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

Federal Complaint 2001:506

BOULDER VALLEY SCHOOL DISTRICT RE 2

Decision

INTRODUCTION

This Complaint letter was dated March 1, 2001, and received by fax on the same date, and by regular mail on March 5, 2001. However, the Federal Complaints Officer did not accept the Complaint until March 12, 2001, when he confirmed by telephone with the complainant that she wished to proceed with her Complaint. The school's response to the Complaint was dated March 27, 2001, and received by the Federal Complaints Officer on March 29, 2001. By certified mailing dated March 29, 2001, the Federal Complaints Officer sent the complainant a copy of the school's response to her Complaint, with cover letter granting the complainant ten (10) days to submit a response to the school's response to her Complaint. This certified mailing was received on April 2, 2001, and the response time for the complainant expired on April 12, 2001. On April 13, 2001, a Friday, the Federal Complaints Officer called the complainant and granted her until Monday, April 16, 2001, to submit her response. The Federal Complaints Officer told the complainant that if her response was not received by Monday April 16, 2001, he would proceed to a Decision without it. No response was received. The Federal Complaints Officer closed the record on Tuesday April 17, 2001.

COMPLAINANT'S ALLEGATIONS

- The complainant alleged that her daughter did not participate in the Colorado Student Assessment Program (CSAP), on February 28, 29, and March 1, 2001, and that her daughter should have participated in such testing.
- The complainant alleged that her daughter was wrongfully denied Individual Educational Program (IEP) services on February 28, 29, and March 1, 2001.

SCHOOL'S RESPONSES

- The school responded that the only CSAP tests administered in the spring of 2001 were to ninth and tenth graders. Complainant's daughter is a twelfth grader. No CSAP tests

were administered to twelfth graders. Therefore, complainant's daughter was not wrongfully denied participation in CSAP for the spring semester of 2001.

- The school admitted that the complainant was mistakenly notified that her daughter was not to attend school on February 27, 28, and March 1, 2001. The school also stated that a message was left on the complainant's telephone answering machine, by one of the complainant's daughter's teachers, on February 26, 2001, notifying the complainant that school was available for complainant's daughter on February 27, 28, and March 1, 2001 – for the entire school day, each day. The school stated that complainant told the teacher who left the message that the complainant accessed the message on February 27, 2001. The school stated that complainant's daughter did not attend school on February 27 and 28, 2001, but that she did attend school on the afternoon of March 1, 2001.

FINDINGS AND DISCUSSION

34 CFR 300.347(a)(5)(ii)(A)(B), of the Individuals with Disabilities Act regulations (IDEA), require that a student's IEP include a statement of why a particular state or district wide assessment is not appropriate for the student, if the IEP team determines that such an assessment is not appropriate. These regulatory provisions also require a statement of how the student will otherwise be assessed. Complainant's daughter's IEP, at page twenty-four (24), includes statements addressing these regulatory provisions. While these statements do not mention the CSAP by name, it is the finding of the Federal Complaints Officer that the statements are sufficient to address the complainant's daughter's participation in CSAP. The statements indicate that the IEP team found that it would not be appropriate for complainant's daughter to participate in such standards based assessments. Thus, even if it was to be determined that complainant's daughter, as a twelfth grader, was otherwise eligible to participate in CSAP, complainant's daughter's IEP team had made the determination that such participation was not appropriate for complainant's daughter. Students who do not take the CSAP are to take an alternative – CSAP-A, but the CSAP-A is presently only available for fourth graders. Therefore, complainant's daughter was not wrongfully denied participation in CSAP.

The complainant's daughter missed two and one-half (2 and ½) days of special education services to which she would have otherwise been entitled. The school presents several arguments as to why the complainant's daughter should not receive compensatory education for these two and one-half (2 and ½) days – all of which blame the complainant. The first argument the school makes is based on the fact that the school sent out conflicting notices to the complainant, and similarly situated parents, in January of 2001, about special education services for their sons and daughters, for the dates of February 27, 28, and March 1, 2001, and that the complainant did not question these conflicting notices. The school states – "No issue was raised by (the complainant) when she received these seemingly conflicting notices during January and the beginning of February." School's response at page three (3). The second argument the school makes is based upon the fact that the telephone message that the school left for the complainant on February 26, 2001, notifying the complainant that her daughter could come to school on February 27, 28, and March 1, 2001, was not accessed by the complainant until February 27, 2001. "Because (the complainant) apparently did not access her telephone messages in a timely manner, the District should not be found in violation of IDEA." School's response at page three (3). Finally, the school argues as follows:

No facts support the awarding of compensatory services to (complainant's daughter). At most, (complainant's daughter) missed two afternoons of school and (the complainant) knew on the 27th that (complainant's daughter) could attend school that day and the following two days. While the District regrets the miscommunication with (the complainant), it did its best to contact her on February 26th. (The complainant) shares some responsibility for those days being missed. Additionally, each and every week (complainant's daughter) is provided with more special education and related services than are required by her IEP. (Complainant's daughter) receives direct services from 7:35 to 3:05 five days a week for a total of more than 37 ½ hours each week. Any instruction that she did not receive for the two days she was absent, has already been incorporated into her daily programming. The facts do not support a finding that (complainant's daughter) has been denied a free appropriate public education by the School District. School's response at page four (4). Parentheses added.

Whatever the validity of the school's allegations about the shortcomings of the complainant, it is the complainant's daughter, not the complainant, that is entitled to a free appropriate public education (FAPE). It is the complainant's daughter that missed two and one half (2and ½) days of IEP required services – notwithstanding the alleged shortcomings of her mother and notwithstanding any other services the school may be providing in excess of what is required by the complainant's daughter's IEP. Moreover, notwithstanding the alleged shortcomings of the complainant, it was the school that created the uncertainty about the special education services that were to be provided on February 27, 28, and March 1, 2001. Having said all that, however, it is also true that the school is required to rely on the parent as spokesperson for the student. The school's ability to provide services is heavily dependent upon the cooperation of the parent in allowing for service provision. Moreover, even where IEP required services have not been provided, it is not always clear whether, and if so what, compensatory education is appropriate.

The Federal Complaints Officer finds that the school violated, with regard to complainant's daughter, 34 CFR 300.13(d) – which references the IEP provisions of 34 CFR 300.340-350. Compensatory education is addressed in the remedy section of this Decision.

REMEDY

At the complainant's request, the school shall convene an IEP meeting, before the end of the spring semester 2001, unless otherwise agreed to by the complainant, which shall include as one of its purposes the consideration of whether, and if so what, compensatory education is appropriate for complainant's daughter. If the IEP team reaches any determination with which the complainant disagrees, the complainant shall be appropriately informed of her right to request a hearing to challenge any such determination. This IEP meeting need not occur separate from an IEP meeting scheduled to address other concerns for complainant's daughter. Any IEP meeting which is held, within thirty days of the date of this Decision, even if not requested by the complainant, shall address the issue of compensatory education. If the complainant does not request an IEP meeting within thirty (30) days of the date of this Decision, or an IEP meeting is not otherwise held within this time period, the school shall not be required to hold an IEP meeting for the purpose of addressing compensatory education, nor shall the

school otherwise be required to provide compensatory education for complainant's daughter, pursuant to this Decision. Nothing in this remedy prevents the complainant and the school from otherwise reaching an agreement about compensatory education, should they choose to do so.

CONCLUSION

This Decision shall become final as dated by the signature of the Federal Complaint Officer. A copy of the appeal procedure is attached to this Decision.

Dated today, April _____, 2001.

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Charles M. Masner, Esq.
Federal Complaints Officer