

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

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**Federal Complaint 2004:511**

Jefferson County School District R-1

**Decision**

**INTRODUCTION**

The Complaint letter (Complaint) was dated March 24, 2004 and filed on June 25, 2004. The response of the Jefferson County School District R-1 (District) was dated July 22, 2004 and received on that same date. Complainant's reply to the District's response was dated July 28, 2004 and received on July 29, 2004. On August 2, 2004, the Federal Complaints Officer contacted Complainant and the District's legal counsel for additional information, which was received between August 2, 2004 and August 4, 2004. The Federal Complaints Officer closed the record on August 5, 2004.

Complainant is the parent of a child who has been referred for an initial assessment to determine eligibility for special education services under the Individuals with Disabilities Education Act (IDEA).

**COMPLAINANT'S ALLEGATIONS**

The Complaint states that, on March 23, 2004, Complainant turned in to the District paperwork of independent evaluations as well as a document entitled "Proposed Intervention/Special Education Assessment form." On that date, Complainant states that she was promised a draft<sup>1</sup> before the end of the school year but she has not yet received a draft despite several calls and a letter to the District regarding her concerns. Complainant states that the District did not respond to her concerns or phone calls. As the Federal Complaints Officer understands it, Complainant has alleged a violation of the 45-school day rule for completing the initial assessment and developing the child's IEP, if the child is determined to be eligible for special education services.

**THE DISTRICT'S RESPONSE**

The District denies the Complainant's allegation that it is out of time for completing the child's initial assessment and IEP planning. The District states that the parent signed the consent for initial assessment on March 23, 2004 and also agreed to an August 30, 2004 staffing date, as is

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<sup>1</sup> The Federal Complaints Officer understands Complainant to mean a draft IEP, which would include a reporting of the initial assessment results.

evidenced by the parent's signature on the consent form which bears the date of August 30, 2004 as the tentative completion date. The District states that the 45-school day period has not yet expired because only 43 school days have passed from March 23, 2004 and the last day of school on May 27, 2004. The District states that between March 23, 2004 and May 27, 2004 there were four days when school was not in session, including two "flex days" that were scheduled for assessment, and not instructional, purposes. The District has submitted documentation in the form of the child's school newsletter, which explains that the flex days in question were for individual student assessments required for the school to comply with the Colorado Literacy Act.

## **COMPLAINANT'S REPLY TO THE DISTRICT'S RESPONSE**

In her reply, Complainant states that she did agree to the tentative August 30, 2004 meeting date with the understanding that she would have a draft IEP before the end of the school year. During a telephone conversation on August 2, 2004, Complainant stated to the Federal Complaints Officer that the two flex days in question met the definition of a school day because her child attended school on those days for assessment and instruction around reading. Complainant calculates the 45-school day deadline for completing the initial assessment and developing an IEP for her child to be May 26, 2004 – leaving an extra day before the end of the 2003-04 school year.

## **FINDINGS OF FACTS AND CONCLUSIONS**

### **Applicable Legal Authority**

34 C.F.R § 300.343(b)(1) of the regulations implementing the IDEA<sup>2</sup> provides that the public agency has a reasonable period of time following the agency's receipt of parent consent to an initial evaluation to complete the initial evaluation of the child, and, if the child is eligible, to make available special education services to the child. Under the Rules for the Administration of the Exceptional Children's Educational Act (ECEA),<sup>3</sup> once a written special education referral has been initiated, assessment, planning and development of the child's IEP must occur within 45- school days from the date when the administrative unit obtains the parent's written consent to assess. Rule 4.01(2)(c)(ii).

Meetings must be held to discuss the initial evaluation of the child, to determine if the child has a disability, and to determine whether the child is eligible for special education within a time frame that is sufficient to allow the child's IEP to be developed within 45-school days of the date of the special education referral. Rule 4.01(4)(a)(i). Determination of disability, determination of eligibility and IEP development may occur at the same meeting or different meetings. Rule 4.01(4).

A school day means "any day, including a partial day, that children are in attendance at school for *instructional* purposes." § 300.9 (c)(1). [Emphasis supplied]

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<sup>2</sup> Hereafter, the regulations implementing the IDEA will be referred to by section number only (e.g., § 300.343).

<sup>3</sup> Hereafter, the rules implementing the ECEA will be referred to by rule number only (e.g., Rule 4.01).

Nothing in the IDEA, the ECEA or their implementing rules and regulations requires a school district to provide the parent with a draft copy of the IEP prior to the meeting(s) to determine disability, eligibility and IEP planning.

### **Findings of Fact and Conclusions**

The Federal Complaints Officer makes the following findings of fact and conclusions:

- 1) The parent gave her written consent for an initial special education assessment of her child on March 23, 2004 and the District received the written consent on that same date.
- 2) The school calendars submitted by the parties reflect that May 27, 2004 was the last day of the 2003-04 for the school district. According to both calendars, April 23<sup>rd</sup> and May 14<sup>th</sup> were not school days; April 22<sup>nd</sup> and May 3<sup>rd</sup> were flex days. The parties disagree regarding whether the two flex days were school days.

When facts are in dispute, the usual process in most legal settings for resolving the dispute is through an evidentiary hearing in which individuals testify under oath, and the testimony is then subject to cross-examination. It is through this process that the fact finder determines the credibility of the individuals and, by extension, which version of the facts is the more credible. The federal complaints process, unlike the due process hearing, makes no provision for an evidentiary hearing. Another way of resolving a factual dispute is to examine the documentation submitted by the parties and the surrounding circumstance to see whether they provide a definite answer.

The Federal Complaints Officer has carefully examined the documentation submitted by the parties and has also carefully considered the surrounding circumstances regarding the question of whether the flex days were “school days” as that term is defined under the IDEA. The Federal Complaints Officer finds that the District has submitted credible documentation (the 02/27/04 “Knightly News” – the school newspaper), which states as follows:

As a result of the Colorado Basic Literacy Act and the need to assess each student’s reading ability with individualized assessments, you will soon be hearing more from your child’s teacher about our Spring “Flex” days. Those are two days, April 22<sup>nd</sup> and May 3<sup>rd</sup>, where teachers will individually schedule students to come to school and be assessed in a one-on-one setting. There will be no regular school on those days and teachers will be contacting you soon to schedule times. We understand that this may be inconvenient for some parents, but in order to be in compliance with the Literacy Act, these individual assessments are necessary. We are asking for your cooperation with regard to these days and we appreciate your support in bringing your child to school on their assigned day.

The Federal Complaints Officer finds that the flex days in question were not school days as that term is defined by the § 300.9 (c) (1) because the purpose of the flex days was to conduct individual student assessments and not to provide instruction.

- 3) Between March 23, 2004 and the end of the school year on May 27, 2004, 43 school days elapsed. Per the District's 2004-05 school calendar, the deadline for the 45-school day requirement in this case is August 18, 2004.<sup>4</sup>
- 4) The Federal Complaints Officer therefore concludes that the District has not violated the IDEA nor the ECEA because 45 school days have not yet elapsed since the parent first provided her written consent for initial assessment of her child.
- 5) The District may, but is not required by either the IDEA or the ECEA, to provide the parent with a draft IEP prior to the IEP development meeting. The Federal Complaints Officer therefore concludes that the District did not violate the IDEA or the ECEA when it did not give Complainant a draft of her child's IEP by the end of the 2003-04 school year. If, for any reason, Complainant disagrees with the final IEP developed for her child, she is entitled to request a due process hearing to resolve the disagreement.

### **REMEDY**

Having found no violation of the IDEA, the Federal Complaints Officer orders no remedy.

### **CONCLUSION**

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

Dated this 5<sup>th</sup> day of August 2004

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Laura L. Freppel  
Federal Complaints Officer

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<sup>4</sup> The Federal Complaints Officer notes that (1) in its written response, the District stated that it was scheduling a multidisciplinary team meeting for August 18, 2004, which is the 45th school day following the District's receipt of Complainant's written consent for the initial assessment; and (2) in her response to the District's response, Complainant accepted that date.