

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

Federal Complaint 2003:510

San Juan BOCS

Decision

INTRODUCTION

This Complaint was dated April 28, 2003, and received May 2, 2003. The Board of Cooperative Services (BOCS) response was dated May 20, 2003, and received by fax on May 21, 2003. The original BOCS response document was received by express mail on May 22, 2003. The complainant's response to the BOCS' response to the Complaint was dated May 26, 2003, and received by certified mail on June 3, 2003. The Federal Complaints Officer then closed the record.

COMPLAINANT'S ALLEGATIONS

The Federal Complaints Officer is stating the allegations as stated by the complainant, except as where otherwise indicated by editing by the Federal Complaints Officer. The complainant did not number the allegations, but the Federal Complaints Officer has done so for ease in deciding the Complaint. The numbering of the allegations is not meant to convey any hierarchy of importance attached to the allegations.

1. Here is a description of the violation made: Are not modifying school work. Sent in letters that too much home work was sent home[.] [S]he has 6-7 hours a night[.] [This] does not allow enough time for recommended sleep [,] affecting her health. Parent sent letter ... requesting modification[.] [The] [t]eacher [proper name] told a resource teacher [proper name] it did not matter how many letters or notes the parents sent she would ignore them and she would teach her class the way she wanted to.
2. Here is a description of the violation made: Is out of compliance for social extra curriculum activities, denies her social acceptance with her peers. 502.2
3. Here is a description of the violation made: Teacher [proper name] was informed that the student had an I.E.P. and needed preferred seating[.] [The] teacher[']s reply was that she could not seat her towards the front because she uses tables instead of desks in her classroom.
4. Here is a description of the violation made: Teacher asked student in front of class if this was her work. Parent scribed for her[.] [I]t is in the I.E.P. ... [T]eacher [proper name] told her that her mom could not help or write for her on April 23, 2003.

5. Here is a description of the violation made: Is out of compliance with spelling accommodations when teachers count off for spelling errors on non spelling tests.
6. Here is a description of the violation made: Is denying parent as scribe, inclusion in extra curriculum activities giving her excessive work loads, telling her sister that her sister has to go to summer school if she does not pass her class. Is not accommodating to build self confidence.
7. Here is a description of the violation made: Failure to comply with parents' request[.] [A]sked for progress report before her grades start[ed] to drop. [School] did not comply.
8. Here is a description of the violation made: Discriminated in front of the class[.] ... [T]eacher [proper name] asked her about school work[.] [W]as [it] hers [?] [S]he felt humiliated and scared. She was afraid to accommodate for herself, to build self confidence.
9. Here is a description of the violation made: When child is absent and makes up work it is counted as being late and she drops the grade down[.] [I]s out of compliance with extended time on I.E.P.

BOCS' RESPONSES

The Federal Complaints Officer is stating the BOCS responses as stated by the BOCS Director of Special Education, except as where otherwise indicated by editing by the Federal Complaints Officer.

1. I.E.P. of 11-5-02 specifies that modifications are to be made for academic delays where they exist (Page 4 under Cognitive Section, Needs); and, accommodate for crossover skills to general education (Page 8, Service Delivery).

Escalante Middle School Staff state that “extensive modification has been made to quantity, quality, word bank derivations, extension of late work accepted, preferential seating, preferential peer lab partners, extra support period during the day with one less exploratory class, modified tests and assessments, modified projects in their design”. In addition, teachers state that students were polled four times during the year targeting time spent on homework. [Student] did not express a frustration about the amount of homework until she was absent for an extended period of time. Teachers also report that during that period of absence, no attempt was made to secure work assignments from school. Teachers were not contacted by student or parent with regard to a concern over homework until receipt of the allegations in connection with this Complaint. [Teacher] denies making any statement to [teacher] with regard to how she would teach her class. [Teacher] denies making any statement to parent about [teacher] other than advising [parent/mother] that if she had concerns, she should contact the teacher first.

2. The current IEP (11-05-02) for [student] does not make recommendations for modifications with regard to “social extra curriculum activities”. [Student] has not been denied opportunities to participate with children without disabilities in academic, nonacademic and extra curricular activities as set forth in Section 5.02(2) of the Rules for the Administration of the Exceptional Children’s Education[al] Act.

The Escalante Middle School Staff state the [student] is provided the same opportunities as her peers to participate in social and athletic activities. Teachers also state that [student] is given

modifications and accommodations on her class and homework. [Student] has maintained passing grades throughout most of the year, although third trimester absences have negatively impacted her academic performance. Teachers report that during that extended period of absence, no attempt was made to get work from school.

3. The current IEP (11-05-02) for student does not make any recommendations for preferred seating.

Escalante Middle School Staff state that [student] is seated at the front of the classroom as she has been for most of the year. Teacher states that parents have neither expressed a concern over the seating arrangement nor visited the classroom to see the seating arrangement.

4. The current IEP (11-05-02) for [student] recommends “scribe for spelling unless testing spelling” under Accom[m]odations/Modifications Section, Page 8a.

Escalante Middle School Staff state that they did, in fact, have concerns during third trimester about the work that [student] turned in, but only with regard to [the] fact that it did not appear to be student’s vocabulary or usage. Teacher did talk with [student] with regard to whether she understood the work and was present while the script was happening, however, this discussion took place in private and not in front of the class. Past scores would indicate that work was accepted for full credit, whether scribe was used or not.

5. The current IEP (11-05-02) for [student] recommends “modify for spelling” under Adaptations/Modifications Section on Page 8a.

Escalante Middle School Staff deny ever having counted off on spelling for [student]. Parent expressed concern, in the course of a meeting on April 28 with Escalante administrators, about spelling in Spanish class. The Assistant Principal contacted the Spanish teacher who stated that he was aware of [student’s] special education plan and need for modifications and that he did not penalize [student] for misspellings. Staff states that one of the ways they differentiate for [student] is to attempt to get the meaning of what [student] is writing, overlooking spelling errors, and often checking with her for clarification.

6. The allegations which are presumed to be contributing to preventing [student] from building self confidence have been denied in Responses to Allegations 1, 2, and 4.
7. Current IEP (dated 11-05-02) states that parents will be informed of the child’s/student’s progress as often as others, plus IEP review (Page 8a). [Student] has not been denied opportunities to participate with children without disabilities in academic, nonacademic and extra curricular activities as set forth in Section 5.02(2) of the Rules for the Administration of the Exceptional Children’s Education[al] Act.

Escalante Middle School Staff states that no specific request for a progress report was received by teachers. All students are able to check grades posted outside classroom using student ID number. Progress reports are distributed every three weeks to all students.

8. Current IEP (dated 11-05-02) recommends “accommodate to build self confidence” Post School Transition Outcome section on Page 6.

The actions which allegedly led to [student] feeling humiliated and scared have been denied by the named teacher.

9. Current IEP (dated 1-05-02) recommends additional time (Cognitive Section, Needs, Page 4).

Escalante Middle School Staff reports that only one assignment was counted late but was accepted. The assignment was over one month late. In addition, two assignments were excused and eleven were handed in late with no points deducted.

FINDINDGS AND DISCUSSION

The Federal Complaints Officer finds no violations by the BOCS, including any of its members or employees, of any of the allegations made by the complainant. In making this finding of law, the Federal Complaints Officer is also finding, for the purpose of this Complaint Decision, that the facts are as stated by the BOCS. However, the complainant is also entitled to seek a due process hearing on every allegation made in his Complaint. As the Federal Complaints Officer did his best to explain to the complainant prior to the complainant’s filing of this Complaint, the Federal Complaint process does not provide for an evidentiary hearing in which persons can be required to testify under oath, and can also be cross examined to challenge the veracity of their testimony.

REMEDIES

While the Federal Complaints Officer has not found, for the purpose of resolving this Complaint, any specific violations by the BOCS, or its members or employees, of the allegations made by the complainant, he nonetheless has determined that the ordering of certain remedies is appropriate. “Appropriate services”, as referenced in CFR 34 300.660(2)(b) of the Individuals with Disabilities Education Act (IDEA) Federal Complaint provisions, cannot be adequately provided in circumstances such as the Federal Complaints Officer finds is the case in this Complaint, where the parent(s) and the school system are not in adequate communication or agreement. Therefore, the Federal Complaints Officer orders the following remedies in an attempt to promote such communication and agreement.

1. Within thirty (30) days of the date of the BOCS certified receipt of this Decision, the BOCS Director of Special Education, or his designee, shall inform the complainant that the BOCS, or its designee, will convene an IEP meeting, upon the oral or written request of the complainant. If such IEP meeting is requested, it shall be held as soon as possible, but in no case later than sufficiently prior to the first day of the 2003 fall school semester to appropriately plan for this student, unless otherwise agreed to by the parties. For the purpose of being bound by this Remedy in this Decision, the BOCS, or its designee, is only required to provide such IEP meeting if the complainant requests such a meeting within thirty (30) days of the invitation by

the BOCS Director of Special Education, or his designee. Also, for the purpose of being bound by this Remedy, in this Decision, the BOCS, or its designee, is only required to schedule and convene such an IEP meeting if both parents indicate that they will attend and if, in fact, both parents do attend. In addition, while every effort should be made to accommodate reasonable scheduling requests of the parents, the parents are instructed by this Remedy in this Decision that every reasonable effort should be made by the parents to accommodate the reasonable scheduling needs of school staff.

If such IEP meeting as ordered in this Remedy is convened and conducted, a verbatim record of this meeting shall be made by the BOCS, or its designee. The means for making this record shall be determined by the BOCS, or its designee, but, whatever means is used, the record shall identify each speaker by name and title and shall be intelligible. If an audio or video record is made, this record shall be reduced to a verbatim written transcript. All expenses of recording and written transcribing shall be paid by the BOCS, or its designee. There shall be no expense for such recording or transcription assessed to the parents of this student. A complete and unedited copy of the recording, if there is one, and a verbatim written transcription of this IEP meeting, shall be provided to the parents of this student, at no expense to the parents of this student.

It is the intent of the Federal Complaints Officer that if multiple sessions of this IEP meeting are necessary in order to address every issue necessary to address for the education of this student, then the school system shall convene as many sessions as necessary in order to resolve these issues. All requirements for the initial session of this IEP meeting, as has been specified by the Federal Complaints Officer, apply to all subsequent sessions of this IEP meeting. If the issues can't be resolved to the parents' satisfaction, then the school system shall fully and clearly describe for the parents, orally and in writing, the differences between the parents and the school system, and shall similarly inform the parents of their due process hearing rights, and where they can obtain low cost legal advice. If agreement is reached, such agreement shall be made as specific as possible, on all issues related to providing a free appropriate public education (FAPE) for this student, and such specifics shall be put in writing in this student's IEP.

While the Federal Complaints Officer does not make it a part of his order in this Remedy, he nonetheless strongly encourages the school system to obtain someone, agreed to by the parents, and not employed by the BOCS or any of its members, and not otherwise having bias or giving the appearance of bias towards either the school system or the parents, to facilitate any IEP meeting convened and conducted in compliance with this Remedy. He also strongly encourages the school system, if it has not already done so, to designate a school staff member to coordinate communications with the parents.

2. The requirement, for the purpose of compliance with this Federal Complaint Decision, of complying with Remedy number one (1), shall be waived, in its entirety, if the parties, within thirty (30) days of the date of their certified receipt of this Decision, agree to participate in mediation, and if, in fact, the parties do participate in mediation. If the mediation does not take place, Remedy number one (1) is not waived. If the parties agree to participate in mediation, then the Federal Complaints Officer will assign a mediator, and the fees and expenses of the mediator will be paid by the Colorado Department of Education (CDE). If Remedy number two

(2) is chosen by the parties, the BOCS Director of Special Education, or his designee, shall make the mediator aware of this Decision upon first contact by the mediator, and shall timely provide the mediator with a copy of this Decision.

CONCLUSION

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

Dated today, June _____, 2003.

Charles M. Masner, Esq.
Federal Complaints Officer