

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed March 26, 2025
Against Unified School District No. 305

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced on March 26, 2025, with the parent, -----, filing a complaint on behalf of her child, ----- . This decision will refer to ----- as "the parent," and ----- as "the student." A complaint investigator completed the complaint investigation on behalf of the Kansas State Department of Education (KSDE) Special Education and Title Services team. Following the investigation, KSDE issued a complaint report addressing the parent's allegations, on May 1, 2025. The complaint report concluded that there were four violations of special education law under three issues.

On May 9, 2025, the district filed an appeal of the complaint report. Upon receiving the appeal, KSDE appointed an Appeal Committee, and it reviewed the district's appeal, the complaint report, the district's response to the parent's complaint and the district's accompanying exhibits that the district referenced in its appeal, and the parent's complaint. The Appeal Committee now issues this Appeal Decision.

Preliminary Matters

KSDE included the text of regulation regarding filing an appeal, § K.A.R. 91-40-51(f)(1), with the complaint report. That regulation states, in part, " Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the KSDE Appeal Committee may only consider appeals of findings or conclusions and 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 for the statement, the Appeal Committee does not attempt to locate the missing support.

The Appeal Committee does not decide new issues as part of the appeal. The Appeal Committee reviews the complaint report and determines whether the appealed findings or conclusions are correct. The Appeal Committee does not conduct a separate investigation. The Appeal Committee's function is to determine whether sufficient evidence exists to support the complaint report's appealed findings and conclusions.

Districts' Appeal

The district raises three allegations that the findings and conclusions from the complaint report are incorrect. The district also raises concern regarding one of the corrective actions ordered. Corrective action is not appealable; only findings or conclusions are appealable under K.A.R. § 91-40-51(f)(1). The Appeal Committee will address the following three allegations:

Allegation One: Date District Began Comparable Services

Allegation that the complaint investigator's conclusion regarding the district's start date of comparable services should have been the date the student started school in the district. This allegation is connected to complaint report Issue One.

Allegation Two: Comparable Services in Student's Neighborhood School

Allegation that the complaint investigator's conclusion that the district did not make comparable services available in the student's neighborhood school is not supported by the evidence the district provided in its response. This allegation is connected to complaint report Issue One.

Allegation Three: Material Change of Services Consent Finding

Allegation that the complaint investigator did not sufficiently investigate prior to concluding that the district violated K.A.R. § 91-40-27(a)(3). This allegation is connected to complaint report Issue Two.

Allegation One: Date District Began Comparable Services

Whether the complaint investigator should have based the Issue One conclusion of the district providing compensatory services on the date the student started school.

Applicable Law

The regulation at focus in Issue One of the complaint is 34 C.F.R. § 300.323(e), "If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either—

- (1) Adopts the child's IEP from the previous public agency; or
- (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324."

Relevant Facts

The district's response indicates that the student began attending school at Meadowlark Ridge Elementary on April 2, 2025. (District's Response, 2, Apr. 14, 2025.) In support of this statement, the district's response points to Exhibit 2, the special education coordinator's notes. (District's Response, 2, Apr. 14, 2025.)

The complaint report indicates that on "March 31, 2025, an internal team determined that the most appropriate program in the district for the student would be at Meadowlark Ridge Elementary School." (Complaint Report, 5, May 1, 2025.) The complaint report further indicates that the "student's IEP team met on Friday, April 4, 2025 to develop a new IEP for the student." (Complaint Report, 5, May 1, 2025.) The complaint report does not include the date the student started school at Meadowlark Ridge Elementary. (Complaint Report, 6, May 1, 2025.)

The complaint investigator concluded that the "LEA made two offers of services to the student after enrollment" and neither offer "made comparable services available to the student." (Complaint Report, 6, May 1, 2025.) The complaint investigator concluded these two offers of non-comparable services were at the student's neighborhood school (Oakdale Elementary) and to provide work for the student to complete at home. (Complaint Report, 6, May 1, 2025.)

The complaint investigator ordered compensatory services for the student based on a calculation that ended on "April 4, 2025, the date the IEP team met and developed a new IEP for the student." (Complaint Report, 6, May 1, 2025.) During the complaint investigation the district offered the parent compensatory services based on a calculation that ended on April 2, 2025, the date the district maintains it began to provide the student with comparable services. (District's Appeal, 2, May 9, 2025.) The district disputes the investigator's conclusion that the district did not provide compensatory services until April 4, 2025, and the corresponding compensatory services calculation the complaint investigator used to determine corrective action. (District's Appeal, 2, May 9, 2025.)

Allegation One Conclusion

Based on its review, the Appeal Committee finds support for the April 4 date the complaint investigator used in the Issue One conclusion as there is no clear evidence that the district clearly communicated to the parent that comparable services were available for the student until April 4. The parent provided enrollment documentation on March 10, the district received the student's IEP from the former district on March 12, staff with the student's neighborhood school reviewed the student's IEP on March 13, staff with the neighborhood school met with the parent on March 24, the student's current and former district IEP Teams met on March 27. On any of these dates the district could have communicated to the parent that comparable services were available to the student and did not. The district also did not provide any evidence both during the investigation and the appeal that the district actually provided comparable services beginning April 2. Based on

this evidence and analysis, the Appeal Committee upholds the complaint investigator's conclusion in Issue One on the start date of compensatory services.

Allegation Two: Comparable Services in Student's Neighborhood School

Whether the complaint investigator correctly concluded in Issue One that the district did not make comparable services available in the student's neighborhood school.

Applicable Law

The regulation at focus in Issue One of the complaint is 34 C.F.R. § 300.323(e), "If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either—

- (1) Adopts the child's IEP from the previous public agency; or
- (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324."

Relevant Facts

The district's response indicates that at a March 24, 2025, meeting between the parent, school psychologist, and the lead teacher at the student's neighborhood school, the school psychologist informed the parent that the student could attend the neighborhood school immediately.

(District's Response, 2, Apr. 14, 2025.) The district's response indicates the parent chose not to send the student to the neighborhood school because there was a possibility the student may attend a different school when the district developed, adopted, and implemented a new IEP.

(District's Response, 2, Apr. 14, 2025.) The district points to Exhibit 1, the neighborhood school's principal's notes, and Exhibit 8, the school psychologist's notes in support. (District's Response, 2, Apr. 14, 2025.)

The complaint report included findings that directly quote from the lead teacher's March 24, 2025, meeting notes stating, "[the school psychologist] stated that we cannot deny you (the student) enrollment starting now. Mom said that will not work for [the student] to start here (Oakdale) then go somewhere else in a week. . . . [The school psychologist] re-stated that [the student] can begin attending Oakdale today as we work through the process and meeting." (Complaint Report, 5, May 1, 2025.) The complaint investigator concluded "the district offered the parent the option for the student to begin attending the neighborhood school but comparable services to those provided in the previous school district were not available in this school building and the parent was not in agreement." (Complaint Report, 6, May 1, 2025.)

The district's appeal asserts that the complaint investigator did not ask the district whether comparable services were available at the student's neighborhood school. (District's Appeal, 2, May 9, 2025.) The district's appeal indicates that "the behavior program at Meadowlark is a better fit for [the student], Oakdale could have provided comparable services to [the student] until the IEP meeting was held." (District's Appeal, 2, May 9, 2025.)

Allegation Two Conclusion

The Appeal Committee does not believe the district provided information during the investigation or on appeal to indicate comparable services were available at the neighborhood school. If the district had relevant information to provide regarding comparable services, it could have provided it during the investigation or the appeal and did not. The complaint investigator interprets the district's offer for the student to attend the neighborhood as simply allowing the child to attend the neighborhood school and not as a communication that it would provide comparable services. The complaint investigator bases this conclusion on the district's focus on the student's likely placement being a school other than the student's neighborhood school. In the district's Exhibit 7, included with the district's response to the complaint, the school psychologist notes indicate that at the March 24 meeting with the parent, "I explained that [the student] can begin school at [the student's neighborhood school] today and it will be up to the [neighborhood school] to do their best in providing special education services." The Appeal Committee finds that "to do their best in providing special education services" does not communicate to the parent that comparable services will be provided in the neighborhood. The Appeal Committee finds that the district cannot have it both ways. The district cannot communicate to the parent that the student must ultimately attend a non-neighborhood school and that comparable services can also be provided at the neighborhood school. Based on this evidence and analysis, the Appeal Committee upholds the complaint investigator's conclusion in Issue One that the district did not make comparable services available in the student's neighborhood school.

Allegation Three: Material Change of Services Consent Finding

Whether the complaint investigator correctly concluded in Issue Two that the district violated K.A.R. § 91-40-27(a)(3).

Applicable Law

The regulations at focus in Issue Two of the complaint are 34 C.F.R. § 300.323(e), K.S.A. § 72-3429(g), 34 C.F.R. § 300.503(a), and K.A.R. § 91-40-27(a)(3). Relevant to this allegation, the complaint investigator found a violation of K.A.R. § 91-40-27(a)(3), "[E]ach each agency shall obtain parental consent before . . . making a material change in services to . . . an exceptional child"

Relevant Facts

The parent's complaint did not include an alleged violation of K.A.R. § 91-40-27(a)(3). The district's response does not provide any information on a material change of services, other than pointing to the Prior Written Notice where the district indicates it will implement a new IEP for the student and does not request parent consent for any services changes. (District's Response, 2, Apr. 14, 2025; Prior Written Notice, Apr. 4, 2025.)

The complaint investigation report indicated that the student's IEP from their previous district required, "20 minutes per week of social work services." (Complaint Report, 4, May 1, 2025.) In explaining the removal of the social work services, the complaint investigator points to the Prior Written Notice the district provided the parent during the complaint investigation offering compensatory services. (Complaint Report, 9, May 1, 2025.) The district pointed out in its appeal that in the investigator's focus on the removal of social work services, the investigator instead should have pointed to the Prior Written Notice the district provided to the parent indicating it would implement a new IEP for the student and not requesting parent consent for any services changes. (District's Appeal, 2, May 9, 2025; Prior Written Notice, Apr. 4, 2025.)

The district's appeal maintains the complaint investigator should have asked the district for information on why social work services were removed from the student's IEP. (District's Appeal, 2, May 9, 2025.) The district indicated in its appeal that the district discussed with the parent that the student will receive "social skills support in the special education classroom for 60 minutes a day . . . provided by his special education teacher . . . [and] . . . access to the building's social worker any time he needs it, just like any other student in the building." (District's Appeal, 2, May 9, 2025.) The district indicated the removal of social work services from the student's IEP should have been "clearly identified on the PWN" and that the district would issue a new PWN and provide the parent "the opportunity to meet with the team again to discuss it further." (District's Appeal, 2, May 9, 2025.) The complaint investigator ordered corrective action for the LEA to "reconvene the student's IEP team no later than May 30, 2025 to review and revise, as appropriate, the provision of social work services to the student as required by the March 22, 2024 IEP and provide the parent with appropriate prior written notice following that IEP team meeting" as well as KSDE. (Complaint Report, 13, May 1, 2025.)

Allegation Three Conclusion

If the district had relevant information to provide regarding social work services, it could have provided it during the investigation and did not. The district provides information regarding the removal of social work services on appeal and also admits a violation of K.A.R. § 91-40-27(a)(3). The investigator cited sufficient evidence to show that the district was required to seek the parent's consent to remove social work services and the district did not do that. Based on this evidence

and analysis, the Appeal Committee upholds the complaint investigator's conclusion in Issue Two that the district violated K.A.R. § 91-40-27(a)(3).

Appeal Committee

Brian Dempsey: Assistant Director of Special Education and Title Services

Dr. Crista Grimwood: Dispute Resolution Coordinator

Melissa Valenza: Coordinator