

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

Federal Complaint 2004:505

Morgan County School District RE-3

Decision

I. INTRODUCTION

This Complaint letter was dated April 12, 2004, and was received by the Federal Complaints Officer on April 14, 2004. The school district's response was dated April 29, 2004, and was received by the Federal Complaints Officer on April 30, 2004. The complainant's response to the school district's response to her Complaint was dated May 7, 2004, and was received by the Federal Complaints Officer on May 11, 2004. The Federal Complaints Officer then closed the record.

II. COMPLAINANT'S ALLEGATIONS

The Complainant's allegations are:

The attached current IEP [Individualized Educational Program] lists the following, improved daily communication with parent regarding [my son's] classroom assignments. Specific missing assignments be reported by all classes. This service is not being provided. My son also received a Discipline Referral for losing his temper, and I was not notified of this until I received it in the mail 4 days later. He also has an attached behavior plan that is over one year old that is not being followed. Complaint, page 1.

III. SCHOOL DISTRICT'S RESPONSE

The school district denies any violations of law.

IV. FINDINGS AND DISCUSSION

The IEP and School – Parent Communication

The crux of what the Federal Complaints Officer has identified as the unresolved disagreement between the school district and the parent on this issue, is identified in excerpts from the school district's response to the Complaint, and the parent's response to that response:

The Transitions/Life Skills portion of the current IEP, included in Attachment "C" and tabbed as "C-1", includes a statement of parent concerns. The parent has asked for a home-to-school agenda to be checked daily and she encourages email communications if there are concerns about missing work or other issue[s]. The school's responsibility, as stated on the IEP, is to have a daily agenda and assignments checked with a teacher. There has been a school-home daily agenda in place for the entire 2003-2004 school year. The child is supposed to write all assignments in the agenda. At the end of the day a teacher checks the agenda and signs it. The teacher sees that assignments are written down and homework is placed in the child's backpack. *The child has been generally uncooperative in this endeavor in spite of school efforts. At times, assignment information stapled to the agenda has been removed. On occasion, the agenda is misplaced or simply not brought to class.* ... School district's response at page 2. Italics added.

The parent responds:

The requirement in the current IEP states that the Special Education Teacher check [my son's] agenda and help make sure the assignments are written down and place the homework in [my son's] backpack. As shown in [their] letter Attachment "C2" it does state that the above is to be done, along with the Attachment "D" copies of the agenda that are signed by the special education teacher but nothing in the agenda states what the homework is to be done.

I, along with [my son's] counselor, [proper name and non-school district organization], have stated to the School District at all IEP meeting's, [my son] **does not** and **cannot** go from A, to B, to C [because] his disability **will not** allow that. As also stated in the District [']s letter included in the Attachment "C" and tabbed "C1" I have asked for school to home communications via e-mail. A few of his teachers have complied with this request and that has been wonderful in helping with the homework. I have seen an improvement in [my son's] grades

in these classes. The statement made in their letter also states that the teacher is to see that the assignments are written down and homework is placed in [my son's] backpack[.] [My son] does get that signed by a teacher, but it still does not show the homework assignments. I [cannot] assist my son in completing his assignments if I do not know what they are. Parent's response at page 1. Emphases, quotation marks, and underlining in original.

The school district and the parent are in agreement that the parent has expressed concerns about school to parent communications, and that these concerns are stated on the student's IEP, along with the parent's request for email communications from the school district. As stated on the student's IEP, these concerns do not impose legal requirements on the school district for the specifics of how they are to communicate with the parent. However, the parent also references the student's Behavior Support Plan (BSP), submitted as the school district's Attachment C2, and referenced by both the school district and the complainant, as support for her allegation that the school district has failed in its obligation to adequately communicate with her about her son's needs. The BSP goes into significant detail about the student's behavior problems, how they are to be addressed, communication between the school district and the parent, and – the responsibility for seeing to it that the BSP is appropriately implemented. Specifically, that responsibility is placed upon – “[the student], [the parent], teachers, counselor, administration, school psychologist”. School district's response, Attachment C2, page 2.

The Federal Complaints Officer does not find that this student's BSP, or any portion of the student's IEP, as currently written, imposes the weighted responsibility upon the school district for this student's completion of his homework that the parent complainant seeks to impose. The Federal Complaints Officer interprets the school district to be claiming that it is meeting its fair portion of the responsibility to see to it that the student gets his homework done, but that the student is not meeting his fair portion of that responsibility. The parent does not fully respond to this claim by the school district. That is, she does not respond to whether or not, as the school district claims, appropriate school district staff are providing the student with homework assignments, but that the student is not always taking care of them so that he can complete them. However, the parent complainant does respond that her son “does not and [cannot] go from A, to B, to C [because] his disability will not allow that”. Parent's response at page 1. Emphases and underlining omitted. She also states that in those classes her son is taking in which the teachers email her the homework assignments, her son's grades have been improving.

The Federal Complaints Officer interprets the school district's position to be that this student is capable of doing what is necessary to get his homework done, without having assignments emailed to his mother. The Federal Complaints Officer interprets the complainant mother's position to be that her son's disability prevents him from being able to maintain and complete his homework assignments without the school district staff doing more to insure that he does so. If the complainant wants the school district to be legally required to do more, and to be able to establish whether or not it is doing so, she will have to get the school district's responsibilities for doing so stated with less ambiguity and more specificity in her son's IEP. Moreover, notwithstanding whether or not the parent complainant is correct that her son currently has a disability that prevents him from being able to “go from A, to B, to C”, it is the responsibility of

the parent and the school district, through the IEP process, to do their best to work towards the goal of helping the student overcome this circumstance. A fundamental purpose of the Individuals with Disabilities Education Act (IDEA) is: “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and *prepare them for employment and independent living*”. 20 U.S.C. 1400(d)(1). Italics added. A student who has difficulty “[going] from A, to B, to C” is also likely to have increased difficulty in obtaining and maintaining employment and in sustaining independent living. If the parent and the school district cannot agree, through the IEP process, about the most appropriate way to help the student towards obtaining these fundamental goals, then the parent is entitled to a due process hearing to resolve her disagreement with the school district.

The BSP

While the complainant parent makes the general allegation that her son’s BSP is “not being followed” (Complaint, page 1), the only specific allegation made, either in the original Complaint letter, or in the parent’s response, is to an incident that occurred on February 20, 2004, when a BSP dated January 28, 2004 was in effect. It is the allegation concerning this incident which the Federal Complaints Officer is deciding. The school district discussed this incident as follows:

The incident on 2-20-04 occurred on a Friday afternoon in the last hour of the school day in a class with a long-term substitute teacher. [The student] was shooting spit wads in class. He was asked to throw the spit wad away and go into the hall. He threw a fit and slammed the door so that he almost hit a student coming in. The teacher referred the child to the office. This was the only time in the 2003-2004 school year that the child has received a written referral to the office. [The Assistant Principal] met with the child and at first found him to be defensive, angry and trying to shift the blame for the incident. They discussed behavior and consequences and the child relaxed. The child agreed that the behaviors were not acceptable. The child and Assistant Principal agreed that another similar incident should result in an in-school suspension or out-of-school suspension, depending on the severity. By the end of the conference the child was very agreeable and calm. Since the child did not continue to be defiant and uncooperative a call was not made to his mother. Since this was at the end of the school day, the child spent a short time in the office area and was dismissed from school at the 3:10 bell.

It was [the Assistant Principal’s] professional judgment that the child’s cooperation and responsiveness required nothing more than a warning. He believed this was resolved under the first tier of the BSP, which provides that when the child is not controlling his actions he can be counseled, allowed to calm down and given positive reinforcement.

The next school day (the following Monday), a written discipline referral was mailed to the home to inform the parent of the incident. The parent did not contact anyone at the district to complain that she had not been called or to express concerns that the BSP was not being followed. The first the district heard of this was when it received the complaint form and letter from your office, even though [the parent] had numerous contacts with school administration since that incident occurred. School district's response at pages 3-4.

The parent's response to this discussion was as follows:

As for the disciplinary referral, I agree the previous BSP was in [effect] at the time of the 2-20-2004 incident. I feel that [my son] trying to "slam" another child's head into the door on his way out of that classroom is loss of temper. In the BSP, the Attachment "F" of the District[']s letter [it] states that if [my son] "loses" control of his temper that I be called **immediately**. The reason I did not call, e-mail or fax is because I did not [know] of the incident!! I was notified in the mail four days later. After receiving the office referral, I did speak to the "long-term substitute teacher" and asked why I was not called. She stated to me that it was the end of the day on a Friday and she had just sent him to the office. As for the conversation that [my son] had with the Assistant Principal, I knew nothing about the conversation nor anything that was discussed. Complainant's response, page 2. Bold, underlining, quotation marks, and double exclamation point in original.

The Federal Complaints Officer was not, obviously, present when this incident occurred. Nor does he have the ability to subpoena witnesses and require them to testify under oath and be cross-examined about the incident. However, the BSP for this student that was in effect at the time of this incident does state that if "[the student] 'loses' control of [his] temper call mother immediately." School district's response, Attachment F. Under either the school district's characterization of the incident, or the mother's, the Federal Complaints Officer finds that the school district did not follow the requirements of the student's BSP when it failed to call his mother immediately after the incident occurred.

V. **REMEDIES**

Having found no violation by the school district of its IEP communication responsibilities to the parent, no remedy is ordered for this allegation made by the complainant. Neither does the Federal Complaints Officer order any remedy for the violation he did find by the school district of the student's January 28, 2004 BSP, since the Federal Complaints Officer finds that - as

claimed by the school district, and as undisputed by the complainant – this was a one time incident and the student now has a new BSP that does not require that the school district immediately notify the parent of such incidents. These facts being true, the Federal Complaints Officer has determined that there is no remedy that could be imposed which would be of benefit to the student.

VI. 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 7, 2004.

Charles M. Masner, Esq.
Federal Complaints Officer