

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

Federal Complaint 2001:505

RIO BLANCO BOCES

Decision

INTRODUCTION

This Complaint letter was dated February 9, 2001, and was received by the Federal Complaints Officer on February 13, 2001. The school's response was dated March 1, 2001, and was received by the Federal Complaints Officer on March 5, 2001. The complainant's response to the school's response to her Complaint was dated March 19, 2001, and was received by the Federal Complaints Officer on March 23, 2001. The Federal Complaints Officer then closed the record. The Federal Complaints Officer subsequently reopened the record on March 29, 2001, for the purpose of obtaining a copy of the school's calendar for complainant's son for the 2000 – 2001 school year. The Federal Complaints Officer then again closed the record.

COMPLAINANT'S ALLEGATIONS

- The complainant alleged that her son was not receiving .50 hours per week of IEP required direct Occupational Therapy (OT) services.
- The complainant alleged her son was not receiving .25 hours per week of IEP required indirect School Psychologist services.
- The complainant alleged her son was not receiving .50 hours per week of direct School Psychologist services.

SCHOOL'S RESPONSES

- As of the date of the school's response letter, March 1, 2001, the school stated it had provided complainant's son with 9.25 hours of OT services, for the 2000-2001 school year.
- As of the date of the school's response letter, March 1, 2001, the school stated it had provided complainant's son over eighteen (18) hours of indirect School Psychologist services, for the 2000-2001 school year.

- As of the date of the school's response letter, the school stated direct School Psychologist services had been provided by the school's speech language pathologist, under the direction of the School Psychologist.

FINDINGS AND DISCUSSION

As of the date of the school's response letter, March 1, 2001, the 9.25 hours of direct OT services provided by the school, was 3.25 hours short of the 12.5 hours to which the complainant's son was entitled, according to his IEP. This is figuring at the rate of .50 hours per week times twenty-five (25) school weeks – the number of school weeks that had elapsed as of the date of the school's response - for a total of 12.5 hours, minus 9.25 hours, equals 3.25 hours.

As of the date of the school's response letter, March 1, 2001, the eighteen (18) hours of indirect School Psychologist services provided by the school exceeded the six (6) hours to which the complainant's son was entitled, according to his IEP. This is figuring at the rate of .25 hours per week times twenty-five (25) school weeks – the number of school weeks that had elapsed as of the date of the school's response - for a total of six (6) hours.

As of the date of the school's response letter, March 1, 2001, the complainant's son had not received the 12.5 hours of direct School Psychologist services to which he was entitled according to his IEP. This is figuring at the rate of .50 hours per week times twenty-five school weeks – the number of school weeks that had elapsed as of the date of the school's response - for a total of 12.5 hours.

The services not sufficiently provided are violations of 34 CFR 300.13(d), which references 34 CFR 300.340-350.

REMEDIES

The school shall provide the complainant's son with compensation for the 3.25 hours of IEP required OT services, which he had not received as of March 1, 2001, plus any additional hours of OT services necessary to bring the IEP required services current, as of the date of the school's receipt of this Decision.

The school shall provide the complainant's son with compensation for the 12.5 hours of direct School Psychologist services, which he had not received as of March 1, 2001, plus any additional hours of direct School Psychologist services necessary to bring his IEP required services current, as of the date of the school's receipt of this Decision.

The compensation for the indirect OT services, and the direct School Psychologist services, need not be in the form of these services. If the complainant and the school can reach an agreement on compensation, then that agreement will satisfy the Federal Complaints Officer. If the IEP team determines that compensation should be in the form of these services, then that is how they shall be provided. The complainant shall be appropriately notified of her right to a hearing to contest such a determination, should she disagree with it. If the complainant's son's IEP team determines that it would not be educationally appropriate to provide complainant's son with additional indirect OT services, and/or direct School Psychologist services, as a means of

compensation, then these services should not be provided. However, in that case, if the school and the complainant cannot otherwise agree on a means of compensation, then the school shall pay the complainant the hourly rate times the number of hours of IEP required indirect OT services and direct School Psychologist services that have not been provided to complainant's son as of the date of the school's receipt of this Decision.

If the school has not already done so at the time of its receipt of this Decision, the school shall convene an IEP meeting, no later than the end of the school spring semester 2001, to determine, in addition to any determination necessary for compensatory education, what the continuing placement and services for complainant's son shall be. This would include, of course, any necessary determinations about continuing OT and/or School Psychologist services, indirect or direct. If the IEP team cannot reach consensus, the complainant would be entitled to request a hearing to resolve any continuing disagreements with the school. The Colorado Department of Education would also provide a mediator for this purpose, should the complainant and the school agree to mediation.

CONCLUSION

The Federal Complaints Officer recognizes, as best he can from this distance, the hardship that was created by the death of a school psychologist employed by the school. Such a loss is not only, nor primarily, measured in a quantification of services lost, but in the loss of a colleague, and member of the school community serving complainant's son, for which there can be no adequate quantification. The Federal Complaints Officer also recognizes that complainant's son received educational benefit from the indirect services provided by the School Psychologist who did work with complainant's son, including the speech pathologist who evidently provided direct services, other than speech language services, under consultation from the School Psychologist, aimed at providing complainant's son with educational benefit which would otherwise have been provided by the School Psychologist. However, the IEP stated that services were to be provided in a certain way by certain personnel. It does not seem to the Federal Complaints Officer that direct School Psychologist services can be provided interchangeably by a speech language pathologist, where the student's IEP requires that these services be provided by a School Psychologist. The IEP team, of which complainant was a part, did not contemplate this type of service provision.

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, April _____, 2001.

Charles M. Masner, Esq.
Federal Complaints Officer