

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 402,
Augusta Public Schools: 25FC402-002

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on March 19, 2025, by -----, on behalf of her child, ----- . In the remainder of this decision, ----- will be referred to as "the complainant," 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 15, 2025. That Complaint Report concluded that there was a violation of special education statutes and regulations

Thereafter, the district 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 district's notice of appeal, and the parent'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 two issues:

ISSUE ONE: Whether USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), on March 11, 2025, failed to implement the Student's IEP when a substitute teacher did not follow the Student's behavior intervention plan. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

ISSUE TWO: Whether USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to inform the substitute teacher of their roles and responsibilities in implementing the Student's IEP on March 11, 2025. K.A.R. 91-40-16(b)(5); 34 C.F.R. 300.323(d)(2).

The district appealed the decision rendered on both issues.

Issue One

Whether USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), on March 11, 2025, failed to implement the Student's IEP when a substitute teacher did not follow the Student's behavior intervention plan. K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

In its appeal of this issue, the district asserts that it did implement the student's IEP Behavior Intervention Plan (BIP) and that the investigator relied "on the parent's description of what happened on March 11, 2025."

The Appeal Committee disagrees with both assertions. Even disregarding all of the parents statements to the investigator, and relying solely on statements of school personnel made to the investigator, the Appeal Committee notes following facts:

The BIP specified that:

- a. "Staff will gently and [with] the use of general rules [,] will redirect the Student."
- b. "Staff will walk away after redirection immediately."
- c. "If [the Student] starts to argue [,] staff will ignore and walk away."

The incident was described by the paraeducator to the investigator as follows:

"Towards the end of the class, there's a little more movement. At that point, [the Student] wanted to talk to another student. [The Student] just got up and did it, but [the Student] was standing in the middle of the room also. And that's when [Teacher 1] was asking [the Student] to sit down, and they went back and forth with ... more of an argument. Eventually, though, [the Student] sat down. At that point, it felt like [the

Student] was deescalated, and there was no other thing to do. There was maybe five minutes before class was getting ready to let out. So at that moment, [Teacher 1] preferred to release the students instead of just going out of the class, stand up, walk out [sic]. And so [the Student] bolted out of the classroom without being told to go, and that's when [the Student] ran into [Teacher 1].” Report, p.8-9.

The paraeducator further reported to the investigator that:

After the Student left the classroom, “... I heard the confrontation when [the Student] was leaving. [The Student] went to [their] next class, and that's when [Teacher 1] went to the next room and confronted [the Student] in there for what [the Student] had done by running into [Teacher 1].” Report, p. 9.

It is clear from this account that teacher 1 did not comply with the portion of the student's IEP/ BIP, cited above. This issue has nothing to do with the suspension. The district had authority to suspend the student for this behavior. This issue is solely about whether the district implemented this student's BIP. The evidence supports the investigator's conclusion that teacher 1 did not implement the BIP, likely because teacher 1 was unaware of the BIP.

This was not just a procedural error. The error likely contributed to negative consequences for the student. As the investigator pointed out, on page 16 of the report, “If Teacher 1 had been furnished with the necessary information and had responded to the verbal interactions with the Student in accordance with the BIP, the subsequent escalation and physical interaction, which ultimately led to the Student's two-day suspension, might have been avoided.”

With regard to the district's position that, although teacher 1 did not know of the student's BIP, the paraeducator did and that should be sufficient, that interpretation is in opposition to the clear language in the federal regulation that is addressed in Issue two and this case illustrates why the requirement in issue 2 is so important to ensure the implementation of IEPs.

Issue Two

Whether USD #402, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to inform the substitute teacher of their roles and responsibilities in implementing the Student's IEP on March 11, 2025. K.A.R. 91-40-16(b)(5); 34 C.F.R. 300.323(d)(2).

The pertinent federal regulation is 34 C.F.R. 300.323(d), which states (bold, underlined, print added for emphasis):

(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that--

(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of--

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

The pertinent fact, provided by school personnel to the investigator, is that the District principal, special education director and Teacher 1 each acknowledged that Teacher 1 had not been informed of the Student's IEP or BIP (Finding 9 - p. 8, 25 - p. 12, 27 - p. 13, 33 - p. 14). The conclusions of the investigator on both issues are fully supported by evidence presented by school district staff.

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 6th day of May, 2025.

Appeal Committee

Crista Grimwood

Brian Dempsey

Mark Ward