

In the Matter of the Appeal of the Report  
Issued in Response to a Complaint Filed  
Against Unified School District No. 233  
Olathe Public Schools: 26FC233-001

## DECISION OF THE APPEAL COMMITTEE

### **Background**

This matter commenced with the filing of a complaint on July 28, 2025, by -----, on behalf of her son, ----- (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 (KSDE). Following the investigation, a Complaint Report addressing the allegations was issued on September 2, 2025. That Complaint Report concluded that there was a substantiated violation of special education statutes and regulations.

Thereafter, the school district filed an appeal of the Complaint Report. Upon receipt of the appeal, an Appeal Committee was appointed, and it reviewed the parent's original complaint, the Complaint Report, the notice of appeal, and the response to the district's notice of appeal submitted by the parent. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

### **Preliminary Matters**

The Appeal Committee limits its inquiry to the issues presented in the appeal. No new issues will be decided by the Appeal Committee. The appeal process is a review of the Complaint Report issued on September 2, 2025. The Appeal Committee does not conduct a separate investigation. The Appeal Committee's function is to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

### **Discussion of Issues on Appeal**

The Complaint Report dated September 2, 2025 addressed four issues, and the investigator found no violations of special education laws for issues one through three. For issue four, the investigator found a violation of special education laws and stated appropriate corrective action. On appeal, the district disputes the findings and conclusion in the Complaint Report (Notice of Appeal, p.1) for issue four. The Appeal Committee will address only those findings and conclusion the district disputes, the findings not in dispute are sustained.

## **Issue Four**

**Did USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education ACT (IDEA), fail to provide a free appropriate public education (FAPE) for the student, specifically by not providing access to hearing aids and glasses as the Claire Learning Center during the 2024-25 school year?**

All children with disabilities have available a Free Appropriate Public Education (FAPE) that emphasizes special education and related services designed to meet their unique needs. 34 C.F.R. 300.1(a). FAPE means special education services and related services that: (a) are provided at public expense; (b) meet the standards of the state education agency (SEA); (c) include an appropriate preschool, elementary school, or secondary school education; and (d) are provided in conformity with an individualized education program (IEP). 34 C.F.R. 300.17; K.A.R. 91-40-1(z).

Each public agency must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as part of the child's special education, related services, or supplementary aids and services. 34 C.F.R. 300.105. An assistive technology device means any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capabilities of a child with a disability. 34 C.F.R. 300.5. The decision of whether a hearing aid or eyeglasses is an assistive technology device is a determination that is made by the child's IEP Team. The IEP team is required to consider whether the child needs assistive technology devices and services. 34 C.F.R. 300.324. A public agency is responsible for the provision of the assistive technology device as part of FAPE only if the IEP Team determines that a hearing device is an assistive technology device and the device is required as part of the child's special education, related services, or supplementary aids and services. Assistive Technology, 71 Fed. Reg. 46581 (Aug. 14, 2006).

Generally, public agencies are not responsible for providing personal devices, such as eyeglasses or hearing aids that a child with a disability requires, regardless of whether the child is attending school. *Id.* However, if the device is not a surgically implanted device, such as a hearing aid or eyeglasses, and a child's IEP Team determines that the child requires a personal device (e.g., hearing aid, eyeglasses) to receive FAPE, the public agency must ensure that the device is provided at no cost to the child's parents. *Id.*

This case is unique. Here, the complainant voluntarily placed the student in a residential facility. Further, the student's IEP did not include a hearing aid or eyeglasses as assistive technology. On October 3, 2024, a Functional Learning Evaluation was performed. The evaluation report stated the student's necessity for hearing aids. Further, the report recommended the following accommodations and modifications to classroom instruction: (1) continued and consistent use of personal amplification; (2) continued and consistent use of remote microphone technology; (3) proximal seating with line of sight to the speaker; (4) verbal prompting to remind student to listen and watch the speaker; and (5) front loading of information Report, p. 17). Following the report, the

student's IEP was not amended to reflect the student's need for hearing aids and eyeglasses, nor was an IEP Team meeting held even though one was scheduled for December 6, 2024 to discuss amending the student's IEP to allow for assistive technology, such as a hearing aid and eyeglasses.

The Appeal Committee agrees with the investigator's analysis that, "although the student was medically placed in the residential facility and the student's educational placement was changed as a result of the medical placement, the relationship between the district and the school associated with the district obligate the district to continue to assume the education of the student and ensure the special education services are provided to the student (Report, p. 19)." The Appeal Committee disagrees with the investigator's conclusion that "Allowing this student to attend school for an extended time without the assistive devices the student clearly needs in order to be successful, for whatever reason, is a failure to meet the FAPE responsibility the district assumed when it agreed to provide the educational services to the children at the school associated with the residential facility (Report, p. 19)."

As stated previously, this case is unique. The complainant/parent made the unilateral decision to place the student in a residential facility. The student resided at the facility from October 29, 2024 to December 2, 2024 (Report, p. 17). That residence consisted of 18 school days. The residential facility refused to allow the student to take his eye glasses and hearing aids to school (Report, p. 18). On November 22, 2024, the district delivered a Notice of Meeting to the parent proposing an IEP meeting for December 6, 2024 to address the student's need for eye glasses and hearing aids (Report, p. 18).

In short, this was not an "extended" delay. The parents initiated this process when they made the difficult decision to place their child in a residential facility. That decision resulted in removing the student's access to personal devices that the student had previously possessed. Because the student had, at all previous times, possessed these devices at school, there was no previous need for the IEP team to add them to the IEP or even consider whether they should be added to the IEP. Adding provisions to an IEP has its own set of processes. An IEP meeting is scheduled and advance notice of the meeting is provided to parents. The school district is permitted a reasonable time to comply with these procedural requirements anytime there is a proposed change to an IEP. Considering the unique facts of this situation, the Appeal Committee finds that there was no undue delay in the district's procedures to plan and hold an IEP team meeting to consider the changing needs of this student. The meeting did not occur only because the student exited the residential facility.

Since the student's IEP did not include a hearing aid or eyeglasses as assistive technology, and the student returned to school with his hearing aids and eyeglasses before a planned IEP Team meeting occurred, the public agency was not responsible for the provision of the assistive technology as part of FAPE.

## **Conclusion**

For the reasons stated above, the Appeal Committee overturns the investigator's conclusion in issue four, specifically that the district violated the IDEA by failing to provide access to hearing aids and glasses at the Claire Learning Center during the 2024-25 school year.

Since there were no other corrective actions ordered by the Complaint Report, the school district is no longer required to take any corrective action.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 17th day of September, 2025.

## **Appeal Committee**

Brian Dempsey

Dr. Crista Grimwood

Hannah Miller