

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

Federal Complaint 2006:501

Valley School District No. Re-1

Decision

INTRODUCTION

This Complaint was dated 03/08/06. An unsigned version of the complaint was received by the Federal Complaints Officer on 03/14/06. On that date, the Federal Complaints Officer telephoned the Complainant to let her know that the Complaint was unsigned, and that the Complaint would be opened on the date that a signed version of the Complaint was received by the Federal Complaints Officer. A signed version of the Complaint was received by the Federal Complaints Officer on 03/22/06 and, on that same date, sent to the Valley School District No. Re-1 (District). The District's response was received on 04/06/06 and mailed to the Complainant on 04/07/06. The Complainant received the District's response on 04/11/06. The Complainant did not file a written response to the District's response. On 05/09/06, the Federal Complaints Officer spoke by phone with the Complainant regarding her response. The Federal Complaints Officer closed the record on 05/10/06

The Complainant is the parent of child with a disability.

COMPLAINANT'S ALLEGATIONS

The Complaint alleges in relevant part¹ as follows:

The district refuses to schedule a meeting and determine if the student qualifies for ESY. As stated in the student's many IEP's this determination was required to occur on/before March 8, 2006.

The Complaint did not identify the IEP upon which Complainant relied in making this allegation.

THE DISTRICT'S RESPONSE

The District responds as follows:

¹ As is indicated in a later section of this Decision, the Federal Complaints Officer has rejected the allegation concerning the IEP team's prior determinations of the student's eligibility for extended school year services.

- A review IEP meeting [was] held on 11-30-05 to incorporate Speech-Language testing and review progress. The revised IEP specified that ESY was to be determined by 3-20-06.
- A triennial was scheduled and held on 3-13-06. At this triennial ESY was discussed, agreed to by the team based on predictive factors. A meeting to determine the ESY placement and program is scheduled for 4-18-06.

With its written response, the District enclosed copies of the following documentation:

- 1) Student's 07/14/05 Annual IEP
- 2) Additional IEP dated 10/15/05
- 3) IEP dated 11/30/05
- 4) 02/13/06 transmittal letter from the District's special education director to the Complainant enclosing the 11/30/05 IEP
- 5) Diagnostic placement documentation dated 02/16/06 and 02/27/06
- 6) 03/13/06 Triennial IEP

COMPLAINANT'S RESPONSE TO THE DISTRICT'S RESPONSE

Complainant states that the 11/30/05 IEP has been falsified in that the IEP team did not, at the 11/30/05 IEP team meeting, agree to change the ESY determination date from 03/08/06 to 03/20/06. The Complainant further states that the District never gave her a copy of the 11/30/05 IEP. Her only copy of that IEP is the one contained in the District's response which was mailed to her by the Federal Complaints Officer. The Complainant states that every other IEP contains the date of March 8th for determining ESY services.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Complaint alleges that the District has violated the IDEA because it failed to determine ESY eligibility for the student on or before 03/08/06 as required by the student's IEP. The District denies this allegation. The parties also disagree about whether the date for determining ESY eligibility was changed from 03/08/06 to 03/20/06 at the 11/30/05 IEP team meeting.

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 the District has submitted adequate documentation to establish the following facts:

- 1) The 11/30/05 IEP specified that the ESY eligibility determination date for the student was 03/20/06. *See*, 11/30/05 IEP, Special Education and Related Services page.
- 2) On or about 02/13/06, the District provided Complainant with a copy of the 11/30/05 IEP. *See*, 02/13/06 transmittal letter from the District's special education director to the Complainant.
- 3) On 03/13/06, the IEP team determined that the student was eligible for ESY services. *See*, 03/13/06 IEP, Special Education and Related Services page.

The Federal Complaints Officer therefore concludes that the District timely determined ESY eligibility for the student by 03/20/06, which was the eligibility determination date specified by the 11/30/05 IEP.

REJECTED ALLEGATIONS

The Complaint alleges that “[every] year the district refuses to provide the student with ESY and due to this refusal the student is academically regressing and is unable to progress through [student’s] IEP goals.” The Federal Complaints Officer has rejected this allegation because she does not have the authority to overturn an IEP team decision regarding the determination of ESY eligibility.

REMEDY

Having found no violation, the Federal Complaints 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 this 10th day of May, 2006.

Laura L. Freppel, Esq.
Federal Complaints Officer