

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 490,
El Dorado Public Schools: 25FC490-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on September 10, 2025, by ----- on behalf of unnamed children. In the remainder of this decision, ----- will be referred to as "the complainant," and the unnamed students will be referred to as "the students." 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 4, 2025. That Complaint Report concluded that there were no violations of special education statutes and regulations. Thereafter, the complainant filed an appeal of the Complaint Report. Upon receipt of the appeal, an appeal committee was appointed and it reviewed the original complaint, the Complaint Report, the complainant's notice of appeal, and the district'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.

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.

The complainant is not the parent of any child connected with this complaint. Due to confidentiality requirements, the complainant will be advised only that the Committee has met and issued a decision on this matter, but will not be given a copy of the decision nor advised of the content of the decision.

Discussion of Issues on Appeal

From Complainant

The report identified four issues: (1) Denial of FAPE; (2) Least Restrictive Environment violation; (3) Child Find violation, and (4) IEP implementation violation.

Only Issue 2 is being appealed. The appeal states:

"My appeal specifically addresses the findings related to the least restrictive environment LRE mandate, which, I believe, was not fully substantiated in the initial investigation."

In explanation, the complainant states:

"Basis for Appeal:

The investigation found no systemic violation of the LRE mandate but acknowledged that a violation would have been substantiated had the district acted in accordance with the written e-mail statements made by the Superintendent, Ms. Jennifer Davis, on September 9, 2024. The superintendent's statements indicate a misunderstanding of the LRE requirements, suggesting that parents must choose between enrolling their child in the district's preschool program or receiving special education services, such as speech therapy, which directly contradicts federal regulations under the individuals with disabilities Education Act (IDEA) and Kansas special education process handbook."

The investigator wrote a 28 page report which included a detailed analysis of the pre-kindergarten "At-Risk" program, how district officials interpret the participation requirements of that program, and how the district actually selected students to participate in that program.

The investigator found a discrepancy in how the district interpreted the participation rules and how participation was actually calculated. This is an important distinction because the complaint regulations, at K.A.R. 91-40-51(a)(1) state that a complaint "**shall**" include a "statement that the agency **has violated** a requirement of state or federal special education laws or regulations (emphasis added). In other words, it is not enough to allege that a district has misstated or misunderstood a legal requirement sufficiently to presume a violation has occurred or is likely to occur. To be actionable, the complaint must allege that a district "**has violated**" a special education law or regulation.

With regard to Issue 2, alleging a violation of the Least Restrictive Environment (LRE) requirement, the report concluded that:

*Despite written email statements from the superintendent to the wife of the complainant, there is **no evidence of any systemic action on the part of the district to require the parents of prospective preschool students to make a choice between enrolling their child in a***

Kansas State Department of Education Appeal Report of Formal Complaint
district KPP program with no special education services or having their child receive special education speech support. Further, there is no evidence to show that students have been removed from a preschool program they were attending if they were subsequently determined to be eligible for and in need of special education speech services. Currently, there are a number of students who are receiving speech services while concurrently being enrolled in the district KPP preschool.

In the appeal, the complainant cites only the superintendent's statements in emails, indicating that those emails "clearly stated that parents of a child receiving special education services under an IEP would need to decide between preschool enrollment without special education services or receiving walk in speech therapy without preschool participation. This statement reflects a direct misinterpretation of the LRE requirements."

In the report, the investigator said:

It should be noted, however, that while this investigation did not identify a current violation regarding LRE, a violation would have been substantiated had the district acted in accordance with the written email statement made by the superintendent on September 9, 2024 that Student A's parents would:

"have to decide between preschool enrollment with no sped services or walk in speech with no preschool [because the district] can't offer him a preschool spot when he is a non-at risk student on an iep – that is the conflict."

However, after examining the evidence regarding what actually happened, the investigator concluded that:

Despite written email statements from the superintendent to the wife of the complainant, there is no evidence of any systemic action on the part of the district to require the parents of prospective preschool students to make a choice between enrolling their child in a district KPP program with no special education services or having their child receive special education speech support. Further, there is no evidence to show that students have been removed from a preschool program they were attending if they were subsequently determined to be eligible for and in need of special education speech services. Currently, there are a number of students who are receiving speech services while concurrently being enrolled in the district KPP preschool. (Emphasis added.)

The Appeal Committee agrees that the complaint could have been substantiated if the facts had been different and agrees with the investigator comments on pages 19 – 20. The Appeal Committee also agrees with the investigator's analysis of federal regulation 34 C.F.R. 300.110 on pages 20 - 21 of the report, that the district's view, as stated in the emails of the Superintendent, would be a violation of 34 C.F.R. 300.110 if actually put into practice. According to the investigator

there was no evidence to substantiate that a parent was forced to decide between special education services and participation in an at-risk pre-school program.

The Appeal Committee has already noted, above, that Kansas regulations specify minimum requirements for appeal of a complaint report, namely: "Each notice shall provide a **detailed statement of the basis for alleging that the report is incorrect,**" and that the appeal process allows for an appeal of only the "findings and conclusions" in the report. in this appeal, the complainant merely restates the original complaint issue, citing the Superintendent's emails, and does not provide a detailed basis of why the report reaches the wrong conclusion on the specific facts of this complaint.

Again, 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 appeal process is a review of the Complaint Report. 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." With regard to this issue, the Appeal Committee finds that there is sufficient evidence to support the findings related to Issue 2.

The Committee has reviewed the report in its entirety and finds that sufficient evidence exists to support the findings and conclusions in the Complaint Report

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 30th day of October, 2024.

Appeal Committee

Crista Grimwood

Brian Dempsey

Mark Ward