

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 497,
Lawrence Public Schools: 25FC497-002

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on March 3, 2025, by ----- (former district employee), on behalf of students enrolled in a district autism program.. In the remainder of this decision, ----- will be referred to as "the complainant." 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 11, 2025. That Complaint Report concluded that there was a violation of special education statutes and regulations with regard to Issue 2, and no violation with regard to the remaining issues.

Thereafter, the district filed this 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 district'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 issue on appeal is Issue Two:

Issue Two

Whether USD #497, in violation of state and federal regulations implementing the IDEA, failed to provide qualified staff to implement Individual Education Programs (IEPs) for the Students enrolled in the Autism Classroom. K.A.R. 91-31-34; 34 C.F.R. 300.156.

The investigator summarized the findings and reached a conclusion on this issue on pages 23 and 24 of the report, as follows:

On August 29, 2024, the Special Education Teacher was absent. The Autism Behavior Consultant was present in the morning to help settle students, but then had to leave. There is no record of certified classroom coverage for this afternoon.

September 12th, 13th, and 16th, 2024, the Special Education Teacher was again absent, and there was no record of certified classroom coverage for the afternoons. On Monday, September 16, 2024, the assigned certified substitute was only in the Autism classroom from 8:00 a.m. to 10:00 a.m. A text message from the Complainant to the Speech Therapist that morning indicated that only Paraeducator 1 and the Complainant were present. The Complainant also texted the Autism Behavior Consultant about staffing issues, and they stated they could not be there on that day.

On October 3, 2024, the Special Education Teacher was absent, and there was no record of certified classroom coverage. On November 4, 2024, the Special Education Teacher was absent, and although the long term substitute was scheduled, they texted at 6:46 a.m. that they would not be on that day.

In addition, on January 28th and February 6th, 2025, the Special Education Teacher was absent in the morning, and there was no record of certified classroom coverage during those times.

The Principal stated, "we always had a certified staff member in the room" and if there was somebody missing, support would be found. It was also stated that on occasion the Principal or the Assistant Principal would stay in the room until someone with a special education background arrived. Paraeducator 1 reported there had been days where the Special Education Teacher was absent and a certified person was not in the classroom "all day long."

After reviewing documentation and from interviews with the Complainant and District staff, it was determined that according to IDEA and Kansas special education regulations the District failed to provide qualified staff to implement IEPs for the Students enrolled in the Autism Classroom.

Using a state general education regulation, K.A.R. 91-31-34, the investigator determined that the district was in violation of this regulation because, "the District failed to provide qualified staff to implement IEPs for the Students enrolled in the Autism Classroom (Report, p. 26)."

On appeal, the district asserts that the district made reasonable attempts to provide substitute teachers in the classroom during the special education teacher's absences, although that was not

always possible. In its appeal, the district also asserts that it always provided paraeducator staff who were adequately trained and supervised when a substitute teacher was unavailable.

The relevant federal regulation is 34 C.F.R. 300.156(b)(2)(iii), which describes the extent to which paraprofessionals may be used to provide special education and related services. That regulation says that qualifications of special education personnel must:

(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).

In its appeal, the district correctly points out that Kansas policy regarding special education personnel is recorded in the Kansas Reimbursement Guide. Page 29 of that document states that paraeducators may assist in the delivery of special education and related services, with the following supervision requirement:

"Unless otherwise indicated, instructional paraeducators must be directly supervised a minimum of 10% of the time they are working with students."

The reimbursement guide then includes further directions for situations not involved in this complaint, except for the additional requirement that, "When the assigned special teacher is not present, a paraeducator must have a designated principal or teacher available in the building for assistance and supervision as needed."

The Appeal Committee finds that the absence of a qualified teacher for the specified portions of the school day described above, and on pages 23 and 24 of the complaint report, when a qualified and adequately supervised paraprofessional was present in the classroom, is not a failure to provide qualified staff. This finding is consistent with the investigator's conclusion in Issue 3 that the district, "did implement the IEPs of the students enrolled in the classroom while the special education teacher was absent (Report, p. 25)."

Conclusion

For the reasons stated above, the conclusion in Issue two of the report is reversed.

All corrective action is rescinded.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 6th day of May, 2025.

Appeal Committee

Crista Grimwood
Brian Dempsey
Mark Ward