

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

Federal Complaint 2003:525

Aspen School District 1/Mountain BOCES

DECISION

INTRODUCTION

The allegations contained in this Complaint were originally received in a written complaint dated 10/16/03 and filed on 10/21/03 but those allegations failed to contain sufficient supporting facts. However, on 12/04/03, the Complainants provided sufficient documentation to make a claim that the District's disciplinary actions involving the student violated the Individuals with Disabilities Educational Act (IDEA). Consequently, on 12/04/03, the Federal Complaints Officer opened this Complaint and notified the parties of such action via a letter dated 12/04/03, a copy of which is attached to this Decision. The response of the Aspen School District 1 and the Mountain BOCES (hereafter referred to as the "District") to the Complaint was dated 12/16/03 and received on 12/19/03. The Complainants' response to the District's response was dated 01/08/04 and received on 01/09/04. Between 01/13/04 and 01/26/04, the Federal Complaints Officer contacted the District's special education director and the Complainants via phone and/or email to obtain additional information. The Federal Complaints Officer closed the record on 01/26/04.

The Complainants are the parents of a child with a significant identifiable emotional disability (SIED). The parents have requested "supplemental education to bring him up to where he was before he entered the Aspen School District."

THE COMPLAINANTS' ALLEGATIONS

The Complainants allege as follows:

[During the 2002-03 school year, the District] removed [[Student]] from [a] proper educational setting...[Student] was removed from classes more than 10 times...Some [removals were] for multiple days and these are only the documented ones. There were times when he was told to go to the office and would spend at least one hour before being allowed to go back to class. There were some days time spend (sic) was longer. He would miss quizzes, homework assignments and even had his book and notebook put in lost and found and had homework disappear out of his notebook. We were told by Mrs. Taylor, the Principal, that Mark Murray, the Assistant Principal, was responsible for administering the punishment on the kids.

THE DISTRICT'S RESPONSE

The District generally responds as follows:

[School records] seem to show that [Student] was out of school, for all day or most of the day, six days because of suspensions or "time outs." Seven of the 11 referrals were times that [Student] was sent to the office because of his behavior in class, therefore, he did miss some class time but the exact amount of time is not indicated on any of the paperwork that I have. The other 4 referrals were about behaviors outside the classroom.

FINDINGS OF FACT AND CONCLUSIONS

Under the IDEA and its implementing regulations, a school may remove a student with a disability for up to 10 consecutive school days per school year without the removal constituting a change of placement. During that same school year, the school may order additional removals of not more than ten (10) consecutive days each for separate incidents of misconduct as long as those removals do not constitute a change of placement. 34 C.F.R. § 300.520 (a) (1).¹ A change of placement occurs if (a) the removal is more than ten (10) consecutive school days, or (2) the student is subjected to a series of removals that constitute a pattern because they cumulate to more than ten (10) school days in a school year and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. § 300.519.

An in-school suspension does not constitute a removal as long as the student (a) is given the opportunity to continue to appropriately progress in the general curriculum, (b) continues to receive the services specified by his or her IEP, and (c) continues to participate with nondisabled children to the extent that he or she would have in his or her current placement. *See*, 64 Fed. Reg. 12619 (1999).

The question raised in this Complaint is whether the disciplinary actions imposed by the District on the student during the 2002-03 school year constituted a change of the student's educational placement, i.e., whether the short term suspensions and other discipline-related actions were a series of removals that, when added together, (1) cumulated to more than ten (10) school days in a school year, and (2) constituted a pattern due to a variety of factors.

The documentation submitted by the parties² shows that the student received 12 written disciplinary referrals during the 2002-03 school year. With regard to those disciplinary referrals,

¹ The regulations implementing the IDEA are located at 34 C.F.R. Part 300. Hereafter, the IDEA regulations will be referred to by section number only, e.g., § 300.520.

² The District submitted computerized disciplinary and attendance records for the student. The Complainants submitted copies of twelve disciplinary referrals completed by school personnel. The District states that the only available discipline records that the District now has are the computer records and some discipline notes because the administrator who dealt with the student has left the District's employ, and the new administrator purged all discipline files when she took the position, which purging took place prior the District's receipt of the original

the parties agree that the student received 1 day of out of school suspension, 4 days of in-school suspension, and nearly 1 full day when the student was in an extended “time-out.”

With regard to 11 of the 12 disciplinary referrals, the parties also agree that the student was out-of-class and in the office for a period of time in connection with most of the disciplinary referrals. The District states that, with regard to those periods of out-of-class time, it does not know how much out-of-class time accrued. The Complainants estimate the cumulated time to be approximately 16 hours. The Complainants further state that there were many undocumented times when the student was sent to the office for a short period of time during which time he missed being in class.

The Federal Complaints Officer has carefully reviewed the documentation and other information provided by the parties. The Federal Complaints Officer finds as follows:³

- 1) During the 2002-03 school year, the student’s school day began at 8:05 A.M and ended at 3:05 P.M.
- 1) During the 2002-03 school year, the student received 12 written disciplinary referrals between the dates of 09/10/02 and 05/01/03.
- 2) During the 2002-03 school year, the student was subjected to out-of school suspension for 1 day due to behavior that occurred on 09/24/02.
- 3) During the 2002-03 school year, the student received 4 days of in-school suspension for behavior that occurred on 09/24/02, 12/17/02, 01/16/03 and 04/10/03.
- 4) During the 2002-03 school year, the student was subjected to nearly a full day of “time-out” on 03/07/03 for behavior occurring on that date.
- 5) In addition to the suspensions and extended time-out referenced above, during the 2002-03 school year, the student was sent to the office and was out-of-class for an approximate cumulative total of 16 hours -- the equivalent of $2\frac{2}{3}$ school days.
- 6) The Federal Complaints Officer finds that there is insufficient evidence to find that the student was sent to the office more frequently than is demonstrated by the 12 written disciplinary referrals contained in the record of this case.
- 8) The Federal Complaints Officer finds that the amount of time that the student was out of class due to the out-of-school suspension, the in-school suspensions, the extended time-out, and while in the school office on disciplinary referrals, cumulated to less than 10 school days during the 2002-03 school year.
- 9) Because the Federal Complaints Officer has determined that the student was out of class for less than 10 cumulative school days during the 2002-03 school year, it is not necessary for the

complaint in October 2003. According to the District, the student’s computerized attendance records are “a little inaccurate because the attendance secretary left mid year last year and was not immediately replaced....”

³ In making these findings, the Federal Complaints Officer has relied primarily on the information provided by the Complainants.

Federal Complaints Officer to determine whether the in-school suspensions, the extended time-out or the time the student otherwise spent in the office on disciplinary referrals were “removals” for purposes of the IDEA.

The Federal Complaints Officer therefore concludes that the District not violated §300.520 (a) (1) because the student was not out of class for more than 10 cumulative school days during the 2002-03 school year.

NO DENIAL OF FAPE

Having found no violation of the IDEA by the District, the Federal Complaints Officer finds that the District did not deprive the student of a free appropriate public education.

REMEDY

Having found no violations of the IDEA by the District, the Federal Complaints Officer therefore orders no remedy.

CONCLUSION

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, January 29th, 2004

Laura L. Freppel
Federal Complaints Officer