

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

Federal Complaint 2000:533

Jefferson County SD R1

Decision

INTRODUCTION

This Complaint letter was dated September 13, 2000, and received by the Federal Complaints Officer on September 14, 2000. On September 21, 2000, the complainant and the school entered mediation. On October 12, 2000, the Federal Complaints Officer received a telephone call from complainant's attorney stating that the complainant was withdrawing from mediation, and wanted the Federal Complaints Officer to proceed to decide the Complaint. On October 24, 2000, the Federal Complaints Officer received a telephone call, and a fax, from the complainant's attorney, stating that the complainant and the school were attempting to resolve the issues raised by the Complaint, and that the Federal Complaints Officer would be notified if, and when, the Federal Complaints Officer needed to proceed to decide the Complaint. By telephone voice mail message to the school's attorney on October 24, 2000, the Federal Complaints Officer confirmed that the complainant and the school were attempting to resolve the issues raised by the complainant's Complaint. Periodic telephone calls from the Federal Complaints Officer to the complainant's attorney, and to the school's attorney, between October 24, 2000, and December 15, 2000, yielded responses indicating that progress was being made. There was no request during this time period for the Federal Complaints Officer to decide the Complaint.

In an undated letter from the complainant to the Federal Complaints Officer, received by the Federal Complaints Officer by regular mail on December 19, 2000, the complainant requested that the Federal Complaints Officer proceed to decide the Complaint. The complainant also informed the Federal Complaints Officer that she was no longer represented by an attorney. The Federal Complaints Officer confirmed the information in the letter received on December 19, 2000, from the complainant, by telephone call to the complainant on December 19, 2000. In that telephone conversation the Federal Complaints Officer told the complainant that his Complaint Decision would only cover the allegations raised in her Complaint letter dated September 13, 2000, and received by the Federal Complaints Officer on September 14, 2000. On December 19, 2000, the Federal Complaints Officer called the school's attorney and left a voice mail message that he would be proceeding to decide the Complaint, and needed to agree on a Complaint response time for the school. The school had never been given an opportunity to provide a written response to the complainant's Complaint, because the school and the

complainant had entered mediation, and then negotiation, in an attempt to resolve the issues raised by the complaint. On December 19, 2000, the Federal Complaints Officer received a telephone message from the school's attorney stating that she would not have her school client available for preparing a response until January 2, 2001, and requested two (2) weeks from that date to submit a response. By exchange of telephone messages, and certified letter from the Federal Complaints Officer to the school's attorney, occurring on December 20, 2000, with a copy of the letter sent to the complainant, the Federal Complaints Officer confirmed a school response date of January 16, 2001 – addressing only the allegations raised in the complainant's Complaint letter dated September 13, 2000, and received by the Federal Complaints Officer on September 14, 2000. In a letter dated January 11, 2001, and received by the Federal Complaints Officer on January 16, 2001, the school submitted its response to the complainant's Complaint. In a letter dated January 22, 2001, and received by the Federal Complaints Officer on January 25, 2001, the complainant submitted a response to the school's response to her Complaint. The Federal Complaints Officer then closed the record.

FINDING OF EXCEPTIONAL CIRCUMSTANCES

Based on the facts as stated in the Introduction to this Decision, the Federal Complaints Officer finds that there are exceptional circumstances for extending this Decision beyond the usual sixty (60) days. Therefore, the Decision has been extended beyond the usual sixty (60) days.

COMPLAINANT'S ALLEGATIONS

- Her son's IEP, dated November 23, 1999, required a "specialized instruction and curriculum adaptation with a full-time paraprofessional", and no such paraprofessional had been working with her son for the time period between August 15, 2000, and September 13, 2000.
- No "specialized instruction" or "curriculum adaptation" was being provided for her son, as required by her son's November 23, 1999 IEP.
- No "speech/language intervention and consultation" was being provided for her son, as required by her son's November 23, 1999 IEP.
- Her son's "health and safety" were not being appropriately monitored, as required by her son's November 23, 1999 IEP.
- Her son could not utilize "curb to curb transportation" as required by his November 23, 1999 IEP because of a lack of an appropriate education available for her son at school. (The Federal Complaints Officer is paraphrasing.)
- No "social-emotional consultation/intervention" was being provided for her son, as required by her son's November 23, 1999 IEP.
- No "music therapy" was being provided for her son, as required by his November 23, 1999 IEP.

SCHOOL'S RESPONSES

- The school admits that no paraprofessional was available for complainant's son until September 18, 2000, a Monday. The school stated that the special education teacher

provided services in the interim, and that the school made “extraordinary efforts” to hire a paraprofessional for complainant’s son.

- To the allegation that complainant’s son did not have “specialized instruction” or curriculum adaptations”, the school responded – “He (complainant’s son) attended math lab. His math lab was equipped with materials and computer programs to allow (complainant’s son) to work toward his IEP goals and objectives. He attended a Geology class and he received direct instruction in reading and spelling. (Complainant’s son’s) activities were supervised and coordinated by the special education teacher. He worked on his IEP goals and he received educational benefit.”
- The school stated that complainant’s son’s service providers have received speech language consultation since August 28, 2000. The school states that direct intervention for complainant’s son began September 6, 2000.
- The school stated that complainant’s son’s health and safety were appropriately monitored.
- The school did not respond to complainant’s allegation that her son was unable to use curb to curb transportation.
- The school stated that “social/emotional consultation and intervention” began for complainant’s son on September 20, 2000.
- The school stated that complainant’s son was not provided “music therapy”.

FINDINGS AND DISCUSSION

In its response the school states that the Complaint was filed on September 18, 2000 and received by the school on October 12, 2000. This is incorrect. The Complaint was filed on September 14, 2000. A copy of the Complaint was received by the school, from the Federal Complaints Officer, first by fax on September 15, 2000, and then by certified mail on September 18, 2000. The Federal Complaints Officer does not know when it was received by the school’s counsel.

For the purpose of deciding this Complaint, the Federal Complaints Officer is finding that the first day complainant’s son was entitled to attend classes was August 29, 2000 – a Tuesday. If the complainant can establish by sufficient evidence that students at her son’s school attended classes before that date, and that complainant’s son was likewise entitled to attend classes before that date, she is entitled to file separate Complaint for the time period between August 14, 2000, and August 29, 2000. August 14, 2000, being the date that complainant has alleged her son was entitled to begin attending classes.

- The Federal Complaints Officer finds that from Tuesday, August 29, 2000, until Monday September 18, 2000, excluding September 4 and September 15, 2000, which, according to the school newsletter submitted by the complainant, were days there was no class – the complainant’s son did not have a full time paraprofessional, as required by his November 23, 1999 IEP. This was twelve (12) school days.
- The Federal Complaints Officer finds that from August 29, 2000, until Monday September 18, 2000, excluding September 4 and September 15, 2000, which, according to the school newsletter submitted by the complainant, were days there was no class – the complainant’s son did not receive the “specialized instruction” or curriculum adaptation” as required by his November 23, 1999 IEP. This was twelve (12) school days.

- The complainant did not dispute the school's statement that consultation speech/language services began as early as August 28, 2000. The school stated direct services began on September 6, 2000, a Wednesday. The complainant states direct services began on September 20, 2000, a Wednesday. Complainant's son's IEP states that he will have "speech/language intervention and consultation" - "30-60 min/wk". The IEP does not make clear how much of this time was to be direct intervention. The school's response and the complainant's response to the school's response indicate that at least some of the time was to be direct intervention. For purposes of deciding this Complaint, the Federal Complaints Officer is finding that the division between consultation and direct intervention was to be fifty-fifty. The Federal Complaints Officer finds that for the time period between August 29, 2000 and September 18, 2000, the complainant's son received all of the consultation speech/language services to which he was entitled. The Federal Complaints Officer also finds that complainant's son did not receive one (1) and one-half (1/2) hours, three Wednesdays and fifty percent of the time, based upon one (1) hour total available for these services each week, of direct speech/language instruction to which he was entitled according to the requirements of his November 23, 1999 IEP.
- The Federal Complaints Officer finds insufficient evidence to demonstrate that complainant's son's "health and safety" were not appropriately monitored by the school, for the time period between August 29, 2000, and September 18, 2000.
- The Federal Complaints Officer finds that the complainant's son did not use "curb to curb transportation" from August 29, 2000, until September 18, 2000, to which he was entitled according to the requirements of his November 23, 1999 IEP.
- The Federal Complaints Officer finds that from August 29, 2000, until Wednesday September 20, 2000, the complainant's son did not receive the "social-emotional consultation/intervention" services to which he was entitled according to the requirements of his November 23, 1999 IEP. A period of twelve (12) school days.
- The Federal Complaints Officer finds that from August 29, 2000, until September 18, 2000, the complainant's son did not receive "music therapy", to which he was entitled according to the requirements of his November 23, 1999 IEP. A period of twelve (12) school days.

The Federal Complaints Officer finds that for the time period August 29, 2000, until September 18, 2000, twelve (12) school days, the complainant's son did not receive a free appropriate public education (FAPE), as required by 34 CFR 300.13, 34 CFR 300.300(a), and 1 CCR 301-8-R-5.00 – Provision of Services. 34 CFR 300.13 references the IEP requirements of 34 CFR 300.340 - 34 CFR 300.350. The Federal Complaints Officer makes no findings beyond September 18, 2000, with the exception that social emotional consultation and intervention began for complainant's son on September 20, 2000.

REMEDIES

- Specialized instruction and curriculum adaptation was to be provided for complainant's son for "350-420" minutes per day, according to complainant's son's IEP. The school shall either provide the complainant's son a total of eighty-four (84) hours (420 minutes, or 7 hours, times 12 school days) of special education services to compensate him for the IEP required services which the Federal Complaints Officer has found he did not

receive, or, at the option of the complainant, the school shall monetarily reimburse the complainant for these services. If the complainant requests service provision with which the school does not agree, the school shall compensate by monetary reimbursement. If monetary reimbursement is made, it shall be in the amount of eighty-four (84) times the introductory gross hourly rate that was paid for complainant's son's paraprofessional, who began work on September 18, 2000.

- The school shall provide one (1) and one-half (1/2) hours of direct speech therapy to complainant's son, beyond any such therapy which he may currently be entitled to receive, unless the complainant refuses such services, or the school determines that provision of such services would not be educationally appropriate. If services are refused, which the school determines could be appropriately provided, the school shall not be obligated to offer further compensation to complainant's son. If the school determines that services cannot be appropriately provided, the school shall monetarily reimburse the complainant for one (1) and one-half (1/2) hours of direct speech therapy services, based upon the gross hourly rate paid to the speech therapist who has provided services to complainant's son.
- Music therapy was to be provided "30-45 min/wk", according to complainant's son's November 23, 1999 IEP. The school shall provide forty-five (45) minutes times three (3) weeks, or one hundred and thirty-five (135) minutes, or two (2) hours and fifteen (15) minutes of music therapy to complainant's son, beyond any such therapy which he may currently be entitled to receive, unless the complainant refuses such services, or the school determines that provision of such services would not be educationally appropriate. If services are refused, which the school determines could be appropriately provided, the school shall not be obligated to offer further compensation to complainant's son. If the school determines that services cannot be appropriately provided, the school shall monetarily reimburse the complainant for two (2) hours and fifteen (15) minutes, based on the most recent gross hourly rate which has been paid for a music therapist for complainant's son, or, if music therapy services have never been provided to complainant's son, based upon the introductory hourly rate paid to music therapists employed by the school system, or, if no such therapists are employed by the school system, then the rate paid by a comparable school system.
- The complainant's son's November 23, 1999 IEP states that social-emotional consultation/intervention was to be provided as needed. While the Federal Complaints Officer has found that such services were not provided from August 29, 2000 until September 20, 2000, he cannot determine what services, if any, were needed by complainant's son prior to September 20, 2000. Therefore, the Federal Complaints Officer enters no order of compensation.
- The complainant's son's November 23, 1999 IEP states that curb to curb transportation was to be provided for complainant's son. While the Federal Complaints Officer has found that this service was not utilized by complainant's son, he does not find that this was a deprivation which was part of a denial of FAPE. The Federal Complaints Officer found that there was insufficient evidence to demonstrate that the school did not adequately monitor complainant's son's "health and safety" The Federal Complaints Officer views the complainant's reluctance to use curb to curb transportation as a part of her concern for her son's "health and safety" which, while obviously a legitimate concern, is a concern which the Federal Complaints Officer has found there is insufficient evidence to demonstrate that the school did not sufficiently address.

The complainant shall make her choice regarding Remedy number one (1) known to the school, in writing, postmarked within one week of the date of her receipt of this Decision, with a copy sent to the Federal Complaints Officer. If she has not done so, or if she requests services with which the school does not agree, the school shall provide the complainant with the monetary reimbursement as specified by the Federal Complaints Officer, absent, at the school's option, a later agreement to the contrary with the complainant. All remedies ordered by the Federal Complaints Officer shall be completed by the school no later than the end of the school's spring semester, 2001.

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, February _____, 2001.

Charles M. Masner, Esq.
Federal Complaints Officer