

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

Federal Complaint 2000:523
(Santa Fe Trail BOCES)

Decision

INTRODUCTION

This Complaint was dated May 26, 2000, and received by the Federal Complaints Officer on May 31. The school submitted a written response to the Complaint, dated June 13, 2000, and received by the Federal Complaints Officer on June 20. The complainant submitted a written response to the school's response, dated June 29, 2000, and received by the Federal Complaints Officer on July 6. The Federal Complaints Officer then closed the record.

COMPLAINANT'S ALLEGATIONS

- That, as summarized by the Federal Complaints Officer, on two occasions the school inappropriately denied the complainant a copy of an evaluation report done for her son.
- That, as summarized by the Federal Complaints Officer, complainant's son did not receive a free appropriate public education (FAPE), during the spring 2000 school semester.

SCHOOL'S RESPONSES

- That, as summarized by the Federal Complaints Officer, the school did not inappropriately deny the complainant a copy of an evaluation report done for her son.
- That, as summarized by the Federal Complaints Officer, the school has not denied complainant's son FAPE.

FINDINGS, DISCUSSION, CONCLUSIONS

Records

It is undisputed that an evaluation of complainant's son was completed by a professional not employed by the school. It is undisputed that a copy of this evaluation report was requested by the complainant, from the school, on December 17, 1999. The complainant states that some person, or persons, at the school, denied, on December 17, 1999, her telephone request for a copy of this evaluation report to be faxed to a counselor who was working with her and her son. The complainant did not identify who at the school denied her request. The school's Special

Education Director states that, after receiving a telephone call from the complainant on December 17, she attempted to contact school personnel to follow up on the complainant's request for a copy of the evaluation report. She states that she could not reach who she needed to reach because it was the last day of school before the Christmas holiday. She states that she left a message for the counselor, as instructed by the complainant, to call her if he did not receive a copy of the report. She states the counselor never called her. She states that complainant's son's high school Principal had no idea who would have told the complainant she had no right to the requested report.

Neither the complainant nor the school state exactly when the complainant got a copy of the requested evaluation report. However, the complainant did indicate in her Complaint letter that she was aware of the evaluator's recommendation of a day treatment placement for her son, prior to her first scheduled appointment at the day treatment center, which she states she missed for health reasons. This missed appointment took place sometime prior to February 21, 2000. On February 21, 2000, the complainant, and her husband, and their son, went to the day treatment center without an appointment. The complainant states that she tried to schedule an appointment but no one would return her call. It is undisputed that the complainant's son began the day treatment placement on May 2, 2000. On either May 2, or 3 (the school says May 2, the complainant says May 3), the complainant's son was removed from the day treatment placement due to a behavior problem. It is undisputed that on May 9, the complainant requested another copy of the previously requested evaluation report, indicating she couldn't find her own copy. The school states a copy of this evaluation report was therefore faxed to the special education teacher that same day. It is undisputed that someone other than the complainant attempted to pick up this copy of the evaluation report and was denied. The complainant states she gave oral permission to the school for this release. The school states that since the complainant had not given her written permission for this release, release was not given.

Based upon the necessary information available to him the Federal Complaints Officer does not find that the school inappropriately denied the complainant a copy of the evaluation report she requested. Whatever the miscommunications may or may not have been at the time of complainant's initial request for a copy of the evaluation report, the Federal Complaints Officer finds that she did receive a copy of the evaluation report, and that her son's educational programming was not prejudiced by delay, if there was any, in her receipt of a copy of the evaluation report. The complainant's second request of May 9, 2000, to release the copy of the evaluation report to a third party, was a request the school was not bound to honor since the complainant had not provided written permission for the release.

FAPE

The second issue is whether the complainant's son was denied FAPE. Regardless of the reason, it appears that the complainant's son has received no educational services during the spring 2000 school semester, except for his one or two day appearance at the day treatment center on May 2/3, 2000. The school's response to the Federal Complaints Officer as to why this occurred appears to be because of lack of follow through and cooperation by the complainant. The complainant indicates problems beyond her control, and a lack of sufficient cooperation from the school. In any case, no educational services were provided, pending a resolution of the day treatment placement. Nor were any educational services provided after the day treatment placement ended, for the remainder of the spring 2000 school semester. The

incident at the day treatment center on May 2 or 3, whatever it was, which resulted in complainant's son's removal from the day treatment placement, did not release the school from its obligation to provide educational services to complainant's son, unless an arrest was made and he entered the custody of law enforcement.

The complainant's son did not receive FAPE during the spring, 2000 school semester, as required by the Individuals with Disabilities Education Act (IDEA) statute and regulations. See 34 CFR 300.13.

REMEDY

The school shall convene an IEP meeting, no later than the beginning of the fall semester, 2000, to determine what compensatory education is appropriate, if any, to compensate complainant's son for the FAPE he did not receive during the spring, 2000 school semester. If either the parent or the school is not satisfied with the outcome of this IEP meeting, they may request a due process hearing in order to resolve the issue. Also, the Federal Complaints Officer will assign a mediator to assist the school, the parent, and other necessary IEP participants, in this process, if the school and the parent both wish the participation of a mediator.

This Decision shall become final as dated by the signature of the Federal Complaints Officer. A copy of the appeal procedure is attached to this Decision.

Dated today, July _____, 2000.

Charles M. Masner, Esq.
Federal Complaints Officer