

FEDERAL COMPLAINT NUMBER 98.516

FINDINGS AND RECOMMENDATIONS

I. PRELIMINARY MATTERS

- A. A complaint was received by the Federal Complaints Coordinator, Colorado Department of Education ("CDE"), on May 8, 1998.
- B. The complaint was filed by Mr. [parent] and Ms. [parent] on behalf of her son, [student], ([student] or [student]), against the Telluride R-1 School District, Dr. Ann Brady, Superintendent ("the District") and against the Southwest Board of Cooperative Services ("the BOCS").
- C. The complaint originally was not accepted for investigation based on a statute of limitations, as the allegations were relative to procedures that occurred seven to eleven years previous. The decision not to investigate was overturned by the Office of Special Education Programs ("OSEP") of the U.S. Department of Education in cooperation with CDE's State Director of Special Education, who asked that this voluntarily be investigated. A letter to that effect was issued on October 7, 1998. The deadline for resolution of this complaint was stated to be December 6, erroneously, as this is a Sunday; and therefore the deadline becomes Monday, December 7, 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 and the BOCS as a recipient of federal funds under the Act. It is undisputed that the District and BOCS are program participants and receive federal funds for the purpose of providing a free appropriate public education ("FAPE") to eligible students with disabilities under the Act.
- G. [student] was a student with disabilities eligible for services from the District and the BOCS 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 Southwest Board of Services ("BOCS") and/or the San Miguel R-1 (Telluride) School District ("the District") have violated the provisions of the Individuals with Disabilities Education Act, 20 U.S.C. 1401 et seq. ("the Act"), by failing to provide [student] with a free appropriate public education ("FAPE") as a result of not developing IEPs for [student] from 9/87 through 5/91 which contained annual goals and short term instructional objectives with objective criteria and evaluation procedures and schedules.

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,

34 C.F.R. 300.2, 300.7, 300.8, 300.11, 300.13, 300.14, 300.121, 300.180, 300.237, 300.500 – 300.534

C. FINDINGS

1. At all times relevant to the complaint, the District and the BOCS were receiving funds under the Act pursuant to an approved application for funding.
2. The funds were paid to the District and the BOCS, in part, based on the assurances contained within its application.
3. One of the assurances made by the District and the BOCS is that in accordance with the Act, it 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, as defined by the student's individualized education plan ("IEPs").
4. [Student] was a student with disabilities enrolled into the District in March, 1986, during his first grade year at which time the initial IEP was developed. He continued his enrollment in the District through the end of his sixth grade year in May, 1991. During the summer of 1991, the parents unilaterally placed [student] into a summer program at a private school in New York called The Gow School. The parents subsequently enrolled [student] in The Gow School for the school year 1991-92 and he continued there until graduation in May of 1997.
5. The complainants allege that the District and BOCS did not develop valid IEPs during the time that [student] attended the Telluride Public Schools and was included in the special education program for a Perceptual-Communicative disorder, from September 1987 to the spring of 1991. They allege that not one of the IEPs developed for their son contained the two elements necessary for setting appropriate goals and measuring a student's progress and the success of the school in providing an appropriate education. In addition, they allege that development of short term objectives (STOs) was not always done (4/7/86, 3/30/87, 5/20/88, 5/29/90), and in some instances was done insufficiently (5/30/89).

They believe their son had no reasonable expectation of progressing with IEPs that included no or insufficient annual measurable goals, short term objectives or objective criteria to measure his progress. As a result, they allege their son entered seventh grade with reading skills measured by the school district at a third grade, fourth month level—only one month above his second grade test score after four years of individualized special education.

6. The following is a list of specific allegations made by the complainants as well as a review of what the records contain:
 - a. Complainants' allegation: The IEP dated 4/7/86 includes no specific goals and no objective criteria for measuring progress. No STOs.

Records from the District and BOCS indicate the following:

4/7/86 Initial IEP developed.

Participants: adm, reg tchr, psych, s/l, nurse, parents

Annual Measurable Goals:

Reduce impulse control

Develop focus and attention skills

Decrease negative attitude toward school

Develop reading skills; recognize and read words at 2nd grade level

STOs:

Recognize words on the Basic Word List through 2nd grade

Recognize common signs as listed in the Brigance Diagnostic

Recognize initial consonant clusters...[listed]

Recognize initial consonant diagraphs...[listed]

Understand and use vocab appropriate to grade level

Identify a question

Recognize that a question ends with a question mark

Recognize short vowels...[listed]

Recognize long vowels...[listed]

Recognize names of months and be able to order them

Recognize days of the week and be able to order them

Recognize seasons and the months that are a part of them

Given word cards, align to form sentences

Criteria: 90% accuracy

Improve expressive language form; [student] will improve the linguistic structure of his utterances (language form, i.e. pronunciation, word and sound sequencing, grammatical rules and morphemes) language use and content (word usage and conversational proficiency).

STOs: [12 Objectives listed, all with similar specificity to the following example:]

When presented with auditory and visual stimuli, [student] will generate the third person subject pronoun "they" in activities structured by the speech therapist.

Criteria: [% of accuracy listed, ranging from 50 to 90]

Date Achieved: [all either noted as achieved or to be continued]

- b. Complainants' allegation: The IEP dated 3/30/87 includes annual measurable goals, but does not specify what objective measures will be used to measure progress. No STOs.

Records from the District and BOCS indicate the following:

3/30/87 Annual Review

Participants: PC tchr, reg tchr, psych, prin, parents

Committee Recommendations: Continue Present program

Progress: at expectation

Any Changes in Annual Measurable Goals:

1) Continue Reading in PC Resource Room 6 Mos;

as measured by the PIAT

STOs [9 listed]

Improve spelling skills by 6 months

as measured by the PIAT

STOs [15 listed]

Improve handwriting skills
as measured by the classroom teacher and resource room tchr.
STOs [8 listed]

Improve ability to behave appropriately in structured and
unstructured situations
as measured by regular and resource teacher
STOs [9 listed]

2) Continue Language Development Program 6 mos

1 & 2 as measured by observation, diagnostic tests, standardized tests
(where illegible)

STOs continue from last year

Dates accomplished listed, or if not, continuation noted

Increase self-control in group situations (50%) based on [unclear]

STO: Relaxation and counseling to reduce conflict situations and
improve ability to self regulate behavior

Criteria/Procedure: Teacher observations and reports and self
reports

Date accomplished listed

Increase social awareness; decrease verbal and physical aggressiveness
(50%)

Date accomplished listed.

- c. Complainants' allegation: The IEP date 10/20/87 does not include objective criteria or goals.

Records from the District and BOCS indicate the following:

10/20/87 Annual Review

Participants: two staff members plus Mr. [parent]

- d. Complainants' allegation: The IEP dated 5/20/88 is the only IEP developed for [student] that includes both measurable goals and a recommendation for an objective measure to monitor progress, the PIAT; it was not administered. No STOs.

Records from the District and BOCS indicate the following:

5/20/88 Review

Participants: Five staff members, parents, child

Progress: Above expectation

Any Changes in Annual Measurable Goals:

1) Develop coherent and sequential story telling abilities based on writing
samples and teacher observation

STOs: [11 listed]

Criteria/Procedure: [5 listed]

2) Improve spelling skills by 6 months as measured by PIAT

STOs: [11 listed]

Criteria/Procedure: [5 listed]

3) Improve writing skills as measured by work samples and observation

STOs: [5 listed]

Criteria/Procedure: [2 listed]

4) Reading skill improved by 6 months as measured by PIAT

(improve phrasing for reading)
STOs: [11 listed]
Criteria/Procedure: [6 listed]
5) Monitor behavior as needed
STOs: [2 listed]

- e. Complainants' allegation: The IEP dated 5/15/89 includes no objective criteria for measuring [student]'s progress. Insufficient STOs.

Records from the District and BOCS indicate the following:

5/15/89 Triennial review

Participants: psych, spec ed dir, bld adm, 3 others, parents

Annual Measurable Goals (prioritized and clustered needs):

1) improve linguistic form in oral language to average level—measured by CELF

STOs: [2 listed with procedure]

2) improve reading spelling, and written language – teacher made curriculum referenced test. 1 years growth – strong third grade.. as measured by the Woodcock-Johnson

STOs: [6 listed with criteria and procedure]

Behavioral STOs:

1) Reduced conflict situations 50% - 2 reports, accomplished

2) Decreased aggressiveness 50% - 2 reports, accomplished

- f. Complainants' allegations. The IEP dated (not readable) 26, 1990, includes no measurable goals or objective criteria for measuring progress.

Records from the District and BOCS indicate the following:

1/26/90 Review

Participants: Two plus parents

Progress: Above expectation

Record Any Changes in Annual Measurable Goals:

1) Breaking work down into small segments

STOs: [1 listed with criteria and procedure]

2) Improving wiring and spelling skills as measured by observation and work samples

STOs: [3 listed with procedures]

3) Reading continue present program from previous review.

STOs: [5 listed with criteria at 80% accuracy]

- g. Complainants' allegations: The IEP dated 5/7/90 does not include objective criteria for measuring [student]'s progress. No STOs.

Records from the District and BOCS indicate the following:

5/7/90 Review

Participants: Five plus parents

Progress: Significantly Above Expectation –social, emotional

At expectation – Academic

Record Any Changes in Annual Measurable Goals:

Same Goals

- 1) Improve reading skills 4 months. Curriculum based assessment and diagnostic testing
- 2) Improve written language skills 3 months – complete sentences with major parts of speech (subj, pred, adj, adv) as measured by teacher checklist
STOs: [8 listed with criteria and procedure]
- 3) Improve linguistic skills – will plan and express himself in concise answers in class –observation and clinical judgment.
STOs: [8 listed with procedures]
- 4) Improve social communication skills in (intelligible) format—teacher observation –checklist of outbursts
STOs: [8 listed with procedures]

- h. Complainants' allegations: The IEP dated 2/5/91, an interim IEP, does not list any goals, does not include either measurable goals or objective criteria for measuring [student]'s progress

Records from the District and BOCS indicate the following:

2/5/91 Parent initiated Review

Participants: Four plus parents

Progress: At expectation

Record Any Changes in Annual Measurable Goals:

Purpose of meeting was clarification on 80% content/compensatory skills vs. reading instruction 20%. Team and parents will continue to explore progress and treatment strategies for [student]'s continued success. We would like to help [student] begin to discuss how he feels about himself and school.

[Student] will demonstrated improvement in language processing skills as measured by student and teacher observations/judgment and successful completion of tasks in communication class

STOs: [5 listed]

Criteria: 80% success on daily tasks

[Student] will demonstrate improvement in interpersonal, communication and discourse skills, as measured by parent teacher and student observation/judgment, checklists and participation in communication class dialogue.

STOs: [2 listed]

Criteria/Procedure: teacher and student observation and judgment, pragmatic checklists, participation in communication class dialogue.

- i. Complainants' allegations: The IEP dated May 20, 1991 contains no current, objective goals, but instead references the prior IEP.. it does not include any objective criteria for measuring [student]'s progress.

Records from the Dsistrict and BOCS indicate the following:

5/20/91 Annual Review

Record Any Changes in Annual Measurable Goals:

- 1) Develop problem solving skills as they arise (situations) in resource. [Student] would continue to work with resource and regular ed teacher in using verbal skills effectively in social interaction and problem solving as situations arise.
- 2) Speech objectives accomplished; dismiss from SL program
- 3) Continue reading and written language goals.

7. A memo dated 10/11/89, from CDE's Director of Special Education to all local Directors of Special Education indicates the following procedures to be utilized in the writing of annual goals and short term objectives: Until September, 1990, annual measurable goals were to be written at the staffing/IEP meetings prior to serving the student; then STOs could be written with 20 school days after serving the student (or at the meeting). From 9/90 to 9/91, this same process could take place with the addition of writing at least one STO under each goal at the meeting prior to serving the child; and additional objectives could be written within 20 school days, providing parents are notified/invited. After 9/91, both goals and STOs must be written at the meeting. These procedures were approved by the U.S. Office of Education, Office of Special Education Programs.
8. An onsite visitation conducted by CDE at the BOCS on May 10-12, 1994, at which time records of IEP for the previous 5 years were reviewed, found the BOCS to be in full compliance. An onsite checklist indicated that the BOCS did prioritize and cluster identified needs into annual goals including short term instructional objectives which have appropriate objective criteria and evaluation procedures.
9. The law is clear in that school must provide special education and related services to a child with a disability in accordance with and IEP; however, the Act does not require that any school, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives. An "appropriate" education is one that is commensurate with the IEP which was reasonably calculated to enable a student to receive educational benefit. The Act does not require maximizing a child's potential.
10. The District and BOCS, in their response to this complaint, state the following:
 - a. [Student]'s IEPs comply with the IDEA's procedural requirements. Each of the IEPs adequately complies with the requirements. Although some of [student]'s IEPs contain more general criteria than others, none are so defective so as to fail to provide [student] with explicit or implicit criteria for evaluating general progress toward achieving goals. While on occasion, a specific test may not have been administered as scheduled, regular assessments were administered to measure progress; progress was noted and many meetings were held with the parents to discuss progress.
 - b. [Student]'s IEPs were reasonably calculated to enable him to receive educational benefit. During the time [student] attended school within the District and BOCS, he received passing grades and progressed from grade to grade [Note: records substantiated this.] His IEPs indicated improvement and progress.

c. The District and BOCS are currently in compliance with applicable state and federal law. The most recent audit of the BOCS, in 1996-97 showed that all of the School District's procedures and IEPs comply with the requirements of the law.

III. DISCUSSION

1. It is obvious that the District's/BOCS' and the complainants' perceptions of whether or not annual goals and short term objectives were adequately written, are quite disparate. For that reason, this complaints investigator must rely on documentation found in the official school record of [student], in BOCS records and in CDE records.
2. A review of records indicates that Annual Measurable Goals, Short Term Objectives, Objective Criteria and Evaluation Procedures and Schedules were adequately developed according to the procedures required by the IDEA as interpreted by CDE and the U.S. Office of Education. Although there may have been a few technical deviations from these procedural requirements, the specificity with which these goals and objectives were written was more than adequate. Examples are:
 - a. The complainants allege the 4/7/86 IEP included no specific goals, no objective criteria for measurement and no STOs. Records, however, indicate 5 goals, objective criteria such as "at 2nd grade level" and "90% accuracy", and 25 STOs.
 - b. The complainants allege the 3/30/87 IEP included no objective measures and no STOs. Records, however, indicate such measurements as "6 months as measured by the PIAT, and 42 STOs.
 - c. The complainants allege the 10/20/87 IEP included no goals. Records, however, indicate this IEP was held to make some changes from the 3/30/87 IEP, however, goals and objectives remained the same.
 - d. The complainants allege the 5/20/88 IEP had no STOs. Records indicate at least 40 STOs were developed.
 - e. The complainants allege the 5/15/89 IEP included to objective criteria, however, record indicate "to average level as measured by the CELF" and "1 year's growth as measured by the Woodcock-Johnson."Similar allegations were made for four additional IEPs, however, records indicate the allegations are not justified.
3. Goals and objectives were evaluated, dates of accomplishment were noted, and [student] did progress, according to records. The few technical deviations from procedural requirements do not amount to a denial of an appropriate education.

IV. CONCLUSIONS

The Southwest Board of Services ("BOCS") and the San Miguel R-1 (Telluride) School District ("the District") **have not violated** the provisions of the Individuals with Disabilities Education Act, 20 U.S.C. 1401 et seq. ("the Act"), by failing to provide [student] with a free appropriate public education ("FAPE") as a result of failing to develop IEPs for [student]

from 9/87 through 5/91 which contained annual goals and short term instructional objectives with objective criteria and evaluation procedures and schedules.

V. REMEDIAL ACTION

None.

Dated this _____ day of December, 1998

Carol Amon, Federal Complaints Investigator