

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

Federal Complaint 2004:515

Poudre School District

Decision

INTRODUCTION

This Complaint was dated 10/28/04 and received by the federal complaints officer on 11/03/04. The Poudre School District (District) submitted its response on 11/24/04. The federal complaints officer received the Complainants' response to the District's response on 12/09/04. On 12/20/04, the Federal Complaints Officer contacted the District's legal counsel to clarify the District's legal position. The Federal Complaints Office then closed the record on 12/20/04

Complainants are parents of a child with a disability.

COMPLAINANTS' ALLEGATIONS

The Complainants allege that the District has failed to implement two (2) short term objectives contained in the student's 05/10/04 individualized education program (IEP). Complainants state that the District failed to timely procure the instructional materials necessary to implement those short-term objectives, and that the District has failed to produce any data or other evidence demonstrating that the student received the instruction necessary for him to make progress toward achieving the short term objectives. One of the short term objectives was related to literacy,¹ and the other was related to math.²

The parents have submitted a school progress report, dated 10/18/04, which shows that (1) the student was "in progress" with regard to the relevant short-term literacy objective, and (2) school staff had not yet addressed the short-term math objective. The parents allege that "the lack of instruction using materials appropriate for the [short-term literacy objective] has prevented [Student] from having the opportunity to make meaningful progress toward the October benchmark. Lack of instruction relevant to [the short-term math objective] has prevented [Student] from any opportunity to make any progress toward the November 2004 benchmark."³

¹ The short-term literacy objective in question was one of five related to the annual goal -- "[Student] will improve literacy skills. "

² The short-term math objective in question was one of three related to the annual goal -- "[Student] will improve functional math skills."

³ Complaint letter at page 3

THE DISTRICT'S RESPONSE

In its response, the District “admits that the instructional material contemplated by [Student’s] IEP was not available in implementing the objectives at issue during the first quarter of the year. However, as explained in detail below, the IEP team made a good faith effort to use appropriate materials and instructional methods to provide [Student] with educational benefit.”⁴ The District asserts that the student “received all...services and was provided educational benefit.”⁵ The District “also acknowledges that “[Student] may have lost opportunity during the first quarter due to the admitted lack of specific instructional materials listed on [Student’s] IEP...The District proposes to remediate any lost educational opportunity by providing one to one tutoring to [Student] during second quarter. Because [Student’s] IEP team and parents are in the unique position of planning for [Student’s] education, the District proposes that the amount of tutoring be determined by [Student’s] IEP team, including Complainants, after considering [Student’s] educational needs and what services would ensure that any lost educational opportunity would be appropriately addressed.”⁶

FINDINGS OF FACT AND CONCLUSIONS

34 C.F.R. § 350 (a) (1)⁷ requires each public agency to provide special education services to a child with a disability in accordance with the child’s IEP.

The parties agree that, during the 1st quarter of the 2004-05 school year, the District failed to fully implement [Student’s] IEP. Specifically, the parties agree that the District did not use the instructional materials specified by two short-term objectives contained in his IEP. The Federal Complaints Officer finds this to be case. Based on the specific facts of this complaint, the Federal Complaints Officer concludes that the District violated § 300.350(a) (1).

DENIAL OF FAPE

The Federal Complaints Officer has concluded that the District violated § 300.350 (a) (1) when it failed to fully implement [Student’s] IEP using the instructional materials specified by the IEP. The District acknowledges that the student “may have lost opportunity during the first quarter due to the lack of specific instructional materials listed on the student’s IEP.” It is particularly noteworthy that the 10/18/04 progress report completed by District personnel demonstrates that the relevant short-term math objective had not yet been addressed.

The Federal Complaints Officer finds that [Student] did lose educational opportunity during the period of time that he was without the specified instructional materials. Based on the facts of this complaint, the Federal Complaints Officer concludes that the District denied the student a free appropriate public education during the period that the instructional materials specified by [Student’s] IEP were unavailable for use by [Student].

⁴ District Response at page 3

⁵ *Id*

⁶ District Response at pp. 3-4

⁷ Hereafter, the IDEA regulations will be cited by section number only, e.g., § 300.350 (a)(1).

REMEDY

- 1) Within thirty (30) days of the date of the District's certified receipt of this Decision, the District's special education director shall submit to the Federal Complaints Officer a written statement of assurance explaining how the violation found will be addressed to prevent its recurrence not only as to [Student] but as to all student with disabilities attending the District.
- 2) The Federal Complaints Officer orders that this student is entitled to compensatory education. The nature, scope and amount of compensatory education shall be determined by the student's IEP team (including the parents), whose members are in the best position to decide this matter. The Federal Complaints Officer orders the District to convene the student's IEP team within thirty (30) days of the date of the District's certified receipt of this decision.
- 3) The parents have requested that the compensatory education issue be resolved by mediation. If agreed to by *both* the District and the parents, mediation is an available resource that is accessible through the Colorado Department of Education for resolving special education disputes. If the parties wish to mediate the compensatory education issue, they should contact Charles Masner, Senior Consultant for Dispute Resolution, at (303) 866-6685.

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 21st day of December 2004.

Laura L. Freppel
Federal Complaints Officer