

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

Federal Complaint 2000:505
(Mountain BOCES)

Decision

INTRODUCTION

The complainant filed her Complaint in a letter dated February 22, 2000, and received by the Federal Complaints Officer on February 24, 2000. The school responded in a letter dated March 6, 2000, and received by the Federal Complaints Officer on March 8, 2000. By letter dated March 21, 2000, and received by the Federal Complaints Officer on March 24, 2000, the complainant responded to the school's response. The Federal Complaints Officer then closed the record.

COMPLAINANT'S ALLEGATION

In her letter dated February 22, 2000, the complainant alleged that the school suspended her son on February 17, 2000, despite the fact that her son had an illness that was the cause of his disruptive behavior.

SCHOOL'S RESPONSE

In its response letter dated March 6, 2000, the school stated that no significant behavior concerns were noted for complainant's son until October of 1999. On January 13, 2000, a special education referral was made. In February of 2000, the special education eligibility determination continued, and the Superintendent of Schools withdrew her order of expulsion, that she had entered that same month. On March 6, 2000, the complainant's son began receiving services at the school as a diagnostic placement, with the agreement of the complainant. A March 9, 2000 staffing was scheduled to determine the complainant's son's eligibility for special education services.

FINDINGS AND DISCUSSION

On March 9, 2000, according to the complainant, her son was determined to be eligible for special education services and that his disruptive behavior was a manifestation of his disability. He is evidently currently receiving special education services, which are, at least for now, satisfactory to the complainant. In her final response as a part of the Complaint process, dated March 21, 2000, the complainant did ask, however, "Will he (complainant's son) eventually be allowed to return to a regular classroom where he can have contact with his friends?"

The issues to be decided are what did the school know about complainant's son's problems, and when, and what was the school's obligation to act, if any, based upon what they came to know. The parties are in agreement that it was not until October of 1999 that complainant's son's behavior became such that it was a problem at school. The complainant says that she subsequently, in November of 1999, requested her son be referred for special education services, although no one has provided the Federal Complaints Officer with any form that the complainant signed initiating such a referral. However, on October 28, 1999, Robert L. Chalfant, M.D., Psychiatry, evaluated complainant's son. The school obtained a copy of this evaluation, which it submitted as a part of its response to this Complaint. This is how Dr. Chalfant described the history of complainant's son's illness: "(Complainant's son) has been having ongoing difficulty with explosive behavior, irritability, some sleep difficulties, anhedonia, anergy, and a negativistic outlook. This behavior has changed over the last year. Where he was an 'A' student a year ago, he is now failing everything. He sees no reason to stay in school. There is nothing that can benefit him by being in school. This is reported by his mother and the school system." Subsequently, in a memo to complainant's son's teachers, dated November 19, 1999, the complainant's son's Principal stated, in relevant part, that "...we will work with (complainant's son) and his family regarding psychological and educational testing to determine whether or not (complainant's son) would qualify for special education services."

IDEA regulation 34 CFR 300.527 extends IDEA protections to students who have not yet been determined to be eligible for special education services if:

- (1) The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;
- (2) The behavior or performance of the child demonstrates the need for these services, in accordance with §300.7;
- (3) The parent of the child has requested an evaluation of the child pursuant to §300.530-300.536; or
- (4) The teacher of the child, or other personnel of the local education agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system. 34 CFR 300.527 (b)(1)(2)(3)(4).

Whether or not the complainant requested an evaluation according to 34 CFR 300.527 (b)(3), it is clear to the Federal Complaints Officer that, based upon Dr. Chalfant's evaluation of October 28, 1999, and the Principal's memo of November 19, 1999, the school had sufficient information to meet the requirements of 34 CFR 300.527 (b)(1)(2) and (4). Therefore, the expulsion of February 17, 2000 should never have taken place. The formal referral of January 13, 2000 is not necessary for the Federal Complaints Officer to reach this conclusion, but only fortifies this conclusion. In the view of the Federal Complaints Officer, referral and evaluation for special education services for complainant's son should have been initiated in October of 1999, and certainly no later than the school's receipt of Dr. Chalfant's evaluation report of October 28, 1999, or the level of awareness evidenced by the principal's memo of November 19, 1999. In any case, for discipline purposes, the complainant's son was entitled to be treated as a special education student from these points forward, unless and until an appropriate evaluation determined him not to be entitled to be eligible for special education services.

REMEDY

To its credit, the school did subsequently revoke its expulsion of complainant's son, and special education services have now been initiated. There is insufficient evidence in the record for the Federal Complaints Officer to warrant a finding of denial of FAPE, because of the school's actions, or inaction's. Therefore, the Federal Complaints Officer is not ordering any compensatory educational services be provided. However, the Federal Complaints Officer is ordering that the Mountain BOCS Director, Ms. Ann Morrison Clement, submit to the Federal Complaints Officer a statement of assurances that she accepts the Decision of the Federal Complaints Officer, which includes specifics about how the school is going to deal with other circumstances similar to complainant's son's in the future, in order to guarantee timely referral and evaluation for special education services, and avoidance of the application of discipline procedures not allowed by IDEA. The Federal Complaints Officer expects to receive such assurances within thirty (30) days of the school's receipt of this Decision, the appeal time, unless extension is granted.

CONCLUSION

This Decision will become final as dated by the Federal Complaints Officer's signature on this Decision. A copy of the appeal procedure is attached to this Decision.

Dated today, April _____, 2000.

Charles M. Masner, Esq.
Federal Complaints Officer