

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

Federal Complaint 2006:507

Pueblo 60 School District

Decision

I. INTRODUCTION

This Complaint was dated August 28, 2006, and received by the Federal Complaints Officer the same date. The Complaint was filed by the complainants' attorney, on behalf of his clients, who are the parents of the student who is the subject of the Complaint. The school district's response was dated September 8, 2006, and was received by the Federal Complaints Officer on September 11, 2006. The complainants' response to the school district's response to the Complaint was dated September 29, 2006, and was received by the Federal Complaints Officer on October 1, 2006. The Federal Complaints Officer then closed the record.

II. COMPLAINANTS' ALLEGATIONS

In his Complaint letter dated August 28, 2006, the complainants' attorney stated, as excerpted by the Federal Complaints Officer:

Initially, [my clients] noticed that their daughter, [daughter's name], was having difficulty making decisions while she was doing her homework. They were contacted by [school staff person] at [proper name] Middle School and informed that the team that tests for autism was in the building. They were assured by [school staff person] that no one would know about the tests. As a result of the test, [complainants' daughter] was diagnosed with [Asperger's Disorder], a form of autism, and as a result was put into a special education program.

At some point, [complaints' daughter] was kicked by a girl who was supposed to be her friend. The act was seen by a teacher, [teacher's name], who sent the two of them along with two other girls to [the assistant principal], who told them all that "[Complainants' daughter] was in Special Education and needed extra help." Starting the next day, the other three girls started telling [Complainants' daughter] that she "was crazy, that she was in Special Education because she was crazy in the head." [Complainants' daughter] asked the band teacher if he had told the girls, which he denied. The girls have subsequently told all the students in school.

This caused [complainants' daughter] to cry for days, which necessitated her parents putting her into therapy. They have also needed to place her in a different school which requires additional costs. The costs of therapy have been incurred. This occurred during the 2006 spring semester. The actions are a clear violation of the Federal Individual with Disabilities Education Act.

[My clients] demand that they be compensated monetarily for all the additional costs they have and will incur as the result of [the assistant principal's] conduct for which District 60 is liable, their attorney fees, and appropriate punishment against [the assistant principal]. Complainants' Complaint letter dated August 28, 2006. Capitalizations and quotation marks in original. Bracketed information supplied by the Federal Complaints Officer.

III. SCHOOL DISTRICT'S RESPONSE

The School District's Response consisted of the Individualized Education Programs [IEPs] for the student during the time period of the Complaint, and statements from: the Assistant Superintendent of Leadership & Instruction; the student's Building Principal; the student's Assistant Principal; and two teachers from the student's attendance center. None of these statements concedes the revelation of this student's special education status, nor do they concede any violation of law, including law relevant to the student's confidentiality rights – that is, the Individuals with Disabilities Education Act [IDEA], and the Family Education Rights and Privacy Act [FERPA].

The statements do concede that there was an incident involving the student and other students at the middle school which they all attended in the spring of 2006. The Assistant Principal's statement is consistent with the complainants' attorney's letter that the complainants' daughter was kicked by one of the other students. According to the Assistant Principal's statement, complainants' daughter was "kicked in the shin." The statements of the school staff, as interpreted by the Federal Complaints Officer, are representations by the school staff that they were trying to address the disagreements between the complainants' daughter and other students in a way that included protecting the complainants' daughter from any behavior of the other students that might cause harm to the complainants' daughter.

IV. COMPLAINANTS' RESPONSE TO THE SCHOOL DISTRICT'S RESPONSE

In his response dated September 29, 2006, the complainants' attorney stated, as excerpted by the Federal Complaints Officer:

None of the district's response in any way negates the fact that the child's status was revealed to students who have taken that and used it against her. This has caused her severe emotional trauma resulting in needed therapy. My client requested that she be able to home school [her daughter] but was denied by [the building principal].

It appears though that new evidence has come to light regarding the disclosure. Initially, we thought that it was [the assistant principal] who made the disclosure. It now has been determined that it was [proper name], the Special Education teacher, that told the students about [my clients' daughter's] status. [The special education teacher] admitted to [the student's mother] that she was the one who disclosed that to the other girls. Complainants' response to the school district's response dated September 29, 2006. Capitalizations in original. Bracketed information supplied by the Federal Complaints Officer.

V. FINDINGS AND DISCUSSION

On October 4, 2006, the Federal Complaints Officer spoke by telephone with an Exceptional Student Services (ESS) specialist in Pueblo School District 60, and obtained, at the Federal Complaints Officer's request, the following information about the student which was not already in the record of this Complaint as developed by the Federal Complaints Officer:

- The student first became an IDEA student in the school district in May of 1997;
- The student has remained an IDEA student in the school district up through the spring of 2006, the time during which the incidents subject to this Complaint occurred;
- The middle school that this student attended was, and is, composed of students grades 6 through 8;
- The student entered the middle school at the beginning of the 2005-06 school year;
- At the time the student entered the middle school her IEP identified her disability as perceptual communicative disorder;
- At the time the student entered the middle school her IEP identified her service delivery model as, "Special education services will include consult, collaborative, and resource services that will support [the student] in the regular education setting."

Finding No. 1

The Federal Complaints Officer finds that school district staff did not reveal to the other students involved in the incident cited in this Complaint that this student was a "special education" student. The Federal Complaints Officer bases this credibility determination on the statements by school staff submitted in response to this Complaint. The complainants' attorney, in his response to the school district's response to the Complaint, introduces an alleged disclosure of the student's special education status to the other students by another school staff member not mentioned in the Complaint filing, nor included as a respondent statement by the school district. The Federal Complaints Officer finds this additional allegation unpersuasive. The complainants' are, however, entitled to a hearing on this issue. A hearing officer would not be bound by the determination of the Federal Complaints Officer. The Complainants may also be entitled to file a FERPA Complaint with the Family Policy and Compliance Office (FPCO).

There being no factual finding of a disclosure of special education status, there is, therefore, no finding of any legal violation of the student's IDEA or FERPA confidentiality rights.

Finding No. 2

Even if some, or all, of the school staff members cited in this Complaint had discussed the student's special education status with the other students cited in this Complaint, it would not have constituted a violation of the student's IDEA or FERPA confidentiality, based upon the factual record of this Complaint. In Colorado IDEA Federal Complaint 2004:502, found at www.cde.state.co.us/spedlaw, the school district argued, in response to allegations of a violation of a student's IDEA and FERPA confidentiality rights:

[I]t has been a longstanding legal interpretation that the prohibition against disclosure of personally identifiable information from educational records does not extend to information derived from a source independent of school records, even if it may be the very same information contained in school records. In *Frasca v. Andrews*, 463 F. Supp. 1043 (E.D.N.Y. 1979), the court stated "Congress could not have constitutionally prohibited comment on, or discussion of, facts about a student which were learned independent of his school records." In *Daniel S. v. Bd. Of Educ.*, 152 F. Supp.2d 949, 954 (N.D. Ill. 2001), the court, citing *Frasca*, stated that "FERPA does not protect information which might appear in school records but would also be [']known by members of the school community through conversation and personal contact.['] [The building principal] has personal knowledge about [the student] based upon his interactions with [the student] at school. Any information shared in the comment to the student's parents was not based on information [the building principal] got from [the student's] education record. Colorado IDEA Federal Complaint 2004:502 at p.2,3.

In Federal Complaint 2004:502, the Federal Complaints Officer rejected this argument by the school district stating:

While in general terms a building principal certainly knows students have differing abilities, the building principal here was disclosing information about this student's limited cognitive social/emotional abilities as a means of explaining to other parents this student's behavior. *The Federal Complaints Officer does not find it credible that the building principal would have done so without relying upon evaluation information derived from the student's educational records, which established, to the building principal's satisfaction, limited cognitive social/emotional abilities sufficient to explain the student's behavior, such that the principal thought it would be justifiable and helpful to disclose this information to other parents.* Colorado IDEA Federal Complaint 2004:502 at p. 3. Italics added by the Federal Complaints Officer.

The Federal Complaints Officer finds no such reliance on educational records information by the school district staff in addressing the incident that is the factual genesis of this Complaint. Moreover, the student subject to this Complaint had been a special education student in the school district since 1997, including the entirety of the 2005-06 school year. Confidential educational records information about this student would not have needed to have been revealed

to other students in order for the other students to know that this student was a special education student. The Federal Complaints Officer therefore finds that, even if school district staff stated that this student was a special education student, school district staff did not disclose personally identifiable information in the student's educational records in violation of the student's confidentiality rights under either the IDEA or FERPA.

Finding No. 3

The complainants' have not established that any discussions by school district staff with other students, relative to the complainants' daughter, have caused complainants' daughter to be denied a free appropriate public education (FAPE). Even if there had been a violation of the student's IDEA and FERPA confidentiality rights, such violation alone would not establish that the student was denied a FAPE by the school district. The Federal Complaints Officer finds no such denial of a FAPE for this student.

VI. CONCLUSION

The complainants' are entitled to a hearing on all issues relevant to this Complaint. A hearing allows for the taking of sworn testimony. A hearing officer would not be bound by the factual or legal conclusions of the Federal Complaints Officer.

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, October 16, 2006.

Charles M. Masner, Esq.
Federal Complaints Officer