

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

Federal Complaint 99:518
(Arapahoe County School District 5)

Decision

INTRODUCTION

This Complaint was dated June 3, 1999, and received by the Federal Complaints Office on June 7, 1999. In correspondence dated June 30, 1999, and received by the Federal Complaints Officer on July 6, 1999, the school responded to the Complaint. The parties subsequently went into mediation to try to resolve the Complaint. The Federal Complaints Officer was notified by letter from the mediator, dated September 30, 1999, and received by the Federal Complaints Officer on October 4, 1999, that mediation had failed to resolve the disagreement between the parties. In a letter dated November 3, 1999, the Federal Complaints Officer requested clarification and further information from the complainants and the school. In correspondence dated November 19, 1999, the Federal Complaints Officer received the requested further response from the complainants. In correspondence dated November 16, 1999, and received by the Federal Complaints Officer on November 19, 1999, the Federal Complaints Officer received the requested further response from the school. In correspondence dated November 23, 1999, and received by the Federal Complaints Officer on December 1, 1999, the school submitted further, unsolicited, response to the complainants' response of November 19, 1999. The complainants subsequently responded, unsolicited, in correspondence dated December 2, 1999, and received by the Federal Complaints Officer on December 6, 1999. In correspondence to the parties dated December 2, 1999, the Federal Complaints Officer requested further clarification information from the parties. The complainants provided this response to the Federal Complaints Officer in correspondence dated and received by the Federal Complaints Officer on December 21, 1999. The school provided its response in correspondence dated June 5, 2000, and received by the Federal Complaints Officer on January 10, 2000.

Subsequently, the Federal Complaints Officer directed that the school be allowed to review complainants' daughter's Communications Notebook, upon which the complainants were primarily relying to prove that IEP required services had not been provided. Then ensued a series of events in which complainants consulted with their attorney as to whether to proceed with their Complaint and to allow the school to review the Communications Notebook. In correspondence from complainants' attorney, dated February 22, 2000, and received by the Federal Complaints Officer that same date, the complainants' attorney, who had represented the complainants throughout the Complaint, informed the Federal Complaints Officer that he was no longer representing the complainants, on the Complaint, and that the complainants would provide the school with the Communications Notebook, and that they wanted the Federal Complaints Officer to proceed to decide the Complaint, after the school had reviewed and responded to the Communications Notebook, and after they had responded to the school's response. On February 28, 2000, the complainants, who had returned the Communications

Notebook to the Federal Complaints Officer, having previously taken it back, picked it up again for delivery to the school. The school subsequently received the Communications Notebook and responded to its review of it in a letter to the Federal Complaints Officer, dated and received March 13, 2000. In correspondence dated March 16, 2000, and received by the complainants on March 18, 2000, the complainants were given fifteen (15) days to respond to the school's review of the Communications Notebook, if they wanted to do so. In a voice mail from the complainants to the Federal Complaints Officer of March 20, 2000, the complainants said they would submit a response. This response was received by the Federal Complaints Officer on April 3, 2000. The Federal Complaints Officer then closed the record.

Resolution of this Complaint has been made lengthier due to the following exceptional circumstances:

- (1) The parties were first in mediation trying to resolve their disagreement;
- (2) The factual and legal complexities of the disagreement;
- (3) The reluctance of the complainants to provide necessary evidence to the school.

COMPLAINANTS' ALLEGATIONS

The complainants alleged that the school had failed to provide required IEP services, as required by an October 16, 1997 IEP, which the complainants alleged was the IEP still in effect, as of the date of their Complaint letter, which was June 3, 1999. The complainants included as a part of their Complaint, a graphed compilation of special education services hours they alleged were not provided during the 1997-98 and 1998-99 school years. The complainants based their compilation on complainants' daughter's Communications Notebook.

SCHOOL'S RESPONSE

In its response, dated June 30, 1999, and received by the Federal Complaints Officer on July 6, 1999, the school responded that the October 16, 1997 IEP was not the current IEP, but instead, an October 15, 1998 IEP was the current IEP. The school also responded that all required IEP services were provided during the 1997-98 school year, as required by the October 16, 1997 IEP. In addition, the school responded that on August 31, 1998, the complainants physically withdrew their daughter from school. The school further responded that in a letter dated October 12, 1998, prior to the October 15, 1998 IEP meeting, the complainants disenrolled their daughter from school. However, the school also responded that in February of 1999, the school began providing, at the request of the complainants, some homebound services to the complainants' daughter, who, the school stated, the complainants were home schooling. The amount of this homebound instruction was subsequently decreased by the school. The school later notified the complainants that homebound instruction would end at the end of April 1999. The complainants subsequently objected to this termination of homebound services.

FINDINGS AND DISCUSSION

The October 16, 1997 IEP is only relevant for analysis of whether IEP services from October 16, 1997 until October 15, 1998 were appropriately implemented. The IEP meeting of October 15, 1998 was a valid IEP meeting, meaning that whatever IEP that was created as a result of that

meeting was the governing IEP for determination of what services the school was required to provide after that date, assuming the school was otherwise required to provide such services. The fact that the consensus which was reached at the October 15, 1998 IEP meeting may not have included the parents as a part of that consensus, at least not in entirety, given what happened on October 16, 1998, did not invalidate the October 15, 1998 IEP meeting. The complainants were notified of the meeting. They attended the meeting, notwithstanding that a second meeting on October 16, 1998 ended earlier than planned due to a disagreement between the complainants and the school. If the complainants did not like the results of the October 15, 1998 IEP meeting, their option at that time was, is, and always has been, a due process hearing to resolve their disagreement with the school. Had they requested a hearing, they could have also requested, if they had deemed it appropriate to do so, that stay put provisions be invoked to maintain the October 16, 1997 IEP. A hearing officer could then have determined whether this was appropriate. The complainants did not request a hearing. They have not requested a hearing since that time. Therefore, for purposes of deciding this Complaint, the Federal Complaints Officer finds that the IEP of October 16, 1997 has been irrelevant for events past October 15, 1998, since October 15, 1998.

From August 31, 1998, until February of 1999, the school cannot be held to have failed any obligation it may otherwise have had to provide services to complainants' daughter. Services were not required from August 31, 1998, until October 12, 1998, because complainants physically removed their daughter from school. The school cannot provide what the complainants will not participate with them in providing. On October 12, 1998, by letter to the school, the complainants disenrolled their daughter from school. From that point until February 1999, when the school voluntarily began providing some homebound services to the complainants' daughter, the school was under no obligation to provide any services to complainants' daughter. Therefore, whatever the outcome of the October 15, 1998 IEP meeting, it was irrelevant, until February of 1999, because the complainants had disenrolled their daughter from school.

When the school began voluntarily providing services in February of 1999, it bound itself to the requirements of relevant state and federal special education law, whether or not the complainants' daughter expressly re-enrolled in its school system. The public school system cannot be a service provider without being bound by the legal requirements placed upon the public school for being a service provider. However, this is irrelevant to the dispute at hand, because the school still cannot be held to have been obligated to provide October 15, 1998 IEP services, because the complainants had rejected those services. The school, beginning in February 1999, was providing some homebound services, as requested by the complainants. The complainants did not request that the October 15, 1998 IEP be implemented. They did request that some homebound services, which the school indicated to the complainants would end at the end of April 1999, be continued. They also requested additional services, but these would have had to have been pursuant to the October 16, 1997 IEP, since complainants did not recognize the October 15, 1998 IEP as valid. The Federal Complaints Officer has ruled that the October 16, 1997 IEP ceased to be valid on October 15, 1998. The school was under no obligation to continue homebound services, as it was never under any obligation to provide them in the first place. The complainants' relief then, now, and always has been, if they wanted to challenge the type of services the school was providing, was and is, to request a due process hearing.

The only remaining issue for the Federal Complaints Officer to resolve is whether required IEP services were not provided from October 16, 1997, until August 31, 1998, when the

complainants physically withdrew their daughter from school. The evidence provided by the complainants to the Federal Complaints Officer, in support of this allegation, is the complainants' daughter's Communications Notebook. The Federal Complaints Officer finds this evidence insufficient. There is no place for recording service provider time on this document, and the evidence really consists of the complainants' interpretations of the document. That's not good enough to show that its at least more likely than not that these services were not provided. The Federal Complaints Officer did request and review, as requested by complainants' counsel at that time, copies of the attendance records of complainants' daughter's service providers. The Federal Complaints Officer has found nothing in those records sufficient to indicate to him that complainants' daughter was denied IEP required services from October 16, 1997 until August 31, 1998. Nor has complainants' counsel at that time, or complainants, provided the Federal Complaints Officer with any argued analysis of those records which would support such a conclusion. Absence of certain service providers alone is not enough to establish a denial of FAPE. Other service providers can provide IEP required services, and the complainants have not established to the satisfaction of the Federal Complaints Officer that this was not done.

CONCLUSION

The Federal Complaints Officer has not addressed allegations and responses about why certain events took place. The Federal Complaints Officer does not discount the complainants' serious concerns for their daughter's welfare. However, either the court system, or the due process hearing, as appropriate, has always been available to the complainants to address these concerns. The job of the Federal Complaints Officer has been to resolve whether IEP required services have been implemented. He has now done so. He regrets that it has taken so long to do so. However, up until the end of these Complaint proceedings, well-informed legal counsel has represented the complainants. Therefore, the Federal Complaints Officer believes the complainants were aware of their options. The complainants have, on the one hand, chosen to remove their daughter from a school that has been ready, able, and willing to provide their daughter services. On the other hand, they have chosen not to pursue in the appropriate forum their view of what those services should be. They withdrew from mediation, and they have not sought a due process hearing. Thus, their daughter has not received services from the school to which she would have otherwise been entitled. This is a burden the complainants' must bear.

This Decision will become final as dated by the Federal Complaints Officer's signature on this Decision. A copy of the appeal procedure is attached to Decision.

Dated today, April _____, 2000.

Charles M. Masner, Esq.
Federal Complaints Officer