

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

Federal Complaint 2007:506

Adams County School District 50

Decision

INTRODUCTION

This Complaint, dated March 12, 2007, was filed by Student's father (hereafter, the "Complainant") and was received in the office of the Federal Complaints Officer on March 19, 2007.¹ The response of Adams County School District 50 (hereafter, the "District") was received on April 19, 2007. The District's response attached Student's October 17, 2006, Individualized Education Program ("IEP") as well as correspondence exchanged between the District and Complainant in early 2007. The response was transmitted by the Federal Complaints Officer to the Complainant on April 20, 2007, permitting him to submit a reply not later than April 25, 2007.² Complainant's reply was received and the record was closed in this matter on April 27, 2007.

ISSUES

1. Whether the District complied with the schedule established for the second semester of the 2006-2007 school year in Student's October 17, 2006 IEP;
2. Whether the District prohibited contact between Student's parents and his teachers;
3. Whether the District failed to convene a requested IEP team meeting after Complainant's request on January 17, 2007;
4. Whether the District unilaterally changed Student's IEP placement on January 17, 2007;

¹ In a letter dated March 30, 2007, the Federal Complaints Officer advised the District and the Complainant that five of the nine alleged violations stated issues that could be reviewed and resolved via the Federal Complaint process and that the remaining issues would not be investigated.

² On April 26, 2007, The Federal Complaint Officer granted Complainant's request to extend the deadline for a reply until April 30, 2007.

5.³ Whether the District overruled decisions of the IEP team without involvement of the team.

CONTENTIONS OF THE PARTIES

The Complainant alleges that the provisions of Student's October 17, 2006 IEP were violated in January, 2007, when, at the beginning of the spring semester Student was enrolled in different mathematics and social studies classes than he had been during the fall semester.⁴ The Complainant also alleges that he requested an IEP team meeting to discuss his son's special education program and that none was convened prior to the date of the Complaint. Lastly, Complainant alleges that he was wrongly prohibited from communicating with Student's teachers.

The District alleges that the schedule it generated for Student in January, 2007, was consistent with his IEP and did not constitute a change of placement. The District concedes that no IEP team meeting was convened between October 17, 2006, and March 15, 2007. The District contends that all "legally-required" communication regarding "necessary information" was permitted between District staff and Student's parents.

FINDINGS OF FACT

1. Student is a male, born [DOB], living with his parents 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 October 17, 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 and cognition, a set of two annual goals with five corresponding objectives, as well as appropriate accommodations and modifications to Student's instruction. Student's parents consented to implementation of the IEP.
4. No provision of the October 17, 2006 IEP addressed Student's spring semester schedule or mandated his placement in a particular mathematics or social studies class with a designated instructor during the 2006-2007 school year.

³ This issue is denominated as No. 6 in the Complaint.

⁴ The record contains references to an economics class, but not social studies by name. The concern regarding economics appears to be purely whether Student should be enrolled in one period or another, with no discernible impact on the resolution of the issues presented here.

5. There is no indication in the record that Student failed to progress toward his special education goals between October 17, 2006, and January 17, 2007.
6. On or about January 17, 2007, Student's parents became aware that Student's spring semester schedule had changed from that of the fall semester. In January, 2007, Student was supposed to move into a new math class, second-semester AlGeo 2. He did so with a different instructor during a different period of the day.
7. On January 17, 2007, Complainant wrote to the Assistant Principal, [ASSISTANT PRINCIPAL], expressing Complainant's understanding that "as a special accommodation it was arranged" that Student would be enrolled in [TEACHER]'s AlGeo 2 class. In the same correspondence, Complainant requested that the District convene an IEP team meeting.
8. On or about January 18, 2007, Student's parents began writing progressively more urgent e-mail correspondence to District special education staff, school administrators, counselors and teachers attempting to have Student's spring semester schedule altered.
9. On January 24, 2007, Complainant reiterated his request for an IEP meeting in an e-mail directed to the IEP team, including [SPECIAL EDUCATION COORDINATOR], Special Education Coordinator for the District.
10. On January 24, 2007, [SPECIAL EDUCATION COORDINATOR] wrote to Student's parents directing them to "submit a request reflecting [their] concerns on the specific goals, objectives, accommodations, etc. in [Student's] IEP." The letter continued that once this information had been provided to the school principal, the District special education staff would then schedule a review meeting.
11. On January 24, 2007, [PRINCIPAL], principal of [SCHOOL], wrote to Complainant and informed him that all correspondence with [SCHOOL] staff should thereafter be addressed to [PRINCIPAL] and only [PRINCIPAL]. [PRINCIPAL] pledged to "review each request and respond to [Complainant] appropriately." He also scheduled a meeting with Complainant for 9:00 a.m. on January 29, 2007.
12. On January 26, 2007, Complainant attempted to clarify the purpose of the meeting on January 29, 2007. Specifically, Complainant asked if it was to be an IEP team meeting and requested that [PRINCIPAL] explain the purpose of the meeting, its agenda, and who would attend so that Complainant could adequately prepare. [PRINCIPAL]'s only documented response to these requests was, "I will see you at 9:00 a.m. in my office."

13. Student's parents continued to write to [PRINCIPAL] throughout January and February, expressing that Student was struggling "academically and psychologically" with his new schedule and requesting that Student's accommodations be reviewed by the IEP team in the context of the new schedule.

14. At 3:00 p.m. on February 13, 2007, [PRINCIPAL] wrote to Complainant informing him that a meeting had been scheduled for the afternoon of February 16, 2007 to "address classroom accommodations with the special education team." This e-mail correspondence did not provide any notice of the agenda or attendees of the meeting, nor whether the meeting would be convened as an IEP team meeting although Complainant reiterated his request for those details earlier the same day.

15. On February 14, 2007, and on subsequent dates [PRINCIPAL] and Complainant exchanged further e-mail correspondence regarding attempts to reschedule a meeting.

16. The parties participated in mediation in early March. There is no indication in the record that Student's schedule or placement changed between January 17, and March 12, 2007.

17. No IEP team meeting was convened for Student until March 15, 2007.

18. Student suffered no documented educational harm between January 17, 2007, and March 12, 2007.

CONCLUSIONS OF LAW

1. 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 contends that Student's spring semester schedule constituted an improper departure from the program set forth in the October 17, 2006 IEP. This concern is most adamantly expressed in the record with respect to Student's AIGeo 2-2 class. In his reply, Complainant concedes that Student was supposed to be placed in the AIGeo 2-2 class for the spring semester. (Finding of Fact, hereafter "FF," 6) However, a thorough review of that IEP reveals no description of any particular class or instructor designated to teach Student's mathematics class during the spring semester. (FF 4) Nor are there any special education needs or goals and objectives written to specifically addressed to mathematics. Student's accommodations and modifications are stated in general terms and do not obligate the District to offer any particular mathematics placement for the spring semester. In summary, Student's spring semester schedule did comport with the substance of the October 17, 2006 IEP.

2. Meaningful participation of parents is essential to the success of the IEP process and special education as a whole. 34 C.F.R. §300.501(b). In enacting the Individuals with Disabilities Education Act, Congress stated its specific intent to strengthen the role and responsibility of parents to ensure such meaningful participation. 20 U.S.C. §1400(c)(5)(B). Parents of all children naturally have an interest in their progress at school and commonly seek out teachers and counselors for information. Districts, on the other hand, have a cognizable interest in the safe and orderly administration of their schools for the benefit of administrators, teachers and students. Accordingly, as an example, it is reasonable for a school to adopt and enforce rules pertaining to parents visiting classrooms so as to prevent disruptions during instruction or removal of the child without first informing the school. At issue here is whether the District's limitation on Student's parents ability to communicate with Student's teachers and counselors improperly impaired the parents' meaningful participation in the special education process.

The record reveals a sustained effort on the part of the parents to communicate their serious concerns regarding Student's spring semester schedule to various persons in the District between January 17, 2007, and March 12, 2007. (FF 7, 8, 12, 13, and 15) This correspondence expressed the parents' sense of urgency and, at times, frustration but always in the context of Student's best interests and consistently in respectful terms. Additionally, by its very nature, e-mail correspondence is not intrusive or disruptive to the orderly administration of a school. Addressees are free to open and read such messages at their convenience, or they may disregard them altogether.

[PRINCIPAL]'s letter of January 24, 2007, does not state a basis in rule or policy for limiting parents' ability to correspond directly with staff at [SCHOOL]. What is clear is [PRINCIPAL]'s pledge to review the parents' requests and respond "appropriately." The record here does not establish that [PRINCIPAL] fulfilled that pledge. Parents' correspondence consistently posed enumerated questions or concerns, to which there is no documented response. The documented exchange on January 26, 2007, (FF 12) is an apt example. Complainant asked for information regarding the proposed meeting that the District was obligated to provide pursuant to 34 C.F.R. §300.322(b)(1)(i), but received a curt, non-responsive answer.

The District's response to the Complaint similarly provides no policy basis for the limitation on communication. The asserted rationale—that Complainant's e-mails were numerous, lengthy and demanding—reflects more on the inadequacy of the District's communication than it does impropriety on the part of the parents. In conclusion, even if the District could show that the limitation was warranted, it was also bound to show that an alternative means of effective communication was put in place to permit parental participation. The record does not establish that happened here.

3. By law, a parent is empowered to request a meeting to review or revise a student's IEP. State of Colorado Rules (for the) Administration of the Exceptional Children's Educational Act (hereafter, "ECEA Rule") 4.02(1)(d) (December 2006). The District is responsible for convening a meeting to review an IEP in a timely manner following a request. ECEA Rule 4.02(2)(a). On January 17, 2007, Complainant requested that the District convene an IEP team meeting. (FF 7) From that time to the date of the Complaint, March 12, 2007, no meeting was convened. (FF 17) Rather than schedule an IEP team meeting, the District's response on January 24, 2007, directed the parents to formalize their request and provide specific information as a prerequisite to convening the meeting. (FF 10) Neither the letter of [SPECIAL EDUCATION COORDINATOR] nor the District's response to the Complaint identifies any authority for imposing such conditions on the parents' request for an IEP team meeting. The District response implies that a parent request to review or revise an IEP is only justified if the parent presents new evaluation data or requests reevaluation. Complainant, in his reply, correctly asserts that no such criteria exist in the law.

In response to a request, an IEP team meeting should be scheduled at a mutually convenient time and place following sufficient notice to ensure that parents will have the opportunity to attend. ECEA Rule 4.02(1)(d), 34 C.F.R. §300.322(a). Here, on two documented occasions, [PRINCIPAL] unilaterally scheduled meetings without any indication that parents had been consulted regarding the convenience of the proposed time and place. (FF 11, 12, 14) Moreover, in correspondence with the District and in his reply, Complainant has pointed out that he is disabled with serious mobility problems. For that reason—which was known to the District—the need to coordinate the time and place of a meeting acquired added significance in this case. Additionally, as noted above, the District never furnished Student's parents the information required in a notice of IEP team meeting pursuant to 34 C.F.R. §300.322(b)(1)(i). As a result, the District is responsible for the failure to convene an IEP team meeting as requested during the period January 17, 2007, through March 12, 2007.

4. Special education placement decisions are to be made by an IEP team. 20 U.S.C. §1414(d)(1)(A)(i)(IV). A special education placement has been historically referred to "points along the continuum of placement options available for a child with a disability, and 'location' as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services." *Commentary* to 34 C.F.R. §300.116. In Colorado a change in location or facility may or may not constitute a change in placement depending on the factors of a particular case. ECEA Rule 5.04(1)(a). A change in the amount of a given special education service delivered, not merely a change in location of the program, constitutes a material alteration of the program. ECEA Rule 5.04(1)(b). A significant change of placement is defined as any addition or termination of an instructional or related service that results in the child being educated with non-disabled children for an additional or lesser amount of time, different access to nonacademic and extracurricular activities, or a shift in the continuum of

defined alternative placements. ECEA Rule 5.04(2)(a). Such a change can only be made by an IEP team upon the consideration of reassessment. ECEA Rule 5.04(2)(b).

Student was supposed to and did enroll in AlGeo 2-2 with the beginning of the spring semester, 2007. (FF 6) Student's new schedule for the spring semester placed him in a new time block and with an instructor that was different from that of the fall semester. (FF 6) However, applying the factors noted above, these changes did not amount to a change of placement in conflict with Student's implemented IEP. Student's IEP did not address a particular set of services and setting for his mathematics instruction. (FF 3, 4) This contemplated change did not alter the amount or type of special education services he received, the amount of time he was educated with his non-disabled peers, nor his access to nonacademic or extracurricular activities. The change in his schedule did not shift Student along the continuum of special education services defined in ECEA Rule 5.03(3). He merely advanced to the next class in his curriculum with someone other than [TEACHER]. Student was still entitled to benefit from the general accommodations and modifications spelled out in the IEP. The record here contains no evidence that the accommodations and modifications were not implemented after January 17, 2007.⁵

5. Based on the Conclusions of Law stated in response to Issues No. 1 and No. 4, Complainant has not established that Student's IEP was changed without the required involvement of the IEP team.

REMEDY

Complainants failed to establish facts to substantiate their allegations related to Issues No 1, No. 4 and No. 5.

As to Issue No. 2, Complainants established that the District failed to ensure effective parental participation via access to information from Student's teachers. However, this failure appears to be connected to the unique circumstances related to Student's transition from the fall to spring semesters and, as such, is not systemic. The District shall and is hereby Ordered to permit reasonable communication related to Student's educational program between his parents and District personnel, including administration, teachers, counselors and special education staff. If pursuant to a clearly stated policy, the District deems it necessary to regulate such communication in the future, the District shall ensure that some viable alternative means of parent participation through communication is offered and, in fact, implemented.

⁵ This Conclusion should not be read to be in conflict with Conclusions of Law 2 and 3. The rights of Student's parents to participate in the special education process and request an IEP meeting do not depend on a finding that Student's accommodations and modifications were not being implemented. The parents articulated real concerns based on their determination that Student was struggling academically and psychologically. (FF 13) Indeed, parents concerns regarding Student's performance at school may have been exacerbated by their inability to obtain feedback from his teachers and counselors.

As to Issue No. 3, Complainant established that the District failed to timely and with appropriate notice convene an IEP team meeting as requested. The record in this matter supports the conclusion that the District is unfamiliar with the legal requirements of convening IEP team meetings. Accordingly, within thirty (30) days of the District's certified receipt of this Decision shall submit to the Federal Complaints Officer a written statement that the District recognizes and accepts as valid the violation found as to Issue No. 3. This statement shall be accompanied by a corrective action plan developed to effectively address the violation found so as to prevent its recurrence not only as to this Student but as to all students with disabilities for whom the District is responsible. The Federal Complaints Officer reserves the right to request revision of the corrective action plan to the extent it is found to be insufficient. The District's written statement shall further assure that any corrective action to be taken by the District will be completed as soon as practicable, but not later than August 15, 2007. Upon timely completion of its corrective actions, the District shall notify the Federal Complaints Officer in writing describing the corrective actions taken and completed, and the dates of completion. This written notification shall be provided to the Federal Complaints Officer no later than September 14, 2007.

As Student suffered no documented educational harm as a result of the District's actions (FF 18), there is no basis for awarding a compensatory remedy to Student.

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 18th day of May, 2007.

Keith J. Kirchubel
Federal Complaints Officer