, under the facts presented, where significant progress was made toward the student's IEP goals and math deficits were not yet apparent, the district was not compelled by law to convene an IEP meeting or to revise the student's IEP.

The conclusions of the investigator on this issue are sustained in full.

Issue Three

Did the district provide proper PWN in response to parental requests for accommodations or services?

Subsection A

This subsection addresses alleged violations within the PWN provided after the April 24, 2024 annual IEP meeting (dated 4/24/2024) and the February 4, 2025 PWN following the emergency IEP meeting on January 24, 2025.

With regard to the April 24, 2024 meeting, the parents' appeal states: "Following the April 24, 2024 IEP meeting, the IEP removed language regarding accommodations for district assessments, limiting them to state assessments only. This change was not discussed in the meeting and not disclosed in the April PWN (Appeal, p. 16)."

The parents do not explain in this appeal precisely what language was removed from the previous IEP. The Appeal Committee reviewed the IEPs dated 5/1/23 and 4/24/24. Under the title: "Supplementary Aids and Services (Accommodations and Modifications)," the IEPs are identical. Both IEPs allow accommodations, including Text to Speech, on both state and district level

assessments. On page 9 of 13, both IEPs say: “Does the student require Accommodations/Modifications for Assessments”? The “yes” box is checked on both. On page 10 of both IEPs, under the heading of “Participation in Statewide Assessments,” both IEPs state that “Text to Speech” is permitted for Mathematics and English Language Arts (ELA). A plain reading of these identical provisions cannot be interpreted to mean that Text to Speech, or any specific testing accommodations in the IEP, are limited to only state assessments.

With regard to the January 24, 2025 meeting, the district provided a PWN dated February 3, 2025, to the parents asking for consent for material changes in services, including the removal of the Text-to-Speech test accommodation for the ELA KAP assessment. The parents did not give the requested consent. The parties met again on February 28, 2025 and the district issued another PWN, dated March 7, 2025, again requesting consent for removal of the Text-to-Speech test accommodation for the ELA KAP assessment. The parents did not give the necessary consent. These exchanges clearly indicate that neither party believed the district had already removed the Text-to-Speech test accommodation for the ELA KAP assessment from the IEP.

The investigator concluded, as follows: “The district provided all supporting documents to the investigator, who found that the documents, “clearly” showed that the IEP revision process was continuing (Report, p. 24). The Appeal Committee agrees with the investigator. The Appeal Committee finds that this exchange was, and is, an on-going process that has not yet reached a conclusion. It is, therefore, still in the proposal stage. As of the date this complaint was filed, the student’s IEP was not changed with regard to this Text to Speech testing accommodation.

Subsection A of this issue also includes the following allegations:

- The February 4, 2025 PWN, which followed the January emergency IEP meeting:
 - Omitted two accommodations previously listed in the student's IEP.
 - Altered one accommodation’s language without prior discussion.
 - Excluded five new accommodations discussed and agreed upon during the IEP meeting.
 - Revised six additional accommodations in a way that diluted or contradicted their intended support.
 - Failed to accurately reflect the parents’ concerns or the rationale for the changes proposed or rejected.
 - Failed to accurately account for participants in the January 24, 2025 meeting.
 - Omitted two participants who were in attendance.
 - Falsely added a participant who was not in attendance.

This portion of Subsection A lacks sufficient information for consideration on appeal. As stated in the Preliminary Matters portion of this decision, when a party submits an appeal of a complaint report and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support. The above statements do not provide any supporting

information. For example, The first statement alleges that the 2/4/2025 PWN "Omitted two accommodations previously listed in the student's IEP." It does not identify what those two accommodations were, making it impossible for the Appeal Committee to review. Each of the following allegations in this portion of Subsection A have the same lack of sufficient information needed for review. As a result, the Appeal Committee finds these allegations to be without the necessary support for review.

NOTE: the parents cite M.C. v. Antelope Valley Union High School, 852 F.3d 840 (9th Cir. 2017) as ruling that "IEP changes must be mutually agreed upon and documented." The Appeal Committee agrees with the decision in that case, but finds no application to the facts in this complaint. In the Apple Valley Union High School case, school officials saw an unintentional error in the IEP and changed the IEP to correct that error, without informing the parents. That is not what happened here. Here, the school district has made multiple attempts to meet with the parents to discuss proposals to change this student's IEP. The district has not received the required consent to do so, and has not made the proposed changes to the IEP. As a result, the process continues and the school district has not changed the student's IEP where consent is needed but not obtained.

Subsection B

IEP meetings held without parent participation.

On page 17 of their appeal, the parents cite statements of school personnel, made to the investigator, and disclosed in the report, indicating that IEP issues were further considered and decisions were made by the IEP team after the January 24, 2025 IEP meeting, without participation of the parents. These statements, submitted to the investigator by school officials were recorded in the report as follows:

KSDE Report Citations:

*"The team is currently working on a PWN that will provide a written response to all of the requests for clarification and modification included in the two February 11th emails."
(KSDE Report, p. 19)*

*"We were able to agree to some of these verbally during the meeting, **but others needed more time to consider the facts and legal requirements**. It appears that in some cases, the parents viewed not verbally objecting as agreement with their proposals. We did not feel the need to object to every area of concern as the parents stated in writing that they wanted the response in the form of a PWN." (KSDE Report, p. 21)*

*"The District proposes to reject the following accommodation **based on further team discussion after the IEP meeting on January 24th, 2025**" (KSDE Report, p. 23), (emphasis added).*

"The district in response reported that further consideration was required for some of the requests made by the parents before the February 3, 2025, PWN was provided." (KSDE Report, p. 24)

This allegation that the IEP team met without the parents to further discuss and make final decisions on the revision of the student's IEP was first alleged in this appeal. It was not an issue presented in the original complaint and so it is not subject to review on appeal. However, because this information comes from the district, itself, it is highly credible. The department has general supervision duties that obligates it to make an inquiry into highly credible allegations of a failure to comply with law, and will do so on this issue in a separate procedure. The parents will be copied on all correspondence relating to this action, including any resolution or required corrective action.

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 15th day of April, 2025.

Appeal Committee

Crista Grimwood

Brian Dempsey

Mark Ward