

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

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**State Level Complaint 2008:504**

Denver Public Schools

**Decision**

**INTRODUCTION**

This Complaint dated February 27, 2008, was filed by Student’s parent (hereafter, the “Complainant”) and was received in the office of the State Complaints Officer on February 28, 2008. The Complaint was transmitted by certified mail to Denver Public Schools (hereafter, the “District”) on March 6, 2008, and receipt thereof was acknowledged by the District on March 10, 2008. The transmittal also designated those issues to be investigated subject to the authority of the state complaint process.<sup>1</sup> The response of the District, with attachments, was timely received on March 17, 2008.

Complainant initiated a due process request on March 18, 2008. That request sought relief for alleged denial of access to Student’s progress reports—a claim identical to Issue No. 5 of the Complaint herein. On March 27, 2008, the State Complaints Officer transmitted the District’s response to Complainant and advised that determination of Issue No. 5 had been superseded by the filing of the due process request pursuant to 34 C.F.R. §300.152.

Complainant’s reply, with attachments, was received on April 14, 2008. The record was closed in this matter on April 14, 2008.

**ISSUES**

Whether a meeting held on January 8, 2008 was properly noticed as an IEP meeting; and whether the district provided adequate notice of a manifestation determination conducted on February 27, 2008.

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<sup>1</sup> The Complaint also alleged that Student’s educational program failed to meet the substantive requirements of a free appropriate public education. The State Complaints Officer advised Complainant in a letter dated March 6, 2008, that such issues are beyond the scope of a state-level complaint and must be raised by a due process request.

## **CONTENTIONS OF THE PARTIES**

The Complainant alleges that a meeting scheduled for January 8, 2008, was described to her as a “transition meeting” and not an Individualized Education Program (“IEP”) team meeting. She maintains that she did not receive proper notice of an IEP meeting.<sup>2</sup> Additionally, Complainant states that the District failed to provide adequate notice to her of a manifestation determination meeting scheduled for February 27, 2008.

The District contends that the notice provided to Complainant in advance of the January 8, 2008 meeting was sufficient and compliant with federal and state law. With respect to the meeting on February 27, 2008, the District maintains that it was not convened as a manifestation determination and therefore is not subject to the notice requirements cited in the Complaint.

## **FINDINGS OF FACT**

1. Student is a [AGE] male residing within the boundaries of the District and eligible for special education with a diagnosis of [DISABILITY].
2. Student recently moved to the Denver area and has attended [GRADE] at a middle school in the District since early January, 2008.
3. Prior to his enrollment, Complainant and District personnel met to discuss the provisions of Student’s IEP. These meetings occurred on November 19, 2007, December 4, 2007, and December 7, 2007.
4. Prior to January 3, 2008, Complainant received notice of a meeting at the District on January 8, 2008 for the purpose of planning for Student’s ‘transition.’ Since Student is not at the age where post-secondary transition planning is appropriate<sup>3</sup> ‘transition’ in this context is determined to refer to Student’s transition from his prior placement.
5. On January 3, 2008, Complainant requested clarification of the scope of the January 8 meeting via e-mail directed to Angela Pegues Guillory at the District. A primary purpose behind Complainant’s request was to learn whether she should have her attorney present at the meeting.

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<sup>2</sup> In Complainant’s reply she raises for the first time the issue of required participation of IEP team members on January 8, 2008. This was not stated in the Complaint and the District had no opportunity to respond to this allegation. Accordingly, as this was not an issue identified at the time the Complaint was accepted and transmitted to the District, it will not be determined here.

<sup>3</sup> ECEA Rule 2220-R-4.03(6)(d)(i)

6. On January 4, 2008, Ms. Pegues Guillory responded via e-mail, explaining that “[t]he only thing that needs to happen at this transition IEP meeting is finish or confirm the IEP that was started on December 7... the LRE page of that particular IEP should reflect the setting at Grant... Paula will be at the meeting... just to help finalize the IEP.” This communication adequately described the scope of the subject meeting.

7. On January 4, 2008, Complainant acknowledged the District response and that it helped her to decide whether the need existed for her attorney to attend the meeting.

8. Complainant participated as part of Student’s IEP team in the meeting on January 8, 2008. Complainant appended a handwritten comment to the participants’ signature page to the effect that “this is a transition meeting rather than an ‘annual’ IEP meeting.”<sup>4</sup>

9. Also on February 8, 2008, Complainant requested a further IEP meeting for February 21, 2008. On February 20, 2008, Complainant advised the District that she was unavailable for the meeting the next day. As a result, Student’s IEP team meeting was rescheduled for February 27, 2008, at 3:00 p.m.

10. On February 25, 2008, Student was involved in an incident at school. As a consequence he was dismissed early that day and suspended for three days from February 26, through February 28, 2008. This was his first suspension since his enrollment.

11. As a meeting was already scheduled for February 27, 2008, the District intended to add to the agenda for the meeting the subject of Student’s reinstatement following suspension. The District provided Complainant with a “notification letter” to that effect on February 25, 2008, when she picked Student up from school.

12. At no time did the District give notice of, or conduct, a manifestation determination in connection with Student’s February 26 suspension.

13. On February 27, 2008, Complainant informed the District that she intended to attend the meeting that afternoon, but also indicated that she might be late due to other commitments. Both parties attempted to reach each other after the appointed time for the meeting, but none was successful. As a result, the IEP review and suspension reinstatement meetings were rescheduled for February 28, 2008.

### **CONCLUSIONS OF LAW**

Meaningful participation of parents is essential to the success of the IEP process and special education as a whole. 34 C.F.R. §300.501(b). In enacting the Individuals with Disabilities Education Act, Congress stated its specific intent to strengthen the role and

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<sup>4</sup> The signature page for the meeting participants bears the typewritten date December, 7, 2008. However, Complainant established that her handwritten comment was added on January 8, 2008.

responsibility of parents to ensure such meaningful participation. 20 U.S.C. §1400(c)(5)(B). One aspect of meaningful participation is adequate notice of an IEP team meeting and flexibility in the scheduling and agenda creation for such meetings. 34 C.F.R. §300.322(a) and 2220-R-4.02(5)(a). Parents are full-fledged IEP team members and when resolving agenda items, IEP teams must consider parent input. 2220-R-4.02(6)(a).

In this case, the District convened a number of IEP meetings, including Complainant as a team member, prior to Student's enrollment. (FF No.s 3 and 8) The topic of these meetings was the 'transition' of Student from his prior placement. (FF No. 4) Complainant had notice of the January 8, 2008, meeting prior to January 3, 2008. (FF No. 4) On January 4, 2008, in response to Complainant's request, the scope of the meeting was clarified in that components of Student's IEP would be addressed and 'finalized.' (FF No.s 5 and 6) Complainant was satisfied with the clarification and actually attended the meeting. (FF No.s 7 and 8) There is no indication in the record that Complainant was surprised or unprepared for what occurred during the meeting on January 8, 2008. Her e-mail correspondence to the District of that same day makes no mention of any impropriety in the notice or scheduling of the meeting. Nor is Complainant's notation that this was a 'transition' rather than an 'annual IEP' meeting material here. While it is true that "meetings to review or revise each child's IEP and to determine the child's placement shall be initiated and conducted at least once every 365 days" (2220-R-4.03(3)), there is no limitation on having other meetings as dictated by the needs of the Student. Federal regulations prescribe that IEP's be reviewed "periodically, but not less than annually" and revised as appropriate. 34 C.F.R. §300.324(b). Here, Student's IEP required review and revision because of his 'transition' into the District. No special notice was required beyond that specified for any meeting was necessary here. Student's parent was notified early enough to permit her an opportunity to attend, and the meeting was scheduled at a mutually agreed time and place. Accordingly, notice of the January 8, 2008 meeting was adequate and compliant with federal and state law.

With respect to the second issue, it is the finding of the State Complaints Officer that the District did not notice or convene a manifestation determination hearing. (FF No. 12) The February 26, 2008 suspension was Student's first since his enrollment and totaled three days. (FF No. 10) The suspension did not meet the definition of a change of placement pursuant to 34 C.F.R. §300.536 and therefore no manifestation determination was required by 34 C.F.R. §300.530(e). Thus, Complainant has not established that the District failed to provide adequate notice of a manifestation determination. Moreover, the record demonstrates that the District, in fact, attempted to accommodate Complainant's schedule by setting the reinstatement meeting on the same date and time it knew Complainant was available (February 27, 2008) and re-scheduling the meeting as dictated by circumstances to February 28, 2008. (FF No.s 11 and 13) Any further delay would have defeated the purpose of the meeting given that Student was slated to return to school the following day. The actions of the District here do not support a finding of noncompliance.

**REMEDY**

Complainant did not establish that the District failed to comply with federal and state special education law with respect to the two issues raised by the Complaint. Accordingly, no remedy is appropriate here.

**CONCLUSION**

This Decision shall become final as dated by the signature of the State Complaints Officer.

Dated this 25<sup>th</sup> day of April, 2008.

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Keith J. Kirchubel  
State Complaints Officer