

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

Federal Complaint 2000:542
Douglas County School District RE-1, Castle Rock

Decision

INTRODUCTION

This Complaint letter was dated October 30, 2000, and received by the Federal Complaints Officer on November 1, 2000. The school's response was dated November 16, 2000, and received by the Federal Complaints Officer on November 20, 2000. An additional letter from the school, dated November 27, 2000, was received by the Federal Complaints Officer on November 29, 2000. The school mailed copies of all the information it submitted to the Federal Complaints Officer, to the complainant. The Federal Complaints Officer confirmed by telephone call with the complainant her receipt of copies of the submissions by the school. The Federal Complaints Officer received the complainant's response to the school's response to her Complaint, in correspondence dated and received on December 4, 2000. The Federal Complaints Officer then closed the record.

COMPLAINANT'S ALLEGATIONS

The complainant alleges that her son's January 25, 2000 IEP was not appropriately implemented by the school.

The complainant alleges that a necessary May, 2000 manifestation determination review for her son was not held.

SCHOOL'S RESPONSES

IEP

The school states that on January 25, 2000, which was complainant's son's triennial review, the IEP team determined that complainant's son was no longer eligible for special education services. However, the form to document the determination of ineligibility, form F, was not completed at that time. In addition, the school states that – "Despite the fact that (complainant's son) was no longer eligible for special education services, the Team did not want to change his class assignments since the semester was underway. He continued to attend his special education classes for the remainder of the term and to receive the services called for on the IEP from his case manager until April 17, 2000." School's response at page three (3). Thus, even though, according to the school, complainant's son was no longer eligible for special education services after January 25, 2000, the school states in its response that – "It is the School

District's understanding that the goals and objectives and service accommodations attached to the IEP submitted by (the complainant) had been drafted by (complainant's son's) case manager prior to the meeting and the determination of ineligibility. Regardless, because he continued to receive services in his previously scheduled classes, they were generally followed." School's response at page three (3). Thus, states the school – "...(A)fter being found to no longer be a student with disabilities under the IDEA, (complainant's son) continued to receive services, some until April 17, 2000, and some for the remainder of the school year. In actuality, the School District did more than it was legally required to do for (complainant's son) at that time." School's response at page four (4).

MANIFESTATION DETERMINATION REVIEW

The school states that complainant's son was not a student entitled to the protections of the Individuals with Disabilities Education Act (IDEA), during May, 2000, when the complainant alleges a necessary manifestation determination review was not held. Even if complainant's son had been a special education student during May of 2000, the school states that he would not have been entitled to a manifestation determination review, because he had only been suspended for a total of eight (8) school days, less than the ten (10) which the law allows before a manifestation determination review is required.

FINDINGS AND DISCUSSION

The Federal Complaints Officer has no jurisdiction over allegations of violations of a student's rights under Section 504 of the Rehabilitation Act of 1973. Therefore, the Federal Complaints Officer is not addressing the complainant's allegations of violations of Section 504 with regard to her son. The Office for Civil Rights has jurisdiction over such allegations.

IEP

The Federal Complaints Officer finds insufficient evidence that the school did not appropriately implement complainant's son's IEP of January 25, 2000.

In IEP response item number five (5) of the complainant's response to the school's response to her Complaint, the complainant alleges that her son did not receive Open Lab as required by his January 25, 2000 IEP. This is a specific new allegation that was not raised in the complainant's Complaint letter, and to which the school was not given an opportunity to respond. Moreover, the Federal Complaints Officer reads form H.1A as only stating that complainant's son might access Open Lab as his needs required for up to two (2) hours per week. The Federal Complaints Officer does not find, on the facts of this Complaint, this service provision to mean that if complainant's son was not able to access Open Lab because it was not available to students in the spring of 2000, as the complainant claims was the case, that the complainant's son's IEP was not sufficiently implemented in the spring of 2000. The Federal Complaints Officer understands Open Lab to be a place where students can go to get one on one help if needed. It is not like, for example, speech therapy, or some other specific special education instruction, but more like a related service that is used to support whatever specialized instruction the student is entitled to receive. It is not clear to the Federal Complaints Officer whether complainant's son needed to access Open Lab during the spring of 2000, or not, or whether whatever needs Open Lab was designed to serve for complainant's son were otherwise

met by the school. Even if the Federal Complaints Officer were to find that the school had violated complainant's son's January 25, 2000 IEP by failing to provide him with Open lab, it is unclear what remedy the Federal Complaints Officer could provide, other than citing the school for its failure. If the complainant's son had missed two (2) hours per week of IEP required speech therapy then, potentially, the hours missed could be ordered to be compensated by the school. Since Open Lab is non-specific, it's hard to see how ordering the school to now provide the complainant's son with the hours of it that were missed would be compensatory for complainant's son. Given that the school was not provided an opportunity to respond to this specific allegation, and given the lack of other facts available to the Federal Complaints Officer to make a judgment about this particular service provision in complainant's son's IEP, the Federal Complaints Officer finds no violation by the school. The complainant is not limited to the number of complaints she can file, although, depending upon the circumstances, she might be limited to a one (1) year regulatory statute of limitations requirement. If the complainant wishes to file additional Complaint, within applicable time limits, which provides the specifics the Federal Complaints Officer has found missing, and gives the school an opportunity to respond, she is free to do so.

IEP items one (1) through four (4) of the complainant's response to the school's response to her Complaint, are not IEP implementation issues, but are instead IEP process issues about how complainant's son's January 25, 2000, IEP was created and composed. With perhaps some further clarification, items (1) through (4) do appear to contain some allegations that might be appropriate to address in a Federal Complaint. However, these allegations were not made in the Complaint letter that went to the school, and to which the school was asked to respond. Therefore, the Federal Complaints Officer is not going to consider these allegations as a part of this Complaint. If the complainant wishes to file further Complaint about these allegations, in accordance with the regulatory one (1) year statute of limitations, she is entitled to do so.

IEP item six (6) of the complainant's response to the school's response to her Complaint does not relate to any allegation, as far as the Federal Complaints Officer can tell, of a legal violation that the Federal Complaints Officer is supposed to decide. Rather, it is a statement offered by the complainant as to how she came to believe that her son was in special education during the spring of 2000.

IEP item seven (7) in complainant's response to the school's response to her Complaint states a legitimate concern of the complainant but, as stated by the complainant, it is not a concern the Federal Complaints Officer can address. The school's obligation to conduct a Functional Behavior Assessment (FBA), is certainly triggered after ten (10) days of disciplinary removal, but, as the Federal Complaints Officer understands, this ten (10) day threshold was never reached for complainant's son. It may be, as the complainant states, that, given the school's awareness of what the complainant states were documented concerns about her son's behavior, that an FBA should have been done anyway. However, this is not a judgment, on the facts of this Complaint, that the Federal Complaints Officer is in a position to make. It would require the Federal Complaints Officer to make a retrospective judgment about how an IEP team weighed information presented to it. Assuming that the IEP team receives and considers information that parents, and other appropriate IEP participants, bring to the IEP process, it is up to the IEP team to make judgments about that information. If parents do not agree with the judgment of an IEP team, they are entitled to a due process hearing to seek a different result.

MANIFESTATION DETERMINATION REVIEW

The Federal Complaints Officer finds that, under IDEA, the school was not required to perform a manifestation determination review for complainant's son.

The complainant's son did not experience disciplinary removal for more than ten (10) days, and therefore the requirements for a manifestation determination review were never triggered. Therefore, the Federal Complaints Officer finds no violation by the school.

CONCLUSION

The Federal Complaints Officer has not found it necessary to decide the school's claim that the complainant's son was not legally entitled to special education services during the spring of 2000. On the facts given by the complainant, assuming complainant's son was entitled to special education services during the spring of 2000, the Federal Complaints Officer has found that he received those services. Should the complainant file further Complaint that requires the Federal Complaints Officer to decide the entitlement issue, he will do so.

The Federal Complaints Officer takes seriously the complainant's concerns about her son. However, as the Federal Complaints Officer has done his best to communicate to the complainant, the Federal Complaint process is designed to resolve allegations of certain kinds of violations of relevant special education law in a certain way. Other ways of resolving disputes between parents and schools over special education issues exist, and the process for resolving Section 504 concerns, if such concerns cannot be resolved through local school processes, is within the jurisdiction of the Officer for Civil Rights (OCR). If the complainant needs further explanation about how to address her concerns about her son's special education needs, the Federal Complaints Officer remains willing to do his best to provide that explanation.

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, December _____, 2000.

Charles M. Masner, Esq.
Federal Complaints Officer