

FEDERAL COMPLAINT NUMBER 98.528

FINDINGS AND RECOMMENDATIONS

I. PRELIMINARY MATTERS

- A. This complaint was received by the Federal Complaints Coordinator, Colorado Department of Education (“CDE”), on July 23, 1998.
- B. The complaint was filed by Ms. [parent] on behalf of her daughter, [student] against the Sheridan Schools, Dr. Ken Reiter, Superintendent, and Ms. Ann Pearce, Director of Special Education (“the District”).
- C. The timeline within which to investigate and resolve this expires on September 21, 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 violations 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 complaint; and consideration of relevant case law and federal agency opinion letters.

II. ISSUE

A. STATEMENT OF ISSUE:

Whether or not the District has violated the provisions of the Act by **failing to provide those adaptations/modifications/accommodations listed on [student]’s IEPs**. Specifically, whether Mrs. K.K., Mr. K.S., Mr. B.S. and Ms. J.D. [student]’s teachers, provided the following modifications during the past school year.

- extra time on tests and assignments as needed
- tests read or clarified
- supplemental help in the areas of math calculation and application
- supplemental help with the comprehension of new materials
- allowing use of supplemental devices as needed
- tests or directions read

- extra time given to take tests

B. RELEVANT STATUTORY AND REGULATORY CITATIONS

20 U.S.C. 1401(a)(16), (17), (18), (19) and (20), 1412 (2)(B), (4), (6) and 1414, as amended by 20 U.S.C. 602, 612

34 C.F.R. 300.2, 300.7, 300.8, 300.11, 300.14, 300.16, 300.17, 300.121, 300.128, 300.130, 300.180, 300.235, 300.300, 300.340, 300.343, 300.350, and 300.533 (as amended by statute)

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

C. FINDINGS

1. At all times relevant to the complaints, 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 its application.
3. One of the assurances, made by the District are that in accordance with the Act, it will provide a FAPE, including special education and related services, to each eligible student with disabilities within its jurisdiction to meet the unique needs of that child.
4. [student] is a 13 year old student who was identified as having a disability on an IEP dated 2/23/94 and, again at a triennial review dated 2/14/96.
5. An annual review for [student], held on 3/31/98, indicated she had a perceptual/communicative disability and that placement was in general education with support from a special education learning specialist. This support consisted of 3.75 hours per week of support directly in the general classroom and 3.75 hours per week of supplemental pull-out instruction in the area of reading, outside the general classroom. The adaptations/modifications/accommodations listed on the IEP include the following:
 - extra time on tests and assignments as needed
 - test read or clarified
 - supplemental help in the area of math calculation and application
 - supplemental help with comprehension of new materials
 - use of supplemental devices as needed
 - tests or directions read and extra time given when necessary
6. Ms. [parent], in her complaint, states the following:

“...she should be allowed to use a calculator, a computer and ...test and other work should be read to her as needed. Though these things are stated repeatedly, I have yet to see that they are being implemented. ...she struggled terribly in this class but only I seemed to notice there was a problem. I believe it was due to the teachers' lack of understanding of [student]'s IEP... I believe that what is said in the IEP is not being implemented. One teacher's solution to [student]'s needs was [that [student]] needed to tell them what it is she needs. I believe that is wrong, they are the educators; they

should know what her needs are and how to meet those needs...the teachers that I believe that are not following the IEP are Mrs. [K.], Mr. [S.], Mr. [S] and Ms. [D.]”

7. The District, in responding to the complaint, provided responses from Ms. J.D. [student]’s special education teacher, Ms. K.K., one of [student]’s general education teachers and Mr. B.S., a teacher who has since moved from the district. Mr. K.S. has moved out of state but was contacted and asked to provide a response, however none was received by the complaints investigator as of 9/21/98.

The District states that it is committed to helping all students achieve to their highest potential and it supports the provision of accommodations to any student requiring them to access a FAPE.

- a) The response from Ms. J.D., 7th grade learning specialist, includes the following:

I reviewed [student]’s IEPs with her teachers and made them aware of her goals, objectives and accommodations/modifications. I checked in daily with her teachers and encouraged [student] to ask for additional time on tests and assignments if she needed it. I reviewed her progress reports with her each week and questioned whether she needed assistance. I made sure that in all instances when she needed extra time on a test or assignment, that was granted. The determination as to whether or not extra time was needed was partially left to [student], as self-advocacy was one of the goals.

Any questions or directions that [student] indicated she did not understand were read or clarified or reworded.

[student] was offered additional support in the area of math calculation and application before school, during lunch, after lunch, or during her pull-out labs as needed. Private tutoring sessions were offered but not regularly attended. She was permitted to use a calculator to complete such assignments.

[student] was provided help with the comprehension of new materials. She was permitted to bring her work to her pull-out resource period. Need was determined by [student] or her mother asking for assistance.

[student] was permitted to use a calculator or the computer calculator, a word processor and a dictionary. Laptop computers and software were available for check-out to assist with work at home. Books on tape were available.

- b) The response from Mrs. K.K., FACT classroom teacher, includes the following.

Provisions of many kinds were made for [student], including modified time allowances on tests and assignments and teacher support. Extended due dates and no time limit for in-class quizzes were allowed. My partner and I were given copies of [student]’s IEP. We agreed that extra time would be given if she was experiencing difficulty in completing an assignment or test. Since one of her goals was “self-advocacy”, we agreed that it would be to [student]’s benefit to ask for help when she felt it was needed. [student] and I arranged additional one-on-one time during lunch, etc. On test days, I notified J.D. prior, so that she could assist me in answering special education students’ questions, reading sections of tests or for clarification as needed. Any time [student] needed additional time, it was given.

Supplemental help in the areas of math calculation and application was given to [student] throughout the entire school year. She was given additional time and

assistance in completing her math assignments. [student] agreed that if she was not clear on the assignment, she would ask for teacher help.

Assistance was provided to [student] regarding the comprehension of new materials. When reading class novels, I provided [student] with books on tape to assist in comprehension. Teacher assistance was provided when needed. [student] was also allowed to leave the classroom to receive additional assistance from J.D.

[student] was allowed to use supplemental devices both in and outside the classroom for any assignment over the course of the entire year. She was allowed to use a calculator on the computer and was encouraged to use it any time for any assignment. [student] had the opportunity to check out a laptop to complete homework.

c) The response from Mr. B.S., classroom teacher, includes the following:

If a student is having trouble due to whatever reasons, such as reading or comprehension of reading material, tests in my class are given verbally by myself. [student] has always shown me she understands the safety issues extremely well. As far as other written tests, adequate time is always given and free time for those who finish early.

Special education teachers rarely are seen in this class for any extra help (less than 4 times per year for any grade level)

All kids know I'm in before and after school at least ½ hour and they can ask for help.

My classes have always been very individualized. All kids are graded on most things daily.

[student] may have been very intimidated in a classroom of such high ability kids due to her shyness and large amount of group activities.

8. E-Mail Correspondence, dated 5/16/98, from the director of special education to teachers J.D., K.K., K.S and four others includes the following.

"I received a call from [parent], parent of [student], who had several concerns:...the expectation is that when extended time is needed and [student] turns in assignments past the time indicated for general education students, there should be no penalty. Seems we have written 'Late' on some of her papers. That seems to be counter to our agreement on the IEP. Mr. [K.S.]... said extra time would not be penalized. Ms. [K.K.] put a "late" on a paper the following week. Let's make sure we are communicating with each other...Spelling assignments don't appear to recognize [student]'s learning style and needs...[student] has tried to check out a laptop so she can work at home but has been told we don't have any available...Had made arrangements to come in early one morning a week but those seem to be canceled on a regular basis due to teacher meetings...we need to do the following: provide the extended time on assignments...locate a laptop that is available for checkout...review the spelling expectations..."

A response from K.K., dated 5/18/98, states the following:

"...we have been over and over these concerns with Ms. [parent] a million times. I have spoken with Ms. [J.D.]...[student] does not communicate to the two of us; at any time I have scheduled a meeting with her I am always there. When an entire

class period is given to complete an assignment, and [student] still needs additional time, this must be communicated to me...I am more than willing to work with [student] and come up with another solution to these problems.”

III. DISCUSSION

It is obvious that the teachers' and the complainant's perceptions of what accommodations/modifications have been provided are quite disparate. While Ms. [parent] clearly believes that regular education teachers were not aware of [student]'s IEP and, therefore, did not provide those accommodations/modifications listed on the IEP; three of the four named teachers reported numerous accommodations and modifications that were given.

The process of complaint resolution, however, does not allow for taking testimony under oath for determining credibility. Rather, this investigation must rely on documentation in such situations and on a clear indication that a violation has occurred. The only documentation relative to this issue is from the Director of Special Education to staff; however, the Director was simply sharing the concerns of the parent/complainant. Staff response to that was somewhat defensive, indicating adjustments were being made.

Of particular note is the difference in perception between staff and the complainant, as to whether adjustments should be made automatically or whether they need to be requested by [student]. This is clearly a decision of the IEP team and needs to be clarified.

Since this complaint was filed, the Director of Special Education has been in communication with the complainant and with [student]'s new regular education teachers. It appears that there is a strong emphasis on the awareness of [student]'s needs and support for making those adjustments.

III. CONCLUSIONS

Based on the facts of this complaint, this office cannot clearly conclude that the District failed to provide those adaptations/modifications/accommodations listed on [student]'s IEPs, nor can it conclude that all of [student]'s teachers made such adjustments at all times when needed.

IV. RECOMMENDATIONS

It is recommended that the Director of Special Education provide close monitoring of this situation, maintain contact with Ms. [parent], and provide training to regular education staff relative to the need to be clear on the IEPs as to what will be provided under what circumstances and the need to implement that which is written.

Dated this 21st day of September, 1998

Carol Amon, Federal Complaints Investigator