In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 383,
Manhattan-Ogden Public Schools: 25FC383-003

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on April 1, 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 was issued on May 1, 2025. That Complaint Report concluded that there were violations 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, 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 Complaintant

Issue One

Whether the district provided the student with special education services and accommodations. K.S.A. §§ 72-3462

The investigator concluded that the district violated K.S. 72-3462 by failing to implement the student's IEP to provide sufficient implementation of:

Services in the Study Hall classroom (Report, p. 6)
Services in Social Studies (Report, p. 6)
Services in Science (Report, p. 6)
Accommodations (Report, p. 7)
Behavior Intervention Plan (Report, p. 7)

The district's appeal argues that, K.S.A. § 72-3462 "requires school districts to provide equitable services—not FAPE—to eligible students enrolled in private schools," and that "In Kansas, equitable services do not have to be identical to those provided in public school, nor do they constitute FAPE under IDEA." The Appeal Committee finds no such language in the statute, nor any language in the statute that supports such an interpretation. The only references to the term "equitable" in Kansas special education law are the "equitable participation" requirement in K.A.R. 91-40-42(a)(1) and the "participate equitably" requirement in K.A.R. 91-40-42a(a)(2)(A), both of which refer to "child find" processes, not to implementation of an IEP.

The investigator's conclusions in the complaint report were based on: (a) a lack of documentation of implementation, rejecting the district's reliance on mere schedules (Report, p. 7); and (b) statements made by district staff during interviews with the investigator. Those statements made to the investigator confirmed that district staff believed the duty to implement IEP accommodations belonged to the private school staff (Report, p. 8). The investigator correctly determined that,

> *"There is nothing in this statute that would place the responsibility of IEP implementation with a private school teacher. The statute clearly places responsibility for providing special education services for a student with an IEP with the school district (Report, p. 8)."*

As explained by the investigator, on the same page, K.S.A. § 72- 3462 requires that:

> *"[e]very school district **shall provide** special education services for exceptional children who reside in the school district and attend a private, nonprofit elementary or secondary school. (emphasis added)."*

The full (relevant) statement in this statute is:

> *Every school district s**hall provide special education services** for exceptional children **who reside in the school district and attend a private, nonprofit elementary or secondary school,** whether such school is located within or outside the school district, **upon request of a parent or guardian of any such child for the provision of such services** (emphasis added).*

The plain reading of this statute is that, for these exceptional children enrolled in a private school, the district must **provide** the IEP services **requested** by the child's parents.

The district rightly points out that this statute does not obligate it to provide any IEP services at a private school. However, when a district elects to provide all or a portion of the IEP services requested by parents at a private school, as this district did, it must provide those services.

The district's appeal also cites the statute's provision that when, "the services are provided at the private school, the school district of residence is not required to spend more than the "average cost" of providing the same service in public school. This provision in the statute does not mean the district may simply disregard the bulk of services in an IEP for a student attending and receiving services at a private school, whenever it determines that such services would exceed the average cost of providing the same services in a public school. Such an interpretation of this statute would substantially interfere with the parent's right to be informed of any district proposal related to FAPE before implementation of such proposal, under 34 C.F.R. 300.503.

When a district chooses to limit services to the "average cost" of providing the same service in a public school, it must first notify parents of that decision in a Prior Written Notice (PWN). That PWN must notify the parents of what parts of the IEP will not be provided at the private school and include an explanation why the district is proposing to exclude those services. The district's explanation must be sufficiently complete to enable the parents to make decisions regarding their right to accept services at the public school or to exercise procedural safeguards, such as initiating mediation, due process or complaint procedures.

The district did not provide a PWN notifying the parents that it would limit services to the "average cost" of providing the same service in public school. Lacking such prior written notice, it cannot now assert that it was employing the "average cost" process to limit the services it was providing to this student at the private school.

For the reasons cited above, the Appeal Committee sustains the investigator's conclusion on this issue.

*The term "equitable services" is defined in federal regulation 34 C.F.R. § 300.137 to mean services provided to children with disabilities attending a private school. Under federal law, these equitable services are services provided by a services plan, not by an IEP. These equitable services need only be provided until a district has spent its proportionate share of federal IDEA funds on children with disabilities attending a private school. Under the applicable federal regulations no child has any individual right to any service. Kansas law greatly exceeds this minimal federal service/spending requirement. K.S.A. 72- 3462 is the governing statute for Kansas exceptional children enrolled by their parents in a private school, and the "equitable services" provision in federal law and corresponding "services plan" has no application to how IEP services are to be provided to these Kansas children.

Issue Three

Whether the district ensured each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for the implementation of the student's IEP is informed of that individual's specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. K.A.R. § 91-40-16(b)(5).

The district's appeal of this issue is summed up in this statement:

> *While the finding alleges a lack of individualized assignment of accommodations to staff, such specificity is not required under K.A.R. § 91-40-16(b)(5) or IDEA. The legal standard is informed responsibility, not explicit delegation in writing unless needed for clarity, which the district's procedures already support.*

In its appeal, the district cited the correct regulation. K.A.R. 91-40-16(b)(5) says:

> *(5) **Each** teacher and provider described in paragraph (4) of this subsection **is informed of** the following:*
>
> *(A) **That individual's specific responsibilities** related to implementing the child's IEP; **and***
>
> *(B) the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.*

The Appeal Committee agrees that this regulation does not require that personnel be informed of their specific responsibilities in writing. However, the district further asserts that its responsibility under this regulation was fulfilled by distributing a copy of the IEP and what it called a "passport" to all involved staff. This assertion does not address the investigators finding that:

> *The photographs of the student's "passport book" show "the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." (Report, p. 13).*

However, the investigator also found that:

> *There is nothing in the "passport book" that shows that the paraeducators were "informed of . . . [their] specific responsibilities related to implementing the child's IEP." (K.A.R. § 91-40-16(b)(5); Student Passport Book, Aug. 2024.) This is evident in that there is no information on what accommodations the paraeducator is expected to implement and no information on the paraeducator's specific responsibilities for carrying out the student's special education services in English, Math, Social Studies, and Science. Additionally, the special education teacher put together the "passport book" for the paraeducators, but there is no documentation to show that the district ensured the special education teacher was informed of her specific responsibilities related to implementing the student's IEP. With this student, there does not appear to be a process by which the district determined and assigned specific responsibilities for all components of the IEP. (Report, P. 13-14).*

By providing an IEP and passport book to all staff, the staff were informed of the services that needed to be provided, but these sources did not inform staff of each of their individual "specific responsibilities."

The investigator found a violation because this portion of the regulation goes beyond mere access to an IEP. It also requires that any individual who is responsible for implementation of any part of an IEP "is informed of…that individual's specific responsibilities." The IEP and "passport book" did not provide that information and nothing in this appeal supports a finding that paraeducator staff were informed of their "individual specific responsibilities" under this student's IEP.

Accordingly, the conclusion of the investigator on this issue is sustained.

Issue Four

> In the 2024–25 school year, whether the district provided special education services for all students with IEPs attending the same private school as the student. K.S.A. §§ 72-3462, 3463.

The district's appeal is based on the district's assertion that the complainant does not have a parental right, or standing, to lawfully file a systemic complaint on behalf of other students, and so this issue is beyond the "jurisdictional scope" of K.A.R. 91-40-51(a).

The Appeal Committee sees nothing in the cited regulation that supports the district's reading of this regulation. K.A.R. 91-40-51(a) says: "Any person or organization may file a written, signed

complaint alleging that an agency has violated a state or federal special education law or regulation (emphasis added)." The applicable federal regulation (34 C.F.R. 300.153) has a similar provision. Thus, the Appeal Committee finds that this complainant, like "any person," has a right to file a systemic complaint on behalf of students for which she is not a parent.

The investigator found that:

> *"the district did not provide any information on the services each student's IEP requires and does not have any mechanism to ensure services are provided when a public-school staff member responsible for providing services in the public school is pulled to another district building. The district provided documentation that all services are available to each student at the public school, but that only speaks to the availability of services after April 3, 2025, not prior to that in the 2024–25 school year. The district's misunderstanding of staff responsibilities for implementing accommodations and behavior intervention plans is likely impacting all students with IEPs at the private school. The parent's and private school principal's account of whether the district is providing services undermines the district's assertion that it is providing services as indicated in student's IEPs."*

The Appeal Committee agrees with the investigator's findings and conclusion on this issue. When public school staff report an understanding that the duty to implement provisions in an IEP belongs to private school staff and not to public school staff, and the principle of the private school reports that public school staff are not implementing those provisions, those factors are strong evidence undermining the district's assertion that public school staff are providing all services within the IEPs of all students with disabilities in the private school.

The Appeal Committee sustains the conclusion of the investigator on this issue.

Issue Five

Whether the district provided the parent with prior written notice in response to the parent's request for support for the student in health class. K.S.A. § 72-3430(b)(2).

The district argues that it did not deny the parent's request for support in the health class when the special education teacher responded to an e-mail from the parent requesting said support. The e-mail response said; "Unfortunately, we cannot provide support for a class prior to a demonstrated need. We can keep an eye on the situation. I will check in with [the health teacher] and even do some observations to watch for any signs of need." (District's Response to the Complaint, Apr. 20, 2025.) (Report, p. 18). The investigator found this response to be a refusal of the parent's request, which required a Prior Written Notice (PWN). The Appeal Committee agrees. Any response to a parent's request for additional support for their child that starts with,

"Unfortunately, we cannot…" is likely a refusal of the request, at least for a period of time. The Appeal Committee finds that this response was clearly a refusal that required a PWN.

The district also argues that "A violation cannot be found where no adverse action occurred." The district asserts that delivery of a PWN is merely a procedural requirement and so failure to deliver a PWN is merely a procedural violation of law.

No statute or regulation addresses this issue with respect to state complaints, such as this one. There is a provision in federal regulations (at 34 C.F.R. 300.513) that states that a hearing officer in a due process hearing must:

> *Base any determination of whether a child received FAPE on substantive grounds and that a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—*
>
> *(i) Impeded the child's right to a FAPE;*
>
> *(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or*
>
> *(iii) Caused a deprivation of educational benefit.*

That regulation adds that:

> *(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements*

Even though this regulatory provision applies only to hearing officers in a due process hearing, Special Education and Title Services (SETS) often applies it to state complaints. In doing so, SETS recognizes the parameters of this federal regulation, as follows:

> *It includes more than just the provision of FAPE to the child.*
>
> *It also includes significant impediment of the parent's opportunity to participate in the decision-making process and includes deprivation of educational benefit to the child. Additionally, the regulation includes, even when none of the above applies, that the hearing officer may order the district to comply with the procedural requirement. Thus, this regulation authorizes corrective action even when a hearing officer finds no substantive violation.*

In this complaint, the investigator found a procedural violation for not providing the parent with a PWN. There was no analysis in the complaint report regarding whether this procedural violation was also a substantive violation because it "significantly impeded the parent's opportunity to participate in the decision making process." The Appeal Committee finds that there is no need to ascertain whether this procedural violation was also a substantive violation because, in either case, the investigator (like hearing officers) has authority to order the district to "comply with procedural requirements." The corrective action on this issue does just that. There was no finding of a violation of FAPE for the Appeal Committee to overturn. The corrective action in the report merely

orders the district to submit a written statement of assurance that it will comply with the procedural requirements relating to prior written notice and provide the parents with the PWN that it should have provided. These corrective actions are simply "ordering an LEA to comply with procedural requirements," as authorized in the federal regulations for hearing officers.

Finally, the district also appealed corrective action. There is no appeal process for corrective action. The pertinent regulation, K.A.R. 91-40-51(f) permits an appeal of only the "findings or conclusions" in a complaint report. SETS removes corrective action when an Appeal Committee reverses a decision concluding that a violation has occurred, but that does not apply here, where there is no reversal of any conclusion.

The Appeal Committee sustains all of the conclusions in the complaint report that are under appeal.

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 23rd day of May, 2025.

Appeal Committee

Crista Grimwood

Brian Dempsey

Mark Ward