

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

Federal Complaint 2004:508

El Paso County Academy SD 20

Decision

INTRODUCTION

The initial Complaint was dated March 24, 2004, and was received on May 13, 2004. The initial Complaint alleged a violation occurring in September of 2003. Subsequently, on May 17, 2004, additional complaint allegations were received alleging violations on October 23, 2003; September 2003; January 2004; October 22, 2003; October 2003; July/August 2002; March, 2004; and April, 2004. By letters dated May 11, 2004, May 20, 2004, and May 21, 2004, additional Complaint allegations were made alleging violations in March and April of 2004. These additional letters of Complaint allegations were received on May 27, 2004. By letter to the director of special education dated May 28, 2004, with a copy to the complainants, the Federal Complaints Officer stated that he was consolidating all allegations into one Complaint, and that he was finding exceptional circumstances for extending the time period for resolving this Complaint. The exceptional circumstances being the number of allegations, their receipt over a several week period, and the amount of written information submitted by the complainants to be responded to by the school district, and subsequently reviewed by the Federal Complaints Officer, in addition to his review of the school district's written response, and his review of potential further written submissions by the complainants.

The school district's response to the Complaint was received on June 29, 2004. The complainants' response to the school district's response was received at the desk of the Federal Complaints Officer on July 14, 2004. In the complainant's response they purported to make new Complaint allegations of violations. However, the Federal Complaints Officer has subsequently determined that these purported new allegations replicate allegations previously made and, as such, they were already a part of the allegation record to be addressed by the Federal Complaints Officer. The Federal Complaints Officer closed the record on July 14, 2004.

COMPLAINANTS' ALLEGATIONS

The Individuals with Disabilities Education Act (IDEA) guarantees all eligible students a free appropriate public education (FAPE), in the least restrictive environment (LRE). This FAPE in the LRE is to be provided to all students eligible under the IDEA. No student is to be rejected for eligibility and services due to the severity of the student's disability. The content of this FAPE in the LRE is to be determined by an individualized education program (IEP), based upon a non-discriminatory evaluation, with parent participation, and with procedural safeguards provided to the parents to insure the provision of a FAPE in the LRE to the student who is their son or daughter and who is covered by the IDEA. These are the primary principles of the IDEA. It is the Federal Complaints Officer's interpretation of the complainants' allegations, and supporting information submitted by the complainants, that the complainants are alleging that the school district against which their Complaint is filed has violated all of these IDEA principles with regard to their son.

SCHOOL DISTRICT'S RESPONSE

The school district denies any violation of the IDEA, or any other relevant law subject to the jurisdiction of the Federal Complaint process.

FINDINGS AND DISCUSSION

In concluding the complainants' July 2004 response to the school district's response to this Complaint, the complainant mother stated: "In summary, there are more violations here than I can count." However, it is the Federal Complaints Officer's determination that the more fundamental problem is not counting the number of alleged legal violations, but rather sorting out the hundreds of pages of repetitive and overlapping factual allegations in support of those alleged legal violations. Therefore, the Federal Complaints Officer is addressing his findings and discussion thematically to his interpretation of the complainants' Complaint as alleging legal violations by the school district of all of the primary principles of the IDEA. These alleged legal violations are interrelated, as are the factual allegations in support of them.

A FAPE is defined at 20 USC 1401(8) as: "special education and related services that --- (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and; (D) are provided in conformity with the individualized education program required under [20 USC 1414(d)]." In addition, the United States Supreme Court, in *Bd. Of Educ. V. Rowley*, 458 U.S. 176 (1982), described the determination of the meaning of "appropriate" to be: "First, has the State complied with the procedures set forth in the [IDEA]? And second, is the individualized

educational program developed through the [IDEA's] procedures reasonably calculated to enable the child to receive educational benefits?"

As the Federal Complaints Officer understands the complainants' Complaint, they are alleging that their son was denied a FAPE, in the LRE, which addressed all of his disabilities. The Federal Complaints Officer understands the complainants' view to be that this was the case because the education that the school district provided to their son was not appropriate. The Federal Complaints Officer further understands that the complainants have this view for related reasons. Those related reasons being that the complainants do not believe that the school district has adequately evaluated their son; that the school district has not insured that they as parents adequately participate in their son's IEP process; and that the school district has not adequately provided them with procedural safeguards – all of these being primary principles of the IDEA which the school district has a legal obligation to uphold. As a result of these alleged failures by the school district, as the Federal Complaints Officer understands it, the complainants allege that an adequate IEP was not created for their son – an adequate IEP being another primary legal principle of the IDEA that the school district is bound to uphold. The IEP, in conclusion, being the process and document that determines the FAPE to which a student is entitled, including, therefore, how “appropriate” is to be defined for the student for whom a particular IEP is created.

The evaluation allegations

A school district's evaluation responsibility under the IDEA is, most fundamentally, to do child find outreach, and then subsequent determinations as to whether particular children are eligible for services under the IDEA. A part of this eligibility determination process will be to do an evaluation as necessary. However, the nature of this eligibility determination, and any necessary included evaluation, and any necessary included assessments that are a part of the evaluation, are to be decided based upon individual determinations for each child, as determined by appropriate school district staff in appropriate consultation with parents. There is no one size fits all eligibility determination, and parents are not guaranteed specific evaluation approaches, or specific assessments, in order to make a particular eligibility determination.

The complainants' son's birthdate is March 25, 1998. The complainant's allege that the child find process for their son on August 1, 2002 was not adequate because it did not adequately address potential behavior problems of their son as they requested, and that the assessment was not timely completed. Later, after their son entered kindergarten in the fall of 2003, the complainants also allege that the evaluation processes for their son were flawed in many respects, specifically: a failure to adequately assess for sensory motor problems; a failure to do an adequate functional behavior assessment and develop an adequate behavioral support plan; a failure by the school district to adequately inform them of the assessment measures to be administered; a failure by the school district to timely evaluate their son, including a failure by the school district to timely provide them with the necessary consent forms to begin the evaluation process; a failure by the school district to accept a disability of their son, for special education purposes, of attention deficit hyperactivity disorder (ADHD); a failure by the school district to adequately respond to their request for an independent educational evaluation (IEE); a failure by the school district to consider their son for Section 504 eligibility; a failure by the school district to adequately consider the effects of medication when assessing their son.

The Federal Complaints Officer has reviewed all of the information submitted by the complainants and the school district and he finds no violation by the school district of the complainants' evaluation rights for their son. The complainants' son was identified as a child with a disability as a result of child find. There is no evidence that the child find team failed to screen for behavioral difficulties, or that the assessment was not timely done. Potential sensory motor problems expressed by the complainant parents were reviewed by the school district. The student's behavior was assessed and a behavior support plan developed. The complainants do not agree with the school district's review of their son's potential sensory motor problems, or with the way the school district assessed their son's behavior, or the behavior support plan that was developed. However, the Federal Complaints Officer does not find that the school's actions were per se inadequate as a matter of law. These were determinations made by the IEP team, and the Federal Complaints Officer cannot substitute his judgment for that of the IEP team.

Nor does the Federal Complaints Officer find any evidence in the record of a failure of the school district to inform the complainant parents of assessment procedures. The complainant mother signed a permission to assess form on January 26, 2004 that identified the areas to be assessed. This was a reevaluation taking place after the student had already been determined eligible for special education. The Federal Complaints Officer need not determine, for the purpose of deciding this Complaint, whether the forty-five (45) school day completion rule - Colorado Exceptional Children's Educational Act (ECEA) Rule 4.02(2) - is applicable to a reevaluation, since the reevaluation in dispute here was timely completed by the time a subsequent IEP meeting was begun on March 10, 2004. The Federal Complaints Officer finds no credible evidence that the complainant mother was prohibited by the school district from requesting this reevaluation, or that the school district unreasonably delayed in initiating this reevaluation.

Nor does the Federal Complaints Officer find any violation by the school district to determine the complainants' son eligible for special education based upon a physician's diagnosis of ADHD. Whether a student has ADHD for educational purposes, and whether as a result the student needs accommodations or special education services, is a decision for education professionals to make, with parent participation - through the IEP process if IDEA eligibility is sought. The IEP team is required to consider the physician's diagnosis, not necessarily accept it for the purpose of IDEA eligibility. The Federal Complaints Officer does not find that the school district has acted illegally in considering whether this student qualifies for special education based on ADHD disability. Nor does the Federal Complaints Officer find any denial of the complainants' right to an IEE for their son. An IEE was agreed to by the school district prior to the filing of this Complaint. It has since been completed, and the IEP team is scheduled to meet again in August to do a new eligibility determination which will include consideration of the IEE. Section 504 eligibility is beyond the jurisdiction of the Federal Complaints Officer, but it is his understanding that this student has been found by the school district to be Section 504 eligible. Finally, the Federal Complaints Officer finds no evidence that the school district failed to adequately consider the effects of medication when assessing complainants' son. Parenthetically, the complainants have also alleged that the school district has attempted to force them to medicate their son in order to receive services. The Federal Complaints Officer finds no credible evidence that this is true.

Parental participation in the IEP process

The complainant mother repeatedly alleges that the complainants were not allowed to participate in the IEP process, most specifically because the director of special education inappropriately attempted to prevent the complainant mother from speaking at IEP meetings. The Federal Complaints Officer finds these allegations to be without merit. The complainants were appropriately notified of IEP meetings, at least one of them did attend, and at least one of them did speak. The complainant parents were not denied their right to parental participation in the IEP process.

Procedural safeguards

The allegations made by the complainant parents about violations in the evaluation processes, and violations of their right to participate in the IEP process are also allegations of procedural violations, which the Federal Complaints Officer has already addressed. In addition, the complainants allege that the school district violated their right to mediation, and, relatedly, their right to remove their son's functional behavioral assessment from their son's educational records. The Federal Complaints Officer finds no violations by the school district. Mediation under the IDEA is voluntary. Neither parents nor school districts are required to participate. If a school district or a parent wants to place conditions on their participation in mediation they are entitled to do so. If, as the complainants allege, the school district sent the mediator a copy of the student's functional behavioral assessment, the Federal Complaints Officer finds this to be, if it is error, harmless error. The school district is not required to remove a functional behavioral assessment, which is an educational record, from a student's educational records because the parents request it. The school district is, under the Family Education Rights and Privacy Act (FERPA), incorporated by reference in the IDEA, required to provide the parents with a hearing to ask that information be removed from their son or daughter's educational records, and, at a minimum, if the information remains, to insert further information in the student's educational records stating the parents' disagreement. The Federal Complaints Officer finds no credible information in the record to indicate that the complainant parents have been denied these rights.

REMEDIES

Having found no violations by the school district, the Federal Complaints Officer orders no remedies.

CONCLUSION

On October 23, 2003, after the IEP meeting of October 22, 2003, the complainant mother wrote the following handwritten letter to the IEP team:

I want to thank you for everyone's efforts for [my son's] education plan. I felt very good about yesterday's meeting. I was honored so many made the time for us! I obviously was very confused up to that point and panicked thinking he was losing the IEP and hopefully now you can see where I was coming from when I sent the letter – I figured everyone's info was conflicting and [my son] was in the middle needing help and not supposed to get it till March. I appreciate the phone time people gave me to straighten things out. It was truly a good meeting & a joy to see everyone's strengths put together. I felt we came up with a fruitful outcome and a promising plan for [my son's] sake. I was most grateful to the shared ideas for real teaching sake because it made me feel more positive about the whole plan in the 1st place. I couldn't help but be a skeptic at 1st because I'd never been through a meeting like this before and I know [my son] well enough to feel confident to ask for help he truly needs to get off to a great start. He has such better chances the[n] we ever did as children. It was fun having [the building principal's] slipped in experiences too! Thank you for adding the positive [ending] to our plans and presenting a different picture of "going to the office!" It was a real treasure to see [general education teacher] light up when you offered her the classroom support of an aid or sub. Her whole [tone] lightened up - she sounded ready to do her job; but then she sounded excited to try & get this off the ground and relieved to have help with the time consuming aspect of everything. What a great thing that was for us, because "implementing" is so critical and may be what "makes it" for the whole system, and she's already on a positive note thinking there's help for her now! I can't help but think everyone wins here. School District's Enclosure D. Punctuation, underlining, and quotation marks as in original. Brackets added to delete personally identifiable information, or where the Federal Complaints Officer was uncertain of his reading of the complainant mother's handwriting.

In February of 2004, approximately four months later, in a handwritten letter to the building principal, the director of special education, and her son's IEP staff, the complainant mother wrote: "The IEP is a legal document – mine has been a functionless piece of trash." School district's Enclosure F, page nine of complainant mother's letter. And, on July 8, 2004, in her response to the school district's response to this Complaint, the complainant mother submitted a handwritten letter stating, in relevant part:

These people abused and neglected to teach my child all year and they should never have been called a SPED team. Nobody gave my son special education and they treated his disability with methods deemed what NOT to do. I would never

recommend them and I do not have any trust in their judgement or care of my child! Complainant mother's letter at page three. Capitalization, underlining, and punctuation as in original.

The critical views of the complainants excerpted by the Federal Complaints Officer are but a small sample of a repetitive number of similar critical views expressed throughout the complainants' Complaint filings. The complainants are entitled to a due process hearing on all issues subject to this Complaint, which are also subject to the jurisdiction of the due process hearing. However, if the staff members of the school district are as incompetent as the complainants' views indicate the complainants have come to believe is the case, then no relief offered by mediation, the Federal Complaint process, the hearing process, or any appeals of the Complaint or hearing process, is going to make those staff members competent enough to work with the parents to provide this student with a FAPE. Nor do any of these dispute resolution processes include authority for the decision-maker to fire school district staff. Therefore, no matter what the outcome of future dispute resolution options sought by the parent complainants, their options remain as they have always been. That is, to find common ground with whomever may be the school district staff members working with their son, or to accept the status quo, or to find another school system, private or public, in which to enroll their son.

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, July 22, 2004.

Charles M. Masner, Esq.
Federal Complaints Officer