

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: 26FC383-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on August 15, 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, addressing the allegations, was issued on September 19, 2025. That Complaint Report concluded that there was a violation of special education statutes and regulations with regard to Issue Three and Issue Four.

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. The parent did not send a response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this final 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 concluded that a violation occurred with regard to two issues.

1. **ISSUE THREE: Did the LEA afford parental participation by providing appropriate prior written notice? (p 12)**

2. **ISSUE FOUR: Did the LEA implement the student's IEP during the 2024-25 school year?**
(p 19)

Sufficient evidence exists to support the findings and conclusions in the Complaint Report for both issues.

1. **ISSUE THREE: Did the LEA afford parental participation by providing appropriate prior written notice? (p 12)**

In its appeal, the district asserts that a *"Parents' refusal to sign the transportation amendment and to accept public-site services cannot convert the district's lawful offer into a violation"* and *"Any additional PWN obligation attached to parents' counter-requests (e.g., selective delivery at the private site) is, at most, a procedural question, not causally connected to a denial of FAPE where FAPE was available and declined."*

The prior written notice "PWN" requirement is both procedural and substantive. The purpose of the PWN is to inform parents not only of decisions made by an IEP team or school administration but also to provide an explanation of why the decision was made and what data was used as a basis for the decision. That information is important in order to inform parents of information necessary to make informed decisions about how to proceed.

On the transportation issue, the investigator said there was no question that the district had the authority to offer services at the public school rather than the private school and so did not investigate that issue (Report, p. 19). The Appeal Committee agrees the district has the authority to offer services at the public school but disagrees that the district has no obligation to respond to a parent's request for reconsideration of the decision to provide services at the public school with a PWN. The Appeal Committee will not address this part of the investigator's decision only because it is not addressed in the complaint report and so may not be addressed on appeal.

The report correctly states that a PWN must be provided to parents before a public agency "proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (Report, p. 13)." FAPE is defined, in part, as the special education and related services in an IEP (see 34 C.F.R. 300.17). Importantly, this PWN requirement also arises whenever a district **"refuses"** a request involving the provision of FAPE (special education and related services in an IEP). The Appeal Committee finds nothing in chapter 14 of the Kansas Special Education Process Handbook indicating that this PWN requirement does not apply to how districts must respond to parent requests involving students attending a private school.

In her conclusion, on page 19 of the report, the investigator cites three examples where the district was required to provide a PWN and did not do so, as follows:

However, the Parent requested that the LEA's offer of FAPE be altered, documented in the investigation in at least three instances. First, in an email on August 19, 2024, after

receiving the LEA's letter, the Parent specifically requested OT and PT services be changed and that these changes be discussed at the upcoming meeting. The LEA received the email and responded to other elements of this email by scheduling a meeting on September 3, 2024. Second, at that meeting, the Parent asked that some or all the Student's services be continued at the Private School. Third, the LEA agreed to provide the Student's speech language therapy at the Private School rather than at the Public school.

*When the Parents attended the September 3, 2024 IEP meeting and requested changes to the IEP, the IEP team denied these requests, thereby maintaining their previous offer of FAPE through the "ready willing and able" letter dated August 15, 2024. Although the LEA maintained *its* offer of FAPE, it did so by refusing to make the changes being requested by the Parents. At that point, the LEA was required to give the Parents written notice of that refusal and an explanation of why it was refusing the parents requests and a description of the data that supported the refusal, with a PWN. Further, the LEA altered its own offer of FAPE at the Public School by providing the Speech Language services at the Private School during the 2024-25 school year and failed to provide PWN to allow the parent to accept this service while refusing the other services, in this case due to the location determined by the LEA.*

The Appeal Committee agrees with these conclusions. A "ready, willing and able" letter has merit and can be an effective method to inform a parent who has rejected services in an IEP when those services remain available. A "ready, willing and able letter is not sufficient when it is the opposite situation, where it is the district that is rejecting services or other proposals that are being requested by a parent.

As for the district's argument on appeal that the failure to provide a PWN was "at most technical and harmless," the Appeal Committee recognizes that courts have held that a failure to provide a PWN can be harmless if it does not "result in a loss of educational opportunity or significantly restrict parental participation (See, K.D. v. Dept. of Education Hawaii, 665 F.3d 1110 (9th Cir. 2011)). This is a narrow exception to an important right of parents of a child with a disability. The Appeal Committee finds that the exception does not apply to the facts of this case. In this case, the parents requested that OT and PT services be changed and that services be continued at the private school. The district held an IEP meeting on September 3, 2024 and denied these requests without providing written notice explaining why the requests were denied, what information provided the basis for the denial, what other options were considered, or what procedural safeguards were available. This is not a situation where a district delivered a defective PWN. Rather, the district delivered no written notice or explanation for its decision to deny the parent's requests.

Instead, the district relied on a "ready, willing and able letter" that also failed to provide this required information. Even after receiving the complaint investigator's cogent analysis the district

continues to argue on appeal that the Kansas Special Education Handbook “explicitly directs districts to inform families that the district stands ready, willing and able to provide FAPE.” As stated earlier in this decision, a Ready, Willing and Able letter can be an effective method to inform a parent who has rejected services in an IEP that those services remain available, but a Ready, Willing and Able letter is not sufficient when it is the opposite situation, where it is the district that is rejecting additional services that are being requested by a parent. Nothing in the Kansas Special Education Process Handbook can reasonably be interpreted otherwise. This basic misunderstanding of the PWN requirement, along with the failure to provide a PWN when required, constitutes a significant restriction of the parent’s right to participate in the IEP process and requires corrective action.

The decision of the investigator on this issue is affirmed.

**2. ISSUE FOUR: Did the LEA implement the student’s IEP during the 2024-25 school year?
(p 19)**

The investigator found that the evidence substantiated that the student missed four twenty-minute sessions of speech-language services. The investigator found:

According to the personal handwritten notes of the IEP meeting dated September 3, 2024, the LEA stated that speech language services would be provided at the Private School. In an interview follow-up email, the LEA reported that it received an email notifying them that the Student was not receiving the speech language service at the Private School.

The LEA provided a log that showed that direct speech language services in a special education setting were provided to the Student beginning September 19, 2024, two times a week, through the 2024-25 school year.

(Report p. 22 – 23)

The district argues on appeal that; “the brief gap identified in the report (four sessions between 8/14 and 9/19) did not impede progress.” The Appeal Committee agrees that this gap in services was brief, especially considering that this complaint was filed on August 13, 2025, almost a year after the gap in services occurred. Over the span of one school year, these four 20-minute sessions totaled one hour and twenty minutes of missed speech services.

The Office of Special Education Programs (OSEP), is the office in the United States Department of Education that writes the federal special education regulations. For that reason, its guidance on federal special education law is highly persuasive. In Letter to Clarke, 48 IDELR 77 (OSEP 2007), OSEP said the law does not directly address the issue of missed services. Nevertheless, OSEP provided guidance specific to missed services, as follows:

Whether a missed service needs to be made up is a matter of FAPE and must be addressed on a case by case basis with emphasis on the impact of the missed service on the child's ability to continue to progress and meet the annual goals in the IEP.

Accordingly, to find a violation of law for missed services, there must be some analysis of the impact of the missed services on a child's progress in the general curriculum and progress toward meeting annual IEP goals. That analysis is missing in this report. Without that analysis, and taking into account the small amount of services missed over the past year, the Appeal Committee finds that the investigator's conclusion on this issue should be and is, reversed.

The three corrective actions on pages 29 and 30 of the report, including a written statement of assurance, compensatory speech services and review of district policies on implementing services to exceptional children attending a private school are removed. The corrective actions required for issue 3 remain in force.

Conclusion

For the reasons stated herein, the Complaint Report is sustained with regard to Issue 3 and reversed with regard to Issue 4.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 9th day of October, 2025.

Appeal Committee

Crista Grimwood

Brian Dempsey

Hannah Miller