

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

Federal Complaint 2000:536

Weld County School District 6

Decision

INTRODUCTION

On October 17, 2000, the Federal Complaints Officer received, by fax, the complainants' Complaint, dated October 15, 2000. The school's response to the Complaint was dated November 6, 2000, and received by the Federal Complaints Officer, by fax, on November 7, 2000, and November 9, 2000 (duplicate). The original of the school's response was received by regular mail on November 13.

In a letter dated November 10, 2000, and postmarked November 13, 2000, the Federal Complaints Officer sent the complainants' a copy of the school's response, providing them with ten (10) days to submit a response. The complainants' did not obtain this certified mailing until November 25, 2000. In a subsequent non-certified mailing dated November 22, 2000, the complainants were sent the school's response a second time, and given until November 29, 2000, to submit a response.

The Federal Complaints Officer, on November 27, 2000, obtained a telephone number for the complainants (the number is unlisted) from a school staff person in another school district, subject to Complaints concerning two other children of the complainants, since the school subject to this Complaint had no telephone number for the complainants. By telephone call of November 28, 2000 to the complainants, the Federal Complaints Officer confirmed that the complainants received the certified mailing on November 25, 2000, and the non-certified mailing on November 27, 2000. The complainants told the Federal Complaints Officer that they would fax their response to the school's response to their Complaint, to the Federal Complaints Officer on that date. On November 29, 2000, with a letter date of November 28, 2000, the Federal Complaints Officer received a fax from the complainants. The Federal Complaints Officer then closed the record.

COMPLAINANTS' ALLEGATIONS

In essence, the complainants allege that they are the lawful parents of (the student) as defined by 34 CFR 300.20, and that the school has not been treating them as such. Based on the information provided to the Federal Complaints Officer, the student (the complainants' son), has not yet been identified as a special education student. However, the complainant parents allege they want their son evaluated for special education services, and that they have given their permission to so. Thus, in essence, the complainants' allege that the school is failing to meet its child find responsibilities under 34 CFR 300.125, and 1 CCR 301-8 2220-R-4.01.

The complainants also allege that their rights to access their son's records have been denied. Such denial would be a violation of 34 CFR 300.501 and 1 CCR 301-8 2220-R-6.01.

SCHOOL'S RESPONSE

The school denies all allegations. The school indicates that the complainants' son had not entered the school system's jurisdiction as a special education student, and that the parents had subsequently been sent a permission for evaluation form which they had not signed and returned. The school states it has never received any request for school records from the complainants.

FINDINGS AND DISCUSSION

There has been no disagreement between the complainants and the school presented to the Federal Complaints Officer that the complainants are not the natural parents of the student. Neither is there anything else in the record before the Federal Complaints Officer to indicate otherwise. There is also, however, evidently no dispute that on June 21, 2000, a Colorado state judge entered an order stating – "Court orders mother not to come within 500 yds. of foster family, foster home, day care, and school or children." The father is not mentioned in the document provided to the Federal Complaints Officer. Neither the complainants nor the school have provided the Federal Complaints Officer with any more court documentation than this, as to court ordered restrictions placed upon the complainants' relationship with their son.

To the best of the Federal Complaints Officer's knowledge, the complainants, as natural parents, are entitled to be the parent spokespersons for their son with the school, as defined by 34 CFR 300.20, unless their "...authority to make educational decisions on the child's behalf has been extinguished under state law...". Id. at 34 CFR 300.20(b)(1). It is not clear to the Federal Complaints Officer whether it was the intent of the Colorado state judge to include in her order of June 21, 2000 that one or both of the complainants have their authority to make educational decisions for their son taken away. Based upon the information provided to him, the Federal Complaints Officer does not find that this was the judge's intent. However, the Federal Complaints Officer advises the complainants that if they were to obtain an order from the judge clarifying that their authority to make educational decisions for their son had not been taken away – it would promote resolution of any further dispute with the school over their authority as parents to be spokespersons for their son with the school. The Federal Complaints Officer refers the complainants to the advice of their own legal counsel about obtaining such clarification. The Federal Complaints Officer likewise advises the school that it would be well advised to consult its own legal counsel as to the most appropriate way to incorporate any court orders for this student as a part of the school's educational planning and programming for this student. The Federal Complaints Officer finds the school has not violated any rights of the complainants to be considered a parent as defined by 34 CFR 300.20.

In their response to the school's response to their Complaint, the complainants provided what they identified as a second submission of a permission to evaluate form for their son. This being the case, the school has the authorization it was requesting to proceed with the evaluation. The Federal Complaints Officer finds no violation by the school of 34 CFR 300.125 or 1 CCR 301-8 2220-R-4.01.

Since the student had not yet begun the process of being identified as a special education student at the time of the filing of this Complaint, there were no school records the complainants were entitled to, which were subject to the jurisdiction of this Complaint. The complainants, independent of special education law, do have rights under the Family Education Rights and Privacy Act (FERPA), which is incorporated by reference in the Individuals with Disabilities Education Act (IDEA). In any case, the Federal Complaints Officer finds no violation by the school of the complainants' rights to access their son's records, as specified by 34 CFR 300.501 and 1 CCR 301-8 2220-R-6.01.

CONCLUSION

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

Dated today, December _____, 2000.

Charles M. Masner, Esq.
Federal Complaints Officer