

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

Federal Complaint 2004:509

RE-1 Valley School District

Decision

INTRODUCTION

On 05/18/04, the Federal Complaints Officer received nine separate envelopes from [Complainant]. Eight of the envelopes each contained one complaint letter. One of the envelopes was empty. Each complaint letter was dated 05/09/04 and was filed on behalf of [Complainant's] child, who is a child with a disability.

The Federal Complaints Officer consolidated the eight complaint letters into one federal complaint (Complaint). The Federal Complaints Officer determined that some, but not all, of the allegations contained in the various complaint letters were subject to the jurisdiction of the federal complaints process. By letter dated 05/20/04, the Federal Complaints Officer notified the parties that she was accepting some of the allegations and rejecting others.

The Federal Complaints Officer granted the District an extension of time for filing its response because the parties were participating in a mediation which included the issues raised by the Complaint. The District's response was due on 06/28/04 but was not received until 07/01/04. The Complainant's response to the District's response was due on 07/15/04 and received on 07/13/04. The Federal Complaints Officer closed the record on 07/15/04.

REJECTED ALLEGATIONS

The Federal Complaints Officer has rejected a number of Complainant's allegations. The specific allegations rejected by the Federal Complaints Officer and the rationale for rejecting such allegations are set forth in a 05/20/04 letter¹ sent to the parties. The 05/20/04 letter is attached to this Decision as Attachment A and incorporated herein by reference.

ALLEGATIONS RESOLVED BY MEDIATION

By letter dated 06/14/04, Complainant informed the Federal Complaints Officer that her allegation that the District had repeatedly failed to conduct a functional behavioral assessment (FBA) for [Child] had been resolved through mediation. A copy of the 06/14/04 letter is attached to this Decision as Attachment B and incorporated herein by reference. By letter dated

¹ This letter was addressed to the District's special education director and a copy was sent to Complainant.

06/22/04,² the Federal Complaints Officer notified the District that it was not required to respond to the FBA allegation. A copy of this 06/22/04 letter is attached to this Decision as Attachment C and is incorporated herein by reference.

NEW ALLEGATIONS MADE AFTER THE INITIAL COMPLAINT

In Complainant's letter dated 06/14/04 (Attachment B) and also in Section 3 of Complainant's response to the District's response, Complainant raised new allegations. With respect to the new allegations contained in the 06/14/04 letter, the Federal Complaints Officer replied by letter dated 06/22/04.³ In that letter, the Federal Complaints Officer stated that the Complainant, at her discretion, could file a new federal complaint concerning those new allegations. A copy of that 06/22/04 letter is attached hereto as Attachment D and is incorporated herein by reference.

With regard to the new allegations contained in Section 3 of Complainant's response, which was received on 07/13/04, the Federal Complaints Office is not consolidating those allegations with this Complaint because the District has not had the opportunity to respond to them. At her discretion, Complainant may file a new federal complaint concerning those allegations. A copy of the State's federal complaints procedure is enclosed with this Decision.

COMPLAINANT'S ALLEGATIONS

The Complaint's allegations are set forth verbatim:

1. "I requested my child receive academic support in math, as she still doesn't know her basic math facts. [Special Education Director] has continuously agreed with me that all children must know basics before higher math. It was suggested by [Special Education Director] that compass math be tried. I verbally agreed to this on the condition that she would learn her basic addition and subtraction facts at 100%, [Special Education Director] agreed to this and compass math was started. It was explained to me that my child would get 20 minutes per day except Friday on compass math and the remainder of the time on pencil/paper math. On March 7 2004 I became aware that her time on compass math averages less than 10 minutes per day and that she is doing many upper level math subject and still not mastering her basic math facts. My child is slipping further behind in basic math and no academic support is being offered to catch her up. I believe that this is a violation of my child's rights under IDEA."
2. "The principal...denied all my documentation from WA State due to this I asked for a new IEP to be done in November 2002 and medical documentation to be added to the IEP. In February 2003 an IEP staffing was held and the diagnosis SIED was listed as the primary disability. No academic or medical support was listed on the IEP. [Principal] has continuously refused to add my child's medical documentation to her IEP. Due to lack of medical support on the IEP my child's health has been continuously jeopardized. Having an incorrect disability has lead to a lack of academic support, which has caused my child to lose ground academically

² This letter was sent to the District's legal counsel and a copy of the letter was sent to Complainant.

³ This letter was sent to Complainant and a copy was sent to the District's legal counsel.

especially in the areas of math, comprehension and writing. I believe my child's rights under the IDEA have been violated."

THE DISTRICT'S RESPONSE

The District denies the allegations. Its specific responses to the allegations are set forth verbatim:

Allegation 1: "The district has attendance records to support that the student has been supplied with 4 hours per week of special education math service as per her IEP. This included a combination of computer time and paper and pencil time. There was never any plan that would limit the student to only one method of instruction such as computer only. The only attendance exceptions were for field trips, special class activities, or personal absence by student. IEP requirements were met and far exceeded the 20 minutes referenced in the complaint."

Allegation 2: "When the student moved to this district, the records supplied by the parent indicated that the student had been determined ineligible for a continuing disability from her home district. The parent mentioned the existence of medical records but in checking with the previous doctor, the medical information was inconclusive. Assessment by our district yielded a profile that a full staffing team determined the student met CDE criteria for an emotional disability. Other disabilities were considered by the team but there was not data to support a different disability label.

While there was evidence of some attention difficulties, there was not medical evidence to support a diagnosis of attention deficit disorder. In Colorado and this district, once a disability is established, programming for the student is based upon the identification of specific needs and service delivery is not driven based on a particular disability category. Thus, educational programming is based on the demonstrated need of the student and a particular disability category would have no bearing on academic or other services provided."

FINDINGS OF FACT AND CONCLUSIONS

Allegation 1: The parties agree that, as of 03/18/04, math support was one of the special education services that the child was to receive. The parties disagree about the amount (minutes) of math support that the student was to receive per week and about the instructional math methodology that was to be used.

34 C.F.R. § 300.350(a) (1)⁴ requires the District to provide special education and related services to the student in accordance with her individualized education program (IEP). The Federal Complaints Officer finds that the student's 03/18/04 IEP is controlling with regard to this allegation. It specifies that the student "will receive support from the resource room for 1 hour daily (currently 4 days a week ... as long as growth in math continues) and for daily management

⁴ Hereafter, the regulations implementing the Individuals with Disabilities Education Act (IDEA) will be referred to by section number only, e.g., § 300.350.

for behavior plan, support of coping and calming, and as needed for emotional dysfunction (as a time out zone). Additionally, [Student] will receive math instruction in the resource room.”

The Federal Complaints Officer finds that the 03/18/04 IEP specifies that the student is to receive 4 hours of resource room services weekly not only for math instruction but also for management of the student’s behavior plan and to support the student in coping with her emotional disability. The IEP does not require the District to spend a specific number of minutes per day on math instruction, nor does it require a specific instructional methodology for math. The Federal Complaints Officer finds that the District has submitted sufficient documentation⁵ to establish that it has consistently provided math support to the student in the resource room since 03/18/04. The Federal Complaints Officer concludes that the District has not violated § 300.350(a) (1).

Allegation 2: The Complaint alleges that, since February 2003, the District has misidentified the student’s disability category and, as a result, the incorrect disability category (significant identifiable emotional disability or SIED) has lead to a lack of academic support causing the child to lose ground academically, especially in the areas of math, comprehension and writing. As the Federal Complaints Officer understands it, Complainant believes that the student should have been identified as having attention deficit disorder (ADD) which would fall within the physical disability category under Colorado’s categorical disability rules. The District states that, while the parent mentioned the existence of medical records, the medical records were inconclusive and, although other disability categories were considered, there was no data to support a disability label other than SIED.

As was explained in her 05/20/04 letter (Attachment A), the Federal Complaints Officer does not have the authority to overturn the disability determination made by the District’s multidisciplinary team. However, § 300.532 (b) does require the multidisciplinary team to use a variety of assessment tools and strategies to gather functional and developmental information about the child, including information provided by the parent. The IDEA contemplates that the multidisciplinary team will give due weight and carefully evaluate the information supplied by the parent and others. The IDEA does not require the multidisciplinary team to accept the recommendations contained in such information, nor does the IDEA require the child’s IEP team, which includes the parent, to document recommendations that are not part of an independent educational evaluation (IEE). See, *Letter to Anonymous*, 20 IDELR 1460 (OSEP, 02/09/94).

⁵ Complainant objects to the District’s late submittal of its response. While it is important that parties to the federal complaints process comply with designated timelines, the Federal Complaints Officer will not rigidly enforce such timelines at the expense of a fair factual investigation, especially when no prejudice can be shown by the opposing party. This is the Federal Complaints Officer’s policy regardless of whether the tardy party is a district or a parent/complainant. Here, the District submitted its responses to the Federal Complaints Officer on 07/01/04 (4 days late) and also hand-delivered its response to the Complainant on the same day. On the same day, the Federal Complaints Officer and Complainant agreed that Complainant’s response would not be due until 07/15/04 – which is 4 days longer than is ordinarily allowed. The Complainant’s response was received on 07/13/04, and the Federal Complaints Officer is very appreciative of the early submittal. That being said, it is clear that the Complainant was not prejudiced by the District’s late submittal of its information.

The parties disagree that the multidisciplinary team considered the medical information provided by the parents. When facts are in dispute, the usual process in most legal settings for resolving the dispute is through an evidentiary hearing in which individuals testify under oath, and the testimony is then subject to cross-examination. It is through this process that the fact finder determines the credibility of the individuals, and by extension, which version of the facts is the more credible. The federal complaints process, unlike the due process hearing, makes no provision for an evidentiary hearing. Another way of resolving a factual dispute is to examine the documentation submitted by the parties and the surrounding circumstance to see whether they provide a definite answer.

The Federal Complaints Officer has carefully reviewed the documents and other information provided by the parties. The Federal Complaints Officer finds that when the child moved from Washington State to the District, the child was not identified as a child with a disability; however, it does appear that she qualified for Section 504 services. The Federal Complaints Officer finds that the information supplied by Complainant was not part of an IEE obtained by Complainant in response to one of the District's evaluation. The Federal Complaints Officer finds that the 02/06/03 and 03/18/04 IEPs document that the child had a number of medical and mental health issues including asthma, migraines, amblyopia of the left eye, allergies, reflux, anxiety disorders, hyperactivity, and attention problems. One of the factors for determining an SIED disability is "significantly limited self-control, including an impaired ability to pay attention," and in both IEPs that factor was checked as applying to the student. The Federal Complaints Officer finds that the multidisciplinary team did consider and determine that the child had an impaired ability to pay attention but determined that the SIED disability category was the appropriate category. Therefore, the Federal Complaints Officer concludes that the District did not violate § 300.532(b). If the Complainant disagreed that SIED was the appropriate disability category for her child, she was entitled to request a due process hearing on that matter.

REMEDY

Having found no violation of the IDEA, the Federal Complaint Officer orders no remedy.

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, July 15, 2004.

Laura L. Freppel
Federal Complaints Officer