

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

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**Federal Complaint 2000:531**  
(Denver Public Schools)

**Decision**

**INTRODUCTION**

This Complaint was dated September 6, 2000, and received by the Federal Complaints Officer on September 7. The school's response was dated September 25, 2000, and received by the Federal Complaints Officer on September 26. The complainant's response was dated and received October 13, 2000. The Federal Complaints Officer then closed the record.

**COMPLAINANT'S ALLEGATIONS**

The complainant alleges the following violations by the school with regard to complainant's daughter:

- 34 CFR 300.13 – FAPE
- 34 CFR 300.320(b)(2) - INITIAL EVALUATIONS
- 34 CFR 300.346 – DEVELOPMENT, REVIEW, AND REVISION OF IEP, including 34 CFR 300.346(2)(i)
- 34 CFR 300.347(2)(i)(ii) – CONTENT OF IEP

**SCHOOL'S RESPONSE**

The school denies all allegations.

**FINDINGS AND DISCUSSION**

**34 CFR 300.320(b)(2) – INITIAL EVALUATIONS**

The Federal Complaints Officer finds insufficient evidence to demonstrate that the school has violated these provisions with regard to complainant's daughter.

The complainant contends that the school did not appropriately consider certain evaluation results and recommendations and did not perform a neuropsychological evaluation. The school has submitted a credible response as to how it did consider evaluation results and recommendations. The school has also submitted a credible response explaining that a

neuropsychological evaluation was never specifically recommended. If the complainant wishes to further challenge the credibility of the school's responses, she is entitled to request a due process hearing. In such a proceeding, school representatives can be required to testify under oath, including being cross-examined.

### **34 CFR 300.346, including section (2)(i) – DEVELOPMENT, REVIEW, AND REVISION OF IEP**

The Federal Complaints Officer finds insufficient evidence to demonstrate that the school has violated these provisions with regard to complainant's daughter.

The complainant contends that her daughter's behavior plan was not modified in February 2000 (from February 1999), and that it should have been modified. The school responds that it was not modified because it continued to be appropriate. The Federal Complaints Officer is not in a position to judge whether the complainant's daughter's behavior plan needed to be modified or not. This is a judgment made by the IEP team. The Federal Complaints Officer does not find evidence sufficient for him to conclude that the process by which that judgment was reached was flawed in any way that made the process invalid. If the complainant disagrees with the result – the judgment that was made that her daughter's behavior plan did not need to be modified – she has a right to challenge that judgment by requesting a due process hearing.

### **34 CFR 300.347(2)(i)(ii) – CONTENT OF IEP**

The Federal Complaints Officer finds insufficient evidence to demonstrate that the school has violated these provisions with regard to complainant's daughter.

The complainant contends that goals and objectives were not appropriately changed from the February 1999 IEP to the February 2000 IEP, and that her daughter's cognitive needs, attention span, and short-term memory problems were not addressed on the IEP. It is up to the IEP team to determine what the appropriate IEP goals and objectives should be, based upon an assessment of the student's needs. If the complainant believes that appropriate goals and objectives were not developed to meet the assessed needs of her daughter, she is entitled to a due process hearing to challenge the determination of the IEP team. The Federal Complaints Officer finds insufficient evidence to demonstrate that the process by which the IEP team reached its decisions about what the content of the complainant's daughter's IEP should be was flawed in any way sufficient to warrant a finding of a violation by the school.

### **34 CFR 300.13 - FAPE**

The Federal Complaints Officer finds insufficient evidence to demonstrate that the school has denied complainant's daughter a free appropriate public education (FAPE).

The Federal Complaints Officer, having found no other specific violations of IDEA by the school with regard to complainant's daughter, also has no basis to find that the school has denied complainant's daughter FAPE. If the complainant wishes to further claim that the school has denied her daughter FAPE, she is entitled to request a due process hearing to do so.

The complainant raised serious concerns in her Complaint, and the Federal Complaints Officer discounts none of those concerns. However, the Federal Complaint process, as presently constructed, is not designed to resolve competing views about complex issues about what should be appropriate educational services for a student. The crux of the difference between the complainant and the school is summarized by a sentence in the complainant's original Complaint letter – “The needs developed by MSVH (Mount Saint Vincent Home) addresses (complainant's daughter's) needs more appropriately and addresses all of her disability related needs.” Thus, the first remedy the complainant seeks is \_ “An appropriate IEP and behavior plan that will include input from (a) family and behavior specialist.” The Federal Complaints Officer is not in a position to determine what the needs of this student are, and thus what would be an appropriate IEP to meet those needs. This is the job of the IEP team. If the IEP team does not reach consensus, mediation or a due process hearing can be employed to reach a conclusion about the appropriate educational program for this student. If the process in constructing an IEP is sufficiently flawed, or if an IEP is not appropriately implemented, the Federal Complaint process can be invoked to correct the process or require implementation of services. The Federal Complaints Officer has found insufficient evidence to find that either of these types of violations occurred here.

In the complainant's response to the school's response to her Complaint, she raises new issues. The school was not provided an opportunity to respond to these new issues. Whether having complainant's daughter attend school half days, instead of full days, was an appropriate implementation of complainant's daughter's IEP is an issue for which the complainant is entitled to file another Complaint if she so desires. The dispute over the outside behavioral specialist's participation in service delivery is not an issue the Federal Complaint process is designed to resolve, regardless of whose version of the specialist's participation, the complainant's or the school's, is accurate. Schools are allowed to determine who are the qualified personnel that will be the service providers. The allegation by the complainant that her signature was forged on a permission for initial evaluation form is, obviously, a serious allegation. Such an allegation should not be made lightly. The Federal Complaints Officer does not believe it would be an appropriate exercise of his responsibility to engage in an investigation of such an allegation. There are ways to determine the authenticity of signatures, and other legal recourses the complainant can pursue, if she wants to establish that her signature was forged. Should she be able to establish that a forgery took place, that would be evidence with which to demonstrate a violation of special education law subject to the Federal Complaint process.

One area of agreement between the complainant and the school is that complainant's daughter has serious behavioral and emotional problems which require special education services. According to the complainant's response to the school's response to her Complaint, she is now satisfied with the educational services her daughter is receiving at a new attendance center, which is located within the same school system against which she filed this Complaint. If, as the complainant also states, she believes her daughter was denied a free appropriate public education (FAPE) while attending the previous attendance center, she is entitled to request a due process hearing and seek any compensatory education for her daughter which she believes appropriate. A copy of this Decision is also given to the CDE Regional Liaisons for the metro region, and is made available for consideration as a part of the compliance monitoring process. The Federal Complaints Officer, for the reasons he has stated, has not found that the complainant's Federal Complaint established a denial of FAPE.

**CONCLUSION**

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

Dated today, November \_\_\_\_\_, 2000.

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Charles M. Masner, Esq.  
Federal Complaints Officer