

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: 25FC229-005

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on March 11, 2025, by -----, on behalf of her child, ----- . In the remainder of this decision, ----- will be referred to as "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 April 10, 2025. That Complaint Report concluded that there was a violation of special education statutes and regulations

Thereafter, the parent 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 parent's 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

The report identified two issues:

ISSUE ONE: Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct child find activities to determine whether the Student was a student with a disability who required special education services. K.A.R. 91-40-7; 34 CFR § 300.111.

ISSUE TWO: Whether USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the Student with a free appropriate public education when the District did not provide the Student with an IEP. K.A.R. 91-40-1(z); 34 C.F.R. § 300.101.

The investigator concluded that there was a violation with regard to Issue 1, but found no violation with regard to Issue 2. The investigator said that there was no violation with regard to Issue 2 because:

"From reviewing the evidence and interviews, it appears that the Student's entries into hospitals and treatment centers were medically-based. There was not enough evidence to indicate these matters stemmed from educational reasons. Based on the foregoing, according to IDEA and Kansas special education regulations, it is not substantiated that the District failed to provide the Student with a FAPE when the District did not provide the Student with an IEP..." (Report, p. 34).

The essential facts, as follows, appear to be undisputed:

1. The student was attending a private school, with a 504 plan (Report, p. 4);
2. The district requested consent for an initial special education evaluation on April 11, 2024 and the parents signed, giving the necessary consent on the same date (Report p. 7);
3. The student's evaluation was due to be completed by September 25, 2024 (Report p. 8)
4. The student entered the public school on August 13, 2024 (Report p. 8)
5. On September 4, 2025, the parties discussed an extension of the evaluation timeline but the paperwork for consent was never sent (Report p. 31)
6. On September 6, 2024, the student made statements that were deemed a high-level safety threat (Report, p. 31)
7. The student was admitted to the district's Virtual Academy sometime in September, 2024, but did not start coursework until October 23, 2024. (Report p. 34)
8. The Student had the following hospitalizations: September 23, 2024 through October 2, 2024; October 5, 2024 through October 10, 2024; and October 21, 2024 through

November 14, 2024. The Student was hospitalized a total of 29 school days in that date range. (Report p. 32)

9. The School Psychologist sent the draft evaluation report to the Parent on September 26, 2024 (Report p. 32)
10. An eligibility meeting was scheduled for November 19, 2025, but the parent canceled the meeting. (Report, p. 32)
11. The eligibility meeting was rescheduled for November 22, 2024, but canceled because the student was transferring to a different school online. (Report, p. 32)

The investigator determined that the district did not comply with its child find duty (in Issue 1) because it was aware of the student's Autism diagnosis and recent hospitalizations but still did not complete the evaluation and hold the eligibility meeting within the 60-school day timeline as specified by K.A.R. 91-40-8(f), nor did it receive parental consent for an extension of time to complete the evaluation process. (Report p. 33).

However, in this issue (Issue 2), the investigator concluded there was no violation for not providing the student with an IEP within the 60-school day timeline because, "the Student's entries into hospitals and treatment centers were medically-based. There was not enough evidence to indicate these matters stemmed from educational reasons."

The Appeal Committee finds that Issues 1 and 2 are bound by the same criteria and same timeline. Kansas regulation K.A.R. 91-40-8(f) says:

(f) Unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g), the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child:

(1) Conduct the evaluation of the child;

(2) conduct a meeting to determine whether the child is an exceptional child and, if so, to develop an IEP for the child. The agency shall give notice of this meeting to the child's parent or parents as required by K.A.R. 91-40- 17(a); and

(3) implement the child's IEP in accordance with K.A.R. 91-40-16.(Emphasis added).

The Appeal Committee is at a loss to understand how the district could be in violation of K.A.R. 91-40-8(f)(1) but not 91-40-8(f)(2), unless the student is ineligible for special education. Accordingly, that issue must be addressed.

Clearly this student has a disability that adversely affects educational performance, if for no other reason, because the disability is resulting in significant absences from school. However, that is not the end of the eligibility analysis. To be eligible for special education services, the student must

also need specially designed instruction as a result of the disability. That need for specially designed instruction as a result of a disability for this student has never been determined by an eligibility team and no convincing evidence was presented to the Appeal Committee to establish such need. Without such convincing evidence of both requirements for eligibility, there can be no violation of the requirement to timely develop and implement an IEP to meet the FAPE requirement.

For the reasons stated above, the Appeal Committee sustains the conclusion of the investigator (although for a different reason) on Issue two, and finds that the district is not in violation of the requirement to conduct an IEP meeting to determine whether the child is an exceptional child within the 60 school-day timeline.

This result is consistent with the circumstances of this case, where the student is no longer attending school in this district, and so the district has no continuing obligation, or even authority, to develop an IEP for this student.

Conclusion

For the reasons stated herein, the Complaint Report is amended as stated herein. The corrective action specified in the report for issue one remains, as so specified.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 9th day of May, 2025.

Appeal Committee

Crista Grimwood

Brian Dempsey

Mark Ward