

## FEDERAL COMPLAINT NUMBER 98.504

### FINDINGS AND RECOMMENDATIONS

#### I. PRELIMINARY MATTERS

- A. A complaint was received by the Federal Complaints Coordinator, Colorado Department of Education (“CDE”), on February 2, 1998.
- B. The complaint was filed by Ms. [parent] on behalf of her son [student], against the Pueblo 70 School District, Dr. Thomas M. Alby, Superintendent, and Mr. Greg Keasling, Director of Special Education (“the District”).
- C. The timeline within which to investigate and resolve this complaint expired April 3, 1998.
- D. The process for receipt, investigation and resolution of the complaint is established pursuant to the authority of the Individuals With Disabilities Education Act 20 U.S.C. 1401 et seq., (“the Act”), and its implementing regulations concerning state level complaint procedures, 34 C.F.R. 300.660-300.662, and Colorado State Board of Education Policy No. 1280.0.
- H. The complaint was brought against the District as a recipient of federal funds under the Act. It is undisputed that the District is a program participant and receives federal funds for the purpose of providing a free appropriate public education (“FAPE”) to eligible students with disabilities under the Act.
- I. The complaint was accepted for investigation based upon a determination that CDE had jurisdiction over the allegations contained in the complaint pertaining to violations of federal law and rules in a federally funded program administered by CDE.
- J. [Student] is a student with disabilities residing within the District’s attendance boundaries and is eligible for special education services from the District.
- H. The investigation of the complaint included a review of the documents submitted by the parties; interviews with persons named in those documents or who had information relevant to the complaint; and consideration of relevant case law.

#### I. ISSUE

##### A. STATEMENT OF THE ISSUE:

Whether or not the District has violated the provisions of the Act by:

- failing to provide services commensurate with the IEP at the beginning of this school year,
- unilaterally changing placement without holding an IEP meeting, and
- not scheduling the IEP meeting at a mutually agreeable time and date.

B. RELEVANT STATUTORY AND REGULATORY CITATIONS

1401(a)(16), (17), (18), (20) and 1414

34 C.F.R. 300.2, 300.7, 300.8, 300.11, 300.14, 300.16, 300.17, 300.121, 300.130, 300.131, 300.180, 300.235, 300.300, 300.340, 300.343 and 300.533

Fiscal Years 1995-97 State Plan Under Part B of the Act

C. FINDINGS

1. At all times relevant to the complaint, the District was receiving funds under the Act pursuant to an approved application for funding.
2. The funds were paid to the District, in part, based on the assurances contained within the application.
3. One of the assurances made by the District is that in accordance with the Act, it will provide a FAPE, including special education and related services, to each eligible student with disabilities within its jurisdiction to meet the unique needs of that child.
4. [Student] is a student with disabilities as identified on an IEP dated 3/13/97. Services to be provided to [student], as listed on that IEP, are 2 hours per week of EH Resource direct support outside the general classroom. Environment Modifications were to be provided included preferential seating. Such services were to be provided until 11/11/97 at which time a review was to be held.
5. The complainant alleges:
  - a. Services as listed on the IEP were not initiated at the start of the 97-98 school year. She was told that the special education teacher was too busy to provide services to [student] who was a student at Swallows Charter Academy.
  - b. During the first week in October, the special education teacher unilaterally pulled [student] out of class 5 days a week (although the IEP did not call for that ) because the school was not being compliant in sending [student] to special education class at designated times. Although some interim agreements were made between the special education teacher and the parent/complainant, services were dropped in November without notification.
  - c. An annual review held on 11/26/97, was changed three times by the special education teacher, who subsequently settled on a date which was not acceptable to the complainant. Allegedly the teacher refused to schedule the meeting at a time mutually agreeable and stated he would hold the meeting without the parent if she could not be there. Subsequently she called in sick at work so that she could attend.
7. The District, in its response to this complaint, acknowledged Ms. [parent]'s allegations were fairly accurate and offered the following explanation:
  - a. [Student] did struggle with the difficult curriculum at the charter school at the beginning of the school year and the District encountered difficulty in getting

special education services coordinated with the charter school. One teacher from Pueblo West Middle School (“PWMS”) was in charge of coordinating and delivering services, however this was not initially successful. There was some difficulty in connecting [student] with his special education services at PWMS which was just 20 yards away. The director of special education did suggest some alternatives, however they were implemented by the teacher without reconvening the IEP team or notifying the parent.

- b. Although the facts of how the IEP meeting was scheduled are unclear, as the teacher’s version of how this situation occurred are different from the complainant’s, the District does not nor will ever condone holding a meeting at the convenience of the teacher only.
  - c. There were some concerns relative to the annual review held on 11/26/97, in which continued eligibility for special education was a question. Subsequent assessment was provided and a review was again held on 2/3/98 to discuss the new information. During that time there was a misunderstanding on the part of the special education teacher, who believed [student] had been dropped from special education; and therefore did not continue to provide services to him.
  - d. Other needed communication between the special education teacher and the parent/complainant did not occur.
8. The District accepted responsibility for the above. The Director of Special Education and the PWMS vice principal met with Ms. [parent] on 3/9/98 to develop a corrective action plan which included an improvement plan for the teacher, specific services for [student], a communication plan between home and school, and compensatory services for [student] at a private learning center.
9. Ms. [student] was contacted by this complaints investigator on 4/2/98 to determine the effectiveness of the current services and corrective action plan. She stated she was very pleased with the actions of the Director of Special Education who appeared quite willing to do whatever needed to be done to remediate this situation. She explained the current services with which she is very pleased, and indicated that – as a result – [student]’s grades are improving.

### III. CONCLUSIONS

By its own admission, the District did violate the provisions of the Act by failing to provide services commensurate with the IEP at the beginning of this school year, unilaterally changing placement without holding an IEP meeting, and not scheduling the IEP meeting at a mutually agreeable time and date.

### IV. REMEDIAL ACTION

Upon receipt of this complaint, the District acknowledged its failure, acknowledged its responsibility, and set forth a corrective action plan which is quite satisfactory to the

complainants and, therefore, to this complaints investigator. No further action is warranted.

Dated this \_\_\_\_\_ day of April, 1998.

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Carol Amon, Federal Complaints Investigator