

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

Federal Complaint 2007:505

Fremont County School District RE-1

Decision

INTRODUCTION

This Complaint, dated March 13, 2007, was filed by Student's mother (hereafter, the "Complainant") and was received in the office of the Federal Complaints Officer on March 21, 2007. A response of Fremont County School District RE-1 (hereafter, the "District") was received on March 29, 2007. Pursuant to a request from the Federal Complaints Officer for a copy of Student's operative Individualized Education Program (hereafter, "IEP") and documentation of physical therapy services provided during the relevant period, the District mailed an additional response on April 23, 2007. On April 4, 2007, Student's physician wrote a letter addressing Student's need for physical therapy services and his regression occasioned by the absence of such services. On May 21, 2007, the Federal Complaints Officer interviewed Complainant and District representative Ms. Debi Blackwell by telephone. The record was closed in this matter on May 21, 2007.

ISSUE

Whether the District failed to provide physical therapy services specified in Student's agreed-upon and implemented IEP during the period December 1, 2006, through March 13, 2007.

CONTENTIONS OF THE PARTIES

The Complainant alleges that Student was entitled to receive physical therapy services on a weekly basis throughout the 2006-2007 school year as specified in his IEP document dated April 18, 2006. Complainant alleges that Student has not received physical therapy since December, 2006, and that this has resulted in a regression of his physical strength and coordination.

The District concedes that it did not have a physical therapist available during the relevant period due to the resignation of a contracted therapist in December, 2006. However, the District suggests that physical therapy may not have been appropriate for Student from November 10, 2006, through February 5, 2007, while Student was recuperating from surgery.

FINDINGS OF FACT

1. Student is a male, born [DOB], living with his parent within the boundaries of the District. Student is eligible for special education services in the category of [disability].
2. During all times relevant to this Complaint, Student was enrolled in the [grade level] grade at [school].
3. On April 18, 2006, Student's IEP team convened and created a program of special education instruction and services for him. The IEP documented Student's special educational needs in the areas of communication, cognition, education, social/emotional, and physical/motor. The IEP listed multiple annual goals with corresponding objectives, as well as appropriate special education and related services to be provided to Student.
4. Complainant signed the April 18, 2006, IEP consenting to its implementation.
5. The IEP specified that Student was to receive 30 minutes of physical therapy once per week, targeted toward the goal of coordinating his arms and legs during fitness, play and classroom activities with decreasing verbal cues.
6. On or about November 10, 2006, Student underwent surgery. Complainant communicated to the school nurse that Student's physical activity was to be limited for a period of approximately two weeks.
7. On or about December 14, 2006, Elisabeth Watts, the physical therapist then contracted by the District, resigned effective January 1, 2007.
8. There is no documentation in the record that Student was not permitted to receive physical therapy from December, 2006, through March 13, 2007. Moreover, Ms. Blackwell confirmed that the school did not have a doctor's or parent's note restricting Student's activity in its files. An occupational therapy quarterly report submitted by the District documents that Student participated in stretching and exercising on a daily basis between October 24, 2006, and March 15, 2007.
9. Student's participation in occupational therapy activities did not substantially contribute to his progress toward attainment of his physical therapy goals and objectives.

There is no documentation in the record that Student received physical therapy services in the time period between December 1, 2006, and March 13, 2007. This time period represented twelve weeks of school.

10. On April 13, 2007, after the filing of this Complaint, Ms. Betsy Denney, Student's special education teacher, created an e-mail wherein she stated that Complainant prevented Student's participation in daily stretching activities on account of his recuperation from surgery during the period between November 10, 2006, and February 5, 2007. Ms. Denney's account is contradicted by the content of the occupational therapy quarterly report, created prior to the filing of this Complaint, and is therefore not credible.

11. Student's physician, Caroline Rowlands, M.D., established that Student has suffered worsening strength and coordination because of the lack of physical therapy services prior to April 4, 2007. Dr. Rowlands recommended that Student receive 2 to 3 hours per week of physical therapy from a pediatric therapist to address the regression.

CONCLUSION OF LAW

It is well established that a school district must provide special education services that comport with a student's IEP as one element of a free appropriate public education. *Board of Educ. Of the Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176 (1982). Here, Complainant alleges, and the District concedes, that physical therapy services prescribed in Student's operative IEP were not provided during the period December, 2006, through March 13, 2007. (Findings of Fact (hereafter, "FF") 3, 4, 5, 8, and 9) The District contends that it had a very difficult time contracting for a replacement after its therapist resigned in December, 2006. This does not, however, excuse the failure to provide services written into the IEP. Nor has the District established that Student was physically prevented from receiving services during his recovery after surgery. Ms. Denney's e-mail account is contradicted by records of Student's activity—created at the time of the activity and prior to the filing of this Complaint—and therefore appears to be self-serving. (FF 10) In conclusion, it is clear that Student was not provided with physical therapy services that he needed and was entitled to receive pursuant to the April 18, 2006, IEP document.

REMEDY

As a result of missing twelve weeks of physical therapy, Student suffered cognizable harm. (FF 11) Accordingly, Student shall be entitled to six hours of compensatory physical therapy, to be provided by a qualified, licensed therapist, in addition to any therapy he is receiving under his current IEP. Student may receive the compensatory services as an extension of existing therapy appointments or as separate appointments as determined to be appropriate by Complainant and the physical therapist. Lastly, the

failure of the District to provide prescribed services appears to be connected to the unique circumstances related to the resignation of Student's previous therapist and, as such, is not systemic. For this reason, no additional corrective action shall be mandated by this Decision.

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 21st day of May, 2007.

Keith J. Kirchubel
Federal Complaints Officer