

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

Federal Complaint 2007:508

Denver Public Schools

Decision

INTRODUCTION

This undated Complaint was filed by Student's parents (hereafter, the "Complainants") and was received in the office of the Federal Complaints Officer on March 28, 2007. The response of Denver Public Schools (hereafter, the "District") was received on May 2, 2007.¹ The District's response attached Student's November 14, 2006, Individualized Education Program ("IEP") as well as records of a follow-up IEP meeting on November 20, 2006 and Progress Reports for Student during the 2006-2007 school year. On June 4, 2007, the Federal Complaints Officer requested additional information from both parties regarding the amount of special education services actually provided to Student during the time period covered by the Complaint and extended the deadline for decision in this case to June 22, 2007. A response from the District was received on June 15, 2007. No response was received from Complainants. Accordingly, the record in this matter was closed on June 15, 2007.

ISSUE

Whether the District failed to implement Student's IEP by not consistently providing services specified in the IEP during the period January through March, 2007.

CONTENTIONS OF THE PARTIES

The Complainants allege that Student did not receive any services specified in the IEP, other than classroom accommodations, during the three month period preceding the filing of the Complaint.

¹ On April 27, 2007, The Federal Complaint Officer extended the timelines in this case by five days pursuant to the District's request for more time.

The District concedes that Student did not receive all of the services specified in the IEP dated November 20, 2007. It states that Student was opposed to receiving services outside of the general education classroom and that the District did not take measures to ensure that he actually received such services prior to the filing of the Complaint.

FINDINGS OF FACT

1. Student is a [age] year-old male 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] at [school].
3. On November 14 and 20, 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 academics, fine-motor processing, auditory memory and organization. The IEP set forth two annual goals with six corresponding objectives, as well as appropriate accommodations and modifications to Student's instruction. The IEP specified that Student was to receive 120 minutes per week of direct services outside of the general classroom. Student's mother consented to implementation of the IEP.
4. Student was initially scheduled to attend the resource room in the morning, but did not cooperate with being removed from the general education class. Student's special education teacher chose not to escort Student from his general education classroom and "left it up to Student to determine whether he wished to attend" the resource class.
5. From January through March, 2007, Student did not voluntarily attend his resource class. Consequently, he did not receive 22 hours of direct services due pursuant to the IEP during that period.
6. The District's May 2, 2007 response states that "Student received educational benefit from the school program and made appropriate progress toward the goals and the objectives defined by the IEP." However, the progress report for Spring 2007 included as "Attachment A" does not document his progress on any of the defined goals and objectives. There is no data in the record of Student's progress on his IEP goals and objectives during the 2006-2007 school year.
7. There is no dispute among the parties pertaining to the appropriateness of the direct services specified in the IEP. The failure to provide such services necessarily caused an adverse impact on Student's educational progress from January through March, 2007.

8. Since the filing of this Complaint, the District has taken steps to ensure that Student will receive direct services specified in the IEP. The parties have also discussed scheduling of further IEP team meetings since the filing of the Complaint.

CONCLUSIONS 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 contends that the District did not provide the direct services set forth in the November, 2006 IEP. The District concedes that Student did not receive 22 hours of resource room services from January through March, 2007. The reason given by the District—that Student did not seek these services out on his own—does not excuse the failure to provide what was offered and accepted in the IEP. Nor is the District's statement, that notwithstanding the failure to provide this instruction Student still made appropriate educational progress, substantiated by the factual record. There is no documentation of Student's progress toward his special education goals and objectives during the time period covered by the Complaint. Additionally, it is logical to conclude that direct services which both sides agree were appropriate for Student were also necessary to permit him to advance toward attainment of his goals and objectives. Thus, the failure to provide such services must have adversely affected Student's educational progress. In summary, the services provided to Student from January through March, 2007, did not comport with the substance of the November, 2006 IEP.

REMEDY

Complainants established that the District failed to provide direct services specified in Student's operative IEP. However, this failure appears to be connected to the unique circumstances stemming from Student's reluctance to leave his general education setting. The District has established that it has addressed this problem by taking steps to ensure that students receive specified services or, where the reluctance persists, by convening a further IEP team meeting. Accordingly, the District established that its failure in this matter does not present a systemic problem.

In order to compensate for the educational harm caused by the failure to provide direct services to Student, the District shall provide to Student 16 hours of resource room or equivalent services, in addition to any services he currently receives, that are designed to advance Student toward his currently implemented IEP goals and objectives. If, in the course of further IEP meetings convened after the filing of the Complaint, Student's IEP team agrees that he should no longer receive services outside of the general education classroom, then the 16 hours of compensatory services shall be delivered in the mode

described in his current IEP. In either case, Student's compensatory education program shall be completed no later than December 31, 2007.

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 22nd day of June, 2007.

Keith J. Kirchubel
Federal Complaints Officer