

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

Federal Complaint 2000:502
(Northwest BOCES)

Decision

INTRODUCTION

This Complaint was originally filed by letter from the complainant, dated January 12, 2000, and received by the Federal Complaints Officer on January 19. In a letter dated February 15, and received by the Federal Complaints Officer by fax on the same date, the school submitted a written response to the Complaint. The parties entered mediation on February 18. A Memorandum of Understanding (MOU) was signed by the school on April 4, and by the complainant on April 5. However, a part of the MOU was that the Complaint was to be left open until April 21, at which time the complainant would decide whether or not to withdraw her Complaint. In a letter dated April 17, and received by the Federal Complaints Officer on April 24, the complainant notified the Federal Complaints Officer that she was not withdrawing her Complaint.

The Federal Complaints Officer treated the MOU as staying the usual time period for resolving the Complaint, and started the sixty (60) day time period anew with receipt of the complainant's letter dated April 17, received by the Federal Complaints Officer on April 24. The Federal Complaints Officer received, by fax dated and received May 11, the school's response to the complainant's letter dated April 17. By fax dated and received May 31, the complainant responded to the school's response. The Federal Complaints Officer then closed the record.¹

DISCUSSION AND FINDINGS

Once a Complaint is filed and accepted, unless it is subsequently withdrawn or dismissed, for whatever reason, it is the job of the Federal Complaints Officer to determine whether any relevant violation alleged has occurred, and, if so, to order any corrective action necessary. Mediation can take place after a Complaint is filed, as occurred in this case, but the Federal

¹ An additional, unsolicited, faxed response from the school was received by the Federal Complaints Officer on June 7. However, he has not included that response as a part of the record he used to make this Decision. He has not done so because it is the practice of the Federal Complaints Officer to give the complainant the last word, since the Federal Complaints Officer views the complainant as having the burden of proof. Therefore, the Federal Complaints Officer would have to further delay a Decision in this case, if he was to accept the school's response of June 7 into the record, since he would have to give the complainant time to respond to it. The Federal Complaints Officer has decided that such further delay would not be in the best interests of the parties, or complainant's son.

Complaints Officer cannot be the mediator. If mediation results in an agreement, which is incorporated into the student's individualized educational program (IEP), or does not conflict with the student's IEP, and the complainant subsequently alleges that the agreement has not been followed by the other side, in a way that violates relevant special education law subject to the jurisdiction of the Federal Complaint process, a Complaint could be filed based upon this allegation. This would be a separate Complaint. Whether or not this occurs, the Federal Complaints Officer is not precluded from using the terms of the agreement as a part of any corrective action necessary to correct any violation found to have occurred, so long as the terms of the agreement are not in conflict with the student's IEP.

In the complainant's initial Complaint letter, she made allegations that:

- (1) her son was being discriminated against because of his disability;
- (2) her son was not receiving services agreed upon in his current IEP;
- (3) her son was not receiving any accommodations in Spanish class, and only minor accommodations in his other classes.

The allegation of discrimination is not subject to the jurisdiction of the Federal Complaint process. The Office for Civil Rights (OCR) is the enforcement agency for allegations of discrimination. In its response letter dated February 15, the school did not specifically admit or deny the complainant's other allegations that her son was not receiving agreed upon IEP services and necessary accommodations. The school instead responded with statements about how it had agreed to work with the complainant in various ways to meet her son's needs. The complainant did not give specifics in her Complaint letter as to how necessary IEP services were not being implemented, beyond the allegation that necessary accommodations were not being made.

The Federal Complaints Officer finds that, as of the date of the complainant's filing of this Complaint, the school was not fully satisfying the requirements of 34 CFR 300.340 through 34 CFR 300.350, to the extent necessary to insure full implementation of necessary accommodations for the complainant's son. The Federal Complaints Officer does not find that the complainant's son was denied a free appropriate public education (FAPE). The Federal Complaints Officer makes no finding subsequent to the date of filing of complainant's Complaint.

REMEDY

The school will abide by the mediation agreement, and subsequent addendum, reached with the complainant, to the extent that these agreements do not conflict with complainant's son's IEP. The Federal Complaints Officer does not believe he has authority to order that these agreements be incorporated into complainant's son's IEP, but he advises the parties that he knows of no reason why it would not be appropriate to do so.

If the complainant believes that the school is not abiding, either now or in the future, by the mediation agreement, to the extent it does not conflict with her son's IEP, or that the school is violating her son's IEP, whether or not the mediation agreement is made a part of it, she can file an additional Complaint. Should she do so, the school would be given an opportunity to respond, and a new time line for Complaint resolution would begin to run.

CONCLUSION

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

Dated today, June _____, 2000.

Charles M. Masner, Esq.
Federal Complaints Officer