

## FEDERAL COMPLAINT NUMBER 98.509

### FINDINGS AND RECOMMENDATIONS

#### I. PRELIMINARY MATTERS

- A. A complaint was received by the Federal Complaints Coordinator, Colorado Department of Education ("CDE"), on March 9, 1998.
- B. The complaint was filed by Ms. [parent] on behalf of her son, [student]. (known as "[student]"), against the Mesa 51 School District, Dr. George J. Straface, Superintendent and Mr. Howard B. Littler, Director of Special Education ("the District").
- C. The timeline within which to investigate and resolve this expires on May 8, 1998.
- D. The process for receipt, investigation and resolution of the complaints is established pursuant to the authority of the Individuals With Disabilities Education Act 20 U.S.C. 1401 et.seq., ("the Act"), and its implementing regulations concerning state level complaint procedures, 34 C.F.R. 300.660-300.662, and Colorado State Board of Education Policy No. 1280.0.
- E. The complaint was brought against the District as a recipient of federal funds under the Act. It is undisputed that the District is a program participant and receives federal funds for the purpose of providing a free appropriate public education ("FAPE") to eligible students with disabilities under the Act.
- F. The complaint was accepted for investigation based upon a determination that CDE had jurisdiction over the allegation contained in the complaint pertaining to a violation of federal law and rules in a federally funded program administered by CDE.
- G. [student] is a student with disabilities eligible for services from the District under the Act.
- H. The investigation of the complaint included a review of the documents submitted by the parties; interviews with persons named in those documents or who had information relevant to the complaints; and consideration of relevant case law and federal agency opinion letters.

#### II. ISSUE

##### A. STATEMENT OF THE ISSUE:

Whether or not the District has violated the provisions of the Act, by failing to provide the services of a signing interpreter during the 1997-98 school year, when the assigned interpreter was not available.

##### B. RELEVANT STATUTORY AND REGULATORY CITATIONS

20 U.S.C. 1401 (a)(16), (17), (18) (19) and (20), and 1414,

34 C.F.R. 300.2, 300.7, 300.8, 300.11, 300.14, 300.16, 300.121, 300.130, 300.180, 300.235, 300.300, 300.340, 300.346, and

Fiscal Years 1995-97 State Plan Under part B of the Act

## C. FINDINGS

1. At all times relevant to the complaint, the District was receiving funds under the Act pursuant to an approved application for funding.
2. The funds were paid to the District, in part, based on the assurances contained within the application.
3. One of the assurances made by the District is that, in accordance with the Act, it provide a FAPE, including special education and related services, to each student with a disability within its jurisdiction to meet the unique needs of that child.
4. [Student] is an 18 year old student with hearing disabilities as indicated on an initial individualized education plan ("IEP") dated 12/9/97. That IEP indicates [student] is to receive 3 hours per week of deaf education, 45 minutes per week of speech language services and 25 hours per week of tutor-interpreter services.
5. The complainant alleges that several times during the 1997-98 school year, [student]'s interpreter has been unable to attend classes with him and no substitute interpreter was provided, leaving him in classes all day unable to understand what is being taught. She alleges that the interpreter was not available on the following 16 days and that a substitute interpreter was provided for only 6 or 7 of those days:
  - October 7, 8, 9, 16, 21
  - January 19, 20, 21, 22, 23, 29
  - February 26, 27
  - March 4, 5, 6
6. Upon receipt of this complaint, the complaints investigator contacted Mr. R.H., a known coordinator for hearing impaired services. Mr. R.H. indicated that he had just become aware of this problem, that the complainant had "every right to be concerned", that this was due to a communication breakdown between the interpreter and the teacher (whose responsibility it is to request substitute interpreters), and was also due to the limited supply of substitute interpreters available in the community. He indicated that the process which resulted in poor communication had be clarified and that the District's personnel office had just agreed to some salary changes which allowed the District to employ substitute teachers who could act as interpreters.
7. The District, in its response to the complaint, admits that there were some days (the exact number of which may be in dispute) when the regular interpreter assigned to [student] was not available and that a substitute was not provided. The District states that this was unintentional and, in most instances, unavoidable and it emphatically denies that the unavailability of an interpreter amounts to a violation of the Act. The District contends that this had no effect on [student]'s grades or academic progress and that he did receive a free, appropriate public education ("FAPE"). The District cites (a) the refusal of the complainant to allow [student] to attend Grand Junction High School (where interpreters are readily available), (b) the complainant's objection to one particular substitute interpreter due to personality conflict or incompatibility and (c) the unavailability of qualified substitute interpreters as mitigating factors relative to this issue.
8. Despite the District's contention that this complaint is unfounded and that the [student]'s FAPE was not jeopardized, it did pursue the following steps to increase the

likelihood that substitute interpreters will be available in a timely fashion when the need arises:

The pay scale for substitute interpreters has been increased to that of a certified teacher if the interpreter is also a certified teacher, thus allowing for two individuals in the community who meet this criteria to be available.

Advertising continues on a regular basis for qualified interpreters.

Contact was made with the Center for Independence which may be a potential source for emergency interpreters.

Procedures have been changed for interpreters to follow if they are ill and not able to work which will facilitate obtaining substitutes.

9. The complainant was contacted by telephone by the complaints investigator and reported that [student] has consistently had the services of an interpreter since the filing of this complaint.

### III. CONCLUSIONS

The District did technically violate the provisions of the Act by failing to provide interpreter services to [student] on some days. It would serve no purpose, at this time, to determine the exact number of days and whether or not this constituted a failure to provide a FAPE. The District has taken all necessary steps to correct this situation and [student] is currently receiving the services of an interpreter. No remedial action is necessary at this time, however the CDE consultant in hearing will be asked to monitor the availability of interpreters at the next regularly scheduled on site monitoring visit to the District.

Dated this \_\_\_\_\_ day of May, 1998

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Carol Amon, Federal Complaints Investigator