

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: 25FC402-004

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on May 7, 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 June 6, 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 filed by the parent, 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

The report identified one issue:

Issue One

Whether USD #402, in accordance with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), implemented the Student's IEP. Specifically in the Student's Social Studies class, "[The Student] was not regularly offered extended time or separate testing environments. [The Student] was not given class notes or modified assignments when needed, and [they were] frequently penalized for missed or late work without any effort made to determine whether those issues were tied to [their] learning needs." K.A.R. 91-40-16(b)(3); 34 C.F.R. § 300.323.

The investigator concluded that a "separate testing location" was implemented, at least from October 28, 2024 until October 27, 2025 and that "extended time" for completion of assignments was not an accommodation in the student's IEP (Report, p. 15). These conclusions were not contested upon appeal.

The investigator also concluded that: "it is substantiated that the district failed to implement the Student's IEP, specifically, providing notes to the Student in their social studies class." The investigator described the reason for this conclusion as:

Work samples provided by the Parent showed eight pages of handwritten notes along with pasted cutouts of historic pictures on the note pages. The work samples also showed three fill-in-the-blank questions and note pages, as well as notes copied by another person, not the Student. The IEP accommodation involving note taking states, "Notes provided in all core classes, general education classroom, and special education classrooms for the length of note taking from October 28, 2024, through October 27, 2025." Because of the high volume of the Student handwritten notes in their Social Studies notebook, the indication is that notes were not provided on all assignments in social studies, just a few (emphasis added).

The applicable provision in this student's IEP is: "Notes provided in all core classes, general education classroom, and special education classroom for the length of note taking...(emphasis added)"

The district appeals this decision, noting that the investigator based her decision entirely on the following reasoning: "Because of the high volume of the Student handwritten notes in their Social Studies notebook..."

The district's appeal based on the following assertions:

- The IEP does not define what constitutes "notes" nor does it restrict the method of delivery. The district gives many examples of "notes" in various modalities and/or formats (i.e. Cloze Notes, Graphic Organizers, PowerPoint slides, fill in the blank notes, etc.) and how they were provided (i.e. via Google Classroom and printed and given to the student in person). Evidence that supports includes that notes are found, printed, and in the student's Social Studies notebook which was verified by both the district and the parent. Additionally, the digital notes can be seen in the Google Classroom folder.

- The IEP does not state the student will have a scribe or be excused from handwriting answers to questions or fill in the blank options in the notes provided.
- The IEP does not restrict whether the student may take her own notes in addition to receiving them.
- The student choosing to take her own notes in class should not be interpreted as evidence of the absence of the required accommodation.

The appeal Committee agrees with the district's assertion. The investigator does state that her conclusion is based solely on "the high volume of the Student handwritten notes in their Social Studies notebook..." and cites no other basis.

The district's appeal challenges the definitions of terms commonly used in an IEP, specifically the meaning of the word "notes" and whether the word "provide" has flexibility in how a service or accommodation is provided.

IEPs uniformly do not come with a "definition of terms" section. Thus, we turn to the Kansas rules for statutory construction in K.S.A. 77-201. That statute says: "Words and phrases shall be construed according to the context and the approved usage of the language." The usual method for ascertaining the "approved usage" of a word is to find a dictionary description of the word.

The primary definition of the word "note" is: "a brief written record of something to assist the memory for future reference." (See, *Wester's College Dictionary*, 1999). Likewise, we turn to the same dictionary to provide us with an understanding of the term "provide." The primary definition for the word "provide" is: "to make available." (*Wester's College Dictionary*, 1999).

With regard to this dictionary definition of the word "provide," in the context of a special education complaint to a state department of education like this one, the Minnesota Court of Appeals considered this very question in *In re: Special Education Complaint 22-027C*, 82 IDELR 11 (Minn. Ct. of Appeals 2022). In that case, the facts were very different from the facts in this complaint. In the Minnesota complaint, the parents refused services offered in the IEP and then filed a state complaint alleging the district failed to deliver the services. The Minnesota State Department of Education's complaint investigator concluded that the school district was in violation of law because it had not "provided" the services in the IEP. This decision was appealed to a state district court, according to Minnesota law. The Minnesota Court of Appeals overturned the Department of Education's complaint investigator, saying:

the meaning of the term "are provided" is unambiguous, and because the pertinent regulations did not define the term "are provided," the court may look to dictionary definition to find its common meaning. In doing so, the court said:

"One dictionary defines "provide" as: "[t]o make available (something needed or desired)," "[t]o supply something needed or desired," and "[t]o make ready ahead of time; prepare." The American Heritage Dictionary of the English Language 1418 (5th ed. 2018)). Another dictionary defines "provide" as: "to supply or make available (something wanted or needed)"

The court added that to interpret the regulation "to require that a district not only offer or make available special-educational services, but also ensure that those services are received--even when refused--would result in liability and corrective action for school districts based on circumstances completely beyond their control."

We are not bound by decisions of Minnesota courts, but we may look at them for guidance. In addition we note that while the facts are completely different in this complaint than the Minnesota complaint, the meaning of the term "provide" does not change. Using both the Minnesota Court of Appeals decision as a guide and the cited provision in the Kansas statute on statutory construction, the Appeal Committee finds that to successfully "provide" services specified in an IEP does not require that those services be received, unless so specified in the IEP. Otherwise, it is sufficient to "provide" services by making them available. The facts presented in this complaint verify that notes were available to this student in various forms, including through written teacher notes, Cloze Notes, Graphic Organizers, PowerPoint Slides, and fill in the blank notes. Of course, there are situations where such formats for notes may be of little or no help to the student. When that occurs, the IEP team has a duty to identify the specific format of notes the student needs to be successful and to specify that format in the IEP.

In its appeal, as previously acknowledged above, the district adds: : "The student choosing to take her own notes in class is not evidence of a denial of services... (and) The student's use of personal note-taking should not be interpreted as a substitute for or indication of the absence of the required accommodation." The Appeal Committee agrees. Under the circumstances of this case, where the IEP did not require a specified delivery method for notes, the evidence presented verifies that notes were provided to the student (as the word "provide" is commonly defined) in all core classes, general education classroom, and special education classroom, as specified in this student's IEP.

The Appeal Committee is not unsympathetic to this student's experience, and recommends that this student's IEP team meet to discuss whether the student needs notes delivered in a specific format, and if so, to specify that format in the student's IEP.

Conclusion

For the reasons stated herein, the Complaint Report is reversed, and corrective action deleted.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 23rd day of June, 2025.

Appeal Committee

Crista Grimwood, Brian Dempsey, Mark Ward