

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

Federal Complaint 2000:544
Boulder County School District Re-2, Boulder Valley

Decision

INTRODUCTION

This Complaint letter was dated November 9, 2000 and received by the Federal Complaints Officer on November 16, 2000. The school's response was dated December 5, 2000, and received by the Federal Complaints Officer on December 6, 2000. The complainant's response to the school's response to the Complaint was dated and received by fax on December 21, 2000. The Federal Complaints Officer then closed the record.

COMPLAINANT'S ALLEGATIONS

The school was directed to respond to the following allegations of the complainant, as clarified by the Federal Complaints Officer:

- That the school did not comply with 34 CFR 300.343(b)(1) and 1 CCR 301-8 R-4.01(4)(a)(i), which requires that special education eligibility decisions and IEP development occur within a "reasonable period of time", the language of the federal regulation, and within "45 school days", the Colorado requirement. 34 CFR 300.343(b)(2) requires IEPs to be developed within thirty (30) days of the date of determination of eligibility for special education services. The school was also asked to respond to 1 CCR 301-8 R-4.03/Procedures for Transfer Students, to the extent the school believed these procedures were applicable to complainant's son.
- That the school did not provide complainant's son with special education services for which he was eligible.
- That the school did not meet its obligations to complainant's son according to the basis of knowledge requirement in 34 CFR 300.527.
- That the school did not meet the notice requirements of 34 CFR 300.503.

SCHOOL'S RESPONSE

The school denies all allegations.

FINDINGS AND DISCUSSION

The school did not violate 34 CFR 300.343(b)(1), or 1 CCR 301-8 R-4.01 (4)(a)(i), or 34 CFR 300.343(b)(2), or 1 CCR 301-8 R-4.03, with regard to complainant's son.

It is undisputed between the complainant and the school that in the spring of 1999, the complainant's son was initially determined eligible for special education services by the Jefferson County Colorado school system, District R-1, Lakewood, Colorado (Jeffco). It is also undisputed between the complainant and the school that the complainant did not consent to an initial Jeffco special education placement for her son. Instead, it is undisputed between the complainant and the school, the complainant placed her son in a private school, within the Boulder County, Boulder Valley Colorado School District No. RE-2, Boulder, Colorado (Boulder Valley), against which the complainant has made her Complaint.

It is unclear to the Federal Complaints Officer precisely when and how the school first became aware that complainant's son was a resident of its service area and that he might be entitled to special education services from the school. However, it is undisputed between the complainant and the school that a meeting took place between the complainant and the school on October 6, 2000, to discuss a transfer placement for complainant's son from Jeffco to Boulder Valley. It is also undisputed between the complainant and the school that on October 9, 2000, the complainant signed documents agreeing that no further evaluation of her son was needed, but declining the services placement offered by Boulder Valley, and instead requesting that the school provide her son with contracted special education services with "CLC", evidently a preschool special education services provider in Boulder.

At some time subsequent to the October 6, 2000 meeting, the school evidently realized that the complainant's son had never been placed in special education in Jeffco, because the complainant had never signed the consent form for placement. Communications between the complainant and the school ensued. On November 9, 2000, the complainant agreed to the request of the school, that it be allowed to evaluate her son for special education, but she did not consent to the school's request to obtain records about her son. The complainant's Complaint letter was also dated November 9, 2000, and was received by the Federal Complaints Officer on November 16, 2000. It is undisputed by the complainant that the school completed the evaluation of her son, and scheduled a meeting for December 7, 2000, to develop an IEP for her son. In its response to the complainant's Complaint, the school stated it would be offering special education services in accordance with an IEP, within forty-five (45) days of the referral. The Federal Complaints Officer is presuming that the forty-five (45) school days began no earlier than November 10, 2000, which is the date the school states in its response that it directed the evaluation to begin. The complainant did not dispute that the school's evaluation of her son, as stated by the school, was completed on December 1, 2000. A December 7, 2000 IEP meeting date was therefore not only within the required forty (45) school days, but was also within the thirty (30) calendar day requirements of 34 CFR 300.343(b)(2), and 1 CCR 301-8 R-4.02(1)(b), for development of an IEP once a student has been determined to be eligible for special education services. The complainant did not dispute in her response to the school's response that the school would meet the necessary timelines, assuming a November 10, 2000 start date.

When the school met with the complainant on October 6, 2000, it did so with the understanding that complainant's son was eligible for a transfer placement into special education in Boulder Valley, from Jeffco. The representations it made to the complainant at that time were based

upon that understanding. Perhaps the school should have investigated complainant's son's brief school history a little more closely before it made the service representations to the complainant which it made on October 6, 2000. This seems especially true, given that the school evidently knew it had a student who had attended a private school in its service area, during the 1999-2000 school year, that had been found eligible for special education services by a sister Colorado school system. It is not clear to the Federal Complaints Officer why the school would assume that a sister school, Jeffco, would acquiesce in paying for an out of district private preschool placement. On the other hand, if the school knew it was a unilateral placement all along, then it should have known there was no Jeffco public school transfer placement IEP on which it could rely, unless it assumed that the complainant's son began school in Jeffco and then transferred out to a private school. However, whatever the understanding was of the school, and whatever that understanding might better have been, the complainant knew she had not consented to the Jeffco placement. She should have informed the school of such at the outset. Had she done so, the resulting delay could have been avoided.

Moreover, the school's response to the complainant's Complaint, undisputed by the complainant, is that it was the school who approached the complainant sometime prior to the October 6, 2000 meeting between the complainant and the school, in order to discuss having the school provide services for complainant's son, after the school was informed of the change of residency from Jeffco to Boulder Valley. It is not clear to the Federal Complaints Officer who informed the school of this change of residency. However, in her enclosure number two (2), an email letter from the complainant to a school staff person, dated October 18, 2000, page one, paragraph four, the complainant stated – "Needless to say, as I expressed with our conversation, the beauracracy (sic) associated with transitions is one of the reasons I have 'avoided' this process for over a year." Whatever the complainant's dissatisfaction with the school bureaucracy, justifiable or otherwise, and whatever her understanding of the residency requirements for service provision, it seems credible to the Federal Complaints Officer that the complainant was satisfied with the private school services her son was receiving, and therefore did not want these services to be provided by the school's service providers – and that this satisfaction contributed to complainant's failure to make earlier contact with the school about service provision for her son, independent of her concerns about dealing with the bureaucracy. In any case, if she had made earlier contact with the school, subsequent unnecessary delay could have been avoided.

Once the school discovered that the complainant had never consented to her son being placed in special education, it could not legally proceed except as it did, which was to do a new eligibility determination. The school was not bound by representations it made on October 6, 2000, which were based on a false belief that the complainant had already consented to a special education placement for her son. Once the school discovered its mistake, it acted appropriately and within the timelines required by the law.

Having found that the school did not violate 34 CFR 300.343(b)(1) and 1 CCR 301-8 R-4.01 (4)(a)(i), or 34 CFR 300.343(b)(2), or 1 CCR 301-8 R-4.03, the Federal Complaints Officer also finds that the school has not violated, based upon the facts alleged in this Complaint, any obligation it has to provide special education services to complainant's son. The Federal Complaints Officer also finds that that the school did not violate 34 CFR 300.527 with regard to complainant's son. Whether this regulatory provision applies to students outside the context of disciplinary actions taken by the school is irrelevant to this Complaint, because, even it were to be determined that it did so apply, the school has acted appropriately to try and address complainant's son's perceived special needs, based upon its knowledge of those perceived

needs. The Federal Complaints Officer also finds no violation by the school of 34 CFR 300.503 – Prior Notice by the Public Agency; Content of Notice.

If the complainant and the school are still in disagreement over appropriate services or placement for complainant's son, the complainant is entitled to a due process hearing to resolve the disagreement. The Federal Complaints Officer also remains willing to assign a mediator for the benefit of the complainant and the school in resolving this disagreement, should both parties determine that this would be beneficial.

CONCLUSION

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

Dated today, January _____, 2001.

Charles M. Masner, Esq.
Federal Complaints Officer