

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

Federal Complaint 2002:530

St. Vrain Valley District RE-1J

Decision

INTRODUCTION

This Complaint was dated 12/12/02 and filed on 12/16/02. The St. Vrain Valley School District RE-1J (District) received the Complaint on 12/19/02. Its response was originally due on 01/03/03. Due to the holidays, during which the District was closed, the District's special education director did not receive the Complaint until 01/06/03, and she requested and received an extension to 01/15/03 for filing the District's response. The District's response was dated 01/14/03 and received on 01/17/03. The Complainant was given the opportunity to respond to the District's response. The Complainant received the District's response on 01/29/03. The Complainant did not submit a written response. On 02/06/03 and on 02/11/03, the Federal Complaints Officer contacted the District's special education director by phone for additional information. On 02/11/03, the Federal Complaints Officer telephoned the Complainant for additional information and left a voice mail message requesting a response by noon 02/13/03. The Complainant did not contact the Federal Complaints Officer. The Federal Complaints Officer closed the record on 02/13/03.

The Complainant is the parent of a middle school student who has been identified as having a significant identifiable emotional disability (SIED).

COMPLAINANT'S ALLEGATIONS

1. Since April 2002, the District has failed to consistently implement the provisions of [Student's] behavior intervention plan, presumably¹ in violation of 34 C.F.R. §300.350(a).²
2. The District's alleged failure to implement [Student's] behavior intervention plan has subjected [Student] to student discipline and criminal sanctions for behavior which is a manifestation of his disability, presumably in violation of §§ 300.519 through 300.524.

¹ The Complaint did not contain any cites to statutory authority in support of the allegations.

² Hereafter the IDEA regulations will be cited by section number only, i.e., § 300.350(a).

3. Since April 2002, the District has failed to implement the accommodations specified by [Student's] IEP, which accommodations are intended to assist [Student] in completing his homework assignments, and especially his English homework assignments, presumably in violation of § 300.350(a).

4. The alleged violations set forth in Nos. 1-3, above, have deprived [Student] of a free appropriate public education (FAPE), presumably in violation of § 300.121.

THE DISTRICT'S RESPONSE

The District generally denies the allegations. The District's specific responses are noted below.

FINDINGS OF FACT AND CONCLUSIONS

Allegation #1. Since April 2002, the District has failed to consistently implement the provisions of [Student's] behavior intervention plan, presumably in violation of § 300.350(a).

The Complainant alleges that, between April 2002 and October 2002, the student has experienced three disciplinary actions but that the District took no action to review or modify his 04/17/02 behavior support plan prior to the third disciplinary incident that occurred on 10/11/02, which resulted in (1) a three-day suspension of the student, and (2) a referral to law enforcement authorities.

§ 300. 350(a) requires each school district to provide special education and related services to a child with disabilities in accordance the child's IEP, and to make good faith efforts to assist the child in achieving the goals and objectives or benchmarks specified by the IEP.

The Federal Complaints Officer has carefully reviewed [Student's] 04/17/02 IEP and makes the following factual findings:

- The IEP identifies [Student's] disability as being SIED.
- The IEP states that [Student] “[c]ontinues to express frustration and anger towards individuals...[Student] can get frustrated quickly but if given a moment to explain himself or ask a question then he can overcome the frustration. He needs space when angry and given a few minutes before responding to questions to let him fully explain.”
- The IEP describes [Student's] behavior needs as “[n]eeds to have additional time to solve problems with peers...[m]onitor in unstructured situations to review expectations in those settings...[c]ommunicate boundaries and offer time out when needed...[b]uild a relationship and trust level.”

- [Student's] annual goal is "[Student] will increase responsibility for behaviors and academic production." The short term behavioral objective for this goal is "increase self-advocacy skills by asking for space when angry, asking for help in resolving a conflict, or problem-solving a situation on your own." The criteria for determining progress toward that objective is "[b]y 11/02 use one of the strategies above in appropriate situations 2 out of 3 times."
- [Student'] 04/17/02 behavior support plan is incorporated into and is a part of his 04/17/02 IEP.
- The primarily behavioral goal identified in the 04/17/02 behavior support plan is to "[i]ncrease self control and respecting space of others."
- The crisis management strategy established by the 04/17/02 plan is "[t]ime out-escorted to a safe place."
- The 04/17/02 behavior plan's description for success is "[r]eferrals to the office reduced to 1-2 per year."
- School staff identified as being responsible for implementing the behavior support plan are "[s]pecial education teacher and Core teachers, Counselor."
- The 04/17/02 IEP, including the behavior support plan, does not require school personnel to use the behavior plan exclusively and/or in lieu of student discipline procedures, nor does the IEP preclude school personnel from making law enforcement referrals.
- The 04/17/02 IEP provides that the behavior support plan "may be reviewed and modified throughout the duration of the IEP."

A. Disciplinary Incident # 1: The parties do not agree that a disciplinary incident/action occurred within the relevant time frame which involved a threat of suicide by the student. Complainant alleges that such occurred and the District denies knowledge of such an incident. The Conduct Report submitted by the District does not document any such incident.

When facts are in dispute, the usual process in most legal settings for resolving the dispute is through an evidentiary hearing in which individuals testify under oath, and the testimony is then subject to cross-examination. It is through this process that the fact finder determines the credibility of the individuals and, by extension, which version of the facts is the more credible. The Federal Complaints process, unlike the due process hearing, makes no provision for an evidentiary hearing. Another way of resolving a factual dispute is to examine the documentation submitted by the parties and the surrounding circumstance to see whether they provide a definite answer.

The Federal Complaints Officer has carefully examined the information submitted by the parties. The Federal Complaints Officer concludes that there is insufficient evidence to find that the District subjected the student to disciplinary action for an incident involving a threat of suicide by the student.

B. Disciplinary Incident # 2: The Complainant alleges that during June 2002, [Student] experienced a disciplinary incident. “[Student’s] IEP Behavior Plan was not followed and [Principal] removed [Student] from summer school.”

The District agrees that the school principal did not follow the student’s 4/17/02 behavior support plan during June 2002 and, as a result, the student was removed from a 3-week experiential program for a behavioral incident. However the District denies that it was required to implement the behavior support plan -- “[The school] received an Entrepreneurial Grant from the Superintendent to offer a 3 week Experiential Summer Program...It was suggested he take advantage of the opportunity as he had received an “I” (Incomplete) in his English class for that final trimester grade. This was not a special education program. [Student] was not a candidate for ESY. The district does not believe that it was obligated to enforce his IEP during this Experiential Summer Program. While there were no special education support staff available during that program the staff/administrator had previously worked with [Student] and felt he could have a good experience.”

During a 02/06/03 telephone conversation, the District’s special education director clarified that the Experiential Summer Program was a team building, activity-based program taught by school staff (counselors and teachers) and staff from the Boulder County Mental Health Center. Students attending the program had the opportunity to earn credit for attendance. In contrast, the District’s 2002 summer school was six weeks in length. Students attending the 2002 summer school had the opportunity to add credit, make-up credit and/or take a class over for a better grade. Staffing for the District’s summer school included a special education teacher who supervised IEP implementation for students with disabilities enrolled in summer school.

The Conduct Report submitted by the District does not reflect that any disciplinary action was taken against [Student] during June 2002.

The Federal Complaints Officer finds that [Student’s] IEP did not require the District to provide [Student] with extended school year (ESY) services or with the Experiential Summer School Program. The Federal Complaints Officer further finds that the Experiential Summer Program was not a part of either the District’s regular school year program or the District’s summer school program. For these reasons, the Federal Complaints Officer finds that [Student’s] IEP did not require school personnel conducting the Experiential Summer Program to follow [Student’s] behavior support plan during that program.

C. Disciplinary Incident #3: The Complainant alleges that, with regard to the 10/11/02 incident, the school principal failed to follow [Student’s] behavior support plan.

The District denies this allegation -- “[Principal] believed her talking with [Student] in her office provided that time out and safe place.”

The parties generally agree that the following occurred on 10/11/02:

[Principal] removed [Student] for behavior from a classroom being taught by a substitute teacher. [Principal] took [Student] to [Principal’s] office where [Principal] questioned [Student] about his behavior. [Student] admitted to throwing a hackey sack in class the previous day. During or following that discussion, Student became uncooperative by walking away from Principal and by refusing to comply with [Principal’s] requests that he either return to her office or sit by himself at a table in the library. After attempting unsuccessfully to make personal contact with the Complainant by phone at both work and home, [Principal] then contacted the school resource officer (a Longmont police officer), who, with the principal, escorted [Student] from the library to [Principal’s] office. When Complainant arrived at school, [Student] was already being questioned by the officer. While the officer was issuing [Student] a summons, [Student] swore at [Principal]. [Student] was suspended for three days and issued a municipal summons for disrupting a school environment and fighting words.

The Federal Complaints Officer finds that [Principal’s] actions (requesting that [Student] sit at a table alone in the library, that he return to her office, and the final escort back to her office) were consistent with the behavior support plan’s crisis management strategy of “time out-escorted to a safe place.” The Federal Complaints Officer further finds that [Student’s] behavior plan did not preclude [Principal] from resorting to student discipline procedures and/or contacting the school resource officer once [Student] refused to comply with Principal’s requests to sit at a table by himself in the library or to return to [Principal’s] office.

The 04/17/02 behavior support plan describes success as “referrals to the office [will be] reduced to 1-2 times per year.” The Conduct Report submitted by the District shows that the 10/11/02 incident was the first office referral since the behavior support plan was implemented on 04/17/02. Given these facts, the Federal Complaints Officer finds that school personnel were not required to review or modify [Student’s] behavior support plan between 04/17/02 and 10/23/02 when the IEP team met, at the Complainant’s request, to review the behavior plan.

Based on all of the factual findings set forth above, the Federal Complaints Officer concludes that, with respect to Allegation #1, the District did not violate § 300.350(a).

Allegation #2. The District’s alleged failure to implement [Student’s] behavior intervention plan has subjected Christopher to student discipline and criminal sanctions for behavior which is a manifestation of his disability, presumably in violation of §§ 300.519 through 300.524.

A primary concern of the Complainant is that, as a result of the 10/11/02 incident, [Student] is now on probation until approximately May 2003. "What protection does [Student] have from [Principal] during this six months? What is to stop her from calling the police whenever she chooses? I thought I had an agreement with the school in dealing with [Student's] needs through his IEP. Is [Principal] able to discard it at her choosing?"

§ 300.520(a)(1) in pertinent part allows school personnel to remove (e.g., suspend or expel) a student with a disability for a period of not more than ten consecutive school days for conduct that violates school rules so long as the removal does not constitute a change of placement and so long as nondisabled students are subject to the same disciplinary sanction. This is the case even if the conduct in question is a manifestation of the child's disability. See, § 300.523. A change of placement occurs if the suspension is more than ten consecutive school days or if the child is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year. § 300.519.

§ 300.529(a) states that "[n]othing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities...."

The Federal Complaints Officer finds that, on 10/11/02, the District suspended [Student] for 3 days and that such suspension did not constitute a change of placement for [Student]. The Federal Complaints Officer also finds that [Principal's] referral of [Student] to the school resource officer was not prohibited by the Individuals with Disabilities Education Act (IDEA) or its implementing regulations. The Federal Complaints Officer has already determined, above, that the District did not fail to implement [Student's] behavior support plan between April 2002 and October 2002.

With regard to Allegation #2, the Federal Complaints Officer concludes that the District has not violated §§ 300.519 through 300.524.

Allegation #3. Since April 2002, the District has failed to implement the accommodations specified by [Student's] IEP, which accommodations are intended to assist [Student] in completing his homework assignments, and especially his English homework assignments, presumably in violation of § 300.350(a).

As is set forth above, § 300.350(a) requires school districts to provide the special education and related services specified by the child's IEP.

The Federal Complaints Officer has carefully examined [Student's] 4/17/02 IEP. The Federal Complaints Officer finds that, although one of [Student's] short term objectives is that [Student] will increase the percentage of homework assignments that he completes, the IEP does not specify any accommodations related to this short term objective. With regard to this allegation, the Federal Complaints Officer concludes that the District has not violated § 300.350(a).

Allegation #4. The alleged violations set forth in Nos. 1-3, above, have deprived [Student] of a free appropriate public education (FAPE), presumably in violation of § 300.121.

§ 300.121 requires each State receiving assistance under Part B of the IDEA to have in effect a policy that ensures that all children with disabilities aged 3 through 21 have a right to a FAPE.

The Federal Complaints Officer has already concluded that the District has not violated the IDEA with regard to Allegations Nos. 1-3. Because no violations have been found, the Federal Complaints Officer concludes that the District has not deprived [Student] of a FAPE.

Additional Allegations

The Federal Complaints Officer is required to resolve all allegations raised in a Complaint.

In the Complaint, the Complainant states that, on 10/23/02, [Student's] IEP team met, at her request, to review and modify [Student's] 4/17/02 behavior support plan. Complainant further states in the Complaint that "[t]o date, I have only the handwritten copy of this addition to his IEP and have not been provided the complete, updated IEP." Although not clearly stated as an allegation, the Federal Complaints Officer asked the District to include in its response copies of [Student's] behavior intervention plans developed since April 2002. The District submitted a copy of [Student's] behavior intervention plan which was revised on 10/23/02. That copy is identical to the copy submitted by Complainant. It appears from the documentation submitted by the parties that Complainant has been provided with a copy of the revised behavior intervention plan. Based on the information submitted by the parties, it also appears that the 4/17/02 IEP has not been otherwise revised.

§ 300.345(f) requires the school district to give parents a copy of the child's IEP at no cost to the parent.

The Federal Complaints Officer finds that the Complainant does have a copy of [Student's] revised behavior intervention plan. The Federal Complaints Officer concludes that the District has not violated § 300.345(f).

REMEDY

Having found no violations of the IDEA by the District, the Federal Complaints Officer therefore 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 this 13th day of February, 2003.

Laura L. Freppel
Federal Complaints Officer