FINAL DECISION

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 379
Clay Center Public Schools: 23FC379-003

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on February 28, 2023, by The parent, on behalf of her child, The student. In the remainder of this decision, the parent will be referred to as "the parent," and The student will be referred to as "the student." An investigation of the complaint was undertaken by complaint investigators 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 March 30, 2023. That Complaint Report concluded that there was a violation of special education statutes and regulations, and corrective action was ordered.

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, the district’s appeal and supporting documents. 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.

**ISSUE ON APPEAL**

This complaint contained one issue: Whether the student was provided general education curriculum during the student’s suspension, from February 9 to February 20, 2023.

The investigators found that the district failed to provide the student with general education services on six specified dates: 2/10, 2/14, 2/15, 2/16, 2/17 and 2/20.

However, in the report, finding of fact 10 cites an e-mail stating that “required IEP Zoom Services will be provided on February 10.”

Finding of fact 11 states that an e-mail was sent to the parent, stating that the student will be provided services through Zoom during the suspension period from 2/9/23 to 2/14/23.

Finding of fact 12 states that the student “failed to join the scheduled zoom meeting for special education services on February 10…”

Finding of fact 14 cites an e-mail from the school discussing, among other things, “A Zoom schedule for special education services to be provided February 14-16, 2023.”

Finding of fact 17 states that the district sent an e-mail stating that it would not be able to provide services on February 20 and 21, but would make up those services on February 22.

These findings of fact support the district’s position that it contemporaneously offered services on 5 of the six dates the report says services should have been forthcoming. Only 2/17 is left unaccounted. These services were not provided for the reasons specified in the report but that does not negate the evidence that supports the district’s position that the services for those dates were offered.

Finding of fact 22, along with the explanation of the action taken in finding of fact 22, on the last page of the report, states that on February 21 work was dropped off at the office with general education curriculum for all of the dates in question. The parent refused this offer. Even so, the investigators determined that the work was delivered.

On the last page of the report, the investigators said the work containing general education curriculum needs to be provided to the student “within a similar timeframe as same-aged peers, not after the fact.” The committee agrees with that interpretation, but the evidence
indicates that educational services were offered virtually, and contemporaneously, for every
day of suspension except for February 17. The February 21 offer of services appears to be a
second offer to provide these previously offered services, based on the concerns expressed by
the parent.

In addition, the district correctly points out that Kansas regulations, at K.A.R. 91-40-35(c), state
that the school district must provide the special education and related services the child needs
to “progress in the general curriculum...” K.A.R. 91-40-36, adds that when a child has been
suspended from school for more than ten cumulative days in a school year, which is the
circumstance in this case, “the special education and related services to be provided to the
child during any period of suspension shall be determined by school officials of the agency
responsible for the child.”

The federal regulations are similar. In 34 C.F.R. 300.530(c)(i), the federal regulations state that
when a child with a disability has been suspended for more than ten school days in a school
year, the student must: “Continue to receive educational services, as provided in § 300.101(a),
so as to enable the student to continue to participate in the general education curriculum,
although in another setting. Note that § 300.101(a) refers to a Free Appropriate Public
Education (FAPE). In addition, 34 C.F.R. 300.530(d)(4) says “school personnel, in consultation
with at least one of the child’s teachers, determine the extent to which services are needed , as
provided in § 300.101(a), so as to enable the child to continue to participate in the general
education curriculum...”

As the district points out in its appeal, OSEP provided guidance stating that this provision acts
as “modifying the concept of FAPE” during suspensions. In this commentary, OSEP explains
that “An LEA is not required to provide children suspended for more than 10 school days in a
school year for disciplinary reasons exactly the same services in exactly the same settings as
they were receiving prior to the imposition of discipline. However, the special education and
related services the child does receive must enable the child to continue to participate in the
general curriculum...”

OSEP goes on to explain that:

“Section 615(k)(1)(D)(i) of the Act and Sec. 300.530(d)(1) provide that a child must continue to
receive educational services so as to enable the child to continue to participate in the general
educational curriculum, although in another setting, and to progress toward meeting the
goals set out in the child’s IEP.” We believe that using the statutory language in the regulation
is appropriate because the Act specifically uses different language to describe a child’s
relationship to the general education curriculum in periods of removal for disciplinary reasons
than for services under the child’s regular IEP in section 614(d)(1)(A)(i)(IV) of the Act. Based on this difference, we decline to make the change requested.

We caution that we do not interpret participate” to mean that a school or district must replicate every aspect of the services that a child would receive if in his or her normal classroom. For example, it would not generally be feasible for a child removed for disciplinary reasons to receive every aspect of the services that a child would receive if in his or her chemistry or auto mechanics classroom as these classes generally are taught using a hands-on component or specialized equipment or facilities.”

The importance of this guidance, located in the Federal Register, Aug. 14, 2006, p.46716, is the clarification that this requirement, for instances in which a child with a disability is suspended for more than 10 cumulative days in a school year, is a modified form of FAPE. In the example provided by OSEP for auto mechanics or chemistry, OSEP says the services do not have to match “every aspect of the services that a child would receive if in his or her normal classroom.” However, services do need to be provided during these suspensions that will enable the student to continue to participate in the general curriculum. There could be situations where a child is suspended for a day or two in excess of the 10-day limit, where school personnel could determine that no general education services are needed to enable the child to continue to participate in the general education curriculum, but, if there is any standard to measure the extent to which those determinations are justifiable, it is that those determinations must be reasonable.

In this case, the findings of fact in the report document that this student was offered services for all but one day of suspension during the time the suspensions were being imposed, and then services were offered again after all of the suspensions had been served.

**CONCLUSION**

The Appeal Committee finds that the facts of this case do not result in a violation of law. Accordingly, the conclusion in the complaint report is overruled and the corrective actions specified in the report are rescinded.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 8th day of May, 2023.

**APPEAL COMMITTEE:**
Stacey Martin
Amy Rzadczynski
Brian Dempsey