

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

Federal Complaint 2005:501

South Central BOCES

DECISION

INTRODUCTION

This Complaint was dated 02/16/05 and filed on 02/18/05. The response of the South Central BOCES (BOCES) to the Complaint was dated and postmarked 03/07/05 and received on 03/08/05. The Complainant's response to the BOCES' response was dated 03/22/05, received at the Colorado Department of Education (CDE) on 03/24/05 and received by the Federal Complaints Office on 03/30/05. On 04/05/05, the Federal Complaints Officer contacted the BOCES' special education director by telephone for additional information and documentation. The requested documentation was supplied by facsimile on 04/06/05. On 04/06/05, the Federal Complaints Officer contacted the Complainant by telephone for additional information. The Federal Complaints Officer closed the record on 04/06/05.

The Complainant is the parent of a child with a disability.

COMPLAINANTS' ALLEGATIONS

The Complaint contains the following allegations:

1. "I have requested for the past five years to have [Student's] individual educational plan meeting be (sic) set up early in the school year in order to develop an educational plan that would benefit [Student] early in the school year, instead of having the meeting around [Student's] birthday in February (original anniversary date of his IEP) as they have done for many years. School District #1 BOCES office ignores my request. I have had to for the past three years call and request the meeting, This year's meeting was held two and half months into the school year with no representation from the BOCES (sic) the meeting was lead by [Student's] Speech Therapist. Therefore there was no IEP put in place for the beginning of the school year."
2. "In addition [Student's] notices and IEP updates are sent to my mother's address, after the past three years asking them to send to my home address."
3. "The recent incident happened today February 16, 2005. On February 9th, 2005 I called [Special Education Consultant] for BOCES to request a special IEP for [Student, who] had been having some discipline problems in the classroom...When I spoke to [Special

Education Consultant] to request the special IEP meeting I asked that both the physical and occupational therapist be present at the meeting. She stated to look at her calendar and quoted me a meeting time of Wednesday February 16, 2005 at 8:00 A.M. Then she stated that the therapists were not available on Wednesdays, only on Thursdays. I stated then that is when we should have the meeting. She stated that she would get back in touch with me with a date that they can be there. I received a message call from her later in the day stating that they would not be available until mid March, that if I wanted to have it sooner I needed to let her know what time. When I returned her message she was not available, therefore I left the message that the original time of the meeting would be fine. When I showed up for the meeting [February 16th] I was told that the meeting was held on Tuesday, February 15, 2005. I did not receive any meeting notice in the mail. I was very upset and stayed at the school for twenty minutes waiting for them when they were just down the hall from where the meeting was held.”

THE BOCES’ RESPONSE

The BOCES’ specific responses are set forth below.

FINDINGS OF FACT AND CONCLUSIONS

Allegation No. 1

IDEA regulation 34 CFR § 300.343(a)¹ generally provides that “[each] public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing and revising the IEP of a child with a disability.” § 300.343(c)(1) provides that “[each] public agency shall ensure that the IEP team...[reviews] the child’s IEP periodically, but not less than annually....” § 300.342(a) provides that “[at] the beginning of each school year, each public agency shall have an IEP in effect for each child with a disability....” When read together, these regulations require that a child’s IEP be reviewed at least once per year and that an IEP be in effect at the beginning of the school year. The public agency may convene the IEP team more frequently, as appropriate, if there is a lack of expected progress toward the child’s annual goals or for other matters. § 300.343(c)(2). These regulations do not require the public agency to convene an IEP meeting for every child with a disability at the start of each school year. For example, if a child’s IEP was reviewed in February, there is no legal requirement that the IEP team must again review the child’s IEP at the beginning of the school year unless specific concerns have developed between the February meeting and the start of the school year. An IEP that was reviewed in October is not required to be reviewed until the following October.

With regard to this allegation, the Federal Complaints Officer finds as follows:

- A. During an IEP review meeting held on 02/16/01, the BOCES agreed to move [Student’s] annual review date from February to September in response to Complainant’s request.
- B. [Student’s] IEP team met on 09/13/01 and again on 10/12/01 to review [Student’s] IEP.

¹ Hereafter, the IDEA regulations will be referred to by section number only (e.g., § 300.343).

- C. In 2002, an IEP team meeting for [Student] was held on 08/26/02 as a result of letter sent by Complainant to the district superintendent requesting a meeting to discuss the full-time classroom aide who would be assigned to [Student] when the student transitioned to junior high school. In requesting the meeting with the district superintendent, Complainant was not requesting that [Student's] annual IEP meeting be scheduled. The BOCES initiated the 08/26/02 IEP team meeting in response to Complainant's letter to the district superintendent. During that IEP team meeting, [Student's] IEP was reviewed and the IEP team discussed that [Student's] annual IEP review meeting was scheduled for 09/13/02. Complainant requested that [Student's] annual review meeting be rescheduled to October. The [Student's] annual IEP meeting was held 10/31/02. Complainant attended the 10/31/02 annual IEP review meeting. The Federal Complaints Officer finds that [Student's] 2002 annual review meeting was initiated by the BOCES.
- D. In 2003, [Student's] annual IEP review meeting was held on 10/16/03 and well within the one-year time frame. The written notice for this meeting was dated 10/01/03. According to BOCES' records, Complainant attended the 10/16/03 annual IEP review meeting. There is insufficient documentation in the record for the Federal Complaints Officer to make a finding regarding how or by whom the 10/16/03 annual IEP review meeting was initiated.
- E. In 2004, [Student's] annual IEP review meeting was required to be held no later than 10/15/04. The annual review meeting was held on 09/28/05. Two meeting notices were submitted with regard to this meeting. The first notice contains a date of 09/21/04 and indicates that the meeting was an "Additional Meeting...Special Request" which the Federal Complaints Officer finds was initiated by Complainant. The second notice contains a date of 09/22/04 and indicates that the meeting was an annual review meeting. The Federal Complaints Officer finds that Complainant's phone call on or about 09/21/04 triggered the 09/21/04 meeting notice. However, it is quite unclear to the Federal Complaints Officer whether the 09/22/04 meeting notice was triggered by Complainant's request. [Student's] annual meeting for 2004 was not, under the applicable regulations, required to be held until October 15, 2004. It is, therefore, unclear whether the 09/22/04 meeting notice would have been initiated by the BOCES as a matter of course regardless of whether Complainant had called or not.

Therefore, with regard to this allegation, the Federal Complaints Officer finds that there is insufficient evidence to conclude that the BOCES violated §§ 300.342 (a), 300.343(a) and 300.343(c)(2).

Allegation No. 2

§ 300.345(a)(1) requires the public agency to take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are given the opportunity to participate at the meeting. The public agency is obliged to notify the parents "early enough to ensure that they will have the opportunity to attend...." Rule 4.02(5)(a) of the Rules for the

Administration of the Exceptional Children's Educational Act (ECEA)² requires that the notice provided to the parent be in writing. Implicit in these requirements is that the written notice will be sent to the address specified by the parent.

The Federal Complaints Officer finds as follows:

- A. During the 08/26/02 IEP meeting, Complainant specifically requested that all communications regarding [Student] go to her and not to her mother except in the case of an emergency.
- B. Complainant has submitted sufficient documentation demonstrating a continuing practice that written communications from the BOCES or its member school district regarding [Student] have been sent to the address of Complainant's mother and not to Complainant's address.
- C. In its response, the BOCES has not denied this allegation, nor has it provided specific information as to where it contends that written communication regarding [Student] have been delivered.
- D. Complainant attended all IEP meetings between the dates of 08/26/02 and 09/28/04.

Therefore, with regard to this allegation, the Federal Complaints Officer concludes that the BOCES violated § 300.345(a)(1) and ECEA Rule 4.02(5) because it failed to ensure that written notifications for [Student's] IEP team meetings were delivered to Complainant. The Federal Complaints Officer further finds that such violations did not deprive [Student] of a free appropriate public education (FAPE) because Complainant did attend and participate in all IEP team meetings between 08/26/02 and 09/28/04.

Allegation No. 3

As is set forth in the findings for in Allegation No. 2, above, ECEA Rule 4.02(5) requires the BOCES to provide the parent with written notification of IEP team meetings. The rule does not contain any exception for meetings requested by a parent.

The BOCES and the Complainant agree that the BOCES did not send Complainant a written notice for the February 2005 IEP team meeting. Had the BOCES provided the required written notice to the Complainant, the confusion about the IEP team meeting date would have been avoided. The parties are also agreed that, on 03/08/05, the parties met and satisfactorily resolved the issues which first caused Complainant to request the IEP team meeting in February 2005.

The Federal Complaints Officer concludes that, with respect this allegation, the BOCES has violated § 300.345(a)(1) and ECEA Rule 4.02(5) because it failed to provide Complainant with written notice of the February 2005 IEP meeting. The Federal Complaints Officer further finds that such violations did not deprive [Student] of a FAPE because the February 2005 IEP meeting

² Hereafter, the ECEA rules will be referred to by rule number only (e.g., ECEA Rule 4.02).

was ultimately rescheduled to 03/08/05 where Complainant fully participated and her concerns were satisfactorily resolved.

ALLEGATIONS DISMISSED FROM THE COMPLAINT INVESTIGATION

The Complaint generally alleges that “a lack of services are (sic) being provided by their BOCES Department. Their lack of services and frustration that they place on families in School District #1 is unbelievable.” In the 02/28/05 cover letter transmitting the Complaint to the BOCES, the Federal Complaints Officer stated that she was not requiring the BOCES to respond to this allegation because the allegation was very general and lacked sufficient specificity for purposes of conducting a federal complaints investigation.

NEW ISSUES RAISED IN COMPLAINANT’S RESPONSE

In response to the District’s response to the Complaint, the Complainant raised the following new issues that were not part of the original complaint letter:

- During kindergarten (1997-98), [Student] was segregated with other children with severe needs to a modular classroom which was separate from the main building and classrooms attended by nondisabled children.
- During kindergarten through third grade (1997-2001), [Student] was inappropriately labeled as a severe needs child.

These are new issues which were not raised in the original Complaint. The BOCES has not had the opportunity to respond to those issues. More importantly, those issues do not constitute continuing allegations and, therefore, are barred by the general one-year statute of limitations for filing a federal complaint. Therefore, those issues are not considered to be part of this Complaint.

REMEDY

Within thirty (30) days of the date of the BOCES’ certified receipt of this Decision, the BOCES’ special education director shall submit to the Federal Complaints Officer a written statement that the BOCES recognizes and accepts as valid every violation found by the Federal Complaints Officer. This statement shall include a statement of assurance explaining how the violations found will be addressed to prevent their recurrence not only as to [Student] but as to all children with disabilities for whom the BOCES has responsibility. The statement shall specifically address what steps the BOCES has taken to ensure that written notices of IEP meetings and other written communications involving [Student] will be delivered to Complainant at Complainant’s address and not to the address of Complainant’s mother.

AVAILABILITY OF MEDIATION

The information submitted by the parties reflects a long history of miscommunication and tension. Mediation is an effective tool for resolving special education disputes. It is a voluntary dispute resolution option that is available when the concerned parties are agreeable to its use. The costs of mediation are paid by the Colorado Department of Education (CDE). Should the parties have a future need for mediation, they may contact Charles Masner, who oversees CDE's special education mediation program, at (303) 866-6685.

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 7th day April 2005

Laura L. Freppel
Federal Complaints Officer