

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

Federal Complaint 99:540
(Denver Public Schools)

Decision

INTRODUCTION

The Complaint letter was dated November 12, 1999, and received by the Federal Complaints Officer on November 19, 1999. In a letter dated and received December 10, 1999, the school filed its response. In a letter dated January 12, 2000, and received by the Federal Complaints Officer on January 14, 2000, the complainant provided a response to the school's response. In correspondence dated and received February 11, 2000, the school provided further response. In a letter dated March 28, 2000, the complainant filed a final response. The Federal Complaints Officer then closed the record.

COMPLAINANT'S ALLEGATION

The complainant alleged, in her Complaint letter dated November 12, 1999, that her daughter was being denied a free appropriate public education (FAPE), because her daughter was not in school and was receiving no special education services.

SCHOOL'S RESPONSE

The school responded that the complainant did not make her daughter available for special education services until the beginning of October 1999. At that time, according to the school, the school was offering placement at Palmer Elementary School, for delivery of complainant's daughter's IEP services. The complainant subsequently expressed concern about having her daughter attend Palmer Elementary School. On October 27, 1999, the complainant was presented with documents to sign, as required by the Colorado Nurse Practice Act, in order for the school to appropriately meet the medical needs of complainant's daughter. According to the school, as of December 7, 1999, the complainant had not signed the necessary Colorado Nurse Practice Act documents.

FINDINGS AND DISCUSSION

The parties seem to agree that on December 16, 1999, the complainant signed the documents the school was requesting her to sign, pursuant to meeting the requirements of the Colorado Nurse Practice Act. The school, however, stated that the complainant orally withdrew this permission at a meeting on January 6, 2000, at which school representatives, the complainant, and the complainant's advocate attended. The complainant, through her advocate, claims that

such permission was not withdrawn. The complainant has since withdrawn her daughter from the school system against which she filed her Complaint, and has enrolled her daughter in another school system.

The school cannot be held to have been required to provide any services prior to October of 1999. That's when the complainant made her daughter available for services. The school cannot provide services to someone who is not present. Once the complainant's daughter was present, the school was entitled to get necessary medical authorizations, as required by the Colorado Nurse Practice Act. If the complainant wished to challenge having to provide such authorization because she believed it was unnecessary in order for the school to provide her daughter with FAPE, then her recourse was either to request a due process hearing, or possibly to take court action, depending upon the grounds of the objection. In any case, the complainant apparently provided the necessary authorization on December 16, 1999. As to whether or not she orally withdrew this authorization on January 6, 2000, the Federal Complaints Officer finds the school's version of events more credible. The receiving of someone's permission to provide medically related services to their child is not an authorization to be taken lightly. Were the school to provide such services, and injury result to the child, and a credible argument be made that the school provided the services without appropriate authorization, the school might incur liability. The Federal Complaints Officer is not the school's attorney, and therefore not in a position to make judgements about such liability, except to say that he finds the school's caution about making sure appropriate authorization be obtained to be both in the school's best interests, and appropriately deferential to the rights of the parent. The Federal Complaints Officer can think of no credible reason why the school representatives would have wanted to interpret the complainant's statements at the January 6, 2000 meeting as a revocation of authorization, unless the school's representatives genuinely believed this to be the case. The complainant has not offered the Federal Complaints Officer any such credible reason. In any case, the complainant signing another authorization and thus making clear her intentions could have easily solved the problem.

CONCLUSION

For whatever reasons, there was evidently misunderstanding and hard feelings between the complainant and the school. However, such does not rise to the level of any violation of special education law subject to the jurisdiction of the Federal Complaint process.

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

Dated today, April _____, 2000.

Charles M. Masner, Esq.
Federal Complaints Officer