

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 501,

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on July 11, 2022, by _____, on behalf of her son, _____. In the remainder of this decision, Ms. _____ 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 parent's allegation, was issued on August 9, 2022. That Complaint Report concluded that there were violations of special education statutes and regulations

Thereafter, the school 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, and the district's notice of appeal. The parent did not provide a 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.

K.A.R. 91-40-51(f) also states that any appeal of a complaint report "shall be filed within 10 days from the date of the report." This is an important timeline because it provides the Special Education and Title Services (SETS) team with time to notify the other party and give that party a short time in which to respond to the appeal. The district's original

notice of appeal met that timeline. Subsequently, on August 25, 2022, the district submitted an e-mail statement to support its appeal. Because this subsequent statement did not meet the 10-day timeline and because K.A.R. 91-40-5(f) requires the appeal that does meet the timeline to include “a detailed statement of the basis for alleging that the report is incorrect,” the Committee did not consider the statement submitted by the district on August 25, 2022.

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 district does not appeal any of the conclusions of the investigator regarding violations of law. Rather, the district's lone appeal is that the report is in error in those areas of the report that include the following statement: “The District did not provide a written response to this issue.”

In its appeal, the district argues that this statement is incorrect because the district did provide a written response to all three issues. The district's appeal states: “The investigation report should reflect the numerous follow-up questions, responses and the over 100 pages of records provided to the investigator...”

The Committee contacted the investigator about this appeal. The investigator indicated in that discussion (as well as in her e-mail response to Ms. Whiteman on August 11, 2022) that the district did send documents to her. She also stated that she had received responses to questions she had asked and had received documentary evidence. When she stated in the report that the district did not provide a written response she meant that she had also asked the district to submit a written statement of the district's position on each issue, and she did not receive that separate written position statement.

The investigator also stated that she did not oppose the district' proposal to delete the language in the report saying: “The district did not provide a written response to this issue.”

CONCLUSION

The Appeal Committee finds that the words in the complaint report stating: "The District did not provide a written response to this issue" are inaccurate. The Appeal Committee finds that the district did cooperate with the investigator by answering questions in writing and by providing relevant documents. Therefore, the Appeal Committee concludes that the language objected to by the district should be removed from the report, and, by this order, the Appeal Committee removes the words "The district did not provide a written response to this issue," wherever they appear in the original report, specifically on pages 4, 8, and 10. All other portions of the original report are sustained.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 1st day of September, 2022.

APPEAL COMMITTEE:

Mark Ward

Brian Dempsey

Ashley Niedzwiecki