

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

Federal Complaint 2001:525

Decision

Pikes Peak BOCES

INTRODUCTION

This Complaint letter was dated July 3, 2001, and received by the Federal Complaints Officer on July 6, 2001. The school's response to the Complaint was dated August 3, 2001, and received by the Federal Complaints Officer on August 6, 2001. The complainant's response to the school's response to the Complaint was dated August 13, 2001 and received by the Federal Complaints Officer on August 20, 2001. The Federal Complaints Officer then closed the record.

COMPLAINANT'S ALLEGATIONS

- A. In her Complaint letter dated July 3, 2001, the complainant made the following allegations, as paraphrased by the Federal Complaints Officer:
1. Her daughter's Individualized Educational Plan (IEP) was incomplete because it did not include necessary health information.
 2. Her daughter did not receive all of the IEP required speech therapy services to which she was entitled during the 2000-2001 school year.
 3. The school did not offer to provide her daughter with speech therapy, physical therapy, and/or occupational therapy, during the summers of 1998, 1999, and 2000.
 4. The school has not provided the complainant with sufficient notice of whom the school invites to attend her daughter's IEP meetings.
 5. The school has not made the services of a school psychologist or counselor sufficiently available to her daughter, nor has the school invited these professionals to attend school staff meetings for the last two years, nor has the school invited her daughter's vision therapist to attend school staff meetings regarding her daughter.
 6. The school has not kept adequate records regarding her daughter's educational and medical needs.

- B. In her response to the school's response to her Complaint - to which the school was not given an opportunity to respond – the complainant made the following allegations, as paraphrased by the Federal Complaints Officer, which were either not included in the complainant's original Complaint letter, or which were made significantly more explicit in the complainant's response to the school's response to her Complaint to an extent which the Federal Complaints Officer has determined warrants listing here. The numbered listing of the allegations that the Federal Complaints Officer has excerpted from the complainant's response to the school's response to her Complaint does not mirror the numbered listing used by the complainant.
1. Her daughter's IEP is not specific enough as to the nature and extent of her daughter's disability.
 2. The school filed a false report with the Department of Human Services (DHS) (referenced by the complainant as the Department of Social Services), for investigation of possible sexual abuse of her daughter.
 3. The school violated 34 CFR 300.29 of the Individuals with Disabilities Act (IDEA) regulations, because a May 16, 2001 "transition" meeting (quotation marks by the Federal Complaints Officer) for her daughter resulted in an additional goal for her daughter's IEP, and "transition" meetings, according to the complainant, are not supposed to address goals and objectives.
 4. The school violated 34 CFR 300.347(a)(1) of IDEA, regarding IEP content, because her daughter's vision therapist had not attended IEP meetings, which resulted in her daughter's IEPs of May, 2000 and January, 2001, not having an annual review statement, nor goals and objectives, relative to her daughter's vision needs and/or services. This is a repeat of an allegation in the complainant's original Complaint letter, which the Complaint made more explicit by listing a regulatory citation for the alleged violation.
 5. The school has not invited a representative from transportation services to attend her daughter's IEP meetings.
 6. The school has violated 34 CFR 104.6(c), and (c)(2), of the regulations for Section 504 of the Rehabilitation Act of 1973, regarding "self evaluation" (quotation marks by the Federal Complaints Officer), because the school has not evaluated complainant's daughter in all areas of her daughter's disability as required by the IDEA.
 7. The complainant alleges a violation of 34 CFR 300.344 (a)(6) of the IDEA, regarding IEP team composition and function(s) - specifically who is entitled to attend IEP meetings – by stating that the Special Education Director of the BOCES attended an IEP meeting for her daughter, without notice to her, and that he was not entitled to do so. This is a repeat of an allegation in the complainant's original Complaint letter, which the complainant has made more explicit by listing a regulatory citation in support of her allegation.
 8. The complainant alleges a violation of 28 CFR 35.134(a)(b), of the implementing regulations for the Americans with Disabilities Act (ADA), regarding retaliation or coercion, by alleging that the school has attempted to intimidate her in retaliation for her special education advocacy for her daughter, by inviting increased numbers of school personnel, including those with higher authority within the school system, to her daughter's IEP meetings.
 9. The complainant alleges the school violated 34 CFR 300.533(a)(1) of the IDEA, entitled – "Determination of needed evaluation data" – by not adequately addressing her daughter's potential extended school year (ESY) needs. This is a repeat allegation, which, the Federal Complaints Officer presumes, the

- complainant has attempted to make more explicit by listing this regulatory citation.
10. The complainant alleges a violation of her civil rights by the school's attorney.
 11. The complainant alleges a violation of 28 CFR 35.107(a), of the implementing regulations of the ADA, entitled – "Designation of responsible employee and adoption of grievance procedures" – by alleging that the school has failed to provide such procedures.
 12. The complainant alleges that the school has not provided her daughter with a free appropriate public education (FAPE).

SCHOOL'S RESPONSE

The school admits that the complainant's daughter did not receive some of the speech therapy services to which she was entitled during the 2000-2001 school year. The school also admits that it did not follow correct ESY procedures for the summers of 1998, 1999, and 2000. The school denies all other allegations in the complainant's Complaint letter dated July 3, 2001, either because, according to the school, the allegations are factually incorrect, or, even if factually correct, they do not constitute violations of law, and, with regard to some allegations, they are not within the jurisdiction of the Federal Complaints Officer under IDEA. The Federal Complaints Officer is presuming, for purposes of deciding this Complaint, that, to the extent the complainant has raised any new allegations in her response to the school's response to her Complaint, the school also denies these allegations, either because they are factually incorrect, or even if factually correct, they do not constitute violations of law and, with regard to some allegations, that they are not within the jurisdiction of the Federal Complaints Officer under IDEA.

FINDINGS AND DISCUSSION

A.1 The Federal Complaints Officer finds no procedural irregularities in the way that complainant's daughter's IEPs have been created, which would warrant a finding that necessary health information was inappropriately excluded from complainant's daughter's IEPs.

A.2 The Federal Complaints Officer finds that complainant's daughter did not receive IEP required speech therapy services during the 2000-2001 school year. The Federal Complaints Officer also finds that the school's obligation to continue to provide these services ended when the complainant withdrew her daughter from school in February of 2001.

A.3 The Federal Complaints Officer finds insufficient evidence, in the record that is available to be developed by the Federal Complaints Officer, that complainant's daughter was inappropriately denied speech therapy, physical therapy, and/or occupational therapy during the summers of 1998, 1999, and 2000.

A.4 The Federal Complaints Officer finds no violation by the school of its obligation to notify the complainant of whom the school was inviting to IEP meetings for complainant's daughter.

A.5 The Federal Complaints Officer finds insufficient evidence, in the record that is available to be developed by the Federal Complaints Officer, that the school has not made school psychologist or counselor services appropriately available to complainant's daughter. The Federal Complaints Officer also finds no violation by the school of any applicable IDEA law, based upon the non attendance of a school psychologist, counselor, or vision therapist at school meetings regarding complainant's daughter.

A.6 The Federal Complaints Officer finds no violation by the school of any applicable IDEA law, regarding the school's obligation to keep adequate records for complainant's daughter.

B.1 The Federal Complaints Officer finds insufficient evidence, in the record which is available to be developed by the Federal Complaints Officer, that complainant's daughter's IEPs have not been legally sufficient regarding the specifics of the nature and extent of complainant's daughter's disability.

B.2 The Federal Complaints Officer has no authority to investigate complainant's allegation that the school filed a false report to DHS regarding complainant's daughter.

B.3 The school did not violate 34 CFR 300.29 of the IDEA regulations regarding complainant's daughter. This regulatory provision defines transition services for students at the secondary school level who will be transitioning to post secondary life. It does not otherwise apply to the transitioning that takes place in a school system when a student moves from one grade level and/or attendance center to another – as in the case of complainant's daughter, who is transitioning from preschool into kindergarten for the 2001-2002 school year. The complainant alleged that goals and objectives were addressed at a May 16, 2001 "transition" meeting regarding her daughter, which was inappropriate for a "transition" meeting. The Federal Complaints Officer finds that the meeting of May 16, 2001 was an IEP meeting, at which it was appropriate to discuss and develop IEP goals and objectives for complainant's daughter.

B.4 The Federal Complaints Officer finds insufficient evidence, in the record that is available to be developed by the Federal Complaints Officer, that the school violated 34 CFR 300.347(a)(1), regarding IEP content, with regard to complainant's daughter, due to any non attendance of complainant's daughter's vision therapist at the May 2000 and/or January 2001 IEP meetings, and/or any non development of IEP goals and objectives for complainant's daughter's vision needs as a part of these IEPs.

B.5 The Federal Complaints Officer finds no violation of complainant's daughter's IEP as a result of the school not inviting a representative from transportation services to attend IEP meetings for complainant's daughter.

B.6 The Federal Complaints Officer has no jurisdiction over allegations of violations of Section 504 of the Rehabilitation Act of 1973. Moreover, the citation referenced by the complainant is inappropriate to her factual allegation, since the evaluation referenced by 34 CFR 104.6(c) and (c)(2) is for self-evaluation of the school, not an evaluation of complainant's daughter. In any case, the Federal Complaints Officer finds insufficient evidence, in the record that is available to be developed by the Federal Complaints Officer, that the school violated its legal obligation under IDEA to appropriately evaluate complainant's daughter.

B.7 The Federal Complaints Officer finds no violation by the school of 34 CFR 300.344(a)(6), of the IDEA regulations, regarding IEP composition and/or functions – specifically, who is entitled to attend IEP meetings. The complainant is correct that this regulatory provision indicates a standard of “knowledge or special expertise regarding the child” for determining who is entitled to attend IEP meetings. Id. However, 34 CFR 300.344(c) states that – “The determination of the knowledge or special expertise” of such individuals “shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP.” Id. Thus, the school was entitled to invite the BOCES Special Education Director to complainant’s daughter’s IEP meeting. It may be, since the complainant’s daughter’s school system is a part of a BOCES, and since each member school system has a designated special education director in addition to the BOCES Special Education Director, that the complainant did not understand that the special education director indicated on the notice(s) she was sent by the school was the BOCES Special Education Director. However, even if this was the case, the Federal Complaints Officer does not find that such a defect in notice was prejudicial to the complainant, given that the Special Education Director of the BOCES is a person with the kind of knowledge and expertise about complainant’s daughter similar to other participating members of the IEP team, including the complainant. Therefore, the Federal Complaints Officer does not find that the complainant’s preparation for her daughter’s IEP meeting(s) was prejudiced, even if she did not understand that the Special Education Director for the BOCES was going to attend.

B.8 The Federal Complaints Officer has no jurisdiction to investigate an allegation of a violation of 24 CFR 35.134(9)(b), or any other portion of the ADA. The Office for Civil Rights (OCR) has jurisdiction over education related ADA issues.

B.9 The Federal Complaints Officer does not find that the school violated 34 CFR 300.533(a)(1) with regard to complainant’s daughter. The Federal Complaints Officer does find that the school violated the procedural requirements of 34 CFR 300.309 – Extended school year services – and relevant case law, for the summers of 1998, 1999, and 2000. However, on the record available to be developed by the Federal Complaints Officer, the Federal Complaints Officer finds insufficient evidence to conclude that complainant’s daughter suffered educational harm as a result of the school’s procedural violations.

B.10 The Federal Complaints Officer has no jurisdiction to investigate an allegation that the school’s attorney has violated the civil rights of the complainant or the complainant’s daughter, except to the extent that such allegations are based on derivations of IDEA. The complainant’s allegation against the school’s attorney is not derivative of the IDEA.

B.11 The Federal Complaints Officer has no jurisdiction to investigate an allegation of a violation of 28 CFR 35.107(a), or any other portion of the ADA. OCR has jurisdiction over education related ADA issues.

B.12 The Federal Complaints Officer does not find that the school has denied complainant’s daughter FAPE.

REMEDIES

1. The school shall submit a statement of assurance to the Federal Complaints Officer acknowledging that it will provide complainant's daughter with eight (8) hours of speech language services, in addition to those hours of service currently required by complainant's daughter's IEP, should complainant's daughter attend school in the school district this fall – as indicated in the school's response to this Complaint.
2. The school shall submit to the Federal Complaints Officer a statement of assurance that: (a) The school now has in place correct ESY procedures and (b) The school will insure that should complainant enroll her daughter in the school district for the 2000-2001 school year, the IEP team will consider whether compensatory services would be appropriate for complainant's daughter for any ESY services to which the IEP team determines that the complainant's daughter was entitled, but did not receive, during the summers of 1998, 1999, and 2000 – as indicated in the school's response to this Complaint.
3. The statements of assurance ordered by the Federal Complaints Officer shall be submitted to the Federal Complaints Officer within thirty (30) days of the date of the school's receipt of this Decision.

CONCLUSION

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

Dated today, August _____, 2001.

Charles M. Masner, Esq.
Federal Complaints Officer