

FEDERAL COMPLAINT NUMBER 98.508

FINDINGS AND RECOMMENDATIONS

I. PRELIMINARY MATTERS

- A. A complaint was received by the Federal Complaints Coordinator, Colorado Department of Education (“CDE”), on March 3, 1998.
- B. The complaint was filed by Ms. [parent] on behalf of her sons, [student] and [student] against the Commerce City Schools, Mr. Gary Gibson, Superintendent and Ms. Joan Rademacher, Director of Special Education (“the District”).
- C. The timeline within which to investigate and resolve this complaint will expire on May 4, 1998.
- D. The process for receipt, investigation and resolution of the complaint is established pursuant to the authority of the Individuals With Disabilities Education Act 20 U.S.C. 1401 et seq., (“the Act”), and its implementing regulations concerning state level complaint procedures, 34 C.F.R. 300.660-300.662, and Colorado State Board of Education Policy No. 1280.0.
- E. The complaint was brought against the District as a recipient of federal funds under the Act. It is undisputed that the District is a program participant and receives federal funds for the purpose of providing a free appropriate public education (“FAPE”) to eligible students with disabilities under the Act.
- F. The complaint was accepted for investigation based upon a determination that CDE had jurisdiction over the allegation contained in the complaint pertaining to a violation of federal law and rules in a federally funded program administered by CDE.
- G. [student] and [student] are students with disabilities attending Kearney Middle School, reside within the District’s attendance boundaries and are eligible for special education services from the District.
- H. The investigation of the complaint included a review of the documents submitted by the parties; interviews with persons named in those documents or who had information relevant to the complaints; and consideration of relevant case law and federal agency opinion letters.

II. ISSUE

A. STATEMENT OF THE ISSUE:

Whether or not the District has violated the provisions of the Act, by failing to provide those services listed on [student]’s and [student]’s individualized education plans (“IEPs”) during the first quarter of the school year. Specifically, whether or not the District failed to provide:

- integrated support in the regular classroom by the learning specialist or paraprofessional, 5 hours per week,

- a small group setting with the learning specialist or paraprofessional, 10 hours per week,
- Lit. lab with the regular teacher, 5 hours per week and
- compensatory reading skill development by the learning specialist 1 hour per week.

B. RELEVANT STATUTORY AND REGULATORY CITATIONS

20 U.S.C. 1401 (a)(16), (17), (18) (19) and (20), and 1414,

34 C.F.R. 300.2, 300.7, 300.8, 300.11, 300.14, 300.16, 300.17, 300.121, 300.130, 300.180, 300.235, 300.300, 300.340, 300.343, 300.346, 300.350 and 300.533 and

Fiscal Years 1995-97 State Plan Under part B of the Act

C. FINDINGS

1. At all times relevant to the complaint, the District was receiving funds under the Act pursuant to an approved application for funding.
2. The funds were paid to the District, in part, based on the assurances contained within the application.
3. One of the assurances made by the District is that, in accordance with the Act, it will provide a free appropriate public education to each student with a disability according to the individualized education program ("IEP").
4. The complainant alleges:
Neither [student] nor [student] were provided with special education during the first quarter of the 1997-98 school year (nine weeks).
5. The District, in its response to the complaint, acknowledged that some of the direct services were not provided for a limited period of time, however all other services on the IEP were immediately implemented at the beginning of school. This, according to the response, was due to the employment of three new special education teachers and the transitioning of the new case manager. According to the District, both boys were given compensatory services for the remainder of the school year when this omission was discovered which was equivalent to or exceeded the amount of time that was missed during the first quarter. These services were/are provided after school.

According to the District, Ms. [parent] agreed with the compensatory services, but preferred to have them provided by a private educational consultant rather than the District. The District did not agree to this.

In summary, the District states that both boys are receiving the current services as outlined in the IEP through a combination of small group instruction, 1-1 direct

services and integrated services within the classroom. In addition, the "Pit Stop", a special education resource room concept, offers additional assistance to both students on an "as needed" basis as deemed necessary by the students themselves and/or classroom teachers.

7. A review of records indicates the following services are to be provided according the IEPs:
 - (a) [student]'s EIP indicates the following services are to be provided from 12/05/97 to 5/98 with 100% participation in regular education:
 - Integrated support in regular classroom,
5 hours per week, from learning specialist or paraprofessional
 - Small group setting
10 hours per week, fro learning specialist or paraprofessional
 - Lit Lab
5 hours per week from a regular teacher
 - Compensatory reading skills
1 hour per week from a learning specialist
 - (b) [student]'s IEP indicates the following services are to be provided from 11/24/97 to 5/98 with 100% participation in regular education:
 - Integrated support in regular classroom,
5 hours per week, from learning specialist or paraprofessional
 - Small group setting
10 hours per week, fro learning specialist or paraprofessional
 - Lit Lab
5 hours per week from a regular teacher
 - Compensatory reading skills
1 hour per week from a learning specialist
8. A review of records indicates the following schedules and services for each of the boys:
 - (a) Each receives integrated support in the regular classroom 5 hours per week. That support is available in class and in "Pit Stop" for social studies, communications and math.
 - (b) Each gets a small group setting 10 hours per week in the Assess/Assist Class ([student] in Block 1 and [student] in Block 7), and in "Pit Stop" ([student] in Block 3 and [student] in Block 2).
 - (c) Each gets Lit Lab, 5 hours per week, both in Block 6
 - (d) Each receives compensatory reading, 1 hour per week, after school 2 days a week.
9. This complaints investigator talked with the complainant by telephone on 4/30/98, to determine if she believed the above services were being provided. She indicated that she had, indeed, agreed to the services including the compensatory services; but they often were not provided. Specifically, she indicated two areas of concern:
 - (a) Often times the teacher who is to provide the after-school tutoring is not available. She indicated that her sons did purposefully miss one session, but that others were due to the teacher's absence.

- (b) She indicated that she likes the plan for the boys to spend one hour per day with the learning specialist, who is to check on progress and assignments in the regular education classes and provide assistance to the boys (as well as other students with disabilities in her room at that time) in doing their assignments. Ms. [parent] indicated that, although the concept is great, it is not implemented because the boys and other students are alone in the room during much of that time while the learning specialist is in another room assisting other students. Often they receive no assistance.

D. DISCUSSION

The law is clear, those services listed on IEPs must be provided, even at the beginning of the school year. The District, in the case, acknowledged its error and arranged for compensatory services, agreed to by the parent. Those services are provided but, in the complainant's perception, only sporadically due to teachers not being available.

III. CONCLUSION

By its own admission, the District did violate the Act by not providing some of the direct special education services at the beginning of the school year. The District did recognize its error and subsequently arranged for and provided (and continues to provide) compensatory services for the remainder of the school. These services, provided after school and agreed to by the complainant, are equivalent to or exceed the amount of time that was missed during the first quarter.

While the District believes and attests to all services being provided commensurate with the IEP, the complainant believes they often are not, due to teacher unavailability, as indicated by her sons and as observed by her personally. The process of complaint resolution, however, does not allow for taking testimony under oath for determining credibility and therefore, this complaints investigator cannot rule on these allegations.

IV. REMEDIAL ACTION

Due to the strong concern by the complainant relative to the unavailability of the learning specialist during the hour in which the boys are in her resource room and the unavailability of the after-school tutoring teacher, the District's Director of Special Education must periodically monitor these situations for the remainder of the school year to assure services are provided. A report of such monitoring must be provided to this office at the end of the school. Such report may be in writing or it may be done verbally by telephone which then will be documented in the file.

Dated this _____ day of April, 1998

Carol Amon, Federal Complaints Investigator