

In the Matter of the Appeal of the Report  
Issued in Response to a Complaint Filed March 12, 2024  
Against Unified School District No. 497

## DECISION OF THE APPEAL COMMITTEE

### **Background**

This matter commenced on March 12, 2024, with the parent, xxxxxxx, filing a complaint on behalf of her child, xxxxxxx. This decision will refer to xxxxxxx as "the parent," and xxxxxxx as "the student." A complaint investigator completed the complaint investigation on behalf of the Kansas State Department of Education (KSDE) Special Education and Title Services team. Following the investigation, KSDE issued a complaint report, addressing the parent's allegations, on April 12, 2024. The complaint report concluded that there were no violations of special education law under two issues.

On April 12, 2024, the parent filed an appeal of the complaint report. Upon receiving the appeal, KSDE appointed an Appeal Committee, and it reviewed the parent's appeal, the parent's complaint, the email from the complaint investigator to the parent where the complaint investigator frames the complaint issues, and the complaint report. The Appeal Committee now issues this Appeal Decision.

### **Preliminary Matters**

KSDE included the text of regulation regarding filing an appeal, K.A.R. 91-40-51(f), with the complaint report. That regulation states, in part, "Each notice [of appeal] 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 for the statement, the Appeal Committee does not attempt to locate the missing support.

The Appeal Committee does not decide new issues as part of the appeal. The Appeal Committee reviews the complaint report and determines whether the appealed findings or conclusions are correct. The Appeal Committee does not conduct a separate investigation. The Appeal Committee's function is to determine whether sufficient evidence exists to support the complaint report's appealed findings and conclusions.

### **Parents' Appeal**

The parent raises four reasons for alleging that the findings and conclusions from the complaint report are incorrect. One of the reasons focuses on the parent's concerns with the investigation

process. Another reason alleges a mistake in how the investigator stated issue two in the complaint report. Two of the reasons focus on items that were not mentioned in the parent's complaint and, therefore, were not investigated: the student's potty schedule and Prior Written Notice regarding changes to the student's IEP. The Appeal Committee will not address either reason the parent raises on appeal that were not part of the complaint. The parent may exercise her dispute resolution options regarding these issues and will find resources to assist her on the KSDE website, <https://www.ksde.org/Default.aspx?tabid=603>. The Appeal Committee will address the following two issues:

**Issue One**: Can the parent's complaint investigation process concerns be appealed?

**Issue Two**: Did the investigator misstate issue two in the complaint report?

### **Issue One**

**Can the parent's complaint investigation process concerns be appealed?**

K.A.R. 91-40-51(f)(1) indicates that "the findings or conclusions" of a complaint report can be appealed. The parent's appeal states, "None of my witnesses were contacted. No one came to talk My son [sic] or even look at him." (Parent's Request for Appeal, Apr. 12, 2024.) The parent's allegations regarding the complaint investigation process are not complaint report findings and conclusions that can be appealed. Parties to a complaint investigation should always feel free to express any concerns regarding the complaint investigation to KSDE and KSDE will use that information to make improvements to its formal complaint system. Even though the appeal committee determines that the parent's allegations regarding the complaint investigation are not findings and conclusions from the complaint report that can be appealed, the appeal committee will provide information in this appeal decision regarding the complaint investigation process.

### **Applicable Law**

The federal regulations implementing the Individuals with Disabilities Education Act (IDEA) give the state education agency (SEA) discretion about whether to conduct an on-site investigation, indicating this would only occur "if the SEA determines that an [on-site] investigation is necessary." 34 C.F.R. § 300.152(a)(1). *OSEP Memo 13-08* further explains that the "standards to be used in determining whether to conduct an on-site investigation are left to each State." (OSEP Memo 13-08, July 23, 2013.) Kansas special education regulations require the complaint investigator to initiate a "discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded" but does not require the complaint investigator to interview all witnesses the complaint identifies or to observe the child at the center of the complaint. K.A.R. § 91-40-51(c)(1). Ultimately, the investigator must work to obtain the information necessary to "make an independent determination as to whether the public agency is violating" Part B of the IDEA, its implementing regulations, or Kansas special education

law and issue “a written decision to the complainant that addresses each allegation in the complaint and contains . . . (f)indings of fact and conclusions; and (t)he reasons for [KSDE’s] final decision.” 34 C.F.R. § 300.151(a)(5)(ii).

### **Relevant Facts**

The parent’s request for appeal states, “None of my witnesses were contacted. No one came to talk My son [sic] or even look at him.” (Parent’s Request for Appeal, Apr. 12, 2024.) The complaint report indicates that the “complaint investigator attempted to talk with two former staff who worked with the student recommended by the complainant but attempts on March 28 and April 8, 2024 [sic] were unsuccessful.” (Kan. State Dep’t of Educ. Special Educ. & Title Services, *Report of Complaint Filed Against Unified Sch. Dist. #497 on Mar. 12, 2024*, Apr. 12, 2024.) Additionally, the complaint report indicates the complaint investigator “reviewed all documentation . . . provided by . . . the complainant” and details all documentation reviewed in a list within the complaint report. (*Complaint Report 1–3.*)

### **Issue One Conclusion**

Based on its review, the Appeal Committee finds that the parent’s concerns on the appeal process are not findings and conclusions from the complaint report that can be appealed. The Appeal Committee recognizes that a complaint investigation is not required to include an onsite visit to observe the child if this is deemed not to be necessary to resolve the complaint. Finally, the Appeal Committee understands that complaint investigators will make attempts to interview individuals a party requests to be interviewed, should that individual have information relevant to resolving the complaint, but that the complaint investigator must balance efforts to do that with concluding the investigation within the required timeline.

### **Issue Two**

Did the investigator misstate issue two in the complaint report?

### **Relevant Facts**

The complaint investigator indicates in her March 17, 2024, email to the district that this issue was included in the parent’s complaint and frames it for investigation as, “USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the IEP during the 2022-2023 school year, specifically providing the student access to his communication device.” (Email from Complaint Investigator to District Staff Framing Complaint Issues to be Investigated, Mar. 17, 2024.) The complaint investigator frames this issue in the same way in a March 17, 2024, email to the parent. (Email from Complaint Investigator to Parent Framing Complaint Issues to be Investigated, Mar. 17, 2024.) The district caught the investigator’s mistake and emailed the investigator to clarify the investigation of this issue would

focus on the 2023–24 school year. (Email from Complaint Investigator to Appeal Facilitator, Apr. 28, 2024.) The complaint investigator clarified the school year in a phone call with the parent. (Email from Complaint Investigator to Appeal Facilitator, Apr. 28, 2024.) The complaint investigator mistakenly did not change the school year in the issue statement in the complaint report. (Kan. State Dep't of Educ. Special Educ. & Title Services, *Report of Complaint Filed Against Dist. on Mar. 12, 2024*, 4, 6; Email from Complaint Investigator to Appeal Facilitator, Apr. 28, 2024.) The analysis of issue two in the complaint report references items relevant to this issue that were either in effect or took place during the 2023–24 school year. (Complaint Report, 6–8.) There is no reference to items from the 2022–23 school year, other than the student's May 8, 2023, IEP that was in effect during the 2023–24 school year. <https://www.ksde.org/Default.aspx?tabid=603>, 6–8.)

### **Issue Two Conclusion**

Based on its review, the Appeal Committee finds that the complaint investigator's reference to the 2022–23 school year in issue two of the complaint report is a mistake. The correct school year is 2023–24, the complaint investigator informed both parties to the complaint of the year on which the investigation of this issue would focus, and the complaint report references items from the 2023–24 school year. The Appeal Committee directs the KSDE Dispute Resolution Coordinator to correct the mistake in the online posting of this complaint decision.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued April 29, 2024.

### **Appeal Committee**

Brian Dempsey: Assistant Director of Special Education and Title Services

Dr. Crista Grimwood: Dispute Resolution Coordinator

Stacie Martin: State Transition Coordinator