

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: 25FC383-004

## DECISION OF THE APPEAL COMMITTEE

### **Background**

This matter commenced with the filing of a complaint on April 29, 2025, by ----- on behalf of their daughter, ----- . In the remainder of this decision, ----- will be referred to as "the parents," 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 May 29, 2025. That Complaint Report concluded that there were no violations 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 filed by the parent, 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 Issue on Appeal**

The report identified two issues. One issue was appealed:

## **Issue 1**

Whether USD #383, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), implemented special education and related services as described in the Student's Individualized Education Program (IEP).

Specifically alleged is the lack of:

- paraprofessional support throughout the school year,
- elimination of the Student's exposure to latex, and
- appropriate supervision of the Student for their safety, inclusion and independence.

### **I**

The investigator found no violation regarding the amount of paraprofessional support provided to the student. That finding was not based on perfect compliance with the student's IEP. The investigator acknowledged that there were documented instances where paraprofessional services were not provided (Report, p. 39).

Mindful that appeal committee's function is to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report, the Committee noted, In the findings of fact (FOF) in the complaint report, that the building principal told the investigator:

- The district faced continuing staff shortages (FOF 86).
- The district used at-risk aids to support special education minutes (FOF 87).
- The Principal took over scheduling the paraprofessionals because Special Education Teacher 1 "was needing additional support in being able to work [their] own schedule..." (FOF 88).
- The principal kept track of the minutes that were short and made adjustments "making sure those minutes were covered" (FOF 89).
- When shortages occurred, some students may have missed minutes of services as staff were moved to accommodate students with the highest needs. (FOF 91).

The investigator summarized these statements on page 34 of the report.

On page 39 of the report, the investigator found that the student demonstrated progress on the majority of her established goals within their IEP, and concluded as follows:

*While there were documented instances where paraprofessional minutes may not have been served as outlined in the IEP, primarily due to staffing shortages and unexpected absences, these instances, viewed within the totality of the situation, did not constitute a material failure to implement the IEP. The School's efforts to secure additional staff, adjust schedules to prioritize the Student's needs, and directly address the Parents' concerns, as evidenced by the ongoing dialogue and documented actions,*

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*demonstrate a commitment to supporting the Student's needs and implementing the*  
*IEP to the best of their ability under the circumstances.*

There was significant evidence supporting the parent's position as well as the district's position. The investigator reached her conclusion after a careful and meticulous review of physical documents such as paraeducator schedules, nurse logs, communications, staffing procedures, and after conducting extensive personal interviews with the parents, school administrators, and teachers. Ultimately, resolution of this kind of issue is often determined by both the quantity and credibility of the evidence presented. In concluding that, "the totality of the situation, did not constitute a material failure to implement the IEP," the investigator found that the evidence supporting the district's position was greater in both quantity and credibility.

The Appeal Committee notes that the highest courts considering the issue of missed special education services have uniformly held that IEP implementation failure must be material to be actionable, See: Abigail P. v. Old Forge School District, 124 LRP 21769 (3d. Cir. 2024), joining the 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 11<sup>th</sup> Circuits.

The Appeal Committee finds that the investigator included sufficient evidence and analysis to support her conclusion that, though there were missed services, those missed services did not constitute a material failure to implement the student's IEP.

This was a difficult set of facts presented for appeal and could have gone either way. The school district should not interpret this decision as authority to remain understaffed. Proper staffing includes anticipating that there will be some level of staff absences throughout a school year and planning for those absences. In this case, the Appeal Committee recognized that the investigator conducted a thorough investigation. That investigation included an extensive review of documents and personal interviews with those who are most closely involved with this student. In this kind of complaint, that alleges a failure to implement an IEP, the investigator must often exercise judgment when considering the credibility of all of the documents and statements presented. Because the judgement of this investigator is based on a personal review of all of the evidence (documents and interviews), and such personal review is not available to an Appeal Committee, the Appeal Committee must give reasonable deference to the conclusions of the investigator, and has done so in this case. The conclusion of the investigator on this portion of Issue 1 is sustained.

## **II**

With regard to the part of Issue 1 that is related to the presence of latex in the student's environment, the report states: "The Student's IHP, dated February 19, 2025, lists "latex allergy" under Medical Diagnosis and includes "avoid latex" in the Prescribed Treatment/Medication section, further noting the availability of an Epi-pen for emergency use." (Report p. 37). There is no mention anywhere in the report indicating that the student's Individual Health Plan (IHP) was a part of this student's IEP. Without that important information, this Appeal Committee has no

jurisdiction to conduct an appeal. The authority for hearing these appeals applies only to allegations alleging a violation of a "state or federal special education law or regulation (See K.A.R. 91-40-51(a)). Neither law addresses compliance with an IHP that is not part of an IEP.

Even so, the Appeal Committee finds that even if the IHP is in the student's IEP, there is no violation for failing to implement the IEP. The report cites the IHP as follows:

*The Student's IHP, dated February 19, 2025, lists "latex allergy" under Medical Diagnosis and includes "avoid latex" in the Prescribed Treatment/Medication section, further noting the availability of an Epi-pen for emergency use. The Nursing Assessment within the IHP outlines an increased risk of injury due to the latex precaution and directs the School Nurse to ensure all products used for care are latex-free and within expiration dates, and to assess the Student for accidental latex exposure and notify the Parents as needed. Furthermore, the Nursing Goals and Plans state that "staff will eliminate latex exposure (emphasis added)."*

In FOF 93, the principal stated: "my understanding of the latex was the fact that [the Student] was not to have direct exposure." The Appeal Committee finds that the principal's understanding is a reasonable interpretation of this part of the student's IHP. The IHP does not indicate a need for a latex free building. The principal added his comments to the investigator that: "once [the Parents] shared with me the doctor's note, it was then shared [with staff] that there should not be, the balloons can't be in the building (FOF 95)," which demonstrates a willingness to comply with a doctor's note, even when not a part of the IHP.

The appeal Committee finds that this portion of Issue 1 does not allege a failure to implement the student's IEP or a failure of any other provision of special education law.

### III

With regard to the part of Issue 1, dealing with appropriate supervision of the Student for her safety, inclusion and independence, the investigator correctly included this allegation with the implementation issue, concluding that any shortcomings did not constitute a material failure to implement the IEP (Report, p. 39). For the same reasons that the Appeal Committee affirmed the conclusion herein regarding implementation allegations related to an alleged lack of para support (not a material failure), the Appeal Committee affirms the investigator's conclusion regarding the issue of appropriate supervision of the Student for her safety, inclusion and independence.

The parents also appeal the investigator's finding, on page 39 of the report, that the student:

*demonstrated progress on the majority of their established goals within their IEP. The specific goals that were not met or were not addressed in the reporting period were not directly tied to the Student's immediate safety, inclusion, or the provision of paraprofessional minutes"*

Specifically, the parent's appeal cites Goal 2.1.4 involving the use of crutches, and Goal 2.1.3 a "playground steps" goal.

The report does not address a benchmark or goal for the use of crutches, and the parents do not identify how this was presented to the investigator as an issue in this complaint. There is no finding or conclusion on this issue, as none was made. Because no new issues may be considered in an appeal, the Appeal Committee will not address this allegation.

The report states that Benchmark 2.1.3 was not addressed in the reporting period due to "recent weather constraints and recent surgery." (Report, p. 22). The parent's appeal states that this goal remains in the student's IEP, but the appeal does not contest the finding that there was a valid reason for this benchmark not being addressed in the reporting period. Essentially, there was nothing to report because the student was apparently not accessing the playground equipment during the relevant time period. The Appeal Committee finds that there is no violation of law with regard to this portion of Issue 1.

Again, with regard to the issue of implementation of the IEP, this was a difficult set of facts presented for appeal and could have gone either way. The school district should not interpret this decision as authority to remain understaffed. Proper staffing includes anticipating that there will be some level of staff absences throughout the school year and planning for those absences. In this case, the Appeal Committee recognized that the investigator conducted a very thorough investigation. That investigation included an extensive review of documents and personal interviews with those who are closely involved with this student. In this kind of complaint, one that alleges a failure to implement an IEP, the investigator must often exercise judgment when considering the impact and credibility of all of the documents and statements presented. Because the judgement of this investigator is based on a personal review of all of the evidence, and such personal review is not available to an Appeal Committee, the Appeal Committee must give reasonable deference to the conclusions of an investigator, and has done so in this case.

## **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 18th day of June, 2025.

## **Appeal Committee**

Crista Grimwood

Brian Dempsey

Mark Ward