

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

Federal Complaint 2002:506

Decision

Thompson SD R-2J

INTRODUCTION

This Complaint was dated March 20, 2002 and filed March 22, 2002. The school district's response to the Complaint was dated April 9, 2002, and was received by the Federal Complaints Officer on April 10, 2002. The complainants' response to the school district's response was dated April 19, 2002, and received by the Federal Complaints Officer on April 23, 2002. The Federal Complaints Officer then closed the record.

COMPLAINANTS' ALLEGATIONS

The Federal Complaints Officer is stating the allegations essentially as stated by the complainants, unless otherwise indicated.

- 1) Upon entering the meeting (the Individualized Education Program – IEP – meeting of March 14, 2002) the parent was given a 100% prepared IEP obviously for the purpose of obtaining parent approval. The parent was never informed that they were “a member of the IEP team” [Sec. 300.344(a) (1)] – (citing the Individuals with Disabilities Education Act – IDEA – regulations), or afforded the opportunity to actively or meaningfully participate [20 U.S.C. Sec. 1415(b)(1); 34 C.F.R. Sec. 300.501 (a) (2) (i), and (b)], or to be involved in the placement decision. [34 C.F.R. Sec. 300.501 (a) (2), and (c) (1)]. Though the parent was “present”, she was never treated as a member of the group, nor was she ever asked for input in determining the decision on placement. (Explanatory parentheticals added by the Federal Complaints Officer.)
- 2) The parent obtained an independent evaluation at private expense, and paid the evaluator to attend the March 14th meeting. The independent evaluator was never recognized as a member of the IEP team [34 C.F.R. Sec. 300.344 (a) (6)], nor was she given the opportunity to present the results of the independent evaluation for

consideration by the public agency [34 C.F.R. 300.502 (c) (1)]. Though the parent provided the independent evaluation to the (school district's) IEP personnel 10 days prior to the meeting, when they were asked about it, and reminded that it was to be considered, they simply replied, "Yes, we read it, " and proceeded with their agenda. (Personally identifiable information deleted, by parenthetical, by the Federal Complaints Officer.)

- 3) In developing the IEP, the parent was never given the opportunity to address her daughter's strengths or her own concerns for enhancing the education of her child [34 C.F.R. Sec. 300.346 (a) (i)]. Every attempt the parent made to question or add information to the IEP, was met with disregard by the (school district) personnel. Though information was typed on the IEP by the (school district) staff prior to the actual meeting, the following areas regarding development and content of the IEP were *never addressed at the meeting*. None of the members present at the meeting were afforded even the *opportunity* to question, make additions or discuss these areas. a. present levels of functioning, including how the child's disability affects involvement and progress [34 C.F.R. Sec. 300.347 (a) (1) and (1) (i)] b. accommodations and modifications in order for the child to receive FAPE (Free Appropriate Public Education) [34 C.F.R. Sec. 300.346 (c), and Sec. 300.347 (a) (3)] c. statement of educational needs [34 C.F.R. Sec. 300.347 (a) (2) (i) and (ii)] d. how the parents will be informed of child's progress toward annual goals [34 C.F.R. Sec. 300.347 (a) (7) (ii) (A) and (B)] e. extended school year [34 C.F.R. Sec. 300.309 (a) (2)] f. assistive technology [34 C.F.R. Sec. 300.347 (a) (3)]. (Personally identifiable information deleted, by parenthetical, by the Federal Complaints Officer. Italics in original.)
- 4) The classroom teacher was not given an opportunity to participate in the development of the IEP during the meeting [34 C.F.R. Sec. 300.346 (d)]. She was not given a chance to thoroughly state her position on any matter, or to add to, change, delete, or expound on any of the information previously typed on the IEP.
- 5) Neither the parent, the teacher, or the independent evaluator were actively included in determining if (student) was a child with a disability under Sec. 300.7, or her educational needs [34 C.F.R. Sec. 300.535 (a) (1)]. Nor was all of the information that was obtained from them, documented and carefully considered [34 C.F.R. Sec. 300.535 (a) (2)]. Though we were told that the prepared IEP we received at the beginning of the meeting was only a "draft", nothing the mother or independent evaluator said, or attempted to say, was documented in the "final" IEP. The final IEP that the mother was requested to sign was *exactly* the one which had been given to her at the beginning of the meeting, only it didn't have "draft" written on it. No additions, deletions, comments, disagreements, questions, etc., voiced during the meeting, were documented on the final IEP. (Personally identifiable information deleted, by parenthetical, by the Federal Complaints Officer. Italics and quotation marks in original.)
- 6) There was no documentation or reference in the IEP as to any of the team members other than the child's regular teacher observing the child's academic performance in the regular classroom setting [34 C.F.R. Sec. 300.542 (a), and Sec. 300.543 (a) (3)].
- 7) The mother was *told* that her child was not eligible for the learning disabilities program. Though the mother and the independent evaluator disagreed with the eligibility determination, they were not given an opportunity to discuss or support their position, nor were they offered the option of certifying in a written statement that the report did not reflect their conclusion [34 C.F.R. Sec. 300.543 (b)]. (Italics in original.)
- 8) We were told that the child was not eligible based on *one* criteria; a number on a discrepancy chart, which was not disclosed to us. There was information we were never

given a chance to share or discuss which directly related to identification and determination of eligibility. We feel that not *all* of the results gathered during the school and independent evaluations were considered in determining the disability or placement, or in developing the IEP [34 C.F.R. Sec. 300.320 (b) (2)]. (Italics in original.)

- 9) This entire situation appears greatly similar to the case *Amanda S. by Susan s. v. Webster city Community School District*, 27 IDELR 698 (N.D. Iowa 1998). In this case the IEP was invalidated by the Court. Two reasons cited by the Court were; (1) the school presented the parents with a prepared IEP for the purpose of obtaining the parent's approval, and (2) the parents were never given a chance to make suggestions about the IEP or placement it suggested.

SCHOOL DISTRICT'S RESPONSES

The Federal Complaints Officer is stating the school district's responses essentially as stated by the school district, unless otherwise indicated.

- 1) Please refer to meeting notice which specifically states that the purpose of the meeting is to determine eligibility and disability by discussing the evaluation conducted and to determine the child's needs. As per 300.345, the IEP team notified (parents) of the meeting early enough to ensure their opportunity to attend; scheduled the meeting at a mutually agreed upon time and place and indicated the purpose and who would attend. (Attachment A) (Personally identifiable information deleted, by parenthetical, by the Federal Complaints Officer.)

At the beginning of the meeting (mother) was informed that the IEP was in ***draft*** format to be utilized as a guide for the meeting, and that we could change, add, or delete any information during the course of the meeting. (Mother) was frequently asked if she had any questions, if she understood the information that was being presented, and whether she had any additional input [300.501 – meaningful input by parent]. Furthermore, several members of the special ed team offered to continue visiting with (mother) after she had time to peruse the document and share the information with her husband. Our perception is that (mother) was a member of (the) group that makes decisions on the educational placement of their child [300.501 (a)(2) and (c)(1)]. (Personally identifiable information deleted, by parentheticals, by the Federal Complaints Officer. Parenthetical added. Bold and italics in original.)

- 2) The team received a copy of the educational evaluation conducted by (primary complainant) on 9/28/01 prior to the IEP meeting. The report was discussed at the weekly special ed meeting and the team noted that the assessment conducted by the specialist is not used in the (school district) for the purpose of determining eligibility [300.502 (c) (1)] – which as stated above was the main purpose of the meeting. The specialist was informed that the assessment results had been reviewed. (Personally identifiable information deleted, by parentheticals, by the Federal Complaints Officer.)

The school district was not informed that (primary complainant) would be attending the meeting and were not aware of her role. She did not indicate her desire to review her testing with the team at any time during the staffing, and she did not provide copies to

the staff during the meeting. The team perceived (primary complainant's) attendance as one of parent liaison, or possibly to gather more information as to how she could better work with (student) in her private tutoring. (Personally identifiable information deleted, by parentheses, by the Federal Complaints Officer.)

The tests administered by the private evaluator did not specifically present an **overall score** which would indicate the level at which she is functioning. (Bold and underlining in original.)

The assessment conducted by the private evaluator was not an assessment typically used by the (school district) to determine Learning Disabilities. The perception of the team was that the evaluator considered dyslexia as the disability and notes that the State Board of Education does not consider the determination of Dyslexia an area which can be determined by Standardized Testing and qualify as a specific disability. (Personally identifiable information deleted, by parentheses, by the Federal Complaints Officer. Capitalization's in original.)

- 3) The recollection of the (school district) team was that the questions asked by (mother) were responded to in a respectful manner, and she did not ask for any changes. Most of the comments made during the meeting were by the specialist and the classroom teacher – who were frequently having side conversations. The parent primarily addressed questions to the classroom teacher – not to the special education team.
 - a. **Present level not addressed** – information regarding present levels of functioning was obtained prior to and at length during the meeting. The classroom teacher provided information prior to the meeting that was included in the draft IEP as well as a CDE Communication Rating Scale for teacher input which is designed to determine present levels of language skills in the classroom. Present levels were addressed with the parent throughout the meeting.
 - b. **Accommodations and modifications in order for the child to receive FAPE** – Purpose of meeting was to determine eligibility only. (Mother) did not wish to proceed until conferring with spouse – plan is to complete IEP.
 - c. **Statement of Educational Needs** – Purpose of meeting was to determine eligibility only. (Mother) did not wish to proceed until conferring with spouse – plan is to reconvene to complete IEP.
 - d. **How parents will be informed of progress** - Purpose of meeting was to determine eligibility only. (Mother) did not wish to proceed until conferring with spouse – plan is to reconvene to complete IEP.
 - e. **Extended School Year** – IEP not completed; therefore not addressed.
 - f. **Assistive Technology** – IEP not completed; therefore not addressed. (Personally identifiable information deleted, by parentheses, by the Federal Complaints Officer. Bold in original.)
- 4) As stated previously the classroom teacher provided all the information for present levels of functioning, filled out a language classroom survey and met individually with members of the team prior to the meeting. Our perception is that the classroom teacher provided input numerous times throughout the meeting and made suggestions about changes which were included in the final draft of the IEP. In addition the classroom teacher (SAT referral forms – Attachment F) stated her concerns when she initiated the student referral to the special education team and continued to voice her concerns throughout the meeting. She included first quarter and end of semester comments at the time of the referral.
- 5) The disability page was reviewed in depth with all members present at the meeting. Educational needs were typed on the **draft** IEP and (mother) and teacher were asked if anything needed to be changed or added – and changes were made. Regarding the

comments made about changes not appearing on the final draft, - the complaint was made March 20, 2002 to CDE (and never mentioned to the (school district) Special Ed team, the principal, or the Director of Special Education for (school district)) and the final **draft** of the IEP was mailed to (parents) on Thursday, March 21, 2002. The IEP team needs to reconvene to formalize the decisions since the purpose of the meeting was the determination of eligibility. (See Attachment B – Questions sent to IEP team on 3/18/02 and Attachment C – responses to questions sent 3/21/02.) (Personally identifiable deleted, by parentheses, by the Federal Complaints Officer. Bold in original.)

- 6) Pursuant to 300.542 (a) and 300.543 (a) (3) observation is required of at least one member of the team (does not specifically state which member). (Proper name), School Psychologist and Team leader, did observe (student) in her classroom setting, as did (proper name), School Counselor. (Personally identifiable information deleted, by parentheses, by the Federal Complaints Officer.)
- 7) Prior to the meeting information was sent to (parents) as to how a student would qualify for services. When she qualified for services, (mother) was informed that she also could receive services in math. At the time, PCD (Perceptual Communicative Disorder) was not seen as an option for reading due to her reading assessment scores and the fact the team felt that speech/language was the main factor which interfered with (student's) ability to learn. This was communicated to (mother), and also stressed that since she qualified for speech, she could receive support in the resource setting if needed. (Personally identifiable information deleted, by parentheses, by the Federal Complaints Officer.)

As per 34 C.F.R. Sec. 300.543 (b), (mother) certainly may respond as to whether the report reflects her conclusion. The parent **did not** present the team or the Director of Special Education for the (school district) with a dissenting opinion. (Personally identifiable information deleted, by parentheses, by the Federal Complaints Officer.)

The special education team perceived prior to the meeting that (mother) and the classroom teacher had determined that math would be handled outside of school by a private tutor – this was reiterated at the meeting. (Personally identifiable information deleted, by parentheses, by the Federal Complaints Officer.)

The staffing team followed guidelines provided by CDE to determine disability (1+1+1 Formula and the Colorado Department of Education Communication Rating Scale as designated by the state). Staffing team discussed how speech-language deficits may impact cognitive skills (auditory processing of directions, auditory memory). The evaluators never indicated that (student) did not display difficulty in the reading area – only that these skills were not significantly low as indicated on the standardized measurement. (Personally identifiable information deleted, by parentheses, by the Federal Complaints Officer.)

- 8) Information was sent to the parents prior to the meeting explaining the criteria for determination of a disability both by (proper name), School Psychologist (Attachment D) and (proper name), Speech/Language Pathologist (Attachment E). The discrepancy chart was sent to parents prior to meeting in response to their request. The discrepancy chart was not requested by (mother) or the outside evaluator during the meeting. As indicated previously, no request was made by the evaluator to review her testing. No additional request was made by (mother) or the evaluator to further discuss how this is

determined. (Personally identifiable information deleted, by parentheses, by the Federal Complaints Officer.)

As previously indicated, the 1+1+1 Formula and the Colorado Department of Education Communication rating Scale used to determine disabilities has been designated by the state as a viable tool. In addition, the further development of the IEP was not pursued since (mother) had not determined she would sign for placement at the meeting. The only document signed by (mother) was the page denoting her attendance at the meeting. (Personally identifiable information deleted, by parentheses, by the Federal Complaints Officer.)

- 9) As previously stated the IEP was in draft form and has been referred to as a draft by (primary complainant) in the complaint. (Personally identifiable information deleted, by parentheses, by the Federal Complaints Officer.)

The Meeting Notice (Attachment A) clearly states the purpose of the meeting as that of determining eligibility. The **draft** IEP was used only as a planning guide. (Mother) asked for more time to review the IEP with (father) so the meeting was concluded. (Personally identifiable information deleted, by parentheses, by the Federal Complaints Officer. Bold and italics in original.)

FINDINGS AND DISCUSSION

The Federal Complaints Officer has been presented with competing factual versions of events surrounding, and including, an IEP meeting held for the complainant parent's daughter on March 14, 2002. The Federal Complaint process does not provide for an evidentiary hearing, during which witnesses can be put under oath and required to testify, and be cross-examined, about their factual statements. The Federal Complaints Officer has no record of the events surrounding, and including, the IEP meeting held on March 14, 2002, other than the information available to him through the complainants and the school district. Even if the Federal Complaints Officer were to seek more information from persons who had knowledge to contribute, the competing versions of factual events would remain, and there would be no hearing process available to test those competing factual versions of events. And, even if the Federal Complaints Officer had a "neutral" record of the events surrounding, and including, the March 14, 2002 IEP meeting, the Federal Complaints Officer does not have the authority to decide issues of appropriate services or placement. The Federal Complaints Officer can, if appropriate, order further IEP meeting(s). The complainants have requested another IEP meeting. The school district has offered another IEP meeting.

Given the investigatory and fact determination limitations of the Federal Complaint process, the Federal Complaints Officer finds that the complainants have not provided sufficient evidence to prove the specific violations they have alleged against the school district. The complainants are entitled to request a due process hearing to have all of the violations alleged in their Complaint decided by an independent hearing officer. The complainants are also entitled to request mediation and, if the school district agrees to participate in mediation, the Federal Complaints Officer will assign a mediator. Any such mediator assigned could be used to facilitate the IEP

process, if the mediator, and the complainants and the school district, agreed that this was appropriate.

Despite the Federal Complaints Officer's finding that the complainants have not provided sufficient evidence to find violations by the school district of all of the violations specified by the complainants, the Federal Complaints Officer is persuaded that, for the complainants, the IEP process for this student did not work as intended by the spirit of IDEA, for parent participation, parent invitee participation, and the participation of the regular education teacher. Therefore, the Federal Complaints Officer finds that the school district has not met its obligations to develop an IEP for this student as required by 34 CFR 300.340(a), which states, in relevant part, that "...the term *individualized education program* or *IEP* means a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.341-300.350." *Id.* Italics in original. To the best of the Federal Complaints Officer's knowledge, at the time of this Decision, an appropriate IEP has not been developed for this student, and the Federal Complaints Officer finds that the school district has violated its obligation under IDEA to see that this be done, notwithstanding any actions of the complainants which may have also contributed to this delay.

REMEDIES

- 1) Whether or not any additional IEP meeting(s) have taken place subsequent to the filing of this Complaint, the complainant parent shall be entitled to additional IEP meeting(s), as necessary, for the purpose of confirming initial eligibility, appropriate services, and appropriate service delivery. Thus, even if these decisions have already been made at the time of the complainant parent's receipt of this Decision, whether or not such decisions were satisfactory to the complainant parent, the complainant parent shall nonetheless be entitled to have the IEP team reconvene for the purpose of documenting the decisions made. At whatever point after the required IEP meeting(s) have taken place, the school district offers to the complainant parent what the school district believes is necessary in order to provide the complainant parent's daughter with FAPE, or not – if no special education services are determined by the school district to be required – the school district shall not be required to provide the complainant parent with further IEP meeting(s) – for the purpose of complying with this Remedy. Further IEP meetings should otherwise be provided, of course, according to relevant legal requirements.
- 2) The additional IEP meeting(s) ordered by the Federal Complaints Officer shall be, at the request of the complainant parent, and at the expense of the respondent school district, electronically recorded by cassette tape – unless the parties reach other agreement for making a record of the additional IEP meeting(s). If the complainant parent wishes to transcribe the ordered IEP meeting(s) by court reporter, at her own expense, she shall be entitled to do so. Videotaping shall not be required. Whatever method of transcription is used, it shall be done in a manner so that an understandable record is created, which includes the appropriate attribution of all speaker statements. Question twenty-one (21), Appendix A, of the IDEA regulations, addresses the issue of audio or video recording of IEP meetings. Appendix A leaves the decision of whether such recordings shall take place up to the local education agency or the state education agency. To the best of the Federal Complaints Officer's knowledge, neither the

respondent school district, nor the state of Colorado, has a policy addressing such decisions. However, the Federal Complaints Officer finds that his power to order corrective actions under 34 CFR 300.661(b)(2)(iii) are sufficient to allow for this Remedy.

- 3) The IEP meeting(s) ordered by the Federal Complaints Officer shall take place within (30) days of the date of this Decision, unless otherwise agreed to by the parent(s) and the school district. However, in any case, the IEP meeting(s) ordered shall take place prior to the first day of respondent school district's 2002-2003 school year, and the specific issue of ESY, as a part of FAPE, shall be determined either by IEP team consensus, or by school district offering after the failure of the IEP team to reach consensus, within thirty (30) days of the date of this Decision.

CONCLUSION

There is no limit to the number of Complaints that a complainant may file. If the additional recorded IEP meeting(s) ordered by the Federal Complaints Officer is not deemed satisfactory by the complainant(s), additional Complaint may be filed and the record of the IEP meeting(s) may be submitted in support of the Complaint. However, that said, the Federal Complaints Officer has no authority to decide differences between parents and school districts over appropriate services or service delivery systems. This is the job of the IEP team. "Consideration" of parent, and parent participant, views, and the views of others, as a part of the IEP process, does not mean required acceptance of those views by the school district. Ultimately, if, for whatever reason, a parent does not think that the consideration given by the school district is sufficient, and negotiation and/or mediation is either unsuccessful or not attempted, the parent(s) need to request a due process hearing, if the parent(s) wishes to challenge the school district's actions. This is the parent's right after receiving timely notice from the school district, as required by 34 CFR 300.503,504, which requires a full explanation of the school district's actions, or inactions, and the parent's right to challenge the same. Repeated IEP meetings are not required, once the school district has adequately conducted the IEP meeting(s) process, and has made its offer of FAPE, with an adequate explanation of that offer.

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

Dated today, May _____, 2002.

Charles M. Masner, Esq.
Federal Complaints Officer