

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 229,
Blue Valley Public Schools: 25FC229-006

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on March 17, 2025, by ----- on behalf of her child, ----- . In the remainder of this decision, ----- will be referred to as "the complainant," 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 allegations, was issued on May 2, 2025. That Complaint Report concluded that there was a violation of special education statutes and regulations in Issue one, but not in issue 2.

Thereafter, the complainant filed an appeal of the Complaint Report, appealing the conclusion that no violation occurred with regard to Issue two. 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.

Discussion of Issues on Appeal

From Complainant

The issue under appeal is issue 2, which is as follows:

Did one of the student's teachers disclose personally identifiable information about the student to other students during the 2024-2025 school year?

In addressing this appeal, the Appeal Committee first finds that the investigator correctly cited the applicable law, saying:

"Under 34 CFR § 300.622(a) of the IDEA Part B regulations, parental consent must be obtained before PII is disclosed to parties, other than officials of participating agencies. Under IDEA Part B and pursuant to the FERPA regulations at 34 CFR § 99.31(a)(1), prior written consent is not required to disclose PII from student education records to school officials, including teachers, within the educational agency or institution, whom the agency or institution has determined to have legitimate educational interests. 34 C.F.R. § 99.31(a)(1)(i)(A)". (Report, p. 14).

The supporting evidence for this issue that was provided to the investigator by the parent is described in two paragraphs in the report as follows:

"The parent alleged in the complaint that the student's "[general education] teacher was bragging to another class about not giving a dyslexic student [student's] accommodations (specifically shortening [student's] assignments) because [student] wouldn't work in class. [General education teacher] was very clearly referring to [student] and the other students happened to be friends of [student] and told [student]. The teacher even referenced where [student] sat in the class. (Report, p. 14-15)"; and

"The mother of the classmate who reported hearing the teacher disclose personally identifiable information stated her child had not told her about the incident. The classmate's mother stated that her child overheard the reported statements as the teacher was talking to another staff approximately one week before the complaint was filed. The mother reported that after hearing the statements her child repeated the statement to the student who then reported it to the complainant (Report, p. 15)."

The investigator acknowledged the difficulty of verifying conflicting accounts of what is essentially an allegation based largely on hearsay evidence, saying:

"The investigation of this issue was conducted entirely through interview. The issue was complicated as the allegations were made through a thirdhand report and the disclosure was reported between minors (student and classmate). The investigator determined to not interview the minor classmate and instead interview the classmate's mother to ensure

the classmate's identity was not disclosed...All persons interviewed were highly credible and believable so it was difficult to singularly determine if personally identifiable information was disclosed from the interviews." (Report, p. 16).

Because of the difficulty of verifying what may, or may not have been said among disputing parties, the investigator cited two pieces of neutral evidence:

First,

"The investigator talked with two paraeducators who work in the teacher's class. In response to being asked what they do when they need to discuss a student with a general education teacher they reported they step out into the hallway. They stated that at the beginning of the semester during a professional development day they go over how to support the students and receive the IEP at a glance to learn what each student needs. They additionally reported they had not personally overheard any teachers talking with any student or teacher about any other student." (Report, p. 15-16).

Second,

"Since the issue was related to disclosing personally identifiable information about not providing accommodations, the accommodation log was used to determine if accommodations continued to be offered following the timeframe that the statement was alleged to be made. As the accommodation log demonstrated that accommodations continued to be offered during the entire school year the investigator found that the district is IN compliance with IDEA regulations." (Report, p. 16).

In the appeal, the parent says she is appealing, in part, because her child *"and the other child who heard a conversation in a classroom, not a hallway, were not interviewed. Only the teachers, administrators, and paras were interviewed and I don't believe they were honest in their interviews."*

The Appeal Committee understands the parent's concern that the children were not interviewed. However, the Appeal Committee grants investigators significant discretion on whether to interview children in a complaint against their teachers, with a strong preference for excluding the children from such complaints due to the effect such involvement can make on the vital relationship between student and teacher. That strong preference is particularly applicable, when, as in this case, there are others who can provide context to classroom activities, such as paraeducators who are present and observing classroom activities and physical records, such as accommodation logs indicating that services remain scheduled. The Appeal Committee finds that the investigator's decision not to involve the children in this investigation was more than merely appropriate. It was the correct way to proceed.

The parent's appeal also states *"I would be glad to discuss the inconsistent responses. I've not appealed or dealt with this in the past, so I'm not sure if I'm supposed to list them here or in a separate document. Please advise."*

The Appeal Committee notes that the complaint report is dated May 2, 2025, and the parent sent this appeal by e-mail on May 12, 2025, the last day by which an appeal could be filed. This left no time for an Appeal Committee to be formed and “advise.” In any event, an Appeal Committee must remain neutral and so does not “advise” either party to an appeal. As noted in the “Preliminary Matters” portion of this decision, Kansas regulations put “the burden for supplying a sufficient basis for appeal” 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. A copy of the applicable Kansas regulation regarding appeal requirements was included at the end of the report that was issued to the parties.

After a thorough review of information provided by both parties in this appeal and the evidence and analysis contained in the Complaint Report, the Appeal Committee finds that the findings and conclusion in Issue two in the report should be sustained.

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 23rd day of May, 2025.

Appeal Committee

Crista Grimwood

Brian Dempsey

Mark Ward