

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

Federal Complaint 2006:510

Thompson School District R2-J

Decision

I. INTRODUCTION

This Complaint was dated October 12, 2006, and filed on October 18, 2006. The school district's response was dated November 10, 2006, and received, by fax, on the same date, and by regular mail on November 15, 2006. The complainant's response to the school district's response to her Complaint was dated November 21, 2006, and received on November 27, 2006. The then Federal Complaints Officer, Charles Masner, closed the record and prepared this Decision.

Consistent with 34 CFR § 300.152(c), this Decision was placed in abeyance on December 11, 2006 upon the filing of Due Process Complaint 2006:120. Due Process Complaint 2006:120 was subsequently dismissed by the Impartial Hearing Officer (IHO) on January 4, 2007. The Department received a copy of the IHO's case file on January 11, 2007. Said case file contained the Order of Dismissal. At that point, the Department had 60 calendar days (or until March 12, 2007) to issue the Decision in this case. Due to error by the Department, it was not discovered until 05/24/07 that the Decision had not been issued.

On May 29, 2007, Laura L. Freppel, the undersigned authority, contacted complainant by telephone to determine the circumstances of the dismissal of Due Process Complaint 2006:120. It was determined during that telephone conversation that Due Process Complaint 2006:120 was not dismissed subject to any agreement by the parties that would have required this Federal Complaint to also be dismissed. It was further determined that the complainant wanted the Decision in this case to be issued. Other than this Introduction, and the issuing signature and date, this Decision, including the findings of fact and conclusions of law, has not been modified by the undersigned authority, i.e., the Decision essentially stands as written by then Federal Complaints Officer Charles Masner as of December 11, 2006.

II. COMPLAINANT'S ALLEGATIONS

The Federal Complaints Officer lists the fourteen (14) allegations by the complainant of violations of the Individuals with Disabilities Education Act (IDEA), in the language used by the complainant. All legal citations, quotation marks, and other punctuation, are as used by the complainant, unless otherwise bracketed by the Federal Complaints Officer.

1. IDEA 300.501(a)(1), “The parents of a child with a disability must be afforded an opportunity to inspect and review all education records with respect to (1) the identification, evaluation and placement of the child.”
2. IDEA 300.501(1)[,] “The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to (i) the identification, evaluation and placement of the child.”
3. ECEA [R]ule 3.04(1)[,] “Personnel Qualifications...” (Personnel conducting evaluations were not qualified to conduct the specified evaluations.)
4. ECEA [Rule] 4.01(2)c, “IEP development shall be completed within 45 [school] days from the point of initiation of the special education referral.”
5. ECEA [R]ule 4.01(3)d, “Assessment procedures shall protect the interests of the child.”
6. ECEA [Rule] 4.01(3)d(i)[,] “Administrative unit personnel evaluating children for the purpose of determining eligibility for special education services shall be appropriately licensed and endorsed. For those areas where CDE licensure and endorsement are not available, appropriate professional licensure, registration or credentials is required. Any standardized test shall be administered by trained personnel in accordance with any instructions provided by the producer of the test. If an evaluation is not conducted under standard conditions, a description of the extent to which it varied from standard conditions shall be included in the evaluation report or IEP.”
7. ECEA [Rule] 4.01(3)(d)(iv)[,] “Evaluation instruments shall be valid and reliable.” & IDEA 300.304 “In conducting the evaluation, the public agency must use technically sound instruments.”
8. IDEA 300.122[,] “Children with disabilities must be evaluated in accordance with sections 300.300 through 300.311 of Subpart D of this section.”
9. IDEA 300.302[,] “Screening for instructional purposes is not evaluation. The screening of a student by a teach[er] or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.”
10. IDEA 300.303[,] “Re-evaluations” The entire section applies.
11. IDEA 300.304(a)[,] “The public agency must provide notice to the parents of a child with a disability, in accordance with 300.503, that describes any evaluation procedures the agency proposes to conduct[.]”
12. IDEA 300.323[,] “At the beginning of each school year each public agency must have in effect an IEP...”
13. IDEA 300.134e[,] “Written explanation by the LEA regarding services.” “How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract) the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a written contract.”
14. IDEA 300.305[,] “Additional Requirements for evaluations and reevaluations.” As part of an initial evaluation (if appropriate) or as part of any reevaluation under this part, the IEP team and other qualified professionals must (1) review existing evaluation data on the child, ...”

III. SCHOOL DISTRICT’S RESPONSES

The Federal Complaints Officer lists the responses of the school district as stated by the school district, absent a restatement of the legal citations in the complainant's allegations, and with numbers added to the responses to correspond to the numbered allegations of legal violations as stated by the complainant, and with bracketed information provided by the Federal Complaints Officer.

1. The factual narrative provided by [the student's] parents offers no explanation to support this allegation. [The student's] parents have been provided access to all of [the student's] educational records. The District suspects that the allegation here relates to their demand that they be given copies of assessment protocols prior to the evaluation. While the District has invited [the student's] parents to review the protocols at the school prior to the evaluation, for obvious reasons, the District does not release test protocols to the public. Moreover, test protocols are not "education records." Education records are those documents that "directly relate" to a student. 20 U.S.C. § 1232g. A blank test document does not directly relate to a student any more than a text assigned to the student is an educational record.
2. There is no factual basis for this allegation. As describe above, the District has offered [the student's] parents numerous dates for evaluation, and with the exception of the abbreviated visit on September 6, 2006, they have not come to the evaluation sessions.
3. [The student's] parents offer no evidence to support this allegation. The members of the staff who would be evaluating [the student] – [proper names of staff members] – all are appropriately certified.
4. There is no evidence to support this allegation. The referral begins when the parent signs the consent for evaluation form, or in [this student's] case, August 31, 2006. The district then has forty-five school days to complete the IEP. [The student's] parents were given numerous opportunities to make [the student] available for an evaluation, but did not do so. Most recently [the student's] parents were given an entire week of dates from which to select, but have not produced [the student] for the evaluation.
5. There is no evidence to support this allegation. Autism is marked by deficits in socialization and functional communication. Given these deficits, it is important to assess [the student's] skills in these domains in the criterion environment, that is, the school setting. Similarly, it is important to get a baseline on [the student's] ability to perform without the supports and familiarity of home. While [the student's] parents have expressed concern that [the student] will not perform without their assistance, the team needs to learn how well [the student] performs without their assistance. Finally, students with autism have difficulty generalizing skills that they have learned in one environment, or with one partner, or in response to a standard cue to other environments, partners, and cues. As a result, a home-based assessment would not provide valid data regarding how well [the student] performs in a school environment.

While [the student's] parents insisted that he must be evaluated in their home, there has never been any indication that [the student] is home-bound for medical reasons. [The student] attended a private school prior to reenrolling in the District. The reason [the student's] parents sought to reenroll [the student] in the District was to allow him to participate in a peer environment. [The student's] parents were notified that the staff would accommodate any necessary health concerns in order to carry out the evaluation,

and were asked to forward any relevant information, for example physician's orders, notes, or medical diagnosis, along with supporting documentation to school nurse, [proper name of school nurse]. They did not do so.

To the extent [the student's] parents allege that [the student] was "traumatized" by his visit to the school, the staff found [the student's] behaviors and responses to be within the range of normalcy for a student with his profile.

6. There is no evidence to support this allegation. As noted above, the staff members all have appropriate licenses. Since [the student's] parents have not produced [the student] for the evaluation dates, with the exception of the brief visit on September 6, the staff has not had the opportunity to administer any assessments or produce an evaluation report.
7. [The student's] parents have offered no evidence that the test protocols proposed for [the student] – Brigance Inventory of Early Assessment, the Wide Range Assessment of Motor Abilities, the Brunicks-Orerstky test of motor proficiency, Sensory Profile Checklist and possibly the Goldman-Fristoe Test of Articulation II- are invalid.
8. [The student's] parents offer no explanation as to what provisions were violated, and no explanation as to how the provisions were violated.
9. [The student's] parents offer no explanation as to how this provision was violated. Presumably, they object to informal assessments and observations to determine [the student's] functional skills in the areas of socialization and communication. The IDEA, however, specifically requires that evaluations include "classroom-based observations; and observations by teachers and related services providers." 34 C.F.R. 300.305(a)(1)(ii) & (iii).
10. [The student's] parents offer no explanation as to how this section was violated.
11. There is no evidence to support this allegation. As described above, [the student's] parents have been provided a description of the assessments proposed for [the student].
12. Again, the District cannot develop an IEP for [the student] absent a reevaluation, and [the student's] parents have not made him available for such an evaluation.
13. The provision cited by [the student's] family involves "equitable participation" of private schools in the IDEA and has no application here. Further, [the student's] home tutoring is not a private school, nor a home-based education, and is in apparent violation of Colorado's mandatory school attendance law.
14. [The student's] parents offer no evidence or explanation to support this allegation.

IV. COMPLAINANT'S RESPONSES TO SCHOOL DISTRICT'S RESPONSES

The Federal Complaints Officer lists the fourteen (14) responses of the complainant to the school district's responses to her Complaint, in the language of the complainant, absent a restatement of the legal citations in the complainant's headings of her responses. These legal citations repeat the legal citations stated in the complainant's Complaint filing, and to which the school district responded. All other legal citations in the complainant's responses, and italics, and quotation marks, and other punctuation, are as used by the complainant, unless otherwise bracketed by the Federal Complaints Officer.

1. The district has at various times preceding our October 12th filing [stated] that either [my son's] current placement was agreed, that [my son's] placement would be in [proper

name of school staff person] classroom, or that [my son's] placement would be in the GAIN classroom. We requested copies of all records on September 23rd, but were provided no records indicating that an IEP meeting took place. Therefore, there must have been some secret meeting, where the family was not invited, to determine placement. Additionally, the district has provided no record of the Sept. 6th evaluation report. These are violations of IDEA 300.501.

2. The district provided no evidence that it ever scheduled or attended an IEP meeting (to date).
3. Prior to our filing, the district had not identified who would be conducting evaluations. The district only responded in their letter dated October 15th.
4. The district provided no evidence that it has completed development of an IEP within 45 days from the point of initiation. Since the district does not dispute that [my son's] "point of initiation" was August 3rd, then we do not agree that it was August 31st.
5. The district's assessment team traumatized [my son]. This is acknowledged by the district's own response on page 16 of [school district attorney's] narrative "*..the staff found [the student's] behaviors and responses to be within the range of normalcy for a student with his profile.*" I guess that the district staff considers trauma to be normal for a child with autism. We do not agree. Most of the time, [my son] is happy and comfortable with his one-on-one tutor, in the regular education classroom. We believe that traumatizing a child is not in his best interest, and we hope that you agree.

[My son] is not home-bound at all. He is lacking a school, because the district is failing to provide him with special education services at any Thompson R2-J school.

6. The district does not wish to conduct standardized testing. Again, we are especially concerned that the district does not believe it is necessary to conduct a Functional Behavior Analysis nor a formal Cognitive Evaluation, in accordance with Colorado law. The district provided no evidence that it completed an evaluation report, let alone explained how [its] procedures varied from any standard.

We have made [our son] available for no fewer than nine evaluation appointments, but the district has refused to conduct the evaluations.

7. Since the district refuses to provide us with copies of the tests, and on the date of the filing, no formal tests were requested, the district has failed to prove that [its] "informal speech evaluation" was a valid and reliable or technically sound instrument.
8. We believe that our entire complaint shows that there have been multiple violations of the rules of IDEA 300.300 through 300.311. For the purposes of the complaint, we wish to focus on the failure of the district to develop an IEP in the 45 days from the point of initiation (August 3rd)
9. The district's so-called "informal speech evaluation" was not an evaluation at all, as evidenced by no evaluation report, no minutes, no observations provided at all. Therefore, we can only conclude that the 1 hour session was "screening for instructional purposes", not an evaluation.
10. This section was violated by the district's failure to re-evaluate [my son] in the 45 days from the point of initiation. The district provided no evidence that any evaluation had been completed or reported.

11. At the time of our filing, October 12th, the district had failed to provide any description of evaluation procedures it wishes to conduct. In fact, the district refuses to provide copies of the tests procedures, and refuses to meet with us to go over test procedures, it still has failed to meet the requirements of IDEA 300.304(a) by failing to “*describe any evaluation procedures the agency proposes to conduct*”.
12. The district acknowledged that it rejected (out of hand) [my son’s] current IEP. The district fails to show that it has developed some other IEP. Therefore, the district is in violation of IDEA 300.323 “*At the beginning of each school year, each public agency must have in effect of an IEP.*”
13. The district provided no evidence that it ever contacted [my son’s] private schools or our family in the 5 years intervening from our last enrollment. The district provided no evidence why it does not agree with the provisions in [my son’s] current IEP (developed by private service providers.) Therefore, the district is violating IDEA 300.134c.
14. The district failed to provide any evidence that it has reviewed the data we provided to them on August 3rd, 2006. In fact, the district has repeatedly demonstrated that it is not familiar with the contents of [my son’s] current IEP, and that it does not remember the Health Plan I faxed to the school nurse on August 21st. All our evidence is throughout our complaint, and this response to the district response. Please see:
 1. Our original complaint
 2. page 5 of this response, Allegation 8
 3. page 6 of this response, Allegation 12
 4. pages 8-9, Allegation 18

V. FINDINGS AND DISCUSSION

In her response to the school district’s response to her Complaint, the complainant states:

The district spends 20 pages distracting from the issue, but provided not one shred of evidence to show that they acted according to law in the 45 days allowed for them to develop an IEP. The district does not even understand our basic complaint. It is, as we set forth in the complaint, “From the time of re-enrollment to date, the district has denied [our son] a FAPE by failing to develop a (district developed) IEP, failing to review or approve [our son’s] existing IEP, failing to hold an IEP meeting, failing to conduct appropriate evaluations, and failing to provide any services in accordance with the state and federal laws.” Where the “to date” was the date of the filing of the complaint (October 12th, 2006).

And:

Sir, we request that you disregard the side issues raised by the district, and focus on the basis of our complaint – that the district failed to evaluate and develop an IEP in the 45 days allowed by law. To date, they have still not either approved [our son’s] existing IEP nor developed one of their own. Complainant’s response at page 1, footnote omitted. Quotation marks and parentheses in original. Bracketed information added by the Federal Complaints Officer.

The Federal Complaints Officer is making no judgments, per se, as to the extent that the school district, or the complainant, may have “distracted” from the issues raised in this Complaint. However, he is deciding this Complaint with the focus as the complainant stated the focus should be, and in accord with the Complaint language as quoted by the complainant.

The Allegations

The parent complainant and the school district were not always precise in their citations, and quotations, of the relevant law. The Federal Complaints Officer has done his best to correct the citations as necessary, and has done his best to read the law cited accurately, in order to accurately understand the law cited and quoted.

Allegation No. 1

IDEA 2004 34 C.F.R. 300.501(a)(1)

The Federal Complaints Officer finds no violation by the school district.

The school district in its response correctly stated the law (with regard to blank test protocols) , and the Federal Complaints Officer finds credible the school district’s factual assertion that the parent complainant has been provided access to all educational records regarding her son that are in the school district’s custody. School districts can have meetings without parents present. This does not make them “secret” meetings, as alleged by the complainant.

If the complainant parent disagrees with this finding by the Federal Complaints Officer, she is also entitled to a Family Educational Rights and Privacy (FERPA) hearing, or complaint, and an Individuals with Disabilities Education Act (IDEA) 2004 due process hearing.

Allegation No. 2

IDEA 2004 34 C.F.R. 300.501(b)(1)(i)

The Federal Complaints Officer finds no violation by the school district.

The parent complainant and the school district are in disagreement over the nature, and appropriate parental participation, of meetings scheduled and held, and scheduled and not held, and not scheduled and held, and not scheduled and not held. The heart of the complainant’s allegation is that the school district has not worked cooperatively with her to arrange for her appropriate participation in meetings and evaluations concerning her son. The heart of the school district’s response is that it has tried to work cooperatively with the parent complainant to insure her appropriate participation in meetings and evaluations regarding her son.

At the heart of the heart of the disagreement between the complainant parent and the school district over what is required to work cooperatively together, is a more fundamental

disagreement over the appropriate role for the parent in this process. On page ten (10) of her response to the school district's response to her Complaint, the complainant states:

If the district stopped changing [its] mind about allowing/disallowing our tutors at school, then things would proceed more easily. If the district provided us with more than two days notice of an evaluation, I could possibly get my work schedule coordinated with the United States Air Force. We have made the best attempt to support all of the requested evaluations, *subject to protecting [our son](a fragile child, with validated communication, behavioral, and medical issues)[,] protecting our rights to know what evaluations are to be conducted, and who will conduct them. Since the district wanted to waste time in play sessions, and not formally evaluate [our son], we worked to get the district to consider formal testing.* Complainant's response at page 10. Parentheses in original. Bracketed information and italics added by the Federal Complaints Officer.

The Federal Complaints Officer finds that there was sufficient notice given to the complainant parent to insure her ability to make her son present for evaluations. The Federal Complaints Officer also finds that the complainant parent has disagreed, and continues to disagree, with the how the school district wants to evaluate her son, as evidenced by the quoted language of the complainant italicized by the Federal Complaints Officer. See also School District Exhibits numbers four (4) and ten (10), letters of the complainant parent to the school district's Director of Special Education, dated August 31, 2006, and September 7, 2006, respectively, where the complainant parent states, respectively:

We kindly request that you refrain from subjective evaluations of [our son] at this time, when the district has not seen him for more than 5 years. That said, we have not refused a district re-evaluation, and agree that the district may evaluate [our son] to facilitate development of a district services IEP. ... We further expect that you will not have an IEP already developed prior to evaluating [our son]. We believe there are many aspects of our current IEP that will need to be maintained in any setting, and we believe that the district personnel will also find this to be true. School District's Exhibit No. 4 at page 1.

The Brigance method, developed in 1922, is not specific to children with autism. Further, using "informal methods" provides no criteria by which to judge whether a child has speech deficits or not, and there is no grading criteria to judge the severity of any perceived deficit. School District's Exhibit No. 10, at page 2. Quotation marks in original.

And,

We regret to inform the district that until [our son] is accepted into the Thompson R2-J school district, that we cannot allow evaluations to be conducted on school property due to liability, safety, and confidentiality concerns. School District's Exhibit No. 10, at page 2.

The complainant parent is entitled to disagree with how the school district intends to evaluate her son. However, she is not entitled, per se, to have her view of an appropriate evaluation for her son prevail over the view of the school district. The school district must be given sufficient latitude to conduct the evaluation it deems appropriate. The Federal Complaints Officer does not find that any evaluation this school district has been seeking for complainant's son is such that harm is going to be caused to complainant's son sufficient to outweigh the need for the school district to be able to conduct the evaluation it deems appropriate. If the complainant parent does not agree she does not have to present her son to the school district for an evaluation, unless the school district obtains legal authority to conduct the evaluation without parental consent. In any case, the complainant parent does not have to agree with the results of any evaluation conducted by the school district, and, after the school district has had the opportunity to conduct an evaluation it deems appropriate, she is entitled to obtain an independent educational evaluation for her son and to present any evaluation information to the school district that she believes would help the school district in providing a free appropriate public education (FAPE) for her son.

If the complainant parent disagrees with this finding by the Federal Complaints Officer, or the results of any evaluation conducted by the school district, she is also entitled to an IDEA 2004 due process hearing.

Allegation No. 3

ECEA Rule 3.04(1)

The Federal Complaints Officer finds no violation by the school district.

The complainant parent provided no evidence, either in her Complaint filing or response, that any persons that the school district were going to use to evaluate her son were not qualified for the type of evaluation the school district wanted to conduct. Correspondence submitted by the complainant in letters dated September 18, 2006, and October 10, 2006, labeled by the complainant parent as "H" and "J", respectively, stated the names of proposed evaluators. Moreover, the complainant parent already knew who the evaluators were for the evaluation that was attempted on September 6, 2006. The Federal Complaints Officer finds that the school district has met its legal obligation to provide qualified personnel for the evaluation of the complainant's son.

If the complainant parent disagrees with this finding by the Federal Complaints Officer, she is also entitled to an IDEA due process hearing.

Allegation No. 4

ECEA Rule 4.01(2)(c)

The Federal Complaints Officer finds no violation by the school district.

ECEA Rule 4.01(2)(c) states that a special education referral, including IEP development if the student is found to be disabled, shall be completed within forty-five (45) school days of the referral. This Rule also states that written permission to assess is required to initiate a referral. Written permission to assess this student was obtained from the complainant parent on August 31, 2006. See School District's Exhibit No. 9. The Federal Complaints Officer obtained a copy of the school district's 2006-07 calendar from the office of the school district's legal counsel by email on November 28, 2006. The Federal Complaints Officer did the math. The forty fifth school day for this student in this school district (after written permission to assess was obtained), commencing counting with September 1, 2006, was November 8, 2006. The complainant's Complaint was dated October 12, and filed October 18, both dates preceding the end of the special education referral period for this student.

Neither at the time the complainant's Complaint was dated, or filed, had the school district violated ECEA Rule 4.01(2)(c). Moreover, independent of how any disagreements between the parent and school district prior to the complainant's initiation of her Complaint should be resolved, the Federal Complaints Officer finds that, once the Complaint was initiated, the disagreements between the complainant and the school district about how an evaluation should be conducted for the complainant's son were such that an evaluation could not be completed within forty-five (45) school days.

If the complainant parent disagrees with this finding by the Federal Complaints Officer, she is also entitled to an IDEA 2004 due process hearing.

Allegation No. 5

ECEA Rule 4.01(3)(d)

The Federal Complaints Officer finds no violation by the school district.

The complainant parent argues that evaluation attempts by the school district, using the complainant's word, "traumatized" her son. The one example she gives is on page seven (7) of her response where she describes an incident where her son "head-butted" two school district staff persons during a speech evaluation at a school district attendance center on September 6, 2006. The complainant parent states: "[My son] was traumatized by the incident and wanted to leave." The school district staff wanted to continue the evaluation without the complainant parent present, but the complainant parent refused. In the words of the complainant parent: "I explained that first, I could help to get responses, and second [the school district staff person] was not familiar with [my son's] medical and behavioral issues, and so it was not safe to leave my child alone in [the school district staff person's] care." According to the complainant, an agreement was reached which allowed her to watch the rest of the evaluation through a staff member's office window. See complainant's response at page 7. Bracketed information supplied by the Federal Complaints Officer. However, according to the school district, and unchallenged by the complainant, the evaluation was not completed at that time because it was determined that there was not sufficient time to do so. Subsequent attempts to evaluate the student have not succeeded because of the inability of the complainant parent and the school district to agree on the who, what, when, where, why, and how of an evaluation for this student.

According to the edition of *Webster's Dictionary* consulted by the Federal Complaints Officer "trauma" is a "disordered psychic or behavioral state resulting from mental or emotional stress or physical injury". The Federal Complaints Officer does not have the medical expertise to make a medical determination of whether the complainant's son suffered trauma as a result of evaluations conducted by the school district. Neither the complainant parent nor the school district has supplied the Federal Complaints Officer with any such medical expertise. However, the Federal Complaints Officer does have enough expertise to find that there are degrees of trauma and that different events can be experienced by different individuals as traumatic to different degrees. The Federal Complaints Officer also has enough expertise to know that not all life events that might cause "mental or emotional stress or physical injury" are automatically to be avoided because they might result in trauma. Taking this approach to life would pretty much result in not living life at all. Even if one accepts the complainant's statement that her son was traumatized by the head butting incident at school, the complainant also evidently determined that he was not so traumatized by that incident that further evaluation could not take place that same day, albeit with the complainant watching from another room.

The Federal Complaints Officer finds nothing in the information supplied to him by the complainant parent or the school district that causes him to believe that the parent and the school district could agree on whether the complainant's son has experienced trauma during school district conducted evaluations, and, if so, how serious was the trauma experienced. The Federal Complaints Officer also finds nothing to cause him to believe that any evaluation procedures used, or proposed, by the school district are such that they would inappropriately traumatize the complainant's son.

If the complainant parent disagrees with this finding, she is also entitled to an IDEA 2004 due process hearing.

Allegation No. 6

ECEA Rule 4.01(3)(d)(i)

The Federal Complaints Officer finds no violation by the school district.

This allegation, as stated by the complainant parent in her Complaint filing, has been resolved by the Federal Complaints Officer in his finding under Allegation No. 3. However, in her response to the school district's response, and in other language used throughout her Complaint submissions, the complainant raises the more fundamental issue between the complainant parent and the school district. That is, what the nature of the evaluation for the complainant's son should be. See complainant's response number six (6). The Federal Complaints Officer has addressed this disagreement between the complainant parent and the school district in his findings under Allegation No. 2 and Allegation No. 5.

If the complainant parent disagrees with this finding, she is also entitled to an IDEA 2004 due process hearing.

Allegation No. 7

ECEA Rule 4.01(3)(d)(iv)

The Federal Complaints Officer finds no violation by the school district.

The complainant parent is not entitled to blank copies of assessment instruments to be given to her son, either in advance or after any such assessments have been administered. See also Allegation No. 1 finding, and the school district's response to the complainant's allegation number one (1).

The Federal Complaints Officer finds that evaluation instruments used, and proposed to be used, by the school district, for the purpose of determining IDEA eligibility for the complainant's son, are valid and reliable for this purpose.

If the complainant parent disagrees with this finding, she is also entitled to an IDEA 2004 due process hearing.

Allegation No. 8

IDEA 2004 34 C.F.R. 300.122

The Federal Complaints Officer finds no violation by the school district.

IDEA 2004 34 C.F.R. 300.122 defines evaluation for IDEA purposes by referencing IDEA 2004 regulatory sections 300.300 through 300.311. The complainant parent's response to the school district's response to her Complaint is that:

We believe that our entire complaint shows that there have been multiple violations of IDEA [2004] [C.F.R.] [sections] 300.300 through 300.311. For the purpose of the complaint, we wish to focus on the failure of the district to develop an IEP in the 45 days from the point of initiation (August 3rd). Bracketed information supplied by the Federal Complaints Officer.

Beyond the findings that the Federal Complaints Officer is otherwise making in this Complaint, he also finds that the complainant parent has not been otherwise sufficiently specific in her factual allegations for him to make any further findings about alleged violations of IDEA 2004 C.F.R. 300.300 through 300.311. As for the complainant parent's wish to focus the complaint on "the failure of the district to develop and IEP in the 45 days from the point of initiation (August 3rd)", the Federal Complaints Officer has already made findings on this allegation by the complainant under Allegation No. 4 of these findings.

If the complainant parent disagrees with this finding, she is also entitled to an IDEA 2004 due process hearing.

Allegation No. 9

IDEA 2004 34 C.F.R. 300.302

The Federal Complaints Officer finds no violation by the school district.

This provision in the IDEA 2004 regulations is, it is the finding of the Federal Complaints Officer, intended to give authority to school district staff to screen students for, in the language of the provision, “to determine appropriate instructional strategies for curriculum implementation” and “shall not be considered to be an evaluation for eligibility for special education and related services”. Whether the speech assessment that was begun but not completed on September 6th, 2006 (which is the assessment at issue in this allegation, as indicated by the complainant’s response to the school district’s response to her Complaint) is defined as a screening or an evaluation, the school district was authorized to do it. If it is defined as a screening, the school district did not need the parent complainant’s consent to do it. If it is defined as an evaluation for the purpose of IDEA eligibility, the school district had authority by virtue of the signed consent given by the complainant parent on August 31, 2006. The Federal Complaints Officer finds that the assessment that was begun on September 6, 2006 was intended as a part of an evaluation for determining IDEA 2004 eligibility for this student.

The complainant parent, as understood by the Federal Complaints Officer, is not here really arguing that IDEA 2004 C.F.R. 300.302 was violated, but is repeating in another way her argument that the school district has not completed an appropriate evaluation of her son for the purpose of IDEA eligibility within the current Colorado time period of forty-five days – school days, as clarified by the Federal Complaints Officer. The Federal Complaints Officer’s findings under Allegations No. 2,3,4,5,6,7, and 8, have already addressed this argument.

If the complainant parent disagrees with this finding, she is also entitled to an IDEA 2004 due process hearing.

Allegation No. 10

IDEA 2004 34 C.F.R. 300.303

The Federal Complaints Officer finds no violation by the school district.

In order to be obligated to do a reevaluation, which is what this IDEA 2004 regulatory provision addresses, a school district must have first done an initial evaluation and determined the student to be eligible for services under the IDEA, and initiated services with parental consent according to an Individualized Education Program (IEP). That has not happened for the student who is the subject of this Complaint. This student’s previous attendance in this school district as an IDEA student notwithstanding, this student did not, and does not, have a current IDEA IEP, and the Federal Complaints Officer finds that any evaluation conducted, or considered to be conducted,

by this school district, for this student, should be considered an initial evaluation, not a reevaluation.

If the complainant parent disagrees with this finding, she is also entitled to an IDEA due process hearing.

Allegation No. 11

IDEA 2004 34 C.F.R. 300.304(a)

The Federal Complaints Officer finds no violation by the school district.

The Federal Complaints Officer has already addressed this disagreement between the complainant parent and the school district in his findings under Allegations No. 1,2,3,4,5,6,7,8, and 9. The consent form that the complainant parent signed on August 31, 2006 describes the areas that the school district intended to assess to determine whether the complainant parent's son was eligible for services under IDEA 2004.

If the complainant parent disagrees with this finding, she is also entitled to an IDEA 2004 due process hearing.

Allegation No. 12

IDEA 2004 34 C.F.R. 300.323

The Federal Complaints Officer finds no violation by the school district.

School districts are only required to have IEPs in effect at the beginning of each school year, which is what this regulatory provision addresses, for students who have been determined to be eligible for IEP services, and for whom parental consent has been obtained to initiate those services. This student has not been determined to be eligible for IDEA services, and parental consent has not been obtained for the provision of any such services.

The complainant parent refers to an "IEP" she says her son had when she contacted the Thompson School District R2-J. The complainant parent is entitled to label documents IEPs, or anything else, unless otherwise validly prohibited by law, but her son did not have an IDEA IEP when the complainant parent first met with school district staff on August 3rd, 2006 to discuss enrolling her son in the Thompson School District R2-J. He still does not have such an IEP, and he cannot have such an IEP until a valid eligibility determination has been made and parental consent for the delivery of IDEA services has been obtained.

See also the Federal Complaints Officer's discussion under Allegation No. 10.

If the complainant parent disagrees with this finding, she is also entitled to an IDEA 2004 due process hearing.

Allegation No. 13

IDEA 2004 34 C.F.R. 300.134

The Federal Complaints Officer finds no violation by the school district.

The school district is accurate in its response that this provision is inapplicable to this student, whose parents are seeking a free appropriate public education (FAPE) from the Thompson School District R2-J. This IDEA 2004 regulatory provision, alleged by the complainant to have been violated by the school district, requires school districts to consult with private school representatives in their geographic service areas to determine how a proportionate share of school district federal IDEA money will be spent for private school students within their geographic service areas who would otherwise be eligible for a FAPE, if the parents enrolled them in the public school district.

During the time the complainant's son has been receiving services from private providers, or attending HMS Richards Seventh Day Adventist (SDA) School, he was not entitled to a FAPE, and would have only been entitled to IDEA monies to help support any services to address what might otherwise be an IDEA disability if the Thompson School District R2-J school district, in appropriate consultation with appropriate private school representatives, had determined that this was to be done. No allegation has been made by the complainant that the Thompson School District R2-J did not meet its obligation to appropriately consult with private school representatives for this purpose. The complainant's son was also entitled to ongoing child find services from the Thompson School District R2-J services. However, IDEA 2004 gives jurisdiction over allegations of violations by school districts of failing to appropriately conduct child find for parentally placed private school students to the IDEA 2004 due process hearing, and not to the administrative complaint process under IDEA 2004.

The Federal Complaints Officer makes no finding as to whether the structure of services received by the complainant parent's son should be considered a private school, or a home school. However, he does find, for the purpose of deciding this Complaint, that the school district has not violated its child find obligations to the complainant parent's son. The complainant parent and this school district have a long enough, and intense enough, history, so that the Federal Complaints Officer does not find credible any claim by the complainant parent that she could not access child find evaluation services from this school district during the period of time that she has chosen not to enroll her son in this school district, and during the period of time that she has instead provided services through private providers or HMS Richards SDA School.

If the complainant believes that the Thompson School District R2-J violated its obligation under IDEA 2004 to provide child find services for her son, she is entitled to an IDEA 2004 due process hearing.

Allegation No. 14

IDEA 2004 C.F.R. 34 300.305

The Federal Complaints Officer finds no violation by the school district.

To the extent that the complainant parent is alleging that the school district has failed to review documentary evaluation data that the parent submitted to the school district, the Federal Complaints Officer does not find the complainant parent credible. However, the Federal Complaints Officer understands the more fundamental claim of the complainant parent here to be that because school district staff have not, for the last five (5) years, attended what the complainant parent labels “IEP” meetings held with her son’s private service providers, that the school district has violated this IDEA 2004 regulatory provision, which addresses requirements for evaluations and reevaluations of IDEA students.

Public school districts are not required, per se, to attend meetings within their geographic service areas held for students receiving private services (or home school services) authorized by the students’ parents, whether these meetings are labeled “IEP” meetings, or otherwise. Neither parentally placed private school students, nor home schooled students in Colorado, have IDEA IEPs. If the complainant parent is alleging that failure to attend such meetings was a violation of the school district’s child find obligations, then the Federal Complaints Officer’s discussion under Allegation No. 13 is applicable.

If the complainant parent believes that the Thompson School District R2-J violated its obligation under IDEA 2004 to provide child find services for her son, she is entitled to an IDEA 2004 due process hearing.

VI. CONCLUSION

This Decision shall become final as dated by the signature, below. A copy of the appeal procedure is attached to this Decision.

Dated today, May 29, 2007.

Laura L. Freppel, Esq.
Supervisor I
Exceptional Student Leadership Unit