In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 229,
Blue Valley Public Schools: 27FC229-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on July 7, 2026, by ------- on behalf of his 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 team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on July 7, 2026. That Complaint Report concluded that there were violations of special education statutes and regulations

Thereafter, the parent 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 parent's notice of appeal, and the '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.

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

Issue Four

Did USD #229 provide the student with a free appropriate public education (FAPE) when the district failed to reconvene the IEP Team to address repeated reports of the student being bullied during the past 12 months?

Ground One: A

The parent alleged that three separate incidents of bullying took place during the one-year period for consideration in a state complaint. They were: (1) an incident of classmate(s) taunting the student during December 2025 regarding the student's dog. (2) an incident whereby a teacher shared an email between the teacher and another teacher on an overhead projector that was visible on a laptop identifying the student, as having a disability and having undescribed behaviors during December 2025, and (3) an incident of classmates putting food on the student during lunch in March 2026. (Report, p. 22, Finding of fact 1

During the time from the first instance of alleged bullying (December 2025) to the third instance (March 2026), the student's IEP did not make reference to any services, placement or accommodations related to bullying and neither the parent or LEA requested an IEP meeting to discuss bullying (Report, p. 23, Finding of fact 5 and 6).

The student's progress reports during the 2025-26 school year showed that the student was not on track to master the IEP goal by the end of the IEP annual review date (Report, p. 23, Finding of fact 9). The investigator, however, concluded that the LEA was not required by law to convene an IEP meeting to address the alleged bullying because "the totality of these incidents were (not) sufficiently severe, persistent, or pervasive enough to create an intimidating, threatening, or abusive educational environment that would have triggered the IEP team to reconvene to consider a change in the student's special education services to provide a FAPE…" The investigator also found that "the student's attendance or grades were not impacted around the times of the incidents and although student progress was not as expected the investigator does not find that this one indicator was enough to trigger a requirement that the LEA reconvene the IEP team to discuss amending the IEP to ensure the student was able to receive a FAPE." (Report Conclusion, p. 24).

In this appeal, the parent asserts that because the investigator found that the student "was not on track to master the goal by the end of the IEP annual review" (Report, p. 23, Finding of fact 9), the failure to convene an IEP meeting was a violation of federal regulations at 34 C.F.R. 300.324(b)(1)(ii)(A). The parent asserts that this regulation "directs the IEP team to revise the IEP to address "any lack of expected progress toward the annual goals."

This interpretation is a misreading of the regulation.

This provision in the federal regulations is as follows:

> (b) Review and revision of IEPs—(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team-- (i) Reviews the child's IEP

> periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and (ii) Revises the IEP, as appropriate, to address—
>
> (A) Any lack of expected progress toward the annual goals described in Sec. 300.320(a)(2), and in the general education curriculum, if appropriate;

This regulation does not require an IEP meeting whenever a child with a disability is not meeting an IEP goal. The requirement in this regulation is to conduct an IEP meeting at least annually and when it conducts an IEP meeting the team must revise the IEP to address: "Any lack of expected progress toward the annual goals described in Sec. 300.320(a)(2), and in the general education curriculum, if appropriate;").

A careful reading of this regulation demonstrates that the requirement to address "Any lack of expected progress toward the annual goals" applies when an IEP meeting occurs, not when an IEP meeting must occur. Even when an IEP meeting occurs, this regulation does not require IEP teams to revise an IEP to "address any lack of expected progress toward the annual goals." The last two words in this regulation (if appropriate) gives IEP teams some discretion to determine whether such a revision to an IEP is needed.

Ground One: B and C

Here, the parent challenges the investigator's application of the definition of the term bullying to a definition in a regular education statute, K.S.A. 72-6147, and the investigator's conclusion that the student's experiences did not meet the requirements of that definition in finding that bullying did not occur. The Appeal Committee agrees with the parents. The term "bullying" does not appear in special education regulations and is not prohibited by special education regulations. Bullying, whether by a student or staff member (as alleged in ground 3 of this appeal) becomes a special education issue only when it interferes with a student's ability to make appropriate progress toward meeting IEP goals, appropriate progress in the general education curriculum, and/or to be educated in the least restrictive environment.

However, there was more to the investigator's analysis than merely that the student's experiences did not meet the definition of bullying in K.S.A. 72-6147. The investigator added:

In addition the student's attendance or grades were not impacted around the times of the incidents and although student progress was not as expected the investigator does not find that this one indicator was enough to trigger that the LEA should have reconvened the IEP team to discuss amending the IEP to ensure the student was able to receive a FAPE (Report, p. 24).

This portion of the conclusion provides a sufficient basis for the investigator's conclusion that the student was not deprived of a FAPE as a result the three incidents described in the complaint.

Ground One: D

Here the parent presents "new information for the committee" that was not presented to the investigator. The appeal process is to assess whether the investigator's decision is correct or incorrect based on the information available to the investigator. The appeal process may not be used to present new information not previously provided by the complainant.

Ground One E:

This ground also presents new information not addressed by the investigator. That is that the district had knowledge that the student's dog had died, and should have known the effect that might have on the student. The parent alleges that this information alone requires the LEA to hold an IEP meeting pursuant to 34 C.F.R. 300.324(b)(1). For the reasons provided earlier in this decision, the Appeal Committee disagrees and concludes both that the parent has misinterpreted 34 C.F.R. 300.324(b)(1) and that the Committee cannot address new information on appeal that was not presented to investigator.

Ground Two:

The corrective-action determination on Issues One and Three erroneously withholds all student-specific relief.

Issue One and Issue three

In both issues one and two the investigator concluded that there was a violation but no compensatory services were ordered because the parent revoked consent for special education services and removed the student from school. The parent contends that corrective action should be ordered from the date the student was removed to the date the parents revoked consent. A short review of what occurred is in order.

This issue relates to the student's movement from a regular education classroom to a much more restrictive setting in the main office of the school building on January 20, 2026. The removal was made by school officials because the student was not following instructions in the technology classroom (due to the student misusing the Chromebook). (Report, Finding 3, p. 18). This change was made by administration, not by the IEP team. The investigator correctly identified the change as a disciplinary change of placement. It was not a substantial change of placement and so did not require parent consent because it did not exceed 25% of the school day, but did require a Prior Written Notice (PWN).

Because it was a disciplinary change of placement, all of the requirements for a disciplinary change of placement applied. None were provided because district personnel did not view the change as a disciplinary removal. On April 3, 2026 the parent withdrew the student from special education

services (Report, Finding 11, p. 23). On April 6, 2026, the student enrolled in an online program (Report, P. 7).

Although concluding that a violation had occurred and some corrective action was necessary, the investigator concluded that compensatory services were not required because of the parent's revocation of consent for special education services. It is this conclusion that the parent appeals. In the appeal, the parent correctly cites 34 C.F.R. §300.151(b) which states that in "resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address — (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement)." From this provision, the parent asserts that the investigator erred in concluding that the parent's revocation of consent on April 3, 2026 removed the district's obligation to provide compensatory services for the period of removal, beginning January 20 and ending April 3, 2026. The Appeal Committee agrees with the parent's analysis.

The next step, however, is to determine what services were missed from January 20 to April 30, 2026. The parent's appeal states: "The complainant respectfully requests that the committee modify the corrective action to include student-specific relief:

> *compensatory education services commensurate with the first-hour instruction lost from January 20 through April 6, 2026 (or a funded equivalent available upon re-enrollment or through independent providers), and/or monetary reimbursement." Apparently, the parent believes that the Appeal Committee should order the LEA to provide the student with approximately three months of instruction in the technology class from which he was removed or the funded equivalent.*

While that request appears to be an appropriate remedy for what the student missed, compensatory services is not an appropriate remedy for two reasons. First, even if the district had correctly followed all of the legal requirements it would likely have determined the student's repeated behavior in the technology class was not a manifestation of the student's disability (Other Health Impairment for executive functioning and impulse control) and could have proceeded with the disciplinary removal without parent consent, and, more importantly, (2) it does not appear from the information in this appeal, that this student was deprived of any special education service, related service, or supplementary aid or service due to his removal from the general education technology classroom for one class period each day.

The report states that the student:

> *will 'receive special education adult support in the general education classroom for 100 minutes daily (25 minutes per each core class)' and 'specialized instruction in the resource classroom for 25 minutes daily.' No portion of the IEP requires [Student] to*

> *attend the general education technology elective class noted in the complaint. The student was offered other general education elective classes as alternatives, and [student] declined those options, so an independent study elective was provided instead. (Report. P. 7-8).*

Thus, these services described in the student's IEP were to be provided only in core classes. It is noteworthy that the technology class was an elective and not a core class, and so was not subject to the "adult support" provision in the student's IEP. The manner in which the student was removed was inconsistent with procedural requirements of the law but it did not result in the loss of any service specified in the student's IEP. Accordingly, the Appeal Committee finds that the report correctly concluded that compensatory services were not an appropriate remedy.

Sufficient evidence exists to support all of the findings and conclusions in the Complaint Report that apply to this appeal.

Conclusion

For the reasons stated herein, the Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 23rd day of September, 2026.

Appeal Committee