

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

Federal Complaint 2007:518

Mount Evans BOCES

Decision

INTRODUCTION

This Complaint dated December 15, 2007, was filed by Student's mother (hereafter, the "Complainant") and was received in the office of the State Complaints Officer on December 21, 2007. The Complaint attached e-mail correspondence and a notice dated November 5, 2007, of Student's September 12, 2007 Individualized Education Program ("IEP") team meeting. The response of Mount Evans BOCES (hereafter, the "BOCES") was timely received on January 8, 2008. The BOCES's response attached portions of Student's IEP document dated November 12, 2007, a two-page court order dated June 16, 2005, and additional e-mail correspondence. The response was transmitted to Complainant on January 10, 2008, but no reply was received prior to the date of this Decision. The record was closed in this matter on January 25, 2008.

ISSUE

Whether Student's IEP team meeting was properly convened on November 12, 2007, without the participation of Complainant.

CONTENTIONS OF THE PARTIES

The Complainant alleges that the BOCES convened an IEP team meeting for Student on November 12, 2007, without permitting her to participate. Prior to the meeting, Complainant had made arrangements to participate in the meeting by telephone. When the meeting actually took place, Complainant alleges that she was improperly excluded. She seeks an order declaring that the BOCES violated her rights as a parent and also requests that the BOCES convene a 'make-up' IEP team meeting.

The BOCES acknowledges that Complainant was not permitted to participate in the November 12, 2007 IEP team meeting. The BOCES contends that Student's father

exercised his exclusive legal authority over Student's educational decisions by directing that Complainant not be included in the meeting.

FINDINGS OF FACT

1. Student is an [AGE] year-old attending [GRADE] within the Clear Creek School District. Student is eligible for special education and related services as a child with a disability in the category of [DISABILITY].
2. On or about September 8, 2007, Complainant sent e-mail correspondence to Student's special education teacher concerning an IEP team meeting then scheduled for November 9, 2007. Complainant expressed her desire to participate in the meeting by telephone and requested other information related to Student's education.
3. Prior to November 5, 2007, Complainant and Student's special education teacher exchanged further e-mail correspondence pertaining to the scheduled IEP team meeting and Complainant's desire to participate by phone in that meeting.
4. On November 5, 2007, the Clear Creek School District sent notice to Complainant that the IEP team meeting had been re-scheduled to November 12, 2007. The notice encouraged Complainant to participate in the meeting.
5. On November 6, 2007, Student's special education teacher sent e-mail correspondence to Complainant confirming the change of schedule for the IEP team meeting.
6. On November 12, 2007, the IEP team meeting was convened at Student's school. Complainant attempted to join the meeting by calling the school repeatedly that morning, but was not successful.
7. Complainant was prevented from taking part in the IEP team meeting at the direction of Student's father. The father determined that Complainant's participation would be emotionally detrimental to Student who was also in attendance at the meeting.
8. Pursuant to an Order of the District Court for the County of El Paso, Student's father has sole decision-making authority regarding Student's education. The Order states that the Complainant and the father were unable to make joint decisions in the best interest of their minor children. To continue joint decision-making authority, the court found, would impair Student's emotional development or endanger his physical safety. Under the terms of the Order, Student's father has the obligation, 'whenever possible' to obtain Complainant's input in advance of significant decisions affecting Student.

CONCLUSIONS OF LAW

An IEP is developed by an IEP team. 20 U.S.C. §1414(d)(3). An IEP team is comprised of educators, administrators, parents and others who are involved in the education of the student. 20 U.S.C. §1414(d)(1)(B). Meaningful participation of parents is essential to the success of the IEP process and special education as a whole. 34 C.F.R. §300.501(b). In enacting the Individuals with Disabilities Education Act, Congress stated its specific intent to strengthen the role and responsibility of parents to ensure such meaningful participation. 20 U.S.C. §1400(c)(5)(B). The term ‘parent’ is defined in federal regulations promulgated to enact the provisions of the statutes referenced above. The biological or adoptive parent of a child with a disability is presumed to act as parent for purposes of participating in the child’s special education program “unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.” 34 CFR 300.30(b)(1). The regulations specifically recognize the authority of a judicial decree or order to identify a specific person to act as parent of a child or make educational decisions on behalf of a child. 34 CFR 300.30(b)(2).

Here, the language of the court Order clearly places decision-making authority in the hands of Student’s father. (Finding of Fact No. 8) That authority reasonably includes deciding whether having Student’s mother take part in an IEP team meeting is in the best interest of Student. The record in this case reflects that the special education teacher at the school actively communicated with Complainant to keep her informed and attempted to facilitate her participation in the IEP team meeting. (Findings of Fact No. 3, 4, and 5) However, although Complainant is a biological parent of Student, the BOCES and the school district were bound to honor the terms of the court Order and abide by the decision reached by Student’s father to exclude Complainant. Whether the father properly sought the input of Complainant in advance of the IEP team meeting as required by the Order is not the issue here, nor is it a matter within the jurisdiction of the State Complaints Officer to decide. Therefore, on the issue and facts presented, neither the school district nor the BOCES violated any right of Complainant with respect to her participation in the IEP process.

REMEDY

Complainant failed to establish that the BOCES violated federal or state special education law by holding the November 12, 2007 IEP team meeting without her participation. Accordingly, no award of relief is appropriate.

CONCLUSION

This Decision shall become final as dated by the signature of the Federal Complaints Officer.

Dated this 19th day of February, 2008.

Keith J. Kirchubel
State Complaints Officer