

FEDERAL COMPLAINT NUMBER 98.501

FINDINGS AND RECOMMENDATIONS

I. PRELIMINARY MATTERS

- A. A complaint was received by the Federal Complaints Coordinator, Colorado department of Education (“CDE”), on January 21, 1998.
- B. The complaint was filed by Mr. And Mrs. [parent] on behalf of their daughter [student], a student at Ponderosa High School, against the Douglas County Schools, Dr. Richard O’Connel, Superintendent and Mr. John Doherty, Director of Special Education (“the district”)
- C. The timeline within which to investigate and resolve this complaint will expire on March 20, 1998.
- D. The process for receipt, investigation and resolution of the complaint is established pursuant to the authority of the Individuals With Disabilities Education Act 20 U.S.C. 1401 et seq., (“the Act”), and its implementing regulations concerning state level complaint procedures, 34 C.F.R. 300.660-300.662, and Colorado State Board of Education Policy No. 1280.0.
- E. The complaint was brought against the District as a recipient of federal funds under the Act. It is undisputed that the District is a program participant and receives federal funds for the purpose of providing a free appropriate public education (“FAPE”) to eligible students with disabilities under the Act.
- F. The complaint was accepted for investigation based upon a determination that CDE had jurisdiction over the allegation contained in the complaint pertaining to a violation of federal law and rules in a federally funded program administered by CDE.
- G. [student] is a student with disabilities residing within the District’s attendance boundaries and is eligible for special education services from the District;
- H. The investigation of the complaint included a review of the documents submitted by the parties; interviews with persons named in those documents or who had information relevant to the complaints; and consideration of relevant case law and federal agency opinion letters.

I. ISSUE

A. STATEMENT OF THE ISSUE:

Whether or not the District has violated the provisions of the Act, by failing to provide those modifications listed on [student]’s current IEP.

B. RELEVANT STATUTORY AND REGULATORY CITATIONS

20 U.S.C. 1401 (a)(16), (17), (18) and (20), and 1414

34 C.F.R. 300.2, 300.7, 300.8, 300.11, 300.14, 300.16, 300.17, 300.121, 300.130, 300.131, 300.180, 300.235, 300.300, 300.340, 300.343 and 300.533 and

Fiscal Years 1995-97 State Plan Under part B of the Act.

C. FINDINGS

1. At all times relevant to the complaint, the District was receiving funds under the Act pursuant to an approved application for funding.
2. The funds were paid to the District, in part, based on the assurances contained within the application.
3. One of the assurances made by the District is that, in accordance with the Act, it provide a free appropriate public education to each student with a disability according to the individualized education program ("IEP").
4. [student] is a student with disabilities as identified on an IEP dated 3/4/97 and 3/24/97. That IEP indicated that [student]'s special education program consists of:

- a. totally modified curriculum in a math skills lab and
- b. regular education for all core and electives with the following adaptations:

Content Modifications

extra time to complete/hand in assignments, with advocate approval
directions/instructions given orally and in writing
long range projects broken down into short term assignments
taped reading material

Modified Written Assignments

shortened length of assignments
spelling errors noted but not evaluated
extra time to complete written assignment, with advocate approval

Other Modifications

script/notes of lectures as needed
minimized memory demands
allow to use tape recorder in lectures
provide word banks
assistance in getting started
encourage verbal practice rather than visual practice
allow to test orally

Environment Modifications

structured environment
limited distractions
consistent expectations and consequences

regular feedback and progress check
Modifications in Evaluation
extra time to complete tests
test given orally or with reading assistance
allow notes on tests
use of calculator on standardized tests
allow to test in E.H. for extra time and reading assistance

5. Following are the complainants' allegations and the District's response to that allegation:

a. Content Modifications have only been offered once because of advocate hardly gives approval. Projects were never broken down or modified. Reading levels were never adapted and taped reading materials were never provided.

Extra time for assignments were considered by [student]'s advocate upon request by either [student] or any of her teachers. In early November of 1997 extra time was requested by [student]'s general education teacher and this time was granted.

b. Written Assignments were never shortened. Spelling mistakes were evaluated. The advocate did not assist her in getting extra time for assignments.

The length of Biology, English and Social Study assignments were modified in accordance with the IEP and [student]'s needs on a regular basis. The length the assignments completed by [student] was not considered in the grading of her work. Rather, emphasis was placed on the content of the work in terms of whether [student] understood the subject matter being covered by the assignment. A report written by [student] on Zaire (copy of file) was only one and one-half pages long and was simply graded according to the content covered in the assignment.

Throughout the 1996-97 school year and during the fall of the 1997-98 school years, [student]'s Biology assignments were modified in terms of length and format in accordance with IEP and under the supervision and coaching of the advocate.

[student]'s English assignment involving the scripting of the Old West was done under supervision of the advocate in a writing lab, that allowed her to complete the assignment in smaller increments of work product and shorter intervals of time.

[student]'s Social Studies teacher was hand-picked due to her skills in both accommodating in accordance with [student]'s needs and in modifying both the content of the class and the length of assignments. She abbreviated several assignments for [student] during the time in which the IEP has been in effect.

Spelling was marked individually for [student]. The school team knows of no instance where she was marked down in her assignment due to spelling. Rather, spelling was graded separately from the content of her work.

The advocates regularly checked with [student]'s teachers in terms of monitoring whether [student] needed additional time to complete the assigned class work. Additionally, [student] was provided a Request for EH Support document that, when

brought to the advocate or any other service provider at Ponderosa, would trigger extra time and individualized assistance either during or after school within 24 hours of the receipt of this request (copy of document on file).

c. Other modifications were not provided. She never received notes of lectures. Memory demands were not minimized.

Neither [student] or her teachers indicated to the advocate or any other service providers at Ponderosa that [student] needed class notes from her classes. Copies of notes taken by students who are especially skilled at note-taking could be provided to [student]; however, this service was not deemed necessary by either [student] or her teachers.

A tape recorder was offered and made available to [student] for her use at any time. [student] refused to use this accommodation. She was allowed to use notes after it was cleared by the advocate, and this accommodation was monitored for accountability purposes.

Both [student] and her mother were twice provided applications for the Talking Book Library where they were to access recorded fictional novels being used and discussed in [student]'s English class. A reading Skills lab was provided [student] in lieu of her not having access to recorded textbooks. [student] attended this lab for approximately 5 hours per week. During the lab time, she was provided with individualized assistance in reading and writing assignments.

d. To get extra time on tests or use notes, [student] is required to get a purple sheet 24 hours prior to the test.

[student] was allowed to take tests either outside of her classroom or at another time following the assigned time line, with notebook assistance upon her request.

e. [student] was never provided with a learning lab.

Ms. [parent] [student]'s mother, contacted the advocate on 9/22/97 to request that [student]'s learning lab be discontinued due to [student] wanting to leave Ponderosa early in order to work at a local restaurant. Upon request of the parent, this learning lab was temporarily suspended pending the impact on [student]'s academic progress. Following a period of time, a meeting was called to address concerns regarding the services [student] was receiving and the benefit [student] was receiving from those services. At the meeting, Ms. [parent] and the IEP team agreed to reinstate the learning lab due to concerns surrounding [student]'s low degree of benefit.

f. Ponderosa H.S. does not have a special education department structured enough to help students with disabilities.

A meeting is scheduled for 2/24/98 to formally review [student]'s IEP and further address parental concerns. Staff is concerned regarding [student]'s excessive absences and the continuation of her leaving the school early in the school day. The Ponderosa team is confident that these concerns can continue to be addressed in a cooperative manner that will result in programming beneficial to [student].

6. Records indicate the following:

An addendum dated 9/22/97 to page 3 of the 3/4/97 IEP, indicates that [student] and her mother refused enrollment in a Reading Skills Lab, preferring that [student] have an early release to attend work.

Records of a Care and Concern Meeting held on 1/8/98 with Ms.[parent], [student], [student]'s sister and 13 staff members in attendance indicates the following:

[student] stated she was unable to remain after school for help from special education and/or general education teachers, as she would feel like a "nerd".

A PARA was suggested for additional support, however [student] indicated she does not want a PARA's one-on-one attention.

Various regular education teachers indicated that [student] has trouble with following-through, taking responsibility, picking up work, absences (16 and 19 for semester), failure to do homework, refusal to use a purple sheet to obtain extended time on tests, un-wise use of class time.

[student] is allowed reading assistance for testing purposes and may be tested orally. She is encouraged to use a tape recorder in lecture situations.

D. DISCUSSION

The law is clear: if modifications to the regular education program are necessary to ensure the child's participation in that program, those modifications must be described in the child's IEP, and those modifications must be provided. The issue in this complaint, is whether or not modifications have been provided. The complainants allege they have not. The District reports that numerous modifications have been made. Obviously the complainant's and the District's perceptions are quite disparate. The process of complaint resolution, however, does not allow for taking testimony under oath for determining credibility. For that reason, this complaints investigator cannot rule on each allegation, but must generally determine if there has been a reasonable effort to provide modifications. The information contained in the files and the information provided by numerous teachers suggest that a reasonable effort has been made.

III. CONCLUSION

It has not been demonstrated that the District has violated the provisions of the Act, by failing to provide those modifications listed on [student]'s current IEP. It is acknowledged, however, that there is a difference of opinion as to whether or not any modifications have been provided.

IV. REMEDIAL ACTION

None

V. RECOMMENDATION

This complaints investigator is encouraged by the fact that a meeting has been scheduled for 2/24/98 (today), to discuss the complainants' concerns and, hopefully, resolve the issues. Should the complainants continue to have concerns after this meeting, it is strongly suggested that this office be contacted to provide a professional mediator who can sit down with all the parties and, hopefully, come to a mutual agreement relative to each of the issues. A brochure on mediation is enclosed with these findings.

Dated this 24th day of March, 1998

Carol Amon, Federal Complaints Investigator