

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 512,
Shawnee Mission Public Schools: 26FC512-002

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on 9/2/2025 by ---- on behalf of four students. In the remainder of this decision, ----, who is not a parent of any of the students in this complaint, will be referred to as "the complainant." 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 30 , 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 complainant's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this final Appeal Decision.

In complaint 26FC512-002, the investigator found no violation with regard to students #1, #3 and #4. The investigator did find a violation of law with regard to student #2 because the district used a special education teacher with an endorsement for High Incidence Special Education to educate student #2 instead of a teacher with a Low Incidence endorsement.. The district has appealed. We have never addressed this issue in a complaint previously, and so is a matter of first impression.

1. First, we start with the law:

Federal regulations, at 34 C.F.R. 300.156(a) state that:

The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

The Kansas State Department of education establishes and maintains personnel qualifications through its Teacher Licensure process and it provides official guidance regarding special education teachers and providers through its Reimbursement Guide.

The term "High Incidence" is defined in the Reimbursement Guide on page 22 to mean:

High Incidence (was Adaptive) (BD/IR/LD) Teachers of students with a range of mild-moderate disabilities that impact learning who are able to participate in general education curriculum with additional support. See Appendix A for endorsements

The term "Low Incidence" is defined on page 22 of the Reimbursement Guide to mean:

Low Incidence (was Functional) (ID/SM) Teachers of students with **significant intellectual disability and students with multiple disabilities who are less able to participate in general education curriculum**. See Appendix A for endorsements

The chart in Appendix B of the Reimbursement Guide indicates that:

The Licensed Personnel Report area of High Incidence allows multiple endorsements and correlates to the reimbursement categories of Behavior Disorder, Interrelated, and Learning Disability.

The Licensed Personnel Report area of Low Incidence allows multiple endorsements and correlates to the reimbursement categories of SM (severe multiply disabled), and ID (Intellectual Disability).

These are areas of service and appropriate endorsements according to the Teacher Licensure team at the Kansas State Department of Education.

2. Next, we interpret the law.

The teacher qualification portion of the Reimbursement Guide was built to be a "guide" for establishing teacher qualifications for both high and low incidence. It is just that and does not dictate determining how IEP teams determine what services are required. There are no specific cutoffs in the Reimbursement Guide which a child must meet to be considered "high" or "low" incidence", the descriptions are a guide for clerks reporting the data for reimbursement.

For example, the definition of the term "low incident" includes "*students with significant intellectual disability and students with multiple disabilities who are **less able to participate in general education curriculum***" (Emphasis added). By definition then, students with a, "*significant intellectual disability and students with multiple disabilities*" are only to be considered "low incidence" when they are "less able to participate in general education curriculum."

This lack of specificity is necessary because children with disabilities cannot be lumped into educational environments based solely on their category of disability or their degree of disability. The educational program for these children is called an IEP, or Individualized Education Program. The IEP, then, is built to serve children, based on their unique and individual needs.

In Endrew F. v. Douglas County School District, 117 LRP 9767, 137 S.Ct. 988 (2017), the United States Supreme Court defined the term "free appropriate public education" (FAPE) to mean

that "a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Thus, FAPE is not conditioned on category of disability, but is judged by the extent to which a student makes progress that is appropriate in light of the child's circumstances.

An additional consideration in this analysis is that children with disabilities must be educated in the least restrictive environment (LRE), in accordance with 34 C.F.R. 300.114. Courts have said that educational environments "differ from each other by the extent to which they depart from a "mainstream" assignment." Wilson v. Fairfax County Sch. Bd., 104 LRP 30556 (4th Cir. 2004). That means that each movement of a child that is farther away from a regular education classroom is a change of placement. The Appeal Committee makes no finding with regard to whether a child who is taught by a low incidence teacher rather than a high incidence teacher is necessarily in a more restrictive environment than if taught by a high incidence teacher, in a high incidence environment. The Appeal Committee only notes that a low incident environment could be considered a more restrictive environment. See, for example A.A. v. Northside Independent School District, 951 F.3d 678, 76 IDELR 61 (5th Cir. 2020) where a child was transferred from a behavior management classroom to an applied learning environment classroom. The court said it must look at the functions of the two classrooms to see if those functions were "substantially dissimilar."

In short, whether a child is appropriately served by a low incidence licensed teacher or a high incidence licensed teacher cannot be determined by using a specified formula. That decision involves judgements based on the unique needs of each individual child, the extent to which a child is educated in the least restrictive environment, and the extent to which an individual child is able to achieve IEP goals in a particular environment. That is the kind of decision that is better left to educators, or better yet, to IEP teams, unless the decision is clearly unreasonable.

3. Next we consider the individual child.

In the report student 2 was described as follows:

"[Student 2] needs intensive instruction in the special education classroom. [Student 2's] curriculum is modified from the general education curriculum to better suit Student 2's educational and behavioral needs". The IEP calls for the student to participate in the state-wide alternate assessment designed for the 1% of students working to meet the essential elements of the grade-level standards. The IEP describes the student's academic skills as emerging and significantly below those of same-grade peers who are now reading to learn new material, writing multiple paragraph responses, and learning multiplication / division. The student's IEP indicates more than three hours per day of special education instruction is provided in the special education setting away from same-grade peers focusing on core academics as well as over three hours per day of special education instruction and

attendant care is provided in the general education classroom with the classroom teacher noting the student needing one-to-one instruction with immediate feedback and redirection. Report, p. 14.

4. Next we examine the complaint investigator's report.

The investigator found a violation saying:

This student appears to meet the definition of "Low Incidence" because the student displays an intellectual disability that has more significantly impacted the student's rate of learning as compared to peers and is less able to participate in the same-grade general education curriculum. According to Appendix B: KSDE Special Education Teacher Endorsements for Reimbursement, the special education teacher working with Student 2 should hold a Kansas Teaching License with an endorsement to teach students with Low Incidence disabilities. Report, p. 14.

The investigator concluded:

It is noted that the LEA believes that, because the Student 2's IEP includes goals that are addressed in both the general and special education settings, the student should be considered as "High Incidence" and thus the complainant is appropriately licensed to teach this Student 2. However, the guidance provided by the Director of Special Education and Title Services (SETS) for the Kansas State Department of Education (KSDE) dated September 22, 2025 provides this clarification, "ALL students with disabilities should be "included" in grade level activities. Inclusion alone does not circumvent appropriate licensure."

There is evidence to support a finding that the LEA failed to provide Student 2 with a special education teacher licensed to teach students with Low Incidence disabilities at Mill Creek Elementary School during the 2025-26 school year. Based on the foregoing, the district is determined to be OUT of compliance with state regulations at K.A.R. 91-31-34 which describe the requirements for LEAs to follow in order to provide appropriately qualified staff for teaching assignments in Kansas school districts. Report, p. 14-15.

5. Finally, we review the district's appeal.

The district's appeal makes the following points:

- KSDE recognizes high incidence as appropriate for an Interrelated Resource Room (IRR) assignment.
- The district employed a properly licensed and qualified special education teacher consistent with the KSDE standards
- The placement decision for this student was made by the student's IEP team.

Conclusion

This student is entitled to a free appropriate public education (FAPE) in the least restrictive environment (LRE) by way of an IEP. A student's IEP team serves the vital role as decision maker in the development of an IEP that offers a FAPE in the LRE. While a state education agency has a legal obligation to establish and maintain qualifications to ensure that special education personnel are appropriately and adequately prepared and trained, that obligation does not diminish an IEP team's authority, and duty, to make "individualized" determinations about how and where a child with a disability will be educated.

This individual student has significant needs and could be served by a teacher licensed as "low incidence." That, however, is not the issue here. The issue in this complaint appeal is whether this student could also be served by a teacher holding a "high incidence" license. The fact that the original decision on that issue, to place this student with a high incidence teacher: (a) was made by the student's IEP team, (b) likely resulted in a less restrictive environment for the student, and (3) was reasonable because there was no substantial evidence in this complaint indicating that this student was not making appropriate progress on his IEP goals in the high incidence environment, all support the district's appeal.

The Appeal Committee agrees with the district's analysis of this novel issue, and finds that whether a student should be assigned to a high or low incidence teacher is not solely determined by a category of disability or the severity of a disability, but should be determined by an IEP team, based on the unique circumstances of each individual student's ability to make appropriate progress on IEP goals and to make appropriate progress in the general curriculum.

For the reasons stated above, the Appeal Committee reverses the conclusion in the complaint report and withdraws all corrective actions.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 15th day of October, 2025.

Appeal Committee

Crista Grimwood

Brian Dempsey

Hannah Miller