

In the Matter of the Appeal of the Report  
Issued in Response to a Complaint Filed  
Against Unified School District No. 469  
Lansing Public Schools: 25FC469-002

## DECISION OF THE APPEAL COMMITTEE

### **Background**

This matter commenced with the filing of a complaint on September 3, 2024 by \_\_\_\_\_ on behalf of her son, \_\_\_\_\_. In the remainder of this decision, \_\_\_\_\_ will be referred to as "the parent," and \_\_\_\_ will be referred to as "the student." \_\_\_\_\_ is the father of \_\_\_\_\_, and in the remainder of the report will be referred to as "the father." Together, \_\_\_\_\_ and \_\_\_\_\_ will be referred to as "the parents." 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 October 3, 2024. That Complaint Report concluded that there were violations 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 parent's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this 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.

The Committee also notes that the Kansas regulation, cited above, permits appeal of the "findings or conclusions" of a complaint report. It does not permit an appeal of the corrective actions specified in a report.

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 basis for this appeal is summarized in the second paragraph of the districts appeal, as follows: *"Compensatory services are required to remedy for learning gaps due to missed educational opportunities. There is no data supporting a learning gap, therefore there was no denial of FAPE. There is no evidence of a decline in progress toward IEP goals, and the students continue to have access to the general education curriculum."*

The investigator's findings and conclusions are summarized in the report, under the title: "CONCLUSION," as follows:

*In summary, extensive paraprofessional absences and policy procedures followed by the district resulted in removing special education services from the student in the third grade setting. It is noted that the district's policy prioritizes student safety and that the district has taken actions to ameliorate service interruption due to staff absences (emphasis added).*

This appeal does not object to this or any other finding or conclusion of the investigator. Rather, it objects to the corrective action ordered in the report. The Appeal Committee has no legal authority to set aside corrective action ordered by an investigator when it can locate no error in any fact or conclusion, as is the case here.

A Kansas complaint investigator has discretion to withhold an order for compensatory services upon a finding that missed services did not interfere with a student's progress in the general education curriculum and/or the student's progress toward IEP goals. When a district asserts that missed services did not adversely affect a student's progress, it should provide clear and convincing evidence to that effect to the investigator so that the investigator can make findings and conclusions on that assertion. There is nothing in the report or the appeal that indicates the district made any such assertion or produced any evidence that supported any such assertion. The Appeal Committee notes, however, the investigator's summary statement (under the heading "CONCLUSION" that *"extensive paraprofessional absences and policy procedures followed by the district resulted in removing special education services from the student in the third grade setting."*

The Appeal Committee agrees with this conclusion that the district's failure to provide services was extensive. Moreover, the district's assertions in this appeal, that the student remained successful in the classroom and so was not adversely affected by the missed services, is not supported by any direct evidence provided in the district's appeal.

The district also stated, in its appeal that:

*"Finally, the complaint report extends past 12 months in reference to instances that occurred when the student was in kindergarten; this exceeds the formal complaint time frame."*

The Appeal Committee notes that the investigator concluded that there was a substantiated violation *"specifically in the kindergarten and third grade."* The Appeal Committee finds that including kindergarten in that conclusion was improper. Therefore, the word *"kindergarten"* in this conclusion, shall, by operation of this decision, be removed as part of the investigation report. This does not affect the corrective action specified in the report.

### **Conclusion**

For the reasons stated herein, the word *"kindergarten"* is removed from the conclusion portion of the Complaint Report. Otherwise, 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 30th day of October, 2024.

### **Appeal Committee**

Crista Grimwood

Brian Dempsey

Mark Ward