

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 231
Gardner Edgerton School District: 26FC231-003

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on October 1, 2025, by ----- (Advocate), on behalf of ----- (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 November 3, 2025. That Complaint Report concluded that there were substantiated violations 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, if any. 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 November 3, 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 November 3, 2025 addressed two issues, including eight separate allegations of special education violations under issue one. The investigator found violations of special education laws for issues one and two, including five allegations under issue one. For both issues, the investigator stated appropriate corrective action. On appeal, the district disputes the findings in the Complaint Report (Notice of Appeal, p.1) for issues one (allegations six, and seven) and two. The district also takes issue with the investigator's additional comments in issue one, allegation five. The Appeal Committee will address both issues, including allegations five, six, and seven.

Issue One

Allegation Five

Did USD #231, in accordance with state and federal regulations implementing the IDEA, provide the parents with prior written notice of actions proposed by the district before the IEP team meeting had been conducted?

Any agency or complainant may appeal any finding or conclusion in a complaint report. K.A.R. 91-40-51(f)(1). Here, the district does not dispute the investigator's findings or conclusion in issue one, allegation five. Instead, the district asks the Appeal Committee to comment on and reverse the investigator's statement regarding the ten additional supplementary aids and services (accommodations) not referenced in the PWN provided to the parents. The Appeal Committee declines the district's invitation because appeals must only relate to an investigator's findings or conclusions. Additional comments by the investigator in the report do not constitute findings or conclusions.

The Appeal Committee recommends the district review the chart titled Requirements for Parental Notice and Consent in the Kansas Special Education Process Handbook, Chapter 1, page 10, and note the line for adding a new service or completely deleting a service. The addition of a new service or the complete deletion of a service requires a Prior Written Notice.

Allegation Six

Did USD #231, in accordance with state and federal regulations implementing the IDEA, allow the parents to meaningfully participate in the IEP annual review? Did USD #231 conduct an IEP team meeting with meaningful parental participation?

A school may conduct an IEP team meeting without the parent if the school, despite repeated attempts, has been unable to contact the parents to arrange for a mutually agreed upon time or to convince the parents that they should participate. K.A.R. 91-40-17(e)(1); 34 C.F.R. 300.322(d). Districts are encouraged to use their judgment about what constitutes a good-faith effort in making repeated attempts to involve each family in the IEP process. School districts must at least make two attempts, using at least two methods, to involve the parents in the IEP team meeting. In this case, the school was able to contact the parent to arrange for a mutually agreed upon time to conduct an IEP team meeting. The school and the parent mutually agreed to conduct the annual review of the Student's IEP on September 8, 2025 (Report, p. 18). Further, the parent was consistently reachable by email. (Report, p. 19). There was no need to convince the parent that they should participate in the annual review of the Student's IEP, as the Student's parent actively wanted to participate in the annual review of the Student's IEP and said as much in subsequent emails to the school.

Instead, the parent was unable to participate in the annual review of the Student's IEP due to illness. Kansas policy provides that if the parents are unable to meet prior to the annual review date of the IEP and request that the IEP team meeting be extended for a short period of time until they can be involved in the meeting, the school may honor their request and document why the IEP has not been reviewed and when the IEP will be reviewed and revised. Kansas Education Process Handbook, p. 68. When schools schedule IEP team meetings too close to the annual review deadline, schools must balance the obligation to meet the annual review deadline with giving the parent required notice of the IEP team meeting and working with the parent to reach an amicable agreement about scheduling the meeting. Kansas Education Process Handbook, p. 68.

Kansas policy is supported by *Doug C. v. State of Hawaii*. Though this 9th Circuit case is not binding on the 10th Circuit, of which Kansas is a part, this case is persuasive authority since it is the only appellate circuit decision on point. In *Doug C. v. State of Hawaii*, the district faced almost the exact same issue raised in this appeal. The Court stated, "When confronted with the situation of complying with one procedural requirement of the IDEA or another, an agency must make a reasonable determination of which course of action promote the purposes of the IDEA and is least likely to result in the denial of FAPE." *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013). The court held that because a delay in holding the meeting would do less harm to the student's interest than to the parent's right to participate in the decision-making process, "the decision to prioritize strict deadline compliance over parental participation was clearly not reasonable." *Id.*

Here, the district prioritized a strict deadline for compliance over parental participation. The district could have proposed another meeting date before the September 12th deadline or offered to secure parent participation through a telephone call or video conference call. These options were not explored (Report, p. 23). The district had no reason to believe the parent would be unwilling to participate in a rescheduled IEP meeting.

As for the identified systemic violation, it is enough that the Executive Director stated that the actions of the district in this case are in line with general directives given to staff regarding the convening of an IEP team meeting in similar circumstances. It was reasonable for the complaint investigator to infer that the district treats other parents similarly to the parent in this case, especially because the same practices and directives are given to staff regarding the convening of an IEP team meeting in similar circumstances. Therefore, the complaint investigator appropriately identified a systemic violation.

Allegation Seven

Did USD #231 fail to amend the Student's educational record?

Parents have the right to request that their child's education records be changed if they believe something is inaccurate, misleading, or in violation of the student's rights of privacy. 34 C.F.R. 300.618(a). The district must decide whether to amend the information in accordance with the

request within a reasonable time. 34 C.F.R. 300.618(b). If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under Section 300.619. 34 CFR 300.619(c).

In this case, the Student's annual IEP review began when the district met without the parent on September 8, 2025 and continued until September 23, 2025 when the IEP team met along with the Student's parent. The district was made aware of the parent's request to amend the Student's IEP to correctly state the date of the IEP team meeting on September 23, 2025 (Report, p. 24). The district refused to amend the date of the IEP team meeting. The district has the authority to accept or deny a parent request to amend a Student's educational record. However, the district must inform the parent of the refusal and advise the parent of their right to a hearing. Here, the district did not timely respond in any fashion to the parent's request for the Student's records to be amended and did not inform the parent of her right to request a hearing. The conclusion in the complaint report is sustained on this issue.

Issue Two

Did USD #231, in accordance with state and federal regulations implementing the IDEA, deny FAPE to the Student when it failed to provide the special education support specified in the IEP which would have facilitated the Student's participation in a general education Biology class? In addition, is the corresponding corrective action of dropping the Student's first Biology test grade?

In Letter to Clarke (OSEP 2007), the Office of Special Education Programs emphasizes the missed services' impact on the student's progress and performance and notes a denial of FAPE is a determination that must be made on a case-by-case basis. FAPE is denied when there is an adverse impact on the student's education or parent's participation. In this case, there is insufficient evidence to show that the Student's progress and performance was hindered. It is not enough that the Student failed his first test (Report, p. 29).

Although there is no substantive violation, the evidence shows a material procedural violation of the implementation of the Student's IEP. The Student's September 13, 2024 IEP states he was to "receive 170 minutes of special education service in the general education setting for 5 days each week or a total of 1,700 minutes over two weeks" (Report, p. 27). The paraeducator assigned to the Biology class was to deliver special education services to the Student in the general education classroom (Report, p.29). Beginning August 26, 2025, the Student did not participate in Biology class (Report, p. 29). Rather than remaining in the classroom, the Student went to the counselor's office on at least five occasions between August 26th and September 23rd (Report, p. 29). The Student was provided with packets of materials related to biology and staff "checked on" the Student periodically (Report, p. 29). No special education services were provided to the Student while he was away from the classroom (Report, p. 29). This is inconsistent with the Student's IEP

requiring special education services in the form of paraeducator support in Biology and other subjects. Thus, a procedural violation is found as it relates to the district's implementation of the Student's IEP.

Regarding the corresponding corrective action, any agency or complainant may appeal any finding or conclusion of a complaint report prepared by a complaint investigator. K.A.R. 91-40-51(f)(1). Corrective action is neither a finding nor a conclusion of the complaint report. The Appeal Committee only addresses corrective action if the corrective action is clearly erroneous. Here, the corrective action is reasonable, not clearly erroneous. The complaint investigator has broad authority when it comes to corresponding corrective action. Therefore, the Appeal Committee will not address or amend the corrective action required by the complaint report.

Conclusion

For the reasons stated above, the Appeal Committee sustains the investigator's finding in issue one, allegation six, specifically that the District failed to provide meaningful parent participation at the Student's IEP annual review meeting. The Appeal Committee also sustains the investigator's identification of a systemic violation.

For the reasons stated above, the Appeal Committee sustains the investigator's finding in issue one, allegation seven, specifically that the District failed to timely respond to the parent's request to amend the Student's educational record and inform the parent of their right to request a hearing.

For the reasons stated above, the Appeal Committee rejects the investigator's finding of a denial of FAPE in issue two. Instead, the Appeal Committee finds a material procedural violation as it relates to the district's implementation of the Student's IEP as written. As for the corresponding corrective action, the Appeal Committee sustains the investigator's corrective action for issue two, specifically that the Student's first test grade be dropped and the Student's course grade be calculated without the first test grade in lieu of compensatory services.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 1st day of December, 2025.

Appeal Committee

Hannah Miller

Mark Ward

Brian Dempsey

Crista Grimwood