

Colorado Department of Education
Decision of the Federal Complaints Officer
Under the Individuals with Disabilities Education Act (IDEA)

Federal Complaint 2000:517
(Jefferson County School District R-1)

Decision

INTRODUCTION

This Complaint was dated May 3, 2000, and received by the Federal Complaints Officer on May 8. The school's response to the Complaint was dated May 26, and received by the Federal Complaints Officer by fax the same day. The complainant then submitted a response to the school's response, dated June 16, and received by the Federal Complaints Officer the same day. The Federal Complaints Officer then closed the record.

COMPLAINANT'S ALLEGATIONS

- The school violated 34 CFR 300.345 and 34 CFR 300.501(c)(5) by not allowing the complainant to sufficiently participate in the IEP process;
- The April 26, 2000 IEP that was created for complainant's son was deficient. (This allegation was made in the complainant's response to the school's response.)

SCHOOL'S RESPONSES

- The school denies that the complainant was not sufficiently allowed to participate in the IEP process;
- The school was not given an opportunity to respond to complainant's allegation that the IEP was deficient. The Federal Complaints Officer is therefore assuming for purposes of deciding this Complaint that the school denies this allegation.

FINDINGS, DISCUSSION, AND CONCLUSIONS

The complainant is the father of the student receiving special education services from the school which is the subject of this Complaint. The complainant is divorced from the mother of the student receiving special education services. The complainant was granted custody of the minor children, including the student receiving special education services, in a dissolution of marriage decree entered by the Jefferson County Colorado District Court, as dated by signature of the judge on June 19, 1998. These facts are not in dispute between the complainant and the school. Nor is it in dispute that it was a difficult divorce and that communication restrictions between the complainant and his former wife have been imposed by the Court.

It is also not in dispute between the complainant and the school that the separation agreement between the complainant and his former wife, which was made a part of the dissolution decree, made the complainant the primary educational decision maker for his children, including his son, the student receiving special education services subject to this Complaint. The complainant argues that he could not sufficiently participate in an IEP meeting held on April 26, 2000, because the school did not adequately take into account the court ordered communication restrictions between himself and his former wife, who also attended the IEP meeting, despite his notifying the school of this problem prior to the IEP meeting. The complainant also claims that he understood, based on communications from a school representative, that he would be able to provide input to his son's IEP subsequent to the meeting of April 26. The meeting of April 26 was held, as an IEP meeting, educational decisions were made, and, according to the complainant, he did not speak at this meeting because of court ordered communication restrictions between himself and his former wife, nor was he otherwise given a sufficient opportunity to participate in the IEP process. Thus, in summary, educational decisions for complainant's son were made, of which complainant does not approve, and for which, his argument implies, he had no opportunity to sufficiently object, since the school did not provide him sufficient opportunity to participate in the IEP process for his son.

The school argues that it had no obligation to the complainant to guarantee his participation in the IEP process since, under relevant state and federal special education law, only the attendance of one parent is required for the school to meet its legal obligations. The Federal Complaints Officer makes no finding on this claim by the school since, within the facts of this Complaint, it is unnecessary for him to do so. Both parents were invited, and did attend, the IEP meeting of April 26, 2000.

It remains for the Federal Complaints Officer to decide whether the complainant was given sufficient opportunity to participate in his son's IEP process, as required by relevant law. The Federal Complaints Officer finds that he was provided this opportunity. He does so because, on the basis of the facts as presented to him by the complainant and the school, he sees no reason why the burden was not on the complainant to get the court order modified, if and as necessary, to allow the complainant to speak at his son's IEP meeting on April 26, and in any other circumstances where he and his former wife might be present together in discussions with the school regarding their son's education. As to the issue of the school's legal obligation to the complainant, as opposed to his former wife, based upon a dissolution of marriage decree giving the complainant custody and educational decision making authority for his children, including the student receiving special education services subject to this Complaint, the Federal Complaints Officer makes no finding. The issue of the complainant's authority to speak for his son versus his former wife's authority to do the same, and how the school should appropriately respond to each of them, does not need to be resolved to decide this Complaint. In any case, the IEP deficiencies alleged by the complainant, in his response dated June 16 to the school's response to his Complaint, are, with the exceptions of who was present and what was discussed at the IEP meeting, deficiencies related to appropriate services. Disagreements about appropriate services to be provided, as opposed to their implementation or procedural irregularities, are better resolved in a due process hearing than the Federal Complaint process, if they cannot otherwise be resolved through negotiation or mediation between the parent and the school. A parent, or the school, is entitled to request a hearing, at any time, to resolve such disagreements.

In its response to the Complaint the school stated – “It is not the District's responsibility to solve communication issues created by a dissolution decree.” The Federal Complaints Officer does

not take this to mean that the school is claiming it has no responsibility to address communication issues between parents, divorced or otherwise, related to provision of educational services by the school, since addressing such issues may be necessary in order to appropriately provide those services. Nothing prevents the complainant from requesting another IEP meeting. The Colorado Rules state: "Additional meetings may be held at any time throughout the school year at a mutually convenient time at the request of the parent(s), the child and/or the administrative unit or eligible facility, and the IEP may be revised so long as the planning is done in accordance with these Rules." 1 CCR 301-8 §4.02(1)(d). The federal regulations provide no specifics as to requests for IEP meetings. However, the comments to 34 CFR 300.343 at page 12581 of the Federal Register, Vol. 64, No. 48/Friday March 12, 1999 state, in relevant part:

A provision is not necessary to clarify that public agencies will honor "reasonable" requests by parents for a meeting to review their child's IEP. Public agencies are required under the statute and these final regulations to be responsive to parental requests for such reviews. If a public agency believes the frequency or nature of the parents' requests for such reviews is unreasonable, the agency may (consistent with the prior notice requirements in sect. 300.503) refuse to conduct such a review, and inform the parents of their right to request a due process hearing under sect. 300.507. It should be noted, however, that as a general matter, when a child is not making meaningful progress toward attaining goals and standards applicable to all children, it would be appropriate to reconvene the IEP team to review the progress. Id.

This Decision will become final as dated by the signature of the Federal Complaints Officer to this Decision. A copy of the appeal procedure is attached to the Decision.

Dated today, July _____, 2000.

Charles M. Masner, Esq.
Federal Complaints Officer