

FEDERAL COMPLAINT NUMBER 98.515

FINDINGS AND RECOMMENDATIONS

I. PRELIMINARY MATTERS

- A. A complaint was received by the Federal Complaints Coordinator, Colorado Department of Education (“CDE”), on May 1, 1998.
- B. The complaint was filed by Mr. [parent] and Ms. [parent] on behalf of her daughter, [student], against the Windsor School District, Mr. Brian L. Lessman, Superintendent and Ms. Laura Richardson, Director of Special Education (“the District”).
- C. The timeline within which to investigation and resolve this expires on June 30, 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 a violation of federal law and rules in a federally funded program administered by CDE.
- G. [student] is a student with disabilities eligible for services from the District under the Act.
- 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 records prior to a 4/27/98 IEP meeting,
- presenting a completed IEP to parents on 4/27/98,
- failing to give parents the opportunity to be active participants in the development of that IEP,
- unilaterally predetermining placement, prior to that IEP meeting and
- unilaterally changing goals and services previously written on the 1/14/98 IEP.

B. RELEVANT STATUTORY AND REGULATORY CITATIONS

20 U.S.C. 1401 (a)(16), (17), (18) (19) and (20), and 1412 (2)(B), (4), (6) and 1414 as amended by 20 U.S.C. 602, 612, and 614

34 C.F.R. 300.2, 300.7, 300.8, 300.11, 300.14, 300.16, 300.17, 300.121, 300.130, 300.131, 300.180, 300.235, 300.237, 300.300, 300.340, 300.343, 300.344, 300.345, 300.346, 300.350, and 300.353 as amended by statute

and the 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 its application.
3. Two of the assurances made by the District are 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 it will provide all procedural safeguards as required by the Act.
4. [Student] is a 9 year old student with disabilities, whose disability is hearing impairment, as identified on an IEP dated 1/14/98. That IEP was a result of a triennial review. Recommended placement, according to that IEP was placement in general education with special education resource instruction and consultation 5 ¼ hours per week, Speech/Language instruction and consultation, 1 ½ hours per week and Occupational Therapy consultation, 15 minutes per week.
5. According to the District, on or about 3/5/98, Ms. [parent] met with District staff, requesting that [student] be placed into a private facility, the University of Northern Colorado's Lab School. Ms. Laura Richardson, the Director of Pupil Services, explained that such a change would be an IEP team decision. It was agreed that a new IEP meeting would be held to discuss a change in placement; and assessment information would be updated prior to that meeting to allow for good decision making. After the assessments were completed, an IEP meeting was scheduled for 4/27/98.
6. The complainants first allegation is that they were denied access to records, specifically the new assessment results, prior to the 4/27/98 IEP meeting.
 - a. According to the District, on or about 4/13/98, Ms. [parent] called the Pupil Services Office and requested a copy of [student]'s file. The District subsequently provided her with a copy of records on 4/14/98.
 - b. Documentation on file, shows that all records were provided to [parent] on 4/14/98 and her signature shows her authorization for their release.
 - c. On 4/16/98, the complainants sent a letter to the district requesting copies of all assessment results from recent testing, observations and past performances that pertain to and that would be included in the assessment information discussed at the 4/27/98 IEP meeting.

- d. On 4/17/98, Laura Richardson, Director of Pupil Services, responded in writing to this request, indicating that assessment was currently in progress, reports were in the process of being created and did not exist at that time, and results of such would not be recorded until the assessors brought their final reports to the 4/27/98 meeting and shared them at that time. Ms. Richardson followed up her letter with a telephone call to Ms. [parent], indicated that individual members of the assessment team were available to discuss the raw data that they had at the present time, if Ms. [parent] wished to call them directly. She also indicated that if Ms. [parent] needed extended time to review the reports presented on 4/27/98 or if she needed further interpretation of the data, the IEP meeting could be continued at a later date.
- e. According to the District, the complainants did not contact individual assessors directly.
- f. A review of records indicates the following new assessments were done on the indicated dates, prior to the 4/27/98 IEP meeting:

Educational:

Woodcock Johnson	3/24/98
Informal Observation	4/13/98

Social Emotional:

Child Interview	4/21/98
Kinetic Drawings	4/13/98
Roberts Apperception Test	4/13/98
Psychological Consult	4/24/98
Recess Observation	4/13/98
Classroom Sociogram	4/23/98
Meadow-Kendall	4/8/98
Parent Interview	3/27/98

Physical/Motor/Health:

Tests of Visual Perc. Skills	3/25/98
Bruininks-Oseretsky	4/1/98
Real Ear Measurement	4/13/98

Cognitive:

Wechsler Intelligence Scale	3/27/98
Matrix Analogies Test	3/27/98

Communicative:

Observation	4/24/98
Expressive One-Word	3/26/98
TOLD	4/9/98

Such dates clearly substantiate the District's statement to the complainants that assessment was in progress. Only 50% of the assessment was completed prior to the 4/13/98 request. Four of the assessments were not completed until the week prior to the IEP meeting. Reports of the assessment were not completed until the morning of the IEP meeting, at which time some assessors entered their report into the computer. The parents and assessors were given copies of the reports (in the form of "Documentation of Assessment") as part of the IEP when they entered the IEP meeting.

- g. A written transcript of the audio tape of the 4/27/98 IEP meeting indicates the complainants had wanted a copy of the assessment reports prior to the meeting. It was explained that there were no assessment reports, that assessors had raw data and then converted that into a report on Form 6, "Documentation of Assessment Data", of the IEP form. A partial transcript of that tape, states:

Advocate: What is the team?

Director: This is the team right here.

Ms. [parent]: Then who did this, who prepared this?

Director: Each individual person puts their own data.

Mr. [parent]: ... we didn't put anything in there, are you telling us we're not part of the team?

Director: That's what you'll do today.. if you have some assessment data, it can be considered. This was only standardized assessment that's put into this.

(later)

Advocate: ...are there informal assessments that are included in this...are they all formal or have any done informal observations...

Teacher: We have all done informal observations. This is not a final document: that's what today's meeting is for.

Advocate: ...one of my concerns is that I don't believe [parent] and [parent] were invited to put any of their informal observations or assessment that they have done.. I'm talking specifically about the CIBB that they did at home and those kinds of things to put data into this so this obviously is not a complete look at [student].

Teacher: We have a copy of the CIBB...

Mr. [parent]: Is it included here?

Teacher: Well, we can put it in.

(later)

Director: ... and we'll put anything you say in today.. all of that would go in; that's why we're meeting today... anything any of us says

- h. According to the District, the complainants sent another letter on 5/5/98, requesting records. Although the records (Documentation of assessment Data), were provided to the complainants at the IEP meeting, an additional copy was given to them on 5/8/98. In addition, the complainants were informed to the process for reviewing the test protocols with a representative of the District qualified to help interpret the testing information. The complainants, with advocates, did review such on 5/8/98 and the District even allowed one of the advocates to copy into a computer, some raw data from the cognitive assessment and the social emotional assessment.
- i. The complainants, in response to the District's response, question the District's claim that the assessors were going to bring their final reports to the 4/27/98 meeting and share them at that time, when – in fact, these reports were prepared ahead of time and brought to the IEP meeting, typed. The complainants allege they were the only team members who had no knowledge of the assessment results prior to the meeting.

- j. According to the Director of Special Education, some assessment reports were not entered into the computer until the morning of the IEP meeting. All assessors, IEP participants and parents received the documentation of assessment data at the same time, that is as they entered the meeting.
7. The complainants allege they were presented with a fully completed IEP at the 4/27/98 IEP meeting.
- a. The District, in its response to the complaint, states that the complainants were given a draft IEP on 4/27/98. Such draft was prepared by Ms. P.T., the special education resource teacher, based on the previous IEP and information relative to progress [student] had made since it was written.
 - b. The partial transcript of the tape of this IEP meeting indicates the following:
 - Advocate: What is the team?
 - Director: This is the team right here.
 - Ms. [parent]: Then who did this, who prepared this?
 - Director: Each individual person puts their own data.
 - Mr. [parent]: ... we didn't put anything in there, are you telling us we're not part of the team?
 - Director: That's what you'll do today.. if you have some assessment data, it can be considered.
 - (later)
 - Director: ... and we'll put anything you say in today.. all of that would go in; that's why we're meeting today... anything any of us says
 - (later)
 - Mr. [parent]: ...I do not feel a part of this team whatsoever. I feel that you as an administrator have gone out of your way to exclude us.
 - Ms. [parent]: ...we fell unprepared for this meeting.
 - (much later)
 - Facilitator: What we're going to try to do is focus on...[student] To talk about her in regards to strengths and needs...everybody knows [student]... mom and dad know [student] best... we'll start of with strengths and talk about needs... if you think of something, put it up there... brainstorming
 - Situation....
 - (much later)
 - Mr. [parent]: I think this damn IEP that you people wrote up is in it's final form...
 - Director: No, this is just a preliminary of that... that's why I was sitting here putting all this [information] in today. This would be the final once we went through the whole thing.
 - Mr. [parent]: What you're telling me then is this meeting was just a nice get together and you guys would introduce your findings to us.
 - c. The complainants, in their response to the District's response, state, "The district can state to their dying day that the IEP was only a working draft, but it was not... decisions had been made prior to the 4/27/98 meeting.

8. The complainants allege the District had at least one illegal team meeting where the IEP goals and service delivery changes were made without their parental involvement.

Although this issues was not accepted directly as part of the complaint, this meeting was explained at the IEP meeting, as indicated by a transcript of that meeting. That meeting was held by the assessors to determine if they had enough data to make some decisions and to determine what else they may need.

9. The complainants allege they were not given the opportunity to be active participants in the development of the IEP.
 - a. The District, in its response to the complaint, indicates the parents had a great deal of ongoing input at the IEP meetings. The response states that there were several instances where District personnel observed different things about [student] in the school setting, than her parents observed at home. The district states that, just because the District personnel did not agree with the parents observations is not that same as their not having input.
 - b. In reviewing the 5/14/98, IEP, no indication of differing points of view and discussion could be found.
 - b. The complainants allege their “input was not welcomed or seriously considered”; that they “could not even bring in an outside opinion without 20 minutes of grief”.
10. The complainants allege the District unilaterally predetermined placement, prior to the 4/27/98 IEP meeting.
 - a. The District, in its response to the complaint, indicates that a change in placement has not yet been decided or refused, as this cannot be done until the goals and objectives are developed and the characteristics of service are determined.
 - b. The complainants state they know placement was predetermined because the Director told them she had previously talked with and administrator in Weld District 6 and a UNC faculty member about [student]’s possible placement. The Director encouraged the complainants to contact these two people because the hearing impaired program was at risk for disbandment and it would not be wise to place [student] in a program that would not exist in a year. The faculty member did state, according to [parent], “Look, I don’t know what the problem is between you and [the Director], but I don’t want to be any part of it.” Ms. [parent] had not known of this person before and had never spoken to him, and believes his comment relates to the predetermination.
 - c. The “draft” IEP does not indicate any change in placement.
11. The complainants allege the District unilaterally changed the goals and services previously written on the 1/4/98 IEP.
 - a. The District, in its response, again clarifies that the IEP was a draft, the goals and objectives were based on the previous IEP and updated by the teacher to reflect progress in three months. Since goals and objectives have not yet been

decided, the District is utilizing the goals and objective written on 1/4/98. A meeting has been scheduled on June 9th with the complainants and representatives of the District to draft goals and objectives for consideration by the entire IEP team in August.

- b. The complainants allege they were told at the 5/4/98 meeting that goals and objectives would be drafted on the 9th; however, no teachers, specialists or anyone who worked with [student] would be at the at meeting. They objected.
12. A comparison of the 4/27/98 “draft” with the 5/14/98 partially completed IEP, reveals the following:

Documentation of Assessment Data	No changes.
Present Levels of Functioning, etc.	31 “draft” statements retained as written 18 new statements added
Statement of Needs	Totally changed, new IEP includes lists of strengths as well as needs; some of the old needs were deleted.
Determination of Eligibility	Added three new pates in which PC was now added as a secondary disability.

13. A letter from the complainants to the District, dated 5/25/98, requests that the District cease and desist from any further IEP meetings. The reasons stated in the letter include:
- a. adversarial environment when attempting to participate
 - b. District’s insistence on having its attorney at further meetings
 - c. Sudden addition of PC as secondary disability, eliminated the Lab School as a possible placement
 - d. District’s ignoring [student]’s expressed desire to be with more kids who wear hearing aids
 - e. derogatory statements regarding their marital status and family functioning and refusal to discuss basis for those statements and other opinions
 - f. refusal to consider goals as proposed by parents

Many of these points were further clarified by Ms. [parent] during telephone conversations as indicated below:

- a. As a result of concerns about reported cognitive abilities, academic progress and social interaction with peers (at the previous meeting), Ms. [parent] brought a letter from the executive director of the Irlen Institute to the 5/19 meeting. Such letter suggest that [student]’s IQ scores may be low estimates of her ability, that her difficulties on the Bender Gestalt may be more related to small motor coordination than perception, that penmanship may be an area of difficulty, that the child’s own reporting of social/emotional adjustment should be considered in addition to the Kendall. Ms. [parent] state that the District refused to include this information under current levels of functioning, but rather agreed to place the letter (with some corrections, such as “Ph.D. added to school psychologist’s name”) in the file.

Note: The Director of Special Education indicate they did agree to place this letter in the record, however it was noted that the assessor had never seen [student], but rather only reviewed assessment information.

- b. Ms. [parent] stated that the second IEP meeting, at which attorneys were present, was extremely adversarial with the attorneys and advocate arguing so much of the time that she, as a parent, disengaged from the process.
- c. Ms. [parent] stated that, as a result of new information, the team suggested that PC be added as a secondary disability. She said the team indicated that by adding such, [student] would be eligible for additional types of services. She agreed. However, at a later point in time, she was informed that the diagnosis of PC would automatically eliminate placement at the Lab School, because the Lab School takes those students whose disability is strictly hearing. She felt “set-up”.

Note: The Director indicate that although PC was discussed at the January triennial meeting, nothing was documented. Based on new assessment information, the team believed PC needed to be added as a secondary disability. She states this had nothing to do with potential placement elimination.

- d. Ms. [parent] stated that when, later reviewing the psychologists notes relative to an interview with [student], the psychologist noted that she expressly asked [student], “Do you want to go to the lab school?” and “Why?”. The notes indicated a strong “yes” answer and the reason was to be with students who wore hearing aids like she did. The psychologist, however (according to Ms. [parent]) refused to enter this information into the assessment report.
- e. As a result of the assessment data from the psychologists, Ms. [parent] was very concerned about statement saying the [student] projects feeling of rejection and yearning approval from her family, that there are marital conflict issues, yearning her father’s attention and acceptance, yearning her mother’s acceptance and approval, exhibiting negative attention seeking behavior and oppositional/defiant behavior specifically related to her parents. The parents began to look into why [student] may have reported this, as this was not at all the case. They were able to understand the confusion (some related to hearing loss) and they wanted the IEP team to understand dysfunctional family, marital conflict, pending divorce and non acceptance of children were not issues in their family. They brought to the 5/14/98, IEP meeting a letter from their Bishop stating observations of care, concern, gentleness, understanding and patience relative to their children and a statement of a solid relationship as a couple. Ms. [parent] states that the IEP teams said they could not consider this information because their Bishop was not certified or licensed to do assessment. They did agreed to place this letter in the file.

Note: The Director states that the IEP does note this letter.

Note: The 5/14/98 IEP states, under “Documentation of Assessment Data” – “Reference: Parents submitted a letter from Bishop V.R. 5/12/98”. There is nothing under “current levels of Functioning...” referencing any of this information.

- f. Ms. [parent] stated that she now feels it is useless to continue with the new IEP process. The District refuses to consider goals as proposed by parents, and everything else is predetermined. She wants to simply revert to the 1/14/98 IEP, including goals. She believes that is more productive than the direction the District is moving on the new IEP. In addition, she is tired of the adversarial climate.

III. DISCUSSION

1. Access to Records

- a. The law is clear in that the District must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the District. The District must comply with a request without unnecessary delay and before any meeting regarding an IEP. The right to inspect and review education records includes the right to a response from the District to reasonable requests for explanations and interpretations of records.

Under the Family Educational Rights and Privacy Act (FERPA) and the Act, a district must give parents a right to inspect and review tests questions and answers if they are education records. If the test questions and answers are both personally identifiable to the student, the parents have the right to inspect both the questions and answers. If the questions are separate from the answers, and only the answers are personally identifiable to the student, the parent has the right of access to the answers only. However, since the regulations require a district to respond to a reasonable request for an explanation or interpretation of the record, the district would have to inform the parent of the questions, if so requested, in order to explain the answers to the questions. The FERPA would not require the district to actually show the questions, nor would it require the district to provide a copy of the questions. The test questions become education records of that student if the tests are maintained in personally identifiable form by the District.

The parents have a right to a copy of education records only when the failure of the district to provide a copy would effectively prevent a parent from exercising the right to inspect and review the records.

Records which are in the sole possession on the maker, need not be subject to review and inspection. Test protocols generally cannot be excluded from parental review as they are most likely discussed with school personnel in IEP meetings for the purpose of determining placement and programming of the student. Even though the protocol may remain in the sole possession of the maker of the record, information contained I the protocol is revealed to other persons. As such, it then loses its exclusionary status, and becomes an education record subject to inspection by the parent.

- b. Relative to this case, the parents had a right to review and inspect any raw data that was in existence prior to the IEP meeting. They did not have a right to an "assessment report", because no assessment reports were prepared. Rather,

the District exercised its right to enter assessment information onto that portion of the IEP form which is called "Documentation of Assessment Data" This portion of the IEP may clearly be completed prior to the IEP meeting, as it serves as an assessment report. This information becomes a permanent part of the IEP and need not be changed.

At the IEP meeting, the team must then discuss "Present Level of Functioning, Achievement, and Performance" During this discussion, information from the assessment data may be reviewed and discussed. A record of this discussion must be made onto the IEP. All participants at the IEP meeting have an equal right to actively participate in this discussion, and all ideals must be considered. Generally the IEP then reflects the consensus of the team.

- c. The parents were given the opportunity to meet with the individual members of the assessment team to review and inspect the raw data each had. At that time, the raw data was not entered into the file, nor had a report been created, so meeting with each of the individual assessors was the only way in which the questions and answers or protocols could have been reviewed. The parents chose not to exercise this option.

Assessment reports, in the form of "Documentation of Assessment Data" were not available to anyone until minutes before the IEP meeting. The parents were given a copy at the same time as assessors and administrators. The parents were asked if they wished to delay the beginning of the IEP meeting, to give them time to read the data. They chose not to do so.

The transcript of the beginning of the IEP meeting indicates, however, that there was no clear explanation of this process at that time. The difference between the "Documentation of Assessment Data" section which can be completed prior to the meeting and the "Present Level of Functioning, Achievement, and Performance" section which is the record of the discussion at the meeting, was not made clear. From the beginning the parents and staff appeared to be in an argumentative mode, relative to this lack of clarification. The transcript of staff remarks during the meeting indicates a confusion between "assessment data" which is recorded and "opinions" relative to functioning which must be discussed and noted.

2. Prewritten IEP Including Goals and Objectives, Determination of Placement

- a. The law is clear in that the District is not permitted to present a completed IEP to parents for their approval before there has been a full discussion with the parents of the child's need of special education and related services and what services the District will provide to the child. It would be appropriate for the District staff to come prepared with evaluation findings, statements of present levels of educational performance, and a recommendations regarding annual goals, short term instructional objectives, and the kind of special education and related services to be provided. However, the District must make it clear to the parents at the outset of the meeting that the services proposed by the District are only recommendations of review and discussion with the parents.

Parents must be given the opportunity to be active participants in all major decisions affecting the education of the child. The drafting of a proposed IEP,

therefore, must be approached with great care. The District must take steps to ensure that no abuses occur resulting in reducing or foreclosing a parent's role.

- b. Relative to this case, it is clearly permissible to have completed the "Documentation of Assessment Data", but all other sections of the IEP must be a draft only.
- c. The IEP presented to the parents and team was not marked "DRAFT". At the outset of the meeting, there was no statement given relative to this being only a draft or recommendations for review and discussion. Again, from the beginning, the parents and staff appeared to be argumentative relative to this lack of clarification as to whether this was a draft or the final document.

During the meeting, however, changes to the IEP were made including 18 new statements about present levels of functioning, and a totally changed statement of needs. In addition, determination of eligibility was changed upon hearing new assessment information. There is no record of the team's having discussed goals and objectives, needed special education and related services and/or recommended placement.

3. Parental Opportunity to be Active Participants in IEP Development

- a. The law is clear in that the parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing and revising the child's IEP. This is an active role in which the parents (1) participate in the discussion about the child's needs for special education and related services, and (2) join with the other participants in deciding what services the district will provide to the child. Parents must be given the opportunity to be active participants in all major decisions affecting the education of their child.
- b. Relative to this case, it is not mandated that parents be part of the assessment team. Although this is a recommended practice, where parents provide a written summary of their observations relative to the child's functioning, it is not required. The parents were, however, interviewed as part of the social-emotional evaluation and the results of that interview were incorporated into the "documentation of assessment data".

The parents must have been given the opportunity to participate in all other aspects of the IEP, including present levels of functioning, needs, goals, objectives, services and recommended placement.

- c. The transcript of the audio tape of the IEP meeting indicates that, although parents were very verbal, most of this was relative to trying to understand their role and options relative to the IEP being a draft or final. Clearly, they stated often that they did not feel they had an opportunity to participate and were not considered equal participants. The 5/14/98 IEP does reflect a few statements that were contributed by parents. However, there are other indications that their views were not considered.

One of their particular concerns was relative to some information in the "documentation of assessment data" section suggesting this family may be perceived as dysfunctional with marital conflict issues and problems with acceptance of children. The parents brought in a letter from their bishop

suggestion a totally different perception, that is one of a very caring, accepting family including a strong marital relationship. According to the parents, the District refused to consider this information because the Bishop was not a certified assessor. The District did agree to place the note: "Reference: Parents submitted a letter from Bishop V.R." into the "documentation of assessment data" section. However, there is no mention of this difference in perception in the "present level of functioning.." section, even though that is the place for discussion and differences of opinion to be considered. The note placed in the documentation section serves no purpose and provides no information relative to this differing point of view.

The District's response to the complaint states that there were several instances when district observations were different from parents, and just because the district didn't agree with the parents, doesn't mean the parents didn't have an opportunity to participate. Not only must parents be given the opportunity to participate, but they also have a right to have their views, opinions and observations noted. There is no indication on the IEP that this was done. Rather, it appears if parental views are different, they are not noted.

The parents indicated that they strongly wanted documentation of [student]'s answer to the psychologist when asked if she wanted to go to the Lab School and why; but the district would not do so.

4. Summary

- a. The District has met the "letter of the law" relative to these issues. They did provide the required access to records and they did provide a "draft IEP" to be discussed and reviewed at the IEP meeting. Goals and objectives, services and recommended placement have not yet been discussed or determined relative to this IEP review process; rather a "draft" has been prepared for consideration.
- b. The communication between the District and the complainants relative to differences between "draft" and "final" and relative to parental opportunity to participate has been, in this investigator's opinion, extremely poor.

Other Districts who choose to write draft IEPs use a variety of tactics to ensure parental participation. They may ask the parents to submit in writing, their observation to be included in the assessment data. They may ask the parents to assist in the preparation of the draft. They write "DRAFT" on all draft documents; they explain the idea of "draft" at the outset of the meeting; they actively invite parents to present their view of the child's functioning at the IEP meeting and add that to the "functioning" section. If parents and staff have differing perceptions, that is noted. They ask parents what their goals are for their child and use that as a framework for writing draft goals.

On the other hand the parents, in this investigator' opinion, have been demanding, argumentative and unwilling to listen. This was particularly true during that period of time when record access was being requested. This investigator had the opportunity to talk with the parents during this period and explain what records they had a right to review and what did not yet constitute a record; however the parents appear to have continued with their requests.

- c. The result has been, in this investigator's opinion, defensive school personnel who believe they need to include their attorney in IEP development, angry and distrustful parents who have terminated the review IEP process, and an IEP review that is only partially completed (thus, reverting back to the January IEP). The original issue of whether or not this child needs a change in placement has not even yet been considered or discussed.
- d. Should the parents retain their residence in this District, the relationship between school personnel and the parents must continue, in order to facilitate future planning for an appropriate education for [student]. A review of the IEP must be held prior to 1/15/99. Both parents and school personnel need to take steps to repair this relationship.

III. CONCLUSIONS

1. The District clearly did not violate the provisions of the Act by failing to provide access to records prior to a 4/27/98 IEP meeting. The District provide access to, the opportunity to review and inspect, all records maintained at that time. In addition the District provided the opportunity to review and inspect test protocols and questions and answers that had not yet been entered into the records, but were in the sole possession of the assessors.
2. The District, technically, did not violate the provisions of the Act by presenting a completed IEP to parents on 4/27/98. The IEP presented to the parents was a draft and the parents were given the opportunity to participate in changes to that draft. Goals and objectives and placement have not yet been determined; rather those presented to the parents were in draft form. Whether or not the parents had a genuine opportunity to participate in the development of the IEP is questionable.

IV. RECOMMENDATIONS

1. It is strongly recommended that the District incorporate procedures (such as those mentioned in Discussion #4,b) to insure that parents understand the nature of "DRAFT" IEPs and to insure their opportunity to participate and have their opinions recorded.
2. It is recommended that the parents consider continuing the review IEP meeting which was begun on 4/27/98, continued on 5/14/98, with a continuation meeting scheduled in August.
3. Should the parents agree to do so, it is recommended that both parents and school personnel enter into that meeting with a commitment to work together in the best interest of [student], rather than be adversarial. Should the District desire to utilize outside facilitation for this IEP meeting, to assist with the rebuilding of trust and cooperation, this officer would be happy to provide some assistance.

Dated this 30th day of June, 1998

Carol Amon, Federal Complaints Investigator