

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

Federal Complaint 2006:508

Denver Public Schools

Decision

I. INTRODUCTION

This Complaint was dated September 6, 2006, and received by fax the same date. The school district's response was dated September 26, 2006, and hand delivered to the office of the Federal Complaints Officer on October 2, 2006. The complainant's response to the school district's response was dated October 9, 2006, and filed, by fax, the same date. The Federal Complaints Officer then closed the record.

II. COMPLAINANT'S ALLEGATIONS

The complainant makes four allegations, but allegations numbers one and three are the same allegation stated differently. Therefore, the Federal Complaints Officer lists three allegations of the complainant, in the language of the complainant, as combined and excerpted by the Federal Complaints Officer:

1)

The student's IEP requires 1,840 minutes per week of Direct Special Education Services Outside the General Classroom in a special education classroom. Since the first day of the school year the student has been inside the general classroom with a para-educator assigned to him. ... The Student's placement into the general education classroom at the beginning of the 2006-2007 school year was a unilateral change in placement made by the District without prior written notice to the parent. Complainant's Complaint at pages two and three. Capitalizations by the complainant.

2)

During the 2005-2006 school year the school informed the parent that it would take two weeks before the student received OT,S/L and social skills services while schedules were being determined. It took more than two weeks for the school to start providing these services. The student has not yet received these services this school year. The student has been denied reasonable educational benefit during the periods these services were not provided. Complainant's Complaint at page three. Capitalizations by the complainant.

3)

The parent was informed at the end of the 2004-2005 school year by the general classroom teacher that the student slept in class every single day whenever the special educator was not in the classroom with him. ... The student did not have this symptom in self contained classrooms previously, and when the parent asked the school to solve the problem by either moving the student to a self contained classroom or by keeping him in the classroom her requests were denied. Complainant's Complaint at page five. Excerpted from complainant's numbered allegation four in her Complaint.

III. SCHOOL DISTRICT'S RESPONSES

The school district numbered its responses to the complainant's allegations as numbered one through four by the complainant. However, as he did with the complainant's text, the Federal Complaints Officer has combined and excerpted language from the school district's text addressing complainant's allegations numbers one and three.

1)

In August of 2006, the student enrolled at Martin Luther Middle School as a 6th grade student. The student is receiving 1, 840 minutes per week of direct special education services in the general education setting. ... The IEP is being implemented in the student's home school. School district's response at pages five and six. Capitalizations in school district's response.

2)

Speech/Language and Occupational/Physical therapy related service providers explained that they spend the first and sometimes second week of school observing their students in different educational settings, consulting with the student, and consulting with general and special education providers before finalizing a consistent service schedule. Direct, occupational/physical therapy services commenced on August 31, 2005 and direct speech/language services commenced on August 29, 2005 for the 2005-2006 school year. School district's response at page six. Capitalizations by the school district.

3)

The staff of Archuleta Elementary School denies the parent's allegation that the student slept each day in class. In fact, this behavior was only observed on 2 occasions. School district's response at page seven. Capitalizations by the school district. Excerpted from the school district's response to allegation number four, as numbered by the complainant in her Complaint.

IV. FINDINGS AND DISCUSSION

Allegation No. 1

The Federal Complaints Officer finds that the school district violated, and is violating, the student's Individualized Education Program (IEP).

The school district does not deny, and the student's IEP for the 2006-07 school year confirms, that this student was, and is, to receive 1, 840 minutes of special education instruction per week outside the general education classroom. This is not happening. The student is being instructed in the general education classroom without the parent's IEP agreement, and without the school district having offered to the parent an alternative IEP which the parent could then accept or have the right to challenge. A student's IEP determines the free appropriate public education (FAPE) a student is to receive, and, by the terms of this student's IEP, he is not receiving a FAPE.

Allegation No. 2

The Federal Complaints Officer finds that the school district violated this student's IEP for the 2005-06 and 2006-07 school years by failing to timely provide IEP required services.

The student's IEPs for the 2005-06 and 2006-07 school years do not make provisions for speech/language and occupational therapy service providers to delay their provision of direct services to this student while they observe the student and consult with him and his other service providers before direct service provision begins. While this may be good educational practice, in the absence of it being memorialized in the student's IEP, and where the parent objects to the delay, IEP required services should commence as stated in the IEP.

Allegation No. 3

The Federal Complaints Officer finds no violation by the school district.

The complainant and the school district are in disagreement over how much the student slept, and, presumably, is sleeping, during school hours. The parent complainant's suggested response to her son's school time sleeping is to either place him in a self contained classroom, or resource room, or, in any case, in a classroom, as opposed to a nurse's office or other setting. She states that her son did not have this problem when he was in a self contained classroom.

The Federal Complaints Officer does not find that the school district's responses to this student's sleeping behavior have denied, or are denying, per se, this student a FAPE. Even if the complainant is accurate that her son sleeps less in more restrictive school environments, this would not necessarily be determinative of what the educational service delivery system should be for complainant's son. Life is not a restrictive school environment and the job of the school district, in cooperation with the parent, is to help prepare the complainant parent's son for life beyond the environment of the school. If the student is a student covered by the Individuals with Disabilities Education Act (IDEA), this preparation is to take place appropriately consistent with the procedures of the IDEA.

V. REMEDIES

Within thirty (30) days of the date of the school district's certified receipt of this Decision, the school district shall convene an IEP meeting for this student. The school district shall make reasonable efforts to consult with the parent about the date, time, and location of this IEP meeting but, if agreement about the particulars of the IEP meeting cannot be reached with the parent, the school district shall hold the meeting without the parent. Also within this thirty (30) day time period, the school district shall present, subsequent to the ordered IEP meeting, a proposed written IEP to the parent along with a written copy of the parent's rights under the IDEA. The school district shall then proceed to implement this IEP.

At the ordered IEP meeting, the IEP team shall also discuss what, if any, compensatory education should be provided to this student as a result of the Federal Complaints Officer's Findings One and Two. While the Federal Complaints Officer has determined that this student has been denied a FAPE, by the terms of his IEPs, the Federal Complaints Officer has not determined what, if any, compensatory education should be provided to remedy these denials of a FAPE. The Federal Complaints Officer has not determined that this student received no educational benefits, nor has he determined that any educational benefits not received can be compensated. If the parent and the school district cannot reach agreement on this issue, the Federal Complaints Officer will accept written proposals from the parent and the school district and shall then order any compensatory education he deems appropriate.

Within thirty (30) days of the school district's certified receipt of this Decision the school district shall also submit to the Federal Complaints Officer a proposed Corrective Action Plan (CAP). This CAP shall state that the school district accepts the findings of the Federal Complaints Officer, and shall also state how the school district intends to avoid future violations as found by the Federal Complaints Officer.

VI. CONCLUSION

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

Dated today, October 30, 2006.

Charles M. Masner, Esq.
Federal Complaints Officer