In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 501,
Topeka Public Schools: 27FC501-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on August 19, 2026, 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 August 17, 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, and the parent's notice of appeal. The LEA did not submit 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 parent prevailed on each issue addressed by the investigator, except one. That one issue is only issue on appeal.

The investigator described the issue and her conclusion in the report as follows:

> *It is noted that the findings do not support the parent's allegation that the LEA's staffing pattern is the reason for the proposed change from only one certified staff working with the student to multiple certified and noncertified staff supporting the student's behavior. The findings show that there is an IEP goal to reduce the student's reliance on a 1:1 adult to maintain emotional regulation as well as a finding showing that the Special Education Teacher was absent for 45 school days during the 2025-26 school year and the student worked with substitutes and still scored 76% compared to his peers 78% score on the TPS Emotional Regulation Monitoring Tool. This supports the LEA's position that the student is successful with regulating his emotions with support from a variety of adults. However, as noted previously, this is a moot point because the student's current IEP does not require 1:1 behavior support.*

In this appeal, the parent alleges that specified components of an overall plan for this student were unilaterally changed after a specific staff member was reassigned. The parent explains it as follows:

> *Mr. Overman's certified position at Topeka West and that the proposed three person rotation was connected to the identified employees' coaching commitments and possible absences.*
>
> *That is the basis for my complaint. The issue is not whether personnel can ever change. The issue is whether the move from the multi-year transition structure and the implemented ninth grade model to the rotating, tiered, and partly noncertified sophomore model resulted from an individualized determination of what [the student] needed at that transition point or from the staffing available to Topeka West. The history matters because the district had developed the sheltered ninth grade structure after I requested that [the student]repeat eighth grade due to the amount of instruction he had missed. Findings 7, 15, 16 and 23 trace the resulting process from the sheltered ninth grade discussions to the agreed June Amendment, the detailed schedule attached to it, and the actual implementation of that schedule during ninth grade.*

In support, the parent's Exhibit Manifest (in a 179 page attachment to this appeal) includes a copy of the student's: school plan, mediation provisions, PWNs, assurances, notes, agendas, emails, text & phone correspondence, sheltered program details, notices, clarifications, draft IEP Amendment proposals, other proposals, meeting invitations, meeting summaries, draft IEPs. etc. What it does not list is a valid IEP.

That is important in a complaint like this one in which a complainant is alleging that a district is failing to provide a Free Appropriate Public Education (FAPE) because a FAPE is defined in relevant part as special education and related services that "are provided in conformity with an Individualized Educational Program (IEP)." See 34 C.F.R. 300.17). Kansas is a member state in the 10th Circuit Court of Appeals so the rulings of that court are law in Kansas. That court has held that the IEP is the written offer and the court will only consider the written IEP, not verbal offers

made by the school district (Sytsema v. Academy Sch. Dist. No. 20, 538 F.3d 1306, 50 IDELR 213 (10th Cir. 2008) .

In this appeal the parent is asserting that the LEA is not continuing to provide services it had agreed to provide under mediation agreements and Office for Civil Rights (OCR) settlement agreements. The LEA offered to put much of these agreements into the student's IEP in a PWN on June 24, 2025. The complaint report states that, "The LEA provided the parent with a PWN on June 24, 2025 stating, "The PWN is to acknowledge the review of the tutoring schedule, the OCR Resolution Agreement, the Return to School Plan and the Discipline Matrix for Topeka West High School. The IEP team has reviewed these documents and plan to integrate the information into the draft IEP."(Report, Finding 18). The parent says she signed this PWN.

In Finding 19, the report states that:

> *The Former Special Education Director sent an email to the parent and the staff at TWHS working with the student on June 24, 2025 at 2:02 PM stating, "At our meeting today, we went over several documents and finalized the bank of tutoring hours available to [the student] through the mediation agreement and missed school time. We left the proposed TWHS schedule on the sheet and created an amendment (which [the Current Special Education Director} and team were copied on). The IEP team needs to be convened to finalize placement/services for the upcoming school year after July 24th and prior to school starting. My input would be for [the student] to move to 9th grade with his peers and participate in the sheltered program his freshman year. I would also recommend the continuation of Wilsons as that impacts all academic areas for him".*

Although the parent signed the June 24, 2025 PWN that said the team was planning to integrate these services into the student's IEP, Finding 20 in the report documents that when the LEA formally proposed adding these services to the IEP, the parent refused to give the necessary consent to do so.

As a result of the parent's refusal to give the necessary consent, the tutoring schedule, the OCR Resolution Agreement, the Return to School Plan, the Discipline Matrix for TWHS, and the Proposed Schedule for 25-26 prior to the beginning of the 2025-26 school year never became part of the student's IEP.

Because these services never became part of the student's IEP they never became required to provide a FAPE or to satisfy any other provision of the Individuals with Disabilities Education Act or the Kansas act for exceptional children. Separate agreements outside of the IEP are not enforceable under the special education process, including a formal complaint, in which a complainant must allege a violation of Part B of the IDEA (34 C.F.R. 300.153(b)(1) or allege a violation of state or federal special education law or regulation under K.A.R. 91-40-51.

This limitation to the issues for special education complaints also applies to agreements obtained through mediation. There is no provision in either the federal or Kansas special education regulations that requires an LEA to implement agreements reached in special education mediations. Instead, those mediation agreements are subject to the law of contracts. That is why K.S.A. 72-3438(f)(4) and 34 C.F.R. 300.506(b)(7) specify that mediation agreements are enforceable in any state or federal court.

As a guide, the Appeal Committee notes that both federal and state special education regulations specify that when a parent revokes consent for all special education services, those services may not be provided and the LEA "shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education services, related services, and supplementary aids in services." (See K.A.R. 91-40-27(i)(3) and 34 C.F.R. 300.300(b)(4)(iii). The Appeal Committee also applies this principal, to situations, like this one, where a parent refuses to provide legally required consent for proposed services and then subsequently files a complaint because the district gave notice that it would not provide those proposed services.

For these reasons, the Appeal Committee agrees with the investigator's conclusion that the IEP does not require services and supports specified in documents that are extraneous to the IEP. This result is not a commentary on the seriousness of the parent's concerns regarding the education of her child nor the whether the services obtained outside the IEP process are needed by the student. It is only a recognition that those concerns cannot now be addressed through the special education complaint process, specifically because they are not addressed in the IEP as a result of the parent's decision to refuse give consent for the district's proposal to add them to the IEP. That refusal of the parent to provide the requisite consent put the district in a position where it could not legally add the proposed services to the IEP. The Appeal Committee will not find an LEA to be in violation of law by not adding to or providing additional IEP services, when the applicable law prohibits the insertion of those very services into an IEP.

Sufficient evidence exists to support the findings and conclusions in the Complaint Report on this issue.

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 10th day of September, 2026.

Appeal Committee