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

Federal Complaint 99:542

(Jefferson County Schools)

Decision

INTRODUCTION

This Complaint was dated November 22, 1999, and received by the Federal Complaints Officer on November 24, 1999. The school's initial response was dated December 16, 1999, and received by the Federal Complaints Officer on December 20, 1999. The complainant subsequently filed a response to the school's initial response, dated January 11, 2000, and received by the Federal Complaints Officer on January 13, 2000. The school responded to this response, dated January 31, 2000, and received by the Federal Complaints Officer on February 3, 2000. The complainant subsequently responded again, dated February 9, 2000, and received by the Federal Complaints Officer on February 11, 2000. The Federal Complaints Officer then closed the record.

COMPLAINANT'S ALLEGATION

The complainant alleges that the school is denying the complainant's son a free appropriate public education, because the school is requiring the complainant to pay for non-medical day treatment, which is a required part of complainant's son's Individualized Educational Program (IEP) placement. The complainant cites 34 CFR 300.302, 300.142(b)(1), 300.142(b)(2), and 300.142(c)(3)(d) of the Individuals with Disabilities Education Act (IDEA) regulations, as specific law which is being violated by the school. Most specifically, the complainant quotes 34 CFR 300.302 as meaning that a free appropriate public education provided in a public or private residential program requires that "…the program, including non-medical care and room and board, must be at no cost to the parents of the child." Id. And also 34 CFR 300.142(b)(2) as requiring that – "If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or state agency responsible for developing the child's IEP) shall provide or pay for these services to the child in a timely manner." Id.

SCHOOL'S RESPONSE

The school argues that the school is not required to pay for day treatment for complainant's son because these services are not required by complainant's son's IEP. The school also cites the Public School Finance Act of 1994, C.R.S. §22-54-101 et seq., as authority that the school is only obligated to pay excess costs for any special education and related services that complainant's son does receive, even if those services include non-medical day treatment which, the school argues, is not the case here.

FINDINGS AND DISCUSSION

The school is obligated to pay for the complainant's son's non-medical day treatment services. (The school has not disputed the complainant's claim that none of the service providers is a licensed physician. If services are not provided by a licensed physician, they're not medical services, for purposes of special education. See Cedar Rapids Community School District v. Garret F., 526 U.S. 66, 119 S.Ct. 992 (1999). Even if they were, it is not clear that the result would be different in this case.) Since the complainant and her son have no choice but to participate in the non-medical day treatment services, as a part of the IEP placement, the school is required, as argued by the complainant, to pay for these services if no other agency does. The Federal Complaints Officer concludes that non-medical day treatment services are services required by the IEP, whether or not expressly defined as special education or related services, because in order to get special education and related services, however defined, the complainant's son must participate in the non-medical day treatment program. Participation in the non-medical day treatment program is, in effect, the price of admission for complainant's son to receive IEP required services, whether or not these services include day treatment program services that could, if determined to be educationally appropriate, otherwise be excluded if they were not mandatory. Since the day treatment services are mandatory, no such determination of whether such exclusion would be educationally appropriate can be made, and the Federal Complaints Officer finds the argument persuasive that the day treatment services in this case are within the definition of related services as defined by 34 CFR 300.24. The price of admission in this case for the complainant's son to receive IEP required services is forty-five (45) dollars per month, and it is a price the complainant is not obligated to pay.

Since the day treatment services are mandatory they are de facto, if not expressly, a part of the special education and related services the school is required to provide. To conclude otherwise would mean that complainant's son's entitlement to a free appropriate public education (FAPE), could only be obtained if, in this case, the complainant paid forty-five (45) dollars a month. That's not free, and it is a violation of 34 CFR 300.142, as cited by the complainant, and therefore of 34 CFR 300.13(a). The Colorado Public School Finance Act of 1994, as cited by the school, does not allow the school to violate IDEA. Also, while day treatment is not exactly the same as residential care, since, obviously, with the latter, the student resides where s/he is placed, the Federal Complaints Officer agrees with the complainant in that he can see no reason why the requirements on the school for service provision should be any less for day treatment than a residential placement, and thus the Federal Complaints Officer finds the complainant's reliance on 34 CFR 300.302 persuasive.

The school became legally obligated to pay for the non-medical day treatment received by complainant's son, if no other legally acceptable payor was paying, when it accepted the IEP placement for complainant's son, and it will continue to be legally obligated for so long as the current placement circumstances continue to exist for complainant's son. As stated by the complainant – "…(T)he district's claim that 'No district representative was at the meeting at which this placement was determined' is specious. The failure of the district representative to make appropriate documentation of the individuals present or the actions taken does not give rise to a presumption that she was not in attendance. Even if a district representative was not present, the district scheduled the meeting and sent out notices, its failure to attend its own meeting does not absolve the district from responsibilities it incurred as a result of its own interagency staffing." In any case, the school has indicated that it accepts this placement as appropriate for complainant's son, even though it disputes that it initially participated in it, as stated in its response dated January 31 – "The school does not disagree with the placement

recommended by the other public and private agencies, of (complainant's son) at Cleo Wallace Day Treatment Center, as indicated by its participation in the IEP team meetings…" which were held subsequent to the initial placement decision. If the school wishes to argue that complainant's son is not appropriately placed, its option, as stated by the complainant, is to request a due process hearing and seek another placement, if agreement cannot otherwise be reached with the complainant.

REMEDY

The school will reimburse the complainant for all payments the complainant has made for non-medical day treatment for her son. The school will pay for all future non-medical day treatment costs, which the complainant is obligated to pay, and for which no other legally acceptable payor pays, in accordance with complainant's son's IEP required placement. The school has thirty (30) days from the date of its receipt of this Decision, the appeal time, to comply with this order. A copy of the appeal procedure is attached to this Decision.

Dated today, March _____, 2000.

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Charles M. Masner, Esq.
Federal Complaints Officer