

FEDERAL COMPLAINT NUMBER 98.511

FINDINGS AND RECOMMENDATIONS

I. PRELIMINARY MATTERS

- A. A complaint was received by the Federal Complaints Coordinator, Colorado Department of Education ("CDE"), on March 19, 1998.
- B. The complaint was filed by Mrs. J.B., a family advocate with the Arc of Denver, representing Mr. [parent] and Ms. [parent] on behalf of their son [student], against Denver Public Schools, Dr. Irv Moskowitz, Superintendent and Ms. Patrice Hall, Director of Special Education ("the District").
- C. The timeline within which to investigate and resolve this complaint expires on May 18, 1998.
- D. The process for receipt, investigation and resolution of the complaints 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 violations of federal law and rules in a federally funded program administered by CDE.
- G. [student] is a student with disabilities residing within the District's attendance boundaries and is 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 complaint; and consideration of relevant case law and federal agency opinion letters.

I. ISSUE

A. STATEMENT OF THE ISSUE:

Whether or not the District has violated the provisions of the Act by **failing to take steps to ensure that one or both of the child's parents was present at the 2/26/97 IEP meeting or afforded the opportunity to participate.**

B. RELEVANT STATUTORY AND REGULATORY CITATIONS

20 U.S.C. 1401 (a)(16), (17), (18), (19) and (20), 1412 (2) (B), (4), (6) and 1414, as amended by 20 U.S.C. 602 AND 612

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, 300.344, 300.350 and 300.533 (as amended by statute) 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. Two of the assurances made by the District is that in accordance with the Act, it will provide a FAPE, including special education and related services, to each eligible student with disabilities within its jurisdiction to meet the unique needs of that child and that parents will be afforded an opportunity to participate in the planning for that FAPE.
4. [student] is a student with disabilities as indicated on an IEP dated 2/26/97.
5. The complainants allege that they were never afforded the opportunity to attend the IEP meeting documented on 2/26/97. They allege that they were at Schmitt Elementary School for IEP meetings scheduled for both of their sons [student] and [student]. [student]'s IEP took longer than expected, so Ms. [parent] was informed by Larry Stensgaard, the special education teacher, that he would contact her to reschedule [student]'s IEP. Ms. [parent] alleges she was never notified of the rescheduled meeting. Ms. [parent] alleges she did not know this IPE had been written until its annual review on 2/18/98; and states that she did not receive a copy.
6. The District, in its response to the complaint states that IEPs were discussed and completed for both boys, but that Ms. [parent] had to leave before [student]'s IEP was printed, as she was ill and the printer was malfunctioning. Larry Stensgaard denies that he offered to reschedule the meeting.
7. The law is clear in that parents must be afforded the opportunity to participate in the development of their child's IEP. Should a meeting be held for the review of the IEP, the meeting must include the following participants:
 - The director of special education or designee
 - The child, unless age or preference indicates otherwise
 - The child's parents, unless they decide not to attend.
 - The child's regular education teacher and/or counselor
 - The child's licensed/certified special educators
 - Other persons at the discretion of the parent or school.
8. The IEP dated 2/26/97 and given to the complainants on 2/18/98, lists the following relative to committee members present:

Parent/educational guardian: did not attend
Principal or designee: Christina Dever, MS, CCC-SLP
Speech/Language Specialist: Christina Dever, MS, CCC-SLP

At the bottom of the page is a notation that the IEP was sent in US Mail by Larry Stensgaard on 5/28/97. There is no indication of whom it was sent to.

9. The IEP dated 2/26/97 submitted by the District in response to this complaint, lists the following relative to committee members present:

Parent/educational guardian: did not attend
Principal or designee: Christina Dever, MS, CCC-SLP
Speech Education Director Designee: Larry Stensgaard
Speech/Language Specialist: Christina Dever, MS, CCC-SLP

At the bottom of the page is a notation that the IEP was sent in US Mail by Larry Stensgaard on 5/28/97. There is no indication of whom it was sent to.

10. A letter was sent from this office to the complainants indicating the District's response to the complaint and asking for any additional information relative to this matter. This complaints investigator was contacted by Ms. J.B. who had been in communication with Ms. [parent]. According to Ms. J.B., Ms. [parent] indicated that there was no discussion about [student] at the 2/26/97 meeting and that all discussion had been about his brother, [student]. She emphatically states that Larry Stensgaard told her he would schedule another time for the meeting and inform her. She received no notification, nor a copy of the IEP. In fact, she alleges, that she was surprised (a year later) to learn that services for [student] had been reduced without her knowledge.

When asked, if the allegations were accurate, what resolution the complainants were seeking, Ms. J.B. responded that they wanted a clarification as to who needs to be there and some assurance this would not happen again.

D. DISCUSSION

11. While the District states that discussion was held and decisions were made about [student] on 2/26/97, the complainants deny this. Documentation (both the District's and the copy of the IEP given to the parent one year later) indicates that the parent did not attend.
12. The fact that there is a discrepancy between the District's and complainant's copies of the signature page is of concern. It appears that one copy indicates the IEP meeting was held with only one person there, the speech language specialist. The other copy indicates the IEP meeting was held with both the speech language specialist and the special education teacher. Neither meets all the requirements of the law.
13. Based on its own documentation, the District's records indicate that the parents did not attend [student]'s 2/26/97 IEP meeting. Whether or not the parents were there for discussion and decision, but not printing, is disputed between the parties. The process of complaint resolution, however, does allow for taking testimony under oath for

determining credibility. Therefore the resolution of the complaint must rely on documentation.

III. CONCLUSION

The District did violate the provisions of the Act failing to take steps to ensure that one or both of the child's parents was present at the 2/26/97 IEP meeting or afforded the opportunity to participate. In addition, although not an issue in this complaint, the District did not have all the necessary participants in that meeting.

Nevertheless, it is not disputed that [student] received special education and related services during the next year commensurate with his IEP.

IV. REMEDIAL ACTION

The District must take steps to assure that Mr. [parent] and Ms. [parent] are provided notice of future IEP meetings for both of their sons and are provided the opportunity to participate.

On or before 3/1/99, the District must provide to this office documentation that [student]'s parents received notice of the next review meeting and were provided the opportunity to participate.

Dated this _____ day of May, 1998.

Carol Amon, Federal Complaints Investigator