

**FEDERAL COMPLAINT NUMBER 98.531  
FINDINGS AND RECOMMENDATIONS**

I. PRELIMINARY MATTERS

- A. A complaint was received by the Federal complaints Coordinator, Colorado Department of Education ("CDE"), on November 30, 1998.
- B. The complaint was filled by Ms. J.B., an advocate with the ARC of Denver, on behalf of [student], son of [parent] and [parent], against the Denver Public Schools, Dr. Irv Moskowitz, Superintendent, and Ms. Patrice Hall, Director of Special Education ("the District").
- C. The timeline within which to investigate and resolve this complaint expires on January 29, 1999.
- D. The process for receipt, investigation and resolution of the complaint is established pursuant to the authority of the Individuals With Disabilities 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.
- H. 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 receive federal funds for the purpose of providing a free appropriate public education ("FAPE") to eligible students with disabilities under the Act.
- I. The complaint was accepted for investigation based upon a determination that CDE had jurisdiction over the allegations contained in the complaint pertaining to violations of federal law and rules in a federally funded program administered by CDE.
- J. [student] is a student with disabilities residing within the District's attendance boundaries and is eligible for special education services from the District.
- K. 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 a free appropriate public education to [student] commensurate with his individualized education programs ("IEPs"), specifically by:

- a. failing to provide the assistive technology listed on [student]'s IEPs during the 1992-93, 1993-94, and 1998-99 school years,
- b. failing to develop a transition plan for [student], as part of the 10/24/94, 10/25/95, 11/13/96 and 10/10/97 IEPs including the failure to invite a representative of any

other agency that is likely to be responsible for providing or pay for transition services,

- c. failing to provide those accommodations listed on the [student]'s IEP during the 1998-99 school year,
- d. failing to provide special education and related services commensurate with the IEP during the first two weeks of school in the 1994-95 school year and
- e. failing to develop goals and short term instructional objectives with objective criteria and evaluation procedures and schedules as part of the 10/24/94 IEP.

#### B. RELEVANT STATUTORY AND REGULATORY CITATIONS

20 U.S.C. 1401 (a)(16), (17), (18) (19) and (20), 1412 (2) (B), (4), (6) and 1414, as amended by 20 U.S.C. 602, 612 and 614 and its implementing regulations (as amended by statute), including but not limited to

34 C.F.R. 300.2, 300.5, 300.6, 300.7, 300.8, 300.11, 300.14, 300.16, 300.17, 300.18, 300.121, 300.130, 300.180, 300.235, 300.300, 300.340, 300.343, 300.344, 300.346, 300.347, 300.350, 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 will provide a FAPE, including special education and related services, to each eligible student with disabilities within its jurisdiction to meet the unique needs of that child.
4. [Student] is a 20 year old student with a learning disability according to his current individualized education program ("IEP") dated 10/8/98, 10/27/98 and 11/17/98. His home school is listed as George Washington High School and he is currently attending school at the Community College of Denver.
5. Following are the allegations accepted for investigation. For each is: (1) a description of the allegation made by the complainant, (2) what is stated in the record, and (3) the district's response to the allegation. The complainants were provided with a copy of the District's response and invited to provide any additional information they thought to be important; however they did not do so. After each item is an analysis of the information.

**Failing to provide the assistive technology listed on [student]’s IEPs during the 1992-93, school year**

| Complainant’s Allegation  | Record Review  | District’s Response   |
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| Beginning 12/92, [student] was given a laptop computer with no programs.                        | The 11/17/92 Annual Review IEP lists “computer instruction and assistance” and “speech/language assistance with computer” as Characteristics of Service. | DPS did provide [student] with the assistive technology listed on his IEP. 11/17/92 IEP lists “computer instruction and assistance” and “speech language assistance with computer” as a characteristic of service, but not as an adaptation for all content areas. Interventions included the provision of an IBM laptop and consultation with the student to help him become familiar with the computer technology availability at school. The S/L specialist also consulted with the school staff and explored the potential of different software. |
| DPS did not provide the dragon dictate program which was recommended as a result of evaluation. | There is no indication of the IEP that “dragon dictate” is to be provided.   |   |

Analysis: The law is clear in that the assistive technology listed on a student’s IEP must be provided. In this case, the IEP states “computer instruction and assistance”. The District indicates computer instruction and assistance were provided. The complainant did not refute this, when given the opportunity. Dragon Dictate was not required by the IEP.

**Failing to provide the assistive technology listed on [student]’s IEPs during the 1993-94 school year.**

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| <p>Beginning, 12/93, DPS did not provide several assistive technology devices such as scanners to read books, voice activated computer programs, audio books and a tape recorder to tape lectures, and texts on audio tape in a consistent manner</p> | <p>The 12/16/93 IEP lists “use of computer and tape recorder” and “tape lessons for use at home” as Characteristics of Service.</p> <p>In [student]’s file is an Application for Waiving Students From The IOWA Tests of Basic Skills. That waiver documents 225 minutes per week of exclusive use of audio tape for presenting assignments and 90 minutes per week of textbook assignments being recorded for home listening.</p> | <p>DPS did provide [student] with the assistive technology listed on his IEP. The 12/16/93 IEP lists “use of computer and tape recorder” and “tape lessons for use at home” as characteristics of service and “[student]’s assignments need to be modified to allow for tape recorded lessons” and “use of tape recorder for lecture classes” as adaptations. [Student] had extensive use of audio tape for presenting assignments and textbook assignments were recorded for home listening. [Student] had access to a computer at school as appropriate for assignments.</p> |
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Analysis: The law is clear in that the assistive technology listed on a student’s IEP must be provided. In this case, the IEP states “use of computer and tape recorder” and “tape lessons for use at home”. It does not state scanners, voice activated computer programs and audio books. A record on file indicates that which was required, was provided.

**Failing to provide the assistive technology listed on [student]’s IEPs during 1998-99 school year.**

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| <p>[Student] does not have a tape recorder and not all his tests are on tape.</p> | <p>The 10-11/98 IEP indicates the following assistive technology is to be provided: tape recorder, NCR paper, Naturally Speaking, Computer Program at CCD, Dragon approved PC computer, RB&amp;D. Under “special considerations” it states, “DPS will provide a PC computer to operate Naturally Speaking; Parent has requested a scanner, however, DPS feels that between RB&amp;D, the readers provided at Metro and the Computer Lab at Metro, [student] is receiving reasonable educational supports.”</p> | <p>DPS did provide [student] with the assistive technology listed on his IEP. A general addendum dated 5/18/98, lists “use of Co. Writer and Audio books” as adaptations. Equipment checkout receipts for the 1998-99 school year indicate that a GE cassette recorder with headphones was delivered and received by [student] on 9/10/98. On 9/18/98, the assistive technology team delivered a PowerBook 180 loaded with Co:Writer and Write:Outloud and the student also received Mario Teaches Typing as well as NCR paper for note taking. On 10/9/98, [student] reported he felt comfortable with the technology provided by the district and he could do his homework assignments using his laptop computer, printer and/or the computer lab at CCD. Although the complainants disagree with the current technology accommodations, the IEP team (along with the Assistive Technology Team) has continued to state that which is on the IEP is appropriate. The District has made this technology available to [student].</p> |
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Analysis: The law is clear in that the assistive technology listed on a student’s IEP must be provided. In this case, the IEP lists several items which must be provided and the District indicates they were provided. The complainant did not refute this. It appears that the complainants disagree with the decisions of the IEP team relative to what must be provided, but the complaint process does not deal with disagreements, only that which is written on the IEP.

**Failing to develop a transition plan for [student], as part of the 10/24/94 IEP including the failure to invite a representative of any other agency that is likely to be responsible for providing or pay for transition services**

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| <p>[Student] was not provided with a transition plan. He was first contacted by DVR in October 1997, when he was 18.</p> | <p>Birthdate: [DOB]<br/>[Student] will turn 16 during this IEP's time period; therefore transition must be addressed.</p> <p>The 11/17/92 IEP states, "I believe [student] can and should attend college and should learn self advocacy at all times." The IEP states a regular diploma is anticipated.</p> <p>The 12/16/93 IEP states, "[student]'s transitional goals have been addressed in the areas of personal advocacy, academics, and computer literacy". The IEP states a regular diploma is anticipated.</p> <p>The 10/24/94 IEP states:<br/>"Transition Status: Investigate post secondary options";<br/>"Transitional Needs: improve job training skills"; "annual goals: improve vocational skills and improve self esteem"; Goals were in the areas of academics (reading, writing and math) and affective (self esteem and confidence).</p> | <p>Transition services, goals and objectives were identified on the 10/24/94 IEP. The IEP is the transition plan and it describes and details goals and objectives for instruction, community experiences, social development, employment and other post-school adult living plans to promote [student]'s transition from school to community. Transition goals and objectives were based on [student]'s individual needs, taking into account he preferences and interests. As appropriate, representatives of other agencies that are likely to be responsible for providing or paying for transition services were invited. In addition, these representatives have been actively involved in the provision of transition services and activities to [student] since the beginning of the 1994-95 school year.</p> |
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Analysis: Transition services, meaning a coordinated set of activities for a student, designed with an outcome-oriented process, must be provided. They must be based on the student's needs, taking into account his preferences and interests. They must address activities in the areas of instruction, community experiences, the development of employment and other post school adult living objectives and, if appropriate, acquisition of daily living skills. Based on IEPs, it is clear that a regular diploma was anticipated for [student] and that there was some interest in post-secondary education. This would entail continuing to work on academics in preparation for college and working on areas of self-advocacy and self esteem. This was addressed in this IEP, however, it is difficult to understand where "needs to improve job training" and "improve vocation skills" fits into this. A separate transition plan need not be written for a student, but may be incorporated into the IEP. This IEP, however is not clear relative to post-secondary outcomes. A contact by DVR is not a mandate as part of transition planning. That is up to the IEP team.

**Failing to develop a transition plan for [student], as part of the 10/25/95 IEP including the failure to invite a representative of any other agency that is likely to be responsible for providing or pay for transition services.**

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| <p>[Student] was not provided with a transition plan. He was first contacted by DVR in October 1997 when he was 18.</p> | <p>The 10/26/95 IEP states the following: “Needs: improve vocational skills”, “Annual Goals: improve vocational skills”; “Short Term Objectives: continue to attend school regularly and on time, start to consider post-graduate opportunities and continue to use augmentative technology and transition it with his needs for higher Ed and the workforce.” The 11/13/96 IEP indicates these objectives were met with two continuing.</p> | <p>Transition services, goals and objectives on the 10/25/95 IEP. The IEP is the transition plan and it describes and details goals and objectives for instruction, community experiences, social development, employment and other post-school adult living plans to promotes [student]’s transition from school to community. Transition goals and objectives were based on [student]’s individual needs, taking into account his preferences and interests. As appropriate, representatives of other agencies that are likely to be responsible for providing or paying for transition services were invited. In addition, these representatives have been actively involved in the provision of transition services and activities to [student] since the beginning of the 1994-95 school year.</p> |
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Analysis: See above analysis, relative the 10/94 IEP.

**Failing to develop a transition plan for [student], as part of the 11/13/96 IEP including the failure to invite a representative of any other agency that is likely to be responsible for providing or pay for transition services**

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| <p>There was a transition goal and objective on the 1996 IEP, but no transition plan. He was first contacted by DVR in October 1997 when he was 18.</p> | <p>The 11/13/96 IEP states:<br/>         "Transition/Career/Life Skills: would like to be in the construction trades", Needs: to explore post-secondary options", "post school outcome: to improve post-school options", "annual goal: check out various colleges and trade tech. schools", "short term objectives: investigate trade schools for construction and investigate jr. or community colleges". The 10/10/97 IEP indicates these objectives were met.</p> | <p>Transition services, goals and objectives were identified on the 11/13/96 IEP. The IEP is the transition plan and it describes and details goals and objectives for instruction, community experiences, social development, employment and other post-school adult living plans to promotes [student]'s transition from school to community. Transition goals and objectives were based on [student]'s individual needs, taking into account his preferences and interests. As appropriate, representatives of other agencies that are likely to be responsible for providing or paying for transition services were invited. In addition, these representatives have been actively involved in the provision of transition services and activities to [student] since the beginning of the 1994-95 school year.</p> |
| <p>No staff was designated as a transition representative that had expertise in transition.</p>   |  | <p>[Student] participated in Work Experience and Study activities at GWHS during the 1996-97 school year. Mr. W. coordinated this work experience and acted as a liaison person among the student, home and employer. Mr. M. frequently visited the job site to evaluate [student]'s progress, discussed problems with his trainer and coordinated related class work with the needs of the student on the job.</p>   |

Analysis: This IEP is much more specific relative to transition planning. Again, a transition plan does not need be separate from an IEP. This IEP includes transition needs, outcomes, goals and objectives. It is not a mandate that DVR be contacted. "Mr. M." served as a coordinator for transition services. There is not mandate that this coordinator must be a "transition specialist".



**Failing to develop a transition plan for [student], as part of the 10/10/97 IEP including the failure to invite a representative of any other agency that is likely to be responsible for providing or pay for transition services.**

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| <p>[Student] was not provided with a transition plan. He was first contacted by DVR in October 1997 when he was 18.</p> | <p>A student notification of transition/IEP meeting dated 9/17/97 is on file.</p> <p>The 10/10/97 IEP states the following: "Transition/Career/Life Skills: along with social worker, do mock interviews and discuss personal concerns. Continue to investigate apprentice programs in construction. Take necessary tests. Investigate colleges"; "Needs: increase active participation in his environment/and educational life, improve ability to handle money, learn to budget, reregister at voc. rehab."; "goals: improve use of functional math (3 objectives), increase self advocacy skills in all areas of life (3 objectives), plan for a career in construction (3 objectives).</p> | <p>[Student] attended Construction Trade classes four semesters at the Career Education Center. Although [student] did quite well in the program and was offered an interview for a position paying \$10 per hour with full benefits and ongoing educational options through the company, Ms. [parent] refused the interview, stating [student] wasn't ready for full time employment.</p>  |
| <p>His goals on the IWRP were different from what was stated on his IEP.</p>  |  | <p>[Student] and his parent had expressed an interest in post-secondary education. As per his 10/97 IEP objective relating to College Entrance Exams, Ms. D. contacted Ms. [parent] to discuss [student]'s taking the ACT/SAT. In addition, Ms. D. made arrangements for the registration fee for the exam to be waived. However, Ms. [parent] left a message for Ms. D. stating she did not want [student] to take the ACT or SAT.</p> <p>Specific transition planning, activities and services are ongoing as [student] is still registered as a DPS student, but currently attends the Community College of Denver and a portion of his tuition is paid for by DPS through post secondary education.</p> |

Analysis: The IEP serves as the transition plan and includes those items required. A contact by DVR is not mandated. Goals on the IWRP are not within the jurisdiction of this complaint process.

**Failing to provide those accommodations listed on the [student]’s IEP during the 1998-99 school year**

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| <p>[Student] has not been receiving oral testing his classes. This is only happening in Ms. D.’s class.</p> | <p>The 10-11/98 IEP lists the following accommodations/modifications: extra time for tests will be read orally, transcriber when needed.</p> | <p>For the first semester [student] was enrolled in “Reading, Writing and Study Skills” and “Computer Access Lab” at CCD which is available only to students with identified special education needs. Adaptations are central to the course/curriculum.</p> <p>For all courses during the 1998-99 school year, [student] was provided textbooks on audiotape, as appropriate. “Readers” and/or “transcribers” are available to read text, transcribe notes or other written information to the student, as needed. [Student] continues to record his instructor’s oral presentations on tape. In addition, [student] has the option of utilizing any of the campus tutoring labs. The educators at DPS and CCD have encouraged [student] to utilize the Disability Services tutoring lab for readers, transcribing services, computer, one-on-one or group tutoring services. CCD staff reports that [student] has chosen to access tutoring resources on only a few occasions.</p> |
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Analysis: The law is clear in that those accommodations listed on an IEP must be provided. [Student]’s IEP does list “tests will be read orally”. CCD does have readers available and [student] is being encouraged to utilize that service. Given that he is enrolled in the community college, it appears that everything possible is being done by the District to assure that this modification is provided.

**Failing to provide special education and related services commensurate with the IEP during the first two weeks of school in the 1994-95 school year**

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| <p>In the spring of 1994, [student] was accepted in a pilot computer magnet program at G.W. Four days before he was to start classes in the fall of 1994, he was told he could not participate in the program. As a result he did not have any classes for the first two weeks of school.</p> | <p>The 12/16/93 IEP lists the following services to be provided to [student]: "itinerant LD special educator, 90 minutes per day, 5 days per week.</p> <p>The period attendance register for [student] indicates he was present on Tuesday, 9/6/94 for all periods and present on Friday, 9/9/94 present for all periods except 7<sup>th</sup> for which he was marked absent. No records exist for other days during the first two weeks of school.</p> | <p>DPS provided the student with special education and related services commensurate with the IEP during the first two weeks of school in the 1994-95 school year. The 12/16/93 IEP called for 90 minutes of "Itinerant" special education services. [Student]'s fall 1994 class schedule was as follows: Resource (spec. ed) - 45 min.; Math (spec ed)-45 min.; Computer Reading Lab (spec ed)-45 min.; Vocations (spec ed)-45 min.; ROTC-45 min.; Resource (spec ed) -45 min.; and Science-45 min.</p> <p>The attendance printout for 9/94 did not begin until September 6, 1994; therefore attendance records do not exist for the first 5 days. However the report indicates daily presence thereafter.</p> <p>DPS had in place an appropriate program for [student] from the beginning of the 1994-95 school year. Any failure of [student] to attend was a consequence of choices made by the parent and student and not as a result of any failure or refusal of DPS to provide an appropriate program to [student].</p> |
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Analysis: Special education itinerant services were to have been provided to [student]. 90 minutes per day, 5 days per week for the first two weeks of school. This would total 900 minutes of service. No records are available for other than two days of this period. However, on those two days he did receive a total of 450 minutes of special education services. The District states services were available to him during this entire period. Although the complainants' and District's perceptions of this issue are quite disparate, the non-provision of 7 and ½ hours of service, even if accurate, would not raise to the level of not providing a FAPE.

**Failing to develop goals and short term instructional objectives with objective criteria and evaluation procedures and schedules as part of the 10/24/94 IEP.**

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| <p>[Student]’s 1994 IEP continued to have general goals and objectives that were not measurable.</p> | <p>The 10/24/94 IEP lists 3 goals with 4, 2 and 3 objectives under them. Criterion for Mastery is listed in percentages; evaluations were to have been done by teacher, observation report and parent. Beginning dates are listed. As part of the 10/26/95 IEP Review, these goals and objectives were indicated to have been met, with two being continued to the next year.</p> | <p>[District provided a copy of the 10/24/94 goals and short term objectives.]</p> |
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Analysis: Goals and objectives were measurable.

**III. DISCUSSION**

[Student] is a 20 year old student who has been projected all along to obtain a regular diploma. He has met all graduation requirements, but IEP teams have agreed to continue his special education and related services until the age of 21. Such services have clustered around his desire for post-secondary education. He is now attending CCD with District support. The issues within this complaint appear to center around differences of opinion between the parent/complainant and the IEP teams relative to assistive technology provisions and transition planning.

It is clear that while the District did incorporate transition planning into [student]’s IEPs, such efforts were minimal until the 1997-98 school year when he was 18 and 19 years of age. One justification for this may be that [student] has pursued academics relative to his desire to attend college, and goals would not necessitate a great deal of transition planning. Nonetheless, he has continuously received special education and related services, some of which was geared toward transition and some of which was traditionally geared toward academics. [Student] is currently enrolled in post-secondary education with support of the District and is currently receiving the needed transition services. It cannot be concluded that the poor level of documented transition planning has prevented [student] from receiving a FAPE.

When Ms. [parent] does not agree with the decisions of the IEP teams, she may exercise her right to appeal those decisions through a due process hearing; however the complaint process does not deal with these differences of opinions.

**IV. CONCLUSION**

The District did not violate the provisions of the Act, by failing to provide a free appropriate public education to [student] commensurate with his individualized education programs.

The District's IEPs prior to the 1997-98 school year reflected a level of transition planning which was in need of improvement. This complaint will be provided to CDE's regional liaisons who will ensure that transition planning is appropriate for all students as part of the next onsite visitation.

#### IV. RECOMMENDATIONS

It is recommended that the District's Director of Special Education share this information with the District's transition specialist(s) to ensure improved procedures for transition planning.

Dated this 28<sup>th</sup> day of January, 1999

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Carol Amon, Federal Complaints Investigator