

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

Federal Complaint 2000:528
(Pueblo School District 60)

Decision

INTRODUCTION

This Complaint was dated August 17, 2000, and received by the Federal Complaints Officer on August 22. The school's response was dated September 15, 2000, and received by the Federal Complaints Officer on September 19. The complainant's response to the school's response was dated October 10, 2000, and received on October 16.

FINDING OF EXCEPTIONAL CIRCUMSTANCES

34 CFR 300.661(b)(1) permits an extension of time for processing a Complaint if "exceptional circumstances" are found. The Federal Complaints Officer finds that there were exceptional circumstances. The school received a copy of the Complaint on August 28, 2000. Normally, the school's response would have been due on Tuesday September 12, 2000. The Federal Complaints Officer granted a three (3) day extension until September 15. There was evidently a misunderstanding between the Federal Complaints Officer and the school. The school thought it had until September 18 to send the Federal Complaints Officer its response. The Federal Complaints Officer received the school's response on September 19. The Federal Complaints Officer sent the complainant a copy of the school's response to the Complaint on September 20, giving the complainant ten (10) days from the date of receipt to respond. The complainant received the certified mailing, but no date of delivery was recorded. The complainant subsequently told the Federal Complaints Officer that she would mail him her response on September 27. The Federal Complaints Officer never received this mailing. On October 11, the Federal Complaints Officer was told by the complainant that she mailed her response again. The Federal Complaints Officer confirmed with the complainant that she had the correct mailing address. On October 16, having not received a mailing from the complainant, he asked the complainant to fax him a copy of her response. A fax had not been agreed upon previously due to the expense for the complainant, but at this point she agreed to fax the Federal Complaints Officer her response. The Federal Complaints Officer received the fax on October 16. On October 19, having closed the record on October 17, the Federal Complaints Officer received by regular mail the original of the faxed response he had received on October 16. The mailing was dated October 10, and postmarked October 13.

COMPLAINANT'S ALLEGATIONS

- Her son did not have a behavior coach who was able to work effectively with an aide;
- Required bus transportation was not provided for her son effective March 27, 2000;
- Her son's special education teacher did not have lesson plans for her son, effective March 27, 2000;
- Her son was not assigned to the teacher who was at the March 17, 2000 staffing;
- Her son has not been provided effective aide services;
- Her son has been inappropriately denied enrollment in his home school, and (name of school) (where he previously attended), for the fall 2000 semester.

SCHOOL'S RESPONSE

The school admits that complainant's son was assigned to a different teacher than the one who was at the March 17, 2000 staffing. The school denies all other allegations.

FINDINGS AND DISCUSSION

- BEHAVIOR COACH

The complainant and the school agree that the complainant's son has had a behavior coach. The complainant states that the behavior coach was suppose to start on her son's first day of school at (the attendance center) on March 27, 2000. The complainant states she was not dissatisfied with the behavior coach, but was dissatisfied with what she alleges was his failure to work effectively with her or an aide. The school states that the complainant was not able to come to the school when the behavior coach was there and to meet with the behavior coach and to observe the behavior coach work with her son's aide. The school states that the complainant never gave the school any indication that she was dissatisfied with the way the behavior coach was working with the aide.

The Federal Complaints Officer interprets the transfer document to indicate that the behavior coach was to begin on March 27, 2000. The school admits that the behavior coach did not start until March 29, 2000. As soon as the school knew that the behavior coach was not going to start until March 29, the complainant should have been notified.

The school's response that the behavior coach could not discuss strategies with the complainant because she could not come to school is not entirely satisfactory. In-school demonstrations and observations, as well as in-person conversation, while arguably the best approaches, did not have to exclude telephone conversations or written communications with the complainant, or, if appropriate, and if appropriately arranged, an at home visit. However, these communication difficulties between the school and the complainant do not rise to the level of IEP violations which can be effectively addressed through the ordering of corrective actions by the Federal Complaints Officer. As for the complainant's allegation that the behavior coach worked ineffectively with an aide, the Federal Complaints Officer finds insufficient evidence to determine that this was true. The complainant can also request a due process hearing on this issue.

- BUS TRANSPORTATION

The complainant says that bus transportation was supposed to start on March 27, 2000. The school states that bus service for complainant's son began on March 29, 2000, and that this was within the three (3) day time frame permitted by Colorado law, and that the two (2) day delay was necessary in order to provide proper services. See CCR 2220-R-4.03(4)(b).

The school is right that Colorado law allows three (3) days for service to commence when a special education student moves into a new school system, if that time is needed to develop the requested service. However, the complainant's son started school on March 27, which was the date the transfer document dated March 17 stated services were supposed to commence. According to the school, March 17 was just prior to a school break. If the school did not intend for services to begin on March 27, it should not have indicated this date on the transfer document, and should have communicated clearly to the complainant when services would begin. Moreover, transportation is a related service. Therefore, it should have been in place on March 27, in order to enable the complainant's son to begin receiving the special education instructional services which were suppose to commence.

- LESSON PLANS

It is unclear from the school's response whether lesson plans and a schedule were in place for complainant's son on March 27, or not. The Daily Schedule and Activities for (complainant's son) begins March 29, 2000. The Federal Complaints Officer finds that it is reasonable to conclude that lesson plans and a schedule were not properly in place on March 27, since the behavior coach and bus transportation were not in place either.

- ASSIGNED TEACHER

The school does not deny that a teacher change was made, and that it was made without simultaneously informing the complainant. The Federal Complaints Officer understands how not being notified of this change could have been upsetting to the complainant, and that better notice to her might have been helpful, although, of course, if the complainant didn't get the teacher she wanted, notice would not have solved that problem. However, the school has a right to employ its own qualified personnel, and here the school did so with the stated intent to improve services for complainant's son. The Federal Complaints Officer finds no violation of relevant special education law due the school's decision to provide a different teacher for complainant's son.

- EFFECTIVE AIDE

The Federal Complaints Officer finds insufficient evidence that the quality of aide services for complainant's son were such as to warrant the Federal Complaints Officer finding that complainant's son's IEP was violated, warranting any order of corrective action by the Federal Complaints Officer. The complainant's stated concerns about her son's aide are appropriate for consideration by the local board and school administration. The complainant can also request a due process hearing on this issue.

- ENROLLMENT

Unless it could be demonstrated that a student was denied a free appropriate public education (FAPE) , of which least restrictive environment (LRE) is a part, or that the process by which LRE for a student was determined was insufficient, the Federal Complaints process is not the appropriate forum for placement decisions. If the complainant believes the placement the school is offering her son is inappropriate, she can request a due process hearing to seek a different placement.

Even though the Federal Complaints Officer has found that IEP services were not in effect on March 27, 2000, the date of initiation of services stated on the transfer document, which was also the first date of attendance at the school, and that instead services began on March 29, he also finds that – on the facts of this Complaint – a two (2) day delay in service provision did not deny the complainant’s son FAPE, and compensatory education is not warranted. If the complainant wishes a due process hearing on this issue, or any other relevant issue raised in this Complaint, she is entitled to request one. However, there is a larger concern of the complainant which goes beyond the specific violations she has alleged which deserve to be addressed, but cannot be effectively addressed through the Complaint process – nor could certain aspects of these concerns be resolved through a due process hearing either. In the complainant’s response to the school’s response to her Complaint – to which the school was not provided an opportunity to respond – the complainant quotes one of the school’s principals as stating – “He’ll (complainant’s son) never attend my school.” And – “I don’t want kids with low IQ’s in my school.” While such statements, if they were made, cannot be thoroughly addressed by the Federal Complaint process, they should be addressed by the school. Independent of the Federal Complaint process or the due process hearing, the complainant is entitled to file a Complaint with the Office of Civil Rights (OCR), if she believes the school has unlawfully discriminated against her son because of his disability. And, in addition to all of these processes, the mediation process is available. The larger concern behind the complainant’s specific concerns is that she does not trust the school to do right by her son. The Federal Complaints Officer has previously, on more than one occasion, offered mediation as a means to establish that trust. Mediation is still available, should both parties agree to participate. A copy of this Decision will be made available to the CDE Regional Liaison for the region including the school system against which this Complaint was filed, and will also be made available to the compliance monitoring process for this school system.

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, October _____, 2000.

Charles M. Masner, Esq.
Federal Complaints Officer