

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

Federal Complaint 2002:508

Jefferson County SD R1

Decision

INTRODUCTION

This Complaint letter was dated April 10, 2002, and received by the Federal Complaints Officer on April 16, 2002. The school district's response was dated May 1, 2002, and filed, by fax, on May 3, 2002, with the original received by regular mail on May 7, 2002. The complainant's response to her Complaint was filed, by fax, undated, on May 23, 2002. The Federal Complaints Officer then closed the record.

COMPLAINANT'S ALLEGATIONS

The complainant made numerous allegations going back to her son's second grade year. At the time of the filing of this Complaint, her son was an eighth grader. The Federal Complaints Officer applied the time limitation for filing a Complaint – one (1) year – found in 34 CFR 300.662(c) of the Individuals with Disabilities Act (IDEA) regulations. He found no exception indicated in that regulatory provision to be applicable to the facts of this Complaint. By certified letter to the school district dated April 18, 2002, with a copy sent to the complainant, the Federal Complaints Officer notified the parties that the one (1) year time limitation would be applied. Therefore, this Complaint Decision only addresses allegations of violations beginning in the spring of 2001. Unless otherwise indicated, the Federal Complaints Officer is presenting the complainant's allegations in the language used by the complainant. Personally identifiable information has been deleted by the Federal Complaints Officer.

In middle school (7th grade) many procedure violations were made prior to his triennial review. First, his primary provider (proper name) called me in Feb. 2001 to set up a meeting for his annual review. I corrected her by telling her to check his records, he was up for a triennial, not an annual and I had already signed all the paper work giving permission to test. Later, I received a phone call from the educational consultant (proper name) saying my son did not qualify for special ed. services. She suggested that I speak to the school psychologist for details. After talking to the school psychologist, we both agreed that more testing was needed to determine if he truly qualified. A week later the educational consultant called and said he needed special education services, etc. I did

not receive proper written notification before the meeting (a phone message was left on my voice mail from educational consultant (proper name) stating the date and time for the triennial). During the triennial meeting a regular education teacher did not attend. (However, when I received my copy of the IEP in the mail the regular education teacher had signed it under participation.) As a result of the language arts teacher not attending, many problems developed later on. My son did not get the correct final grade on his report card in language arts. He also did not get credit for making the honor roll (until I brought it to the schools attention). When I requested a new report card for my son, they gave him one that had incorrect teachers listed for his classes. At my insistence a meeting was held to correct and discuss the procedure violations. Mr. Charlie Masner (from CDE) called Jefferson County's special education area manager twice to encourage setting up this meeting.

Also during seventh grade my son came home one day very depressed after taking his CSAP tests. He asked me if he was mentally retarded. I asked him why he thought he was retarded. He said "at school they put me in the class with mentally retarded students to take the CSAP and they made a lot of noise so I didn't do well on my tests." I explained to him that he was in this room as an accommodation for the CSAP. Personally, I felt that this was not an appropriate accommodation.

March 15, 2002 my son had his annual review. Again many procedure problems were evident. His primary provider (proper name), only gave him an informal assessment in spelling. She did not document the name of the test, the name of the tester, or when it was administered. When I questioned her, she said she gave him the Kaufman spelling test. When I asked to see it, she showed me a WRAT protocol. She had run out of Kaufman protocols and recorded the results on the WRAT then placed this in my son's permanent file. I feared this would mislead or confuse any of his future teachers, so I later asked her to put the answers on the correct protocol. When I questioned his reading results, his primary provider informed me that she had tested him with the WRAT and on his reading level was (5.5). However, no reading goals were implemented on his previous IEP. I found this perplexing since this is still a weak academic area for (student's/son's name). When I asked her why she did not include reading goals (even though it was listed as a need) on his former IEP, her explanation was that she "had forgot to include them". (I think the goals were missed because the language arts teacher had not attended (student's/son's) triennial and we did not have his input). As a team, we set up reading goals for his new IEP, and a regular language arts teacher did attend this meeting. He gave me verbal feedback on my son's classroom written performance, but no written work samples were presented to back up this information.

Id. Personally identifiable information deleted by the Federal Complaints Officer.

SCHOOL DISTRICT'S RESPONSES

Unless otherwise indicated, the Federal Complaints Officer is presenting the school district's responses in the language used by the school district. Personally identifiable information has been deleted by the Federal Complaints Officer.

February, 2001

Issue: Confusion whether the next planned IEP meeting was an annual or a triennial review.

Response: Notice of an IEP meeting was sent to the (complainants). Several telephone conversations were held between school staff and the (complainants). It was clarified and agreed that the focus of the next review meeting would be a comprehensive eligibility review (triennial review). Based on the level of success that student was demonstrating within the general education curriculum during the 2000-2001 school year, it was questionable as to whether (student) continued to need special education and related services. However, it was agreed that additional formal testing would be completed and the date of this meeting was rescheduled since the decision to move to an eligibility review was made quite close to the impending annual review date. Since (complainants) actually chose the date of May 3rd and the time of this meeting and verbally verified this date with staff on several occasions, prior to the date of the meeting, it was assumed that a second formal notice was not necessary and, indeed, redundant.

February, 2001

Issue: That a general education teacher was not in attendance at the triennial review meeting and the language arts teacher subsequently signed as if he had been in attendance.

Response: This is essentially accurate. However, (proper name) (primary provider) reviewed the draft IEP with all general education teachers, including the language arts teacher prior to the proposed meeting and obtained and incorporated their input. The intent of asking the language arts teacher to sign the IEP (post meeting) was merely to document that he had been consulted for his input. In retrospect, it is agreed that this was possibly misleading and that practice will not be repeated. While a technical violation of the IDEA may have occurred, all agreed, including the parents, on the appropriateness of this IEP for (student). The error was minimal and had no negative impact on his programming, services or the provision of a free and appropriate public education. Additionally, in the Fall of 2001, when (complainant) contacted (proper name) (building principal), regarding this issue, the primary provider offered to immediately convene another triennial review meeting but (complainant) declined. The offer stands to this date.

Spring, 2001

Issue: That as a result of the general education teacher not being in attendance at the meeting, "many problems developed later on" for (student). A general education course grade was reported in error; (student) did not receive "credit" pertaining to honor roll recognition and finally that a newly issued report card contained some errors.

Response: It is our position that while it was unfortunate that some mistakes, including computer errors, occurred, they were in no way related to the provision of special

education and related services to (student), nor did they result in a denial of FAPE. These matters were either directly corrected or a reasonable explanation offered.

Spring, 2001

Issue: That (student) was assessed as part of the CSAP tests with “mentally retarded students” and that this caused him to be depressed.

Response: This is simply not accurate. Consistent with his IEP and operational accommodations, (student) was assessed in a smaller setting with students who were entitled to similar testing accommodations because of various educational disabilities. The students were not all “mentally retarded” but represented various types and degrees of educational disabilities. The testing session was appropriately proctored, no particular misbehavior was noted. Even if the allegations were true, no violation of the IDEA occurred and (student) was not denied FAPE when provided with the accommodations called for on his IEP.

March 15, 2002

Issue: That informal test results were listed on the incorrect test protocol.

Response: The March 15th IEP meeting was an annual review and thus no formal testing was required or deemed necessary. (School district staff person/proper name) chose to administer an informal WRAT Reading test and an informal Kaufman Spelling test in an effort to further document present levels of performance and educational progress. The results were presented in a narrative and informal manner and are reflected on (student’s) current IEP. (School district staff person/proper name) simply did not have the appropriate test protocols with her at the time of the review. When the parent expressed concern, (school district staff person/proper name) agreed to transfer the results to the appropriate protocol. No procedural violation of IDEA occurred. The information was appropriately presented to, considered by and documented by the EP team. No actions took place that denied (student) FAPE.

March, 2002

Issue: That no reading goals were identified.

Response: During the 2000-2001 school year when he was in the seventh grade, (student) was served in a general education language arts class that emphasized writing and spelling. No specific reading goals were written since the IEP team believed that his needs would be adequately addressed in the general education class and that he was receiving educational benefit from the general reading curriculum. (Complainant) was present at that annual review and did not raise any concerns regarding this issue. Subsequent to that meeting, (complainant) received a copy of the IEP goals/objectives three separate times with updates. It’s confusing to the school team why (complainant) did not question the efficacy of that decision until one year later. (Student) continues to read at a level such that he receives benefit in the regular classroom with the general education curriculum. The IDEA does not require goals and objectives in areas not impacted by a student’s educational disability.

March, 2002

Issue: No written work samples were presented.

Response: Had (complainant) asked to review written work samples prior to the annual review, she would have been provided the opportunity to access and review them. That offer stands to this date.

Id. Personally identifiable information deleted by the Federal Complaints Officer.

FINDINGS AND DISCUSSION

The first sentence of the complainant's one (1) page response to the school district's response to her Complaint is – "While I believe that (son's/student's name) has received an appropriate public education, what bothers me more than anything is the careless way the school kind of follows the Individuals with Disabilities Education Act." Id. Personally identifiable information deleted by the Federal Complaints Officer. The last sentence of that same response is – "(My son/student) is succeeding in school and none of the mistakes that were made at (proper name) Middle School have significantly interfered with his succeeding in school." Id. Personally identifiable information deleted by the Federal Complaints Officer.

The Federal Complaints Officer finds, with one exception, that none of the factual allegations made by the complainant are sufficiently accurate, or, even if sufficiently accurate, are sufficient to find that the school district has denied this student FAPE, or otherwise violated the IDEA. The one exception, which the Federal Complaints Officer finds sufficient to warrant the finding of a non-FAPE violation of IDEA, is the allegation made by the complainant, and conceded by the school district, that a regular education teacher was not present at the spring 2002 IEP/Triennial review meeting for this student, but nevertheless provided his signature indicating that he had been in attendance. 34 CFR 300.344(a)(2), and 34 CFR 300.346(d) require the participation of a regular education teacher as a member of the IEP team. The answer to question number twenty-four (24), Appendix A, of the IDEA regulations, helps define "participation" of the regular education teacher, as follows, as excerpted by the Federal Complaints Officer:

... (W)hile a regular education teacher must be a member of the IEP team if the child is, or may be, participating in the regular education environment, the teacher need not (depending upon the child's needs and the purpose of the specific IEP meeting) be required to participate in all decisions made as part of the meeting or to be present throughout the entire meeting or attend every meeting. For example, the regular education teacher who is a member of the IEP team must participate in discussions and decisions about how to modify the general curriculum in the regular classroom to ensure the child's involvement and progress in the general curriculum and participation in the regular education environment.

.....

In determining the extent of the regular education teacher's participation at IEP meetings, public agencies and parents should discuss and try to reach agreement on whether the child's regular education teacher that is a member of the IEP team should be present at a particular IEP meeting and, if so, for what period of time. The extent to which it would be

appropriate for the regular education teacher member of the IEP team to participate in IEP meetings must be decided on a case-by-case basis. Id.

The violation of IDEA regulatory provisions 34 CFR 300.344(a) (2) and 34 CFR 300.346(d) was not, per se, that a regular education teacher was not in attendance at the spring 2001 IEP/Triennial Review meeting for this student since, as Appendix A of the IDEA regulations makes clear, regular education teachers are not necessarily required to attend all IEP meetings in order to adequately participate in the IEP process. However, Appendix A of the IDEA regulations also indicates that communication is contemplated between school districts and parents about how, and the extent to which, regular education teachers will participate in IEP meetings as a part of their participation in the IEP process. All IEP team members, including parents, need to be able to adequately converse with relevant regular educators as a part of the IEP process. If this is not going to take place at the IEP meeting, other arrangements need to be made. Of course, communications outside of IEP meetings, between IEP members, should support, not subvert, the goal of consensus decision making and parent participation. At least as far as the parent complainant IEP team member in this Complaint is concerned, the Federal Complaints Officer finds that the school district did not meet its responsibility to see to it that this conversation had adequate opportunity to take place, for the spring semester 2001 IEP/Triennial Review. The Federal Complaints Officer also finds that while, to the best of his knowledge, there is no specific requirement that IEPs be signed, or that persons not in attendance at IEP meetings not sign IEPs, it is also true that a signature indicating attendance by a person who did not attend, in this case a regular education teacher, can send a message that the person signing "participated" in the IEP process in a way designed to meet the requirements of 34 CFR 300.344(a)(2) and 34 CFR 300.346(d) when, in fact, this may not be the case. Some signification on the IEP indicating that a non-attendee participated in the IEP process, and the nature of that participation, would be a way to try to accurately reflect the participation of non-attendees.

REMEDY

The appropriate special education administrator for the school district shall submit a statement of assurance to the Federal Complaints Officer, within thirty (30) days of the date of the school district's certified receipt of this Decision, that the school district understands the requirements of 34 CFR 300.344(a) (2) and 34 CFR 300.346(d), and the portions of Appendix A cited by the Federal Complaints Officer, of the IDEA regulations. The appropriate special education administrator shall include in this statement of assurance, a further statement of assurance that the school district has policies and procedures in place to avoid future violation of these regulatory provisions.

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, June _____, 2002.

Charles M. Masner, Esq.
Federal Complaints Officer