

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

---

**Federal Complaint 2007:514**

Denver Public Schools

**Decision**

**INTRODUCTION**

This Complaint dated November 2, 2007, was filed by Student's mother (hereafter, the "Complainant") and was received in the office of the Federal Complaints Officer on November 8, 2007. The response of Denver Public Schools (hereafter, the "District") was timely received on December 7, 2007. The District's response attached Student's March 21, 2007 Individualized Education Program ("IEP") document as well as a District Graduation Policy<sup>1</sup>, Student's 2007-08 class schedule, the course policies for Student's history class, and Student's attendance records for the 2006-07 and 2007-08 school years. The District's response was transmitted to Complainant on December 7, 2007, inviting a reply to the information therein. No response was received from Complainant. Accordingly, the record in this matter was closed on December 21, 2007.

**ISSUE**

Whether the District provided special education services and accommodations to Student as specified in his March 21, 2007 IEP document during the 2007-08 school year.

**CONTENTIONS OF THE PARTIES**

The Complainant alleges that the accommodation to allow extra time on assignments written into Student's IEP document was not implemented during the 2007-08 school year, particularly for "warm-ups" in [TEACHER]'s history course. Complainant also notes that Student is enrolled in two physical education courses and cites this as an example of Student having to take the same class more than once and the school not meeting the Student's needs.

---

<sup>1</sup> The Graduation Policy states that application of its requirements begins with the graduation class of 2011. Given that Student will "age-out" of special education in 2009, the District failed to demonstrate the relevance of this document to the issues raised in the Complaint.

The District contends that it has fully implemented the provisions of Student's IEP, including classroom accommodations. The District further contends that Student's academic problems are due to a chronic attendance problem that has been repeatedly discussed with Student and his family.

### **FINDINGS OF FACT**

1. Student is a [AGE] year-old attending high school in the Denver Public School District. Student is eligible for special education and related services in the category of learning disability.
2. Student currently attends the [GRADE] at [SCHOOL] within the District.
3. On March 21, 2007, Student's IEP team convened and created a program of special education instruction and services for him. The relevant portions of the IEP provide that Student is to receive extra time to process information, and complete class assignments and tests as needed. The IEP document also notes Student's attendance problem and contains a long-term goal addressed to the issue of attendance.
4. Attendance records attached to the District's response document 271 course-period absences and 68 tardies for Student during the 2006-07 school year. Of these, only four absences were deemed "excused."
5. During the 2007-08 school year, through December 3, 2007, Student had accumulated 102 course-period absences and 22 tardies. Of these, 31 absences are coded as "excused."
6. During the fall term of the 2007-08 school year, Student was absent from his second period literature and composition class 32 times and tardy six times. Of these, five absences and one tardy were excused. Between September 17, 2007, and December 3, 2007, Student recorded regular attendance in second period fourteen times and was absent or tardy the other 32 school days—four absences of which were excused.
7. Student was absent from his fourth period history class 18 times and tardy eleven times, of which five absences were excused. Between August 24, 2007, and October 24, 2007, Student recorded regular attendance in fourth period eight times and was absent or tardy the other twenty school days—two absences of which were excused.
8. There is no evidence in the record to suggest that Student's excessive absences are attributable to his learning disability or any other physical, mental or medical condition.

9. Student's history teacher, [TEACHER], provided a class policy memorandum addressed to Student's parents. The policy stated that attendance and tardy rules are strictly enforced and that all students have the opportunity to "make-up or redo" any assignment. This policy memorandum was acknowledged and signed by Student and Complainant.

10. There is no conclusive evidence in the record establishing that Student's accommodation permitting extra time for assignments and tests was not implemented. Both parties asserted contradictory contentions with regard to this issue in the context of Student's fourth period history class. However, the course policy permitting assigned work to be made-up or done over demonstrates that the teacher did not foreclose the use of extra time to complete such tasks.

11. As of the 2007-08 school year, Student had earned no physical education credit. There is no evidence to suggest that Student's disability affects his ability to participate in and benefit from physical education. Accordingly, the District did not deny a free appropriate public education by enrolling him in these two required courses.

### **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 implement the accommodations set forth in the March, 2007, IEP. However, in the only class identified by Complainant to be a particular problem, there is evidence to suggest that the teacher, [TEACHER], did permit extra time to complete assigned work. (Findings of Fact No. 9 and No. 10) Moreover, Complainant did not reply in any way to the District's response, leaving the impact of that evidence unrefuted. To the extent that Student is struggling academically in his language and history courses, this problem is no doubt attributable to his poor attendance. However, as there is no evidence to suggest that this attendance problem is causally related to Student's learning disability or any other physical, mental, or medical impairment (Finding of Fact No. 8), there is no basis on which to find that the District's implementation of Student's IEP does not conform to applicable law.

### **REMEDY**

Complainant failed to establish that the District did not properly implement Student's March 21, 2007 IEP during the 2007-08 school year. Accordingly, no remedy is warranted. The District should nonetheless continue to ensure that all services and accommodations are afforded to Student as specified in his IEP.

## **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 of January, 2008.

---

Keith J. Kirchubel  
Federal Complaints Officer