

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

Federal Complaint 2007:502

Morgan County School District RE-3

Decision

INTRODUCTION

This Complaint, dated January 28, 2007, was filed by Student's parents (hereafter, the "Complainants") and was received in the office of the Federal Complaints Officer on March 12, 2007.¹ The response of Morgan County School District RE-3 (hereafter, the "District") was timely on April 10, 2007. The District's response attached Student's 2006-2007 attendance record as well as Individualized Education Program ("IEP") documents for the time period 1996 through 2007. The response was transmitted by the Federal Complaints Officer to Complainants on April 11, 2007, permitting them to submit a reply not later than April 20, 2007. No reply was received and the record was closed in this matter on April 21, 2007.

ISSUES

1. Whether the District failed to convene a required Individualized Education Program ("IEP") team meeting for Student from October, 2006, through January 28, 2007;
2. Whether the District failed to provide appropriate progress notes regarding Student's IEP goals and objectives to Student's parents; and
3. Whether days documented by the District as "withdrawals" of Student from school by his parents were actually instances of Student being removed from school by the District.

¹ An earlier version of the Complaint was received on February 1, 2007, but was rejected by letter dated February 5, 2007, because the Complaint was not signed. The Complaint lists the time period of alleged violations as being between the dates of October 23, 2006 and January 28, 2007.

CONTENTIONS OF THE PARTIES

The Complainants allege that Student's triennial IEP meeting was due to be convened in October, 2006, and has been delayed for an unreasonable amount of time thereafter. Complainants also allege that Student's parents have not received updated notes of Student's progress on his most recently adopted IEP goals. Lastly, Complainants contend that Student has been "sent home" by the District for between 10 to 30 days and that these instances have been documented by the District as "withdrawals" by the parents rather than as District removals.

The District alleges that it scheduled Student's triennial IEP team meeting four times between October and the date of the Complaint, but Student's parents either did not show for the meetings or cancelled them.² With regard to the second issue, the District contends that Student's parents were given periodic verbal updates by his teacher, but that Student's excessive absences prevented any documented progress on any of his goals and objectives. The District contends that it has only removed Student three times, each for a partial day, and that Student's attendance record otherwise reflects absences being related to illness or other medical reasons.

FINDINGS OF FACT

1. Student is a male, born [DOB], living with his parents within the boundaries of the District. Student is eligible for special education services in the category of [disability] as documented following an IEP meeting of October 11, 2005.
2. During all times relevant to this Complaint, Student was enrolled in the [grade level] grade at [School]. An IEP team meeting was due to have been convened for Student on or before October 11, 2006.
3. On October 15, 2006, the District provided Complainants with Notice of a triennial IEP Meeting scheduled for October 23, 2006. Complainants did not attend that meeting; nor did they contact the District beforehand to cancel or reschedule the meeting.
4. On November 6, 2006, the District provided Complainants with Notice of a rescheduled triennial IEP meeting set for November 20, 2006. Complainants contacted the District on the day of the scheduled meeting to cancel it because Student was sick.
5. On December 8, 2006, the District provided Complainants with Notice of a rescheduled triennial IEP meeting set for December 18, 2006. Complainants contacted the District on the day of the scheduled meeting to cancel it because Student was sick.

² Student's triennial review occurred on January 29, 2007, the day after the Complaint.

6. On January 15, 2007, the District provided Complainants with Notice of a rescheduled triennial IEP meeting set for January 29, 2007. Complainants attended the IEP team meeting on January 29, 2007, and provided their consent for the special education program developed at that time.

7. At the January 29, 2007 IEP team meeting the District requested that Complainants consent to an extension of the timeline for development of the IEP based on Complainants' non-attendance at the three previously-scheduled meetings. Parents refused to consent, noting that they "did not request such a long delay."

8. An attachment to the Complaint evidences the District's documentation of Student's progress on IEP goals and objectives between January and April of 2006. No other documentation of Student's progress toward IEP goals and objectives exists in the record for the 2006-2007 school year, including the period covered by the Complaint.

9. Student's attendance record evidences twelve absences between October 23, 2006, and January 28, 2007, inclusive. Of these, two days are indicated to be partial-day absences, both of which are excused. Three days in November are documented as unexcused. The remaining days are documented as "ill" and are presumed to be excused.

10. Nowhere in Student's attendance record for the 2006-2007 school year is any absence documented as "withdrawn." During the time period at issue, only the three unexcused absences in November and the excused partial-day absence on November 14, 2006, appear to be unrelated to illness or medical reasons. None of the documented absences between October 23, 2006, and January 28, 2007, comprise a pattern of ten consecutive school days.³

CONCLUSIONS OF LAW

1. Although Student's IEP meeting was to have been convened no later than October 11, 2006, that issue is not raised by the Complaint. Rather, the Complaint asserts that all alleged "violations began on October 23, 2006." That was the date scheduled for Student's triennial review by the Notice dated October 15, 2006. (Finding of Fact ("FF") 3.) Complainants did not attend that meeting, nor the next two scheduled for November and December, respectively. (FF 3, 4, and 5) Student's parents are essential members of the IEP team (20 U.S.C. §1414(d)(1)(B)) and their unavailability due to Student's illnesses is a valid reason for cancelling and rescheduling the first three meetings. The record is clear that no IEP meeting occurred between October 23, 2006, and January 28, 2007. For that fact to translate to noncompliance with the law, however, the District's efforts to reschedule the meeting must have been unreasonable or resulted in undue delay of the triennial meeting.

³ The District's response indicates that it treats ten days of consecutive absence as a "withdrawal."

IEP team meetings require the participation of a large number of District personnel. *Id.* When the meeting was eventually convened on January 29, 2007, eleven District representatives signed as participants, including Student's special education teacher, the school administrator, the school psychologist, District speech/language pathologist, school nurse and others. The coordination of these team members, plus Student (who was frequently ill) and Student's parents requires considerable time and effort. Additionally, official notice is taken of the fact that the period of time covered by the Complaint is punctuated by the Thanksgiving and Christmas holidays. Nothing in the record suggests that the Complainants wrote to the District or otherwise communicated a request for the meeting to occur on a particular, earlier date than it eventually did. Accordingly, while the record reflects that no IEP team meeting was convened between October 23, 2006, and January 28, 2007, there is no evidence to support the notion that the District acted unreasonably or breached any duty to Student in its repeated attempts to schedule his IEP team meeting.

2. Meaningful participation of parents is essential to the success of the IEP process and special education as a whole. 34 C.F.R. §300.501(b). One aspect of meaningful participation is the opportunity for parents to review records documenting the provision of a free appropriate public education ("FAPE") to their child. 34 C.F.R. §300.501(a). Notes or other records reflecting Student's present levels of performance and progress toward the attainment of goals and objectives since the last-developed IEP are critical in assessing the effectiveness of the special education program. 20 U.S.C. §1414(c)(1). Here, there is no dispute that the District failed to record and provide Student's parents with such information during the period covered by the Complaint. (FF 8) It is also true that no IEP team meeting occurred during this period. An IEP team meeting occurred on January 29, 2007, at which the parents consented to the program put forth for Student. However, there is no allegation in the Complaint that the District failed to provide required documentation at that meeting. While the District failed to record Student's progress and make such documents available to Student's parents up to January 28, 2007, the only thing taking place during that period was the effort to schedule the IEP team meeting. There is no information in the record that the IEP process was compromised or that Student suffered other educational harm as a result during the time period covered by the Complaint.

3. As established by FF 9 and 10, there is no evidence that Student was "sent home by school administration and staff for not less than 10 days" during the time period of the Complaint. The District concedes that Student was sent home for a partial day for behavioral problems, and this likely occurred on November 14, 2006. The three unexcused absences in November are "entire day" absences and are therefore inconsistent with Student being sent home on those days. Nor is there any substantiation of the allegation that the District documented "withdrawals" anywhere in Student's attendance record. Accordingly, there is no basis upon which to conclude that the District improperly or inconsistently labeled Student's absences during the period covered by the Complaint.

REMEDY

Complainants failed to establish facts to substantiate their allegations related to Issues No 1 and No. 3. As to Issue No. 2, Complainants established that the District failed to maintain and provide to Student's parents records of Student's progress on his IEP goals and objectives during the time period of the Complaint. However, this failure appears to be connected to Student's unique history of absences and, as such, is not systemic. Furthermore, as Student suffered no documented educational harm as a result, there is no basis for awarding a compensatory remedy to Student. This decision should not be construed as exonerating the District for its failure to maintain appropriate records of Student's progress. The District, in its response, pledged to generate such documentation in the future regardless of Student's pattern of attendance. It is so Ordered as this documentation is integral to establishing the provision of FAPE.

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 16th day of April, 2007.

Keith J. Kirchubel
Federal Complaints Officer