

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 265
Goddard Public Schools: 24FC265-001

DECISION OF THE APPEAL COMMITTEE

Background

This matter commenced with the filing of a complaint on September 11, 2024, by ----, on behalf of her child, ----. In the remainder of the decision, ---- will be referred to as "the parent", and ---- will be referred to as "the student". An investigation of the complaint was undertaken by complaint investigator, Gwen Beegle, on behalf of the Special Education and Title Services Team at the Kansas State Department of Education. Following that investigation, a Complaint Report, addressing the parent's allegations, was issued on October 9, 2024. That Complaint Report concluded that there was a violation of special education laws and regulations.

Thereafter, the parent filed an appeal of the Complaint Report. Upon receipt of the appeal, an appeal committee was appointed, and it reviewed the parent's appeal and supporting documents, the original complaint filed by the parent, the complaint report, and the district's response 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.

Parents' Appeal

The parent argues the following two issues in the appeal:

First, the parent argues that there is no evidence to support the investigator's finding that the district did not violate state and federal special education laws by sharing the student's confidential information with persons who were not on the student's team.

Second, the parent argues that the student was denied access to homework when the student failed to complete work in class and the teacher wrote "refused" on [an assignment] instead of sending it home for homework". The parent further argues that there is not a "school policy stating that the administration can pick and choose who can have homework or not."

In this case, the parent presents an argument about the school's failure to provide homework. Unless homework is specifically addressed in a student's IEP, whether a student is given homework is a local control issue and would not fall under the jurisdiction of this Committee. In this case, there is no indication that the issue argued by the parent has any connection to the student's IEP. Regardless, even if homework was addressed in the student's IEP, the original complaint does not address this issue, and therefore the Appeal Committee will not address it now.

The following issue in this complaint has been addressed by the Appeal Committee:

Issue

USD #265, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to safeguard confidential information, specifically that the teacher shared confidential information regarding the student to persons who were not on the student's team.

In the appeal, the parent argues "there is no evidence in regard to Sherry Poe sharing information", and offers a screenshot of a social networking site's message board, dated February 17 (year unknown), in which the parent asks a former district employee if she (the former employee), "ever ask(ed) the Mixed abilities teachers if Sherry is trying to push [the student] into their class." In response the former employee stated, "She (person unknown) said they were, and she doesn't think [the student] belongs there either." Finally, the parent argues that in the report, the investigator found the parent had shared information with others, not Sherry Poe, which the parent claims is "not true".

In the report, the investigator lists the social media message exchange between the former district employee and the parent as part of the evidence reviewed and notes that attempts to interview the former employee were unsuccessful, except that the former employee did report "no knowledge of the issue".

In response to the appeal, the district provided documentation indicating that even before the original complaint was investigated, the district had instituted corrective action that 1) ensured all staff at the student's school were trained on confidentiality and FERPA issues, 2) conducted a

formal investigation of all staff members alleged to have violated the student's right to confidentiality, and 3) conducted one-on-one meetings with staff members the parent alleged had violated confidentiality laws.

Documents, submitted by the district, include notes from the one-on-one meetings. In those documents, dated April 26th, the district recorded comments from the student's 5th grade teacher and homeroom teacher pertaining to conversations between themselves and Sherry Poe. The documents indicate that neither teacher had conversations regarding the student in front of other students or with other teachers. The homeroom teacher, who is a member of the student's IEP team, did indicate that she had conversations with Ms. Poe (also a member of the student's IEP team), behind closed doors, regarding data pertaining to the student and what could be done to "help with [the student's] needs." The Committee notes that this is not a violation of confidentiality, but rather team members discussing the needs of the student based on the student's IEP. Ultimately, the district claims to have found no violation of confidentiality laws during its formal investigation. This finding was confirmed by the investigator, who noted in the complaint report that there was "no available evidence to support that the violations of the student's confidentiality alleged by the complainant occurred during 2022-23."

The district claims to have also taken steps to move the student to a different special education classroom and ensure all classified staff, who were working with the student prior to the formal complaint, were not the same individuals working with the student moving forward. Conversations with the investigator and the district confirmed that the district changed the student's schedule (not IEP) to avoid the specific teacher the parent felt was talking to others in the building.

Regarding the homework issue, the district acknowledged the parents' complaint but stated that it was dealt with at the building level. As stated above, local policy dictates homework procedures unless a student's IEP specifically addresses the issue. In this case, the Committee finds that the IEP does not contain any provision related to homework.

Under 34 C.F.R. 300.622, parental consent must be obtained before personally identifiable information is disclose to any party, other than officials of the public agency with a right to know. In this situation, the parent argues that Ms. Poe was attempting to move the student out of the Mixed abilities class, and in doing so shared the student's confidential information. However, the only evidence presented by the parent to confirm this conclusion is a screenshot of a social media message between the parent and a former employee. When the investigator asked the former employee, the former employee's response was that she had "no knowledge" of the issue. Furthermore, the only conversations that the Committee did find evidence of, occurred behind closed doors and between members of the students IEP team.

Therefore, due to the lack of evidence to show that the district violated confidentiality laws, the Appeal Committee affirms the complaint investigators' finding that the district did not violate state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by

failing to safeguard confidential information, specifically that the teacher shared confidential information regarding the student to persons who were not on the student's team.

Conclusion

The Appeal Committee *affirms the investigator's finding* of no violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), by failing to safeguard confidential information, specifically that the teacher shared confidential information regarding the student to persons who were not on the student's team. No corrective action required.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 9TH day of November 2024.

Appeal Committee

Brian Dempsey: Assistant Director of Early Childhood, Special Education and Title Services,

Ashley Niedzwiecki: Attorney, Special Education and Title Services,

Dr. Crista Grimwood: Dispute Resolution Coordinator