

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

Federal Complaint 2002:517

Aurora Public Schools

Decision

INTRODUCTION

This Complaint was filed July 23, 2002. The school district's response was dated and received August 9, 2002. The complainant's response to the school district's response to her Complaint was dated August 18, 2002 and received September 4, 2002. The Federal Complaints Officer then closed the record.

COMPLAINANT'S ALLEGATIONS

The complainant's allegations, as summarized by the Federal Complaints Officer, are:

- As the Federal Complaints Officer interprets the complainant's Complaint, she alleged that, at least since her son was in seventh (7th) grade, he should have been placed in a "day treatment classroom setting" and that the school district has refused to do so.
- The complainant alleged that the school district has predicated "throughout the years" her son's receipt of services on whether or not she can obtain Medicaid services.
- The complainant alleged that while her son was a student at [attendance center] her son was "lock[ed] out of a classroom".
- The complainant alleged that her son's right to confidentiality was violated while her son was a student at [attendance center].
- The complainant alleged that her son's safety was compromised when the school district called the police, instead of contacting his therapist.

SCHOOL DISTRICT'S RESPONSE

The school district denies all allegations and also argues that the Complaint has been untimely filed, in violation of the Individuals with Disabilities Education Act (IDEA) regulations found at 34 CFR 300.662(c). This regulation states:

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with § 300.660(a) unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under § 300.660(a). Id.

FINDINGS AND DISCUSSION

In her response to the school district's response to her Complaint, the complainant states: "[My son] now has proper services, which have brought about wonderful educational growth." Id. at page four (4). Personally identifiable information deleted by the Federal Complaints Officer. And "[My son] currently is doing extremely well." Id. at page six (6). The complainant also states, "I am asking for the school district to reimburse social services for his total placement cost at Alternative Homes for Youth and to the Third Way Program and to any program until [my son] completes his education." Id. at page four (4). Personally identifiable information deleted by the Federal Complaints Officer. And, "I'm asking that [the school district] pay ... social services the total placement cost since he began for [my son] until he graduates from High School. I am working three jobs to meet the demands of Social Services for placement cost. According to the IDEA the total [cost] is yours." Id. at page seven (7). Personally identifiable information deleted by the Federal Complaints Officer. Parenthetical supplied by the Federal Complaint Officer.

The Federal Complaints Officer finds the most fundamental disagreement between the complainant and the school district is whether complainant's son received a free appropriate public education (FAPE) while he was a student attending Aurora Public Schools. The complainant claims that he did not receive FAPE and that she is entitled to compensatory education for the past denial of FAPE, and for costs which she is currently incurring for her son's education.

- 1) The Federal Complaints Officer finds that all allegations made by the complainant, other than her allegation for denial of FAPE and request for compensatory education, are untimely filed according to IDEA regulation 34 CFR 300.662(c), and therefore the Federal Complaints Officer enters no findings on these allegations. In so finding, the Federal Complaints Officer also finds that the complainant's claim that any filing deadline should not be held against her because the Federal Complaints Officer did not respond to a previous Complaint filing, and that she was not aware of any filing deadline, to be without merit. The Federal Complaints Officer did respond to the complainant's previous Complaint filing, as documented by a copy of his letter to the complainant, dated July 27, 2001, which he makes a part of the record in this Complaint. The complainant did not pursue her Complaint. Nor, to the best of the Federal Complaints Officer's knowledge, did she pursue mediation or her right to a due process hearing. All of these rights were

explained to the complainant by the Federal Complaints Officer either in the text of his letter of July 27, 2001, or in the enclosures sent with that letter, which also referenced the same information on the Colorado Department of Education (CDE) web site. The Federal Complaints Officer and the complainant did speak by telephone on August 8, 2001, during which the Federal Complaints Officer restated to the complainant that the Federal Complaint process could not resolve her placement dispute with the district, and that her Complaint could only go forward with that limitation. The Federal Complaints Officer also got the complainant's agreement to have the director of special education, or the deputy director of special education, contact the complainant, and if that resolved the complainant's concerns, then there would be no Complaint. The Federal Complaints Officer subsequently received voice mails from the deputy director of special education stating that she was trying to contact the complainant, but he never heard back from the complainant, as agreed, as to whether she wanted to continue her Complaint, without the issue of placement. Nor did the Federal Complaints Officer hear from the complainant again, until she filed the Complaint dated July 8, 2002, which is the subject of this Decision. Moreover, even though the Federal Complaints Officer is making no finding on whether there was any affirmative duty upon the Colorado Department of Education, or the school district, to do so – the complainant was informed of the filing deadline for Complaints on the Special Education Law brochure, and the Educational Rights of Parents documents, which were two of the documents enclosed with the Federal Complaints Officer's letter to the complainant, dated July 27, 2001, which the Federal Complaints Officer makes a part of the record in this Complaint, along with a copy of the information sent to the complainant explaining to her how to access the special education law page on the CDE web site.

- 2) While the allegation of denial of FAPE, and request for compensatory education are, at least for the last two years of the complainant's son's attendance at Aurora Public Schools, within the time period allowed for Complaint filings, the Federal Complaints Officer finds no denial of FAPE by the school district for this student. The complainant has had the opportunity to challenge IEP team decisions in a due process hearing, and she has not done so. As the Federal Complaints Officer informed the complainant in his letter to her of July 9, 2002, prior to accepting this Complaint, the Federal Complaints Officer has no authority to overturn IEP team decisions. The most he can do, if he disagrees with an IEP team's decision about FAPE, is to order the IEP team to meet to reconsider their decision. However, this student is not attending the Aurora Public Schools, by choice of the complainant, and she has indicated she has no intention of reenrolling him in the Aurora Public Schools. Therefore, the sole purpose for which the Federal Complaints Officer could order an IEP team to meet, would be for the purpose of considering compensatory education and ongoing reimbursement for the special education placement which the parent has found, and is finding, acceptable. However, the Federal Complaints Officer does not find that the school district has denied this student FAPE and, moreover, given that the school district has denied any denial of FAPE as a part of this Complaint, the Federal Complaints Officer finds no basis for finding that a reconstituted IEP team would reach a different conclusion.

If the complainant had filed Complaints, at the time of her placement and appropriate services disagreements with the school, and if those Complaints had included an allegation of denial of FAPE for failure to implement her son's existing IEP, then the Federal Complaints process would have been an appropriate forum for addressing such allegations. The complainant did not do so, and she has not appropriately done so in this Complaint.

To the extent that the complainant is still entitled to bring her claims for denial of FAPE in front of a due process hearing officer, her right to effectively do so could be prejudiced by any findings on these claims by the Federal Complaints Officer. The Federal Complaint process provides for no evidentiary hearing. Thus, the Federal Complaints Officer has no appropriate means for taking sworn testimony and subjecting that sworn testimony to cross-examination, as is provided for in a due process hearing. Moreover, in her response to the school district's response to her Complaint, the complainant repeatedly states that she did not have enough time to submit information that she wanted to submit. To the extent that she is still entitled to a due process hearing – and the complainant is advised to consult legal counsel of her own choosing on this issue – or to the extent she is entitled to raise these claims in any evidentiary hearing upon appeal of this Complaint Decision, she will have additional time and opportunity to further develop the record. In any case, whatever the status of the complainant's entitlement to an evidentiary hearing, in whatever forum, the Federal Complaint process is not the appropriate forum for the litigation and adjudication of the complainant's placement dispute with the school district.

REMEDY

Having found no violations of law by the school district, the Federal Complaints Officer therefore also orders no remedy.

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, September _____, 2002.

Charles M. Masner, Esq.
Federal Complaints Officer