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

Federal Complaint 2005:516

Denver Public Schools

Decision

I. INTRODUCTION

This Complaint was dated September 1, 2005. An unsigned copy of the Complaint was received by the Federal Complaints Officer on September 2, 2005. A signature was obtained from the complainant on September 8, 2005, which is the date determined by the Federal Complaints Officer to be the filing date for this Complaint. The school district's response to the Complaint was dated September 26, 2005, and was received by the Federal Complaints Officer on September 27, 2005. Prior to receiving this response, the Federal Complaints Officer had a telephone conversation with the school district's legal counsel in which it was agreed that the school district would be allowed to reference in its response a mediation agreement between the school district and the complainant parent. This telephone conversation was referenced in the Federal Complaints Officer's letter of September 28, 2005 to the complainant. The complainant's response to the school district's response to her Complaint was dated October 24, 2005, and received by the Federal Complaints Officer the same date.

On October 13, 2005, and October 20, 2005, the Federal Complaints Officer had telephone conversations with the complainant in which he granted the complainant additional time to submit her response, due to health problems of the complainant. The extension of time was initially until October 21, 2005, and was then extended again until October 25, 2005. During these telephone conversations with the complainant, the Federal Complaints Officer informed her that these extensions might mean that the Federal Complaints Officer would extend the time for deciding this Complaint. The complainant indicated that she understood. The Federal Complaints Officer has subsequently found that the delay in receiving the complainant's response, and the complexity of the disagreement between the complainant and the school district, warrants a finding of exceptional circumstances for the extension of time for deciding this Complaint. Therefore, based upon such finding of exceptional circumstances, the Federal Complaints Officer has extended the time for deciding this Complaint.

By letter to the school district dated October 25, 2005, with a copy to the complainant, the Federal Complaints Officer closed the record. He subsequently opened the record for the sole purpose of confirming with the school district, by voice mail message exchange with an appropriate school district representative, that the student who is the subject of this Complaint is a student in the 12th grade in good standing in the Denver Public School system, and that the

student is scheduled to graduate from high school with a regular high school diploma, in the spring of 2006, assuming he passes all the classes in which he is currently enrolled.

II. COMPLAINANT'S ALLEGATIONS

The complainant's allegations extend back three years, to the 2002-2003 academic year. Proposed IDEA 2004 regulations would limit IDEA Complaints to a one year look back period. Neither the IDEA 1997 statute, nor the IDEA 2004 statute, address a statute of limitations for administrative complaints under the IDEA. The IDEA 1999 regulations allow for a look back period of up to three years, if the complainant alleges continuing violations, or is seeking compensatory education. The Federal Complaints Officer is applying this three year look back period in deciding this Complaint.

The complainant's Complaint letter dated September 1, 2005, stated her allegations under four headings: **Procedural mistakes – Violations (non compliance) of Federal Laws**; **Inconsistencies within the IEP's**; **IEP's not implemented and not followed**; **A culture (environment) of not holding teachers or school accountable**. The school district's response, dated September 26, 2005, organized the complainant's allegations into nine headings, with explanatory language, although the school district made an error beginning after allegation heading number three, skipping to a numbered five, instead of using a number four. In her October 24, 2005 dated response to the school district's response the complainant responded using the school district's numbering system and explanatory language. The Federal Complaints Officer is therefore using the school district's numbering system, and explanatory language, to describe the complainant's allegations, with the qualification that the allegations numbered five through nine are really allegations number four through eight, and the Federal Complaints Officer has re-numbered them as such and will identify and refer to them as renumbered, and not as numbered by the school district, and not as numbered by the complainant who followed the school district's numbering. In addition, the Federal Complaints Officer has added allegation number nine, which he believes was a part of the Complaint, and which was addressed by the school district, but which was not separated out under a specific allegation heading by the school district.

Where he deemed it appropriate to do so, the Federal Complaints Officer has also corrected the statutory and regulatory citations given by the school district, to comport with what the Federal Complaints Officer understands to be the legal authority that the complainant relied upon in making her allegations. The Federal Complaints Officer did so, notwithstanding any failure of the complainant to appropriately do so.

ALLEGATION NUMBER 1:

The parent alleges that IEP decisions were made without benefit of a complete IEP Team; specifically that the general education teacher(s) did not participate in IEP decisions and that some members left the meeting(s) early in violation of [34 CFR] §300.344, of the IDEA 1999 regulations, (Authority: 20 U.S.C. 1414(d)(1)(B)), of the IDEA 1997 statute; H.R. 1350 (IDEA 2004) §614(d)(1)(B). The relevant Colorado law is ECEA Rule 4.02(3).

ALLEGATION NUMBER 2:

District did not provide measurable goals and objectives in violation of [34 CFR] §300.347(2)(i),(ii),of the IDEA 1999 regulations; (Authority: 20 U.S.C. 1414(d)(1)(A)), of the 1997 IDEA statute; H.R. 1350 (IDEA 2004) §614(d)(1)(A). The relevant Colorado law is ECEA Rule 4.02(4).

ALLEGATION NUMBER 3:

The District did not provide the Assistive Technology as required by the IEP in violation of the definition of such services found in [34 CFR] §300.5, 300.6 of the 1999 IDEA regulations; (Authority; 20 U.S.C. 1401(2)), of the 1997 IDEA statute; H.R. 1350 (IDEA 2004) §602(1),(2). The relevant Colorado law is ECEA Rule 4.02(4)(g)(ii).

ALLEGATION NUMBER 4:

The determination for extended school year programming was made without parent input in violation of [34 CFR] §300.347, of the 1999 IDEA regulations: (Authority: 20 U.S.C. 1414(d)(1)(A)), of the 1997 IDEA statute; H.R. 1350 (IDEA 2004) §614(d)(1)(A). The relevant Colorado law is ECEA Rule 4.02(4)(h).

ALLEGATION NUMBER 5:

When teachers have not followed IEP … there [is] no disciplinary action taken against the teacher(s).

ALLEGATION NUMBER 6:

The District failed to comply with the Memorandum of Understanding [mediation agreement] as to how extended school year services would be administered to the student.

ALLEGATION NUMBER 7:

The District did not provide the student with a physical exam as stated in the 2002 IEP (annual physical exam by DPS).

ALLEGATION NUMBER 8:

The District failed to provide the accommodations required by the IEP, in violation of 34 CFR 300.47(3); 20.U.S.C. 1414(d)(1)(A)(i)(IV); H.R. 1350 (IDEA 2004) §614 (d)(1)(IV); ECEA Rule 4.02(4)(g)(ii).

ALLEGATION NUMBER 9:

The complainant alleges that for all of her son's IEPs, from 2002 through 2005, that a "Copy of the IEP was prepared before the meeting without review of last years [IEP] and without parental involvement."

III. SCHOOL DISTRICT'S RESPONSES

ALLEGATION NUMBER 1:

The Federal Complaints Officer interprets the school district's response to be that for all of the IEP years in question, 2002 through 2005, necessary IEP members were present. For 2002, the school district states – "According to the school all persons listed attended all or a portion of the meeting." For IEP meetings in 2003, 2004, and 2005, the school district states – "The school reports that general education teachers either attended a portion of the IEP meeting or that input from the general education teachers was sought through a survey and summary of the student's performance in the general education setting." And, for additional IEP meetings in 2005, the school district states that – "The IEP reflects all persons who attended and participated in the meeting."

ALLEGATION NUMBER 2:

The school district has a two paragraph response to this allegation. The second paragraph states:

> The chief concern outlined by the parent is in relation to the measurement of progress towards goals and objectives. Although the baseline and mastery measure of goals and objectives may be questionable, this alone does not support or establish that the student did not make appropriate progress or benefit from his individualized education program.

ALLEGATION NUMBER 3:

The school district responds that it provided the assistive technology required by the 2002 IEP. It further responds that IEPs written in 2003, 2004, and one in 2005, did not require assistive technology. A later IEP in 2005 did require assistive technology, and the school district responds that this assistive technology was provided to the student.

ALLEGATION NUMBER 4:

The school district states: "The District admits that the IEP team did not reconvene at the stated time and or make a determination in relation to extended school year eligibility for the 2002-2003 school year." However, the school district also states that, with the agreement of the complainant, this error was compensated during the summer of 2005 through the provision of ten hours of instructional services to the student. As for 2003, 2004, and 2005, the school district states: "Extended school year eligibility was discussed at the November 20, 2003 meeting, December 1, 2004 meeting and the January 14, 2005 IEP meetings … and the team (of which the

parent was a member) determined that the student did not meet the eligibility criteria for said programming."

ALLEGATION NUMBER 5:

The school district responds:

> The parent raised this issue as well as other issues in relation to her son's educational program January of 2005 … At that time, the District provided the parent with written notice of administrative remedies in relation to special education, defined the appropriate steps to report personnel concerns, but also stated that District policy does not allow an administrator to report what, if any, "disciplinary steps" are taken in relation to school personnel.

ALLEGATION NUMBER 6:

The school district denies this allegation.

ALLEGATION NUMBER 7:

The school district responds: "The District admits that it did not provide the student with an annual physical examination." However, the school district goes on to respond that this was resolved by agreement with the complainant.

ALLEGATION NUMBER 8:

The school district responds: "It appears that the only accommodations that the parent reports are not being provided on a consistent basis is 'email of grades weekly and copies of overheads and notes.'" And – "The District has in its possession hundreds of emails that were sent to and from the parent [over] the course of the second semester of the 2004-2005 school year that report the students progress in individual classes." And – "The simple fact is that the District's provision of accommodations and [modifications] is over and above what is legally required by IDEA and corresponding state law." And:

> The student's IEP reflects accommodations that were discussed at length through mediation. While many of the accommodations are generally necessary in order for the student to participate in the general education curriculum, other accommodations were included to simply appease the parent.

ALLEGATION NUMBER 9:

The school district admits that there were draft IEPs, but also responds that the parent was provided copies of these drafts either at, or by recent agreement before, IEP meetings.

IV. FINDINGS AND DISCUSSION

ALLEGATION NUMBER 1:

The Federal Complaints Officer finds no violation by the school district.

However, in so finding, the Federal Complaints Officer makes no judgment as to how this allegation would be adjudicated in a due process hearing. In the view of the Federal Complaints Officer, the initial burden of proof in a Complaint or due process hearing is upon the person making the initial allegation of a violation by a school district. A case currently before the United States Supreme Court, *Schaffer v. Weast*, will, it is hoped, provide authority for who bears the burden of proof, at least in due process hearings. Independent of the burden of proof issue, the due process hearing provides for the subpoena of witnesses and testimony under oath that is subject to cross-examination. The Complaint process under IDEA provides for neither of these truth seeking tools.

In this Complaint, the parent complainant cites instances, in all of her son's IEPs going back to 2002, where she says appropriate persons were not appropriately in attendance at IEP meetings. The school district responds that appropriate people were in attendance, to the extent that they needed to be in attendance, which, in some instances, according to the school district, meant attendance for only portions of the IEP meetings. None of the IEPs bear signatures of the high school staff persons whose attendance is in dispute. Such signatures are not required by law, and, in any case, a signature does not necessarily mean that the person who signed attended the meeting.

The school district's response was provided by the school district's Director of Special Education. According to her response, she relied on what the high school staff told her in responding that all appropriate IEP team members appropriately attended all IEP team meetings. It is the word of the complainant parent against the word of the Director of Special Education, relying on the word of high school staff, as to whether appropriate IEP team participation was maintained. Nothing else in the record, or in the record that could be developed by the Federal Complaints Officer, absent the tools of the due process hearing, is available to assist the Federal Complaints Officer in determining the truth of the complainant parent's allegation. In such a circumstance it is the view of the Federal Complaints Officer that the response of the Director of Special Education should prevail in a Federal Complaint filed under the IDEA. No changes in the IDEA 2004 statute, or proposed regulations for that statute cause the Federal Complaints Officer to reach a different result. However, the Federal Complaints Officer will address this allegation in the Remedies section of this Decision, in order to provide for a better record should this complainant parent and this school district disagree over this issue again.

Also, independent of administrative complaints, due process hearings, and mediations, the Colorado Department of Education (CDE), Exceptional Student Services Unit (ESSU), has a Continuous Improvement Monitoring Process (CIMP) designed to monitor the performance of local school districts in providing legally required services to students covered by the IDEA. A copy of this Complaint Decision, as with all such Decisions, will be provided to the CIMP Coordinator for whatever action the Coordinator deems appropriate.

ALLEGATION NUMBER 2:

The Federal Complaints Officer finds that this student's Individualized Educational Program (IEP), for all of the student's IEPs to date, beginning with, and including, his 2002 IEP, did not adequately provide measurable goals and objectives, and thus the school district violated 34 CFR §300.347(a)(2)(i),(ii); and 20 U.S.C. 1414(d)(1) (A); and H.R. 1350 (IDEA 2004) §614(d)(1)(A); and ECEA Rule 4.02(4).

The school district's Director of Special Education stated in the school district's response to this Complaint that "…the baseline and mastery measure of goals and objective[s] may be questionable." The Federal Complaints Officer finds that they are not only questionable, but that they do not meet the minimal requirements of the law.

As the complainant parent stated, in relevant part, on page two of her Complaint:

> Goals and Objectives – Writing [too] vague, must be measurable, to have every goal measured only by teacher observations is not concrete enough. Especially, in high school where more than likely it will be different teachers making the observations from semester to semester, how can you ensure that each teacher will use the same standards to measure the goal [?]

And, as the complainant parent stated, in relevant part, on page two of her response to the school district's response to her Complaint:

> All objectives/benchmarks [measured] only by teacher observation or teacher record, no structure to how objectives/benchmarks measured, it changed from teacher to teacher. Teacher observation can certainly be used for some of the objectives/benchmarks [,] but not for all of them.
>
> Even when none of the objectives/benchmarks [were] not met, the only thing DPS would write is "not met" sometimes adding, "carry over". Never did DPS give a written explanation as to why the objectives [were] going unmet year after year. I asked for this each and every year yet it still has not happened.
>
> When there is year after year that all or most of the objectives/benchmarks have not been met and are being carried over (without explanation) does it not indicate lack of appropriate progress and benefit from the IEP?
>
> Some objectives even had lower starting points [than] previous years.

The Federal Complaints Officer agrees with the complainant parent.

That said, a Federal Complaints Officer under the IDEA does not have the authority to write an IEP for a student. Had the complainant parent filed a Complaint alleging the inadequacy of her son's 2002, 2003, or 2004 IEPs, in 2002, 2003, or 2004, respectively, the Federal Complaints Officer could have found then, as he is finding now, with regard to these IEPs and the 2005 IEP,

that the IEP's were legally inadequate. However, the remedy available to the Federal Complaints Officer is to order that another IEP meeting be conducted to create another IEP. Ultimately, if a parent and a school district disagree on the composition of an IEP, the parent's relief, if negotiation or mediation are not successful, is the due process hearing.

The complainant parent in this Complaint is asking the Federal Complaints Officer to find that, per se, because her son's IEPs were not properly constructed, her son has been denied a free appropriate public education (FAPE). The Federal Complaints Officer cannot do so because there is no evidence in the record, or in any record that the Federal Complaints Officer has the powers to develop, that establish that the complainant's son has been denied a FAPE, despite the inadequacies of her son's IEPs. A FAPE does not mean a perfect education, or even the best education, that a student might receive. Not under current law. That this student might have received a better education if his IEPs had been better constructed does not necessarily mean that he was denied a FAPE.

As the Director of Special Education stated in the school district's response to this allegation - and the Federal Complaints Officer now quotes in its entirety the sentence from which he previously excerpted language of the Director of Special Education – "Although the baseline and mastery measure of goals and [objectives] may be questionable, this alone does not support or establish that the student did not make appropriate progress or benefit from his individualized education program." The Federal Complaints Officer agrees. The evidence available to the Federal Complaints Officer is that this student is scheduled to graduate from high school, with a regular diploma, in the spring of 2006, assuming he passes the courses in which he is currently enrolled. If the complainant parent believes that her son has not been provided with a FAPE, for any or all of the academic years beginning 2002, 2003, 2004, or 2005 she is entitled to a due process hearing (within the applicable statute of limitations) to make her case that this is so. The Federal Complaints Officer cannot do so based on the record before him, or on any record that it is within his power to develop. What the Federal Complaints Officer can do, as he addresses in the Remedies section, is to do his best to provide for a better IEP for this student, and, if appropriate, for all other IDEA students that this high school serves.

ALLEGATION NUMBER 3:

The Federal Complaints Officer finds no violation by the school district.

However, in so finding, the Federal Complaints Officer makes no judgment as to how this allegation would be adjudicated in a due process hearing.

The parent complainant alleges that IEP required assistive technology, going back to the 2002-2003 academic year, was, for a variety of reasons, never appropriately implemented. The Director of Special Education in her response for the school district claims that all IEP required assistive technology has been provided for this student. As with the Federal Complaints Officer's Findings for Allegation Number 1, the record available to him, and any record he could appropriately develop, does not provide him with adequate information to resolve these differing versions of events. In such a circumstance, he finds no violation by the school district. However, again, in the Remedies section of this Decision, the Federal Complaints Officer

provides for a better mechanism for providing a record to be used for resolving any future disagreements between the complainant parent and the school district on this issue.

ALLEGATION NUMBER 4:

The Federal Complaints Officer finds no violation by the school district.

The Federal Complaints Officer understands the heart of the complainant's allegation to be that the school district committed a variety of procedural errors that, if they had not been committed, would have allowed her son to participate in extended school year (ESY) programming going back to the academic year 2002-2003. Even if the school district did commit procedural errors, the most that the Federal Complaints Officer could have done then, and for every academic year since 2002-2003, would have been to order another IEP meeting for the purpose of considering, or reconsidering, the issue of ESY. There is nothing in the record, or in any record the Federal Complaints Officer could appropriately develop, that would lead to a different conclusion, nor is there anything in the record that causes the Federal Complaints Officer to conclude that this parent and this school district would have been in agreement about ESY for this student. If they were not in agreement, the parent's relief would have been, as it is now, the due process hearing – not the Federal Complaint process. A Federal Complaints Officer cannot write an IEP,or any of its components, for a student, and ESY is, if it is provided, a component of a student's IEP.

What the Federal Complaints Officer can do, as he could have done for any proceeding year going back to the 2002-2003 academic year for this student, is to order an IEP meeting for the consideration of the issue of ESY. He addresses such a meeting in the Remedies section of this Decision.

ALLEGATION NUMBER 5:

The Federal Complaints Officer makes no finding on this allegation.

The Federal Complaints Officer does not have jurisdiction over any allegation of insufficient discipline of school district staff. He only has jurisdiction over appropriate allegations of violations of the IDEA, and any other relevant law.

ALLEGATION NUMBER 6:

The Federal Complaints Officer makes no finding on this issue.

The school district wants the Federal Complaints Officer to declare the mediation agreement between it and the complainant parent "null and void." The complainant parent wants the Federal Complaints Officer to "[hold] as valid" the mediation agreement. The Federal Complaints Officer has no authority to do either. The status of the mediation agreement is for the school district and complainant parent to determine.

ALLEGATION NUMBER 7:

The Federal Complaints Officer finds the school district, by its own admission, did not provide this student with an IEP required annual physical exam. While the school district also has responded that this violation has been resolved by agreement with the complainant parent, this is the same agreement that the school district has asked the Federal Complaints Officer to declare "null and void". The Federal Complaints Officer will address this finding in the Remedies section of this Decision.

ALLEGATION NUMBER 8:

The Federal Complaints Officer finds no violation by the school district.

However, in so finding, the Federal Complaints Officer makes no judgment as to how this allegation would be adjudicated in a due process hearing.

In her response to the school district's response to her Complaint, the complainant parent states: "I have stated again, and again, that the [teachers] did/do not follow the accommodations." In the school district's response to the complainant parents Complaint, the Director of Special Education states "The simple fact is that the District's provision of accommodations and [modifications] is over and above what is legally required by IDEA and corresponding state law."

The Federal Complaints Officer has not been present in this student's classrooms at any time since the 2002-2003 academic year. He only has the allegation of the complainant, and the response of the Director of Special Education to determine whether, in fact, accommodations are being appropriately implemented. The record does not otherwise resolve these differing versions of events, and the Federal Complaints Officer has no authority to subpoena and cross examine school staff under oath as to what they are doing or not doing. What he can do, and what he could have done as far back as the academic year 2002-2003, and any year since, had the complainant parent previously filed a Complaint, is to do his best to put in place a process to better document the provision of IEP required accommodations for this student. The Federal Complaints Officer will further address this Finding in the Remedies section of this Decision.

ALLEGATION NUMBER 9:

The Federal Complaints Officer finds no violation by the school district.

Nothing in the law prohibits a school district from creating a draft IEP. A parent does not have to agree to a draft IEP becoming a student's final IEP. If a parent does not agree with a proposed IEP, or any of its contents, including disagreeing because the parent was not allowed to adequately participate in the creation of the student's IEP, the parent is entitled to a due process hearing to challenge the IEP proposed by the school district. The parent is also entitled to file a Complaint alleging, as this complainant parent has done, that, because of the manner in which the draft IEP was presented to her she was not adequately allowed to participate in the IEP process. However, the relief that a Federal Complaints Officer can provide is another IEP

meeting where the parent will have adequate opportunity to participate in the creation of the student's IEP. Even though the Federal Complaints Officer is finding no violation based upon this allegation, he is nonetheless providing for another IEP meeting for the parent as a part of the Remedies section in this Complaint Decision.

V. REMEDIES

IEP Meeting

The school district shall provide the complainant with an IEP meeting to be held within thirty (30) calendar days of the complainant's request for such a meeting, unless the complainant waives this time requirement. The complainant shall make this request for an IEP meeting to the school district, within thirty (30) calendar days of the date of her certified receipt of this Complaint Decision, unless the school district waives this time requirement. If the complainant does not timely request the IEP meeting provided for in this Remedy, the school district shall not be required to provide such an IEP meeting for the purpose of complying with this Remedy.

Any IEP meetings held to comply with this Remedy, and any further IEP meetings held between this parent and this school district, concerning this student, shall be recorded by the school district, unless waived by both the parent and the school district. This recording may be audio, or video, or by court reporter, but the school district shall maintain a copy of this recording, or recordings, in the student's permanent educational records, according to the terms of the Family Educational Rights and Privacy Act (FERPA), and the relevant corresponding provisions of the IDEA. The record shall be verbatim and intelligible and shall identify by name and title all speakers when they speak. It shall also identify by name and title all participants at the meetings, and the time the participant enters the meeting and the time the participant leaves the meeting, whether or not the participant speaks. See Federal Complaint Decision 2003:514 at page six, and Federal Complaint Decision 2005:502, at pages thirteen and fourteen, and ALJ Decision Case No. ED 2003-023, at page fourteen, for previous similar Remedies of the Federal Complaints Officer. Any drafts of IEP content shall be timely provided to the complainant parent.

Any IEP meetings held to comply with this Remedy shall discuss the assistive technology needs, if any, and the accommodation needs, if any, of this student. Such discussion shall be made a part of the recording of the IEP team meeting.

Any IEP meetings held to comply with this Remedy shall address the issue of whether the student should have received ESY services for any period of ESY time from the beginning of the 2002-2003 academic year, to date. If the determination of the IEP team is that such services were not provided because they were not appropriate for the student, that decision, and the rationale for it, shall be made a part of the recording of the IEP team meeting. If the determination of the IEP team is that any such services should have been provided, but were not, discussion shall also be had about whether compensatory education can now be provided to compensate for the missed ESY. This discussion shall also be made a part of the recording. If compensatory education is not to be provided, that decision shall be made a part of the recording. If compensatory education is to be provided, the amount and means of provision of such compensatory education shall be made a part of the recording.

Any IEP meetings held to comply with this Remedy shall address the issue of payment for the student's missed annual physical exam. This discussion shall be made a part of the recording of the IEP meeting.

Any IEP meetings held to comply with this Remedy shall address the goals and objectives for the student. This discussion shall be made a part of the recording of the IEP meeting.

Goals and Objectives

The goals and objectives page for this student's current IEP shall be reviewed by the school district's Director of Special Education, and she shall take whatever actions necessary to remediate the concerns of the parent, as found to be valid by the Federal Complaints Officer in his Finding for Allegation Number 2 of this Complaint. The Director of Special Education shall also take whatever actions necessary to assure that all faculty members at this high school understand, accept, and are capable of fulfilling, their legal responsibilities under the IDEA.

Statement of Assurance

The Director of Special Education for the school district shall submit to the Federal Complaints Officer, within thirty (30) days of the date of her certified receipt of this Decision a signed Statement of Assurance that the school district understands and accepts the Remedies ordered by the Federal Complaints Officer. This statement of assurance shall include an assurance that the school district has met its legal duty to inform the complainant parent of her due process hearing rights.

VI. CONCLUSION

In the conclusion to her response to the school district's response to her Complaint, the complainant states that she requested mediation after "… speaking with [the Federal Complaints Officer] and being told that although [she] could file a complaint at any time if [she] [herself, her son, and DPS] had not yet tried mediation we would be asked to do so." To the extent that the complainant in making this statement meant to imply that her right to request a hearing or file a complaint was conditioned on participation in mediation, the Federal Complaints Officer disagrees. The Federal Complaints Officer never made such a statement. The Colorado Department of Education does encourage mediation, and under IDEA 2004, effective July 1, 2005, a parent is required to participate in a resolution session with a school district before perfecting her right to a due process hearing. However, a parent's right to file a complaint or request a due process hearing is not conditioned upon participation in mediation.

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 _____, 2005.

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Charles M. Masner, Esq.
Federal Complaints Officer