

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

Federal Complaint 2003:511

San Juan BOCS

Decision

INTRODUCTION

This Complaint was dated April 28, 2003, and received May 2, 2003. The Board of Cooperative Services (BOCS) response was dated May 20, 2003, and received by fax on May 21, 2003. The original BOCS response document was received by express mail on May 22, 2003. The complainant's response to the BOCS' response to the Complaint was dated May 26, 2003, and received by certified mail on June 3, 2003. The Federal Complaints Officer then closed the record.

COMPLAINANT'S ALLEGATIONS

The Federal Complaints Officer is stating the allegations as stated by the complainant, except as where otherwise indicated by editing by the Federal Complaints Officer. The complainant did not number the allegations, but the Federal Complaints Officer has done so for ease in deciding the Complaint. The numbering of the allegations is not meant to convey any hierarchy of importance attached to the allegations.

1. Here is a description of the violation made: Out of compliance with extra time[.] [E]xcessive homework[.] [U]p to five hours of homework a night[.] [T]eachers say only half an hours worth[,] but consider a special ed. [c]hild that would or could triple in time depending on their disability.
2. Here is a description of the violation made: 402.4B. When parent showed Vice Principal I.E.P. where it says parents concerns, eligibility for sports was a concern so [student] can get some socialization and fit in with her peers. The Vice Principal said oh that[']s just parent[']s wish list[,] [and] ... the school must follow their policy for eligibility[,] not the wishes of the parents.
3. Here is a description of the violation made: Out of compliance for social curriculum activities which denies [student] her social acceptance with her peers. 50.2(2)
4. Here is a description of the violation made: Out of compliance when [student] requested a progress report from [school staff member] [and] he said she had to have her number. Then when parent asked for a progress report the teacher[']s response was well [student] needs to be more responsible and not lose her number[,] and that is why we are not

receiving a progress report from his class. I.E.P. states that a progress report will be given when needed by the parent.

5. Here is a description of the violation made: Student hands in home work by hanging on hallway wall and [school staff member] [says] she does not turn assignments in. Parent handed one assignment in on teachers desk and [student] was told teacher did not receive assignment[.] No modification was made for her to keep up with the class.
6. Here is a description of the violation made: Parent requested to meet with [school staff member] and vice principal [proper name] did not return call on April 10, 2003 ... [t]o discuss [student's] missing assignments.
7. Here is a description of the violation made: Out of compliance with extended time. Child was absent[.] [The] teacher[.] [proper name][.] cleaned out her folder at the end of the trimester and threw away the papers [and] said she did not turn them in. Parent talked to teacher [and] he said[.] "I have no problem letting her make work up[.]" So parent arranged for [student] to make up work[.] Student hands it to the teacher in the hallway because she is no longer in his class[.] [W]hen asked about new grade was told that the teacher said that he did not get the work[.] [T]his was from the vice principal [proper name].
8. Here is a description of the violation made: Out of compliance when [school staff member] refused to give make up work to [student] so she could get it done to be eligible to play sports that week. He said that it was too much and she would never get it done in time for the event. She asked him again and he did not respond to her[.] [A]sk me in eagle hour which they had special program and was enable to ask again for the assignments missed for an excused absence.
9. Here is a description of the violation made: Out of compliance when [school staff member] refused to give book to student when student requested book to take home so she can keep up with the class. Reason for denial to take home a book is that [school staff member] said too many books were not returned last year so no books were to go home with the student except the main text book[.] [H]e is the principal of the school.
10. Here is a description of the violation made: Failure to comply with parent request to have a transitional meeting. Has been more than ten days and no response to request.

BOCS' RESPONSES

The Federal Complaints Officer is stating the BOCS responses as stated by the BOCS Director of Special Education, except as where otherwise indicated by editing by the Federal Complaints Officer.

1. Current IEP of 11-5-02 recommends "Extra time – testing modifications" in Educational Section, Needs, Page 2. Post School Transition Section, Page 6, of same IEP recommends "special ed in regular ed with support and accommodations". In addition, "accommodate for PC" in Accommodations/Modifications Section, Page 8, could also be construed to indicate extra time was needed to complete assignments or modifications made to assignments to take less time.

Escalante Middle School Staff state that a 7th grader should be expected to average about 70 minutes of homework per night. In addition each student is enrolled in a 45-minute class daily which allows them to get started on the homework. Modifications and accommodations in place for [student] include class work and homework, special tests and extended time. Students are encouraged to communicate with their teachers about work needs. No verbal or written requests by parent or student for accommodations noted by Escalante Middle School Staff.

2. The current IEP (11-05-02) for [student] states, in the Additional Concerns section on Page 4, “eligibility for sports”. This was not a recommendation of the IEP Team. Section 402(4)(b) of the Rules for the Administration of the Exceptional Children’s Education[al] Act only states that an IEP must contain statements of the child’s educational needs, which it, in fact, does.

The Escalante Middle School Staff explained to parent that this comment on the IEP did not exempt [student] from the eligibility requirements of the school, and that all provisions of [student’s] IEP are being addressed.

3. The current IEP (11-05-02) for [student] does not make any recommendations specifically with regard to social extra curricular activities. However, “accommodate for PC” in Accommodations/Modifications Section, Page 8, could be construed to indicate accommodations and modifications would need to be made on her class work and homework. [Student] has not been denied opportunities to participate with children without disabilities in academic, nonacademic and extra curricular activities as set forth in Section 5.02(2) of the Rules for the Administration of the Exceptional Children’s Education[al] Act.

Escalante Middle School Staff state that [student] is provided the same opportunities as her peers to participate in social and athletic activities. In addition, [student] is given modifications and accommodations on her class and homework. [Student] has maintained passing grades throughout most of the year, although third trimester absences have negatively impacted her academic performance.

4. The current IEP (11-05-02) for [student] states that parents will be informed of the child’s/student[’]s progress toward annual goals as often as all students plus IEP meetings (Page 8).

Escalante Middle School Staff state that progress reports are generated by the school office every three weeks for all students.

5. The current IEP for [student] recommends extra time under Educational Section, Needs, Page 2. Post School Transition Section, page 6, of same IEP recommends “special ed in regular ed with support and accommodations”. In addition, “accommodate for PC” in Accommodations/Modifications Section, Page 8, could also be construed to indicate modifications are recommended for assignment completion.

Escalante Middle School Staff recall the missing assignment was a poster that was turned in late and allegedly hung directly in the hall by the student without the teacher's knowledge. [Student] was unable to tell the teacher where the poster was located and could not remember the topic of her poster. Subsequently, a plan was developed to have [student] turn in work directly to the teacher to avoid any future situations of that nature. Teacher denies any knowledge of the parent turning in an assignment.

6. This allegation does not appear to have any connection to a recommendation on the IEP, or to be a compliance issue.

Escalante Middle School Staff state that a message was left on the [complainant's surname] family answering machine suggesting two dates for teacher meetings. No response from the [complainant's surname] was received and no meeting was held until April 28th. Parents revealed in a later conversation that they had received the message but that [student's mother] was unable to get off work. Escalante Staff has made every effort to accommodate the [complainant's surname] work schedule, as evidenced by meetings held at 3:30 p.m. and 4:30 p.m.

7. Current IEP of 11-5-02 recommends "Extra time – testing modifications" in Educational Section, Needs, Page 2. Post School Transition Section, Page 6, of same IEP recommends "special ed in regular ed with support and accommodations". In addition, "accommodate for PC" in Accommodations/Modifications Section, Page 8, could also be construed to indicate extra time was needed to complete assignments or modifications made to assignments.

Escalante Middle School Staff states that the material that was missing was incomplete work due to [student's] absence. The teacher allowed [student] to complete the missing assignments at her convenience. Subsequently the Assistant Principal checked on [student's] progress and reported to parents that only one makeup session had been completed. Several weeks later, the Assistant Principal checked again and found the teacher had updated [student's] file and given her a B. The Assistant Principal shared this information with the family on April 28.

8. Current IEP of 11-5-02 recommends "Extra time – testing modifications" in Educational Section, Needs, Page 2. Post School Transition Section, Page 6, of same IEP recommends "special ed in regular ed with support and accommodations". In addition, "accommodate for PC" in Accommodations/Modifications Section, Page 8, could also be construed to indicate extra time was needed to complete assignments or modifications made to assignments.

Escalante Middle School Staff states that the teacher has allowed [student] to turn in many late assignments over the year. The eligibility requirements are the same for all students. Grades are posted every week outside classroom so students can check for themselves prior to the eligibility determination being made by the teacher.

9. Current IEP of 11-5-02 recommends "Extra time – testing modifications" in Educational Section, Needs, Page 2. Post School Transition Section, Page 6, of same IEP

recommends “special ed in regular ed with support and accommodations”. In addition, “accommodate for PC” in Accommodations/Modifications Section, Page 8, could also be construed to indicate extra time was needed to complete assignments or modifications made to assignments.

Escalante Middle School Staff reports that [student] was absent for a reading selection. The teacher set up a time for her to return for extended opportunity to read/question/review the available material. Parent called instead asking that the book be sent home. Teacher complied with the request.

10. A parent can request an IEP meeting by contacting the San Juan Board of Cooperative Services. Such a request has not been received by this office.

Escalante Middle School Staff stated that [student’s mother] expressed a desire for a transition IEP due to the girls turning 14. The Assistant Principal advised [student’s mother] to call the BOCS office to initiate an IEP meeting.

A parent can request an IEP meeting to visit transition activities at any time by contacting the San Juan Board of Cooperative Services scheduling secretary, the assigned resource teacher, or school office. The Assistant Principal indicated to [student’s mother] in a verbal discussion to contact the San Juan BOCS office. She assumed either [student’s mother] had done that or she was going to wait and address transition services at [student’s] next IEP, which is due on or before 11-05-03. [Student] turned 14 on 2-14-03. Transition services were addressed on her 11-05-02 IEP.

FINDINGS AND DISCUSSION

The Federal Complaints Officer finds no violations by the BOCS, including any of its members or employees, of any of the allegations made by the complainant. In making this finding of law, the Federal Complaints Officer is also finding, for the purpose of this Complaint Decision, that the facts are as stated by the BOCS. However, the complainant is also entitled to seek a due process hearing on every allegation made in his Complaint. As the Federal Complaints Officer did his best to explain to the complainant prior to the complainant’s filing of this Complaint, the Federal Complaint process does not provide for an evidentiary hearing in which persons can be required to testify under oath, and can also be cross examined to challenge the veracity of their testimony.

REMEDIES

While the Federal Complaints Officer has not found, for the purpose of resolving this Complaint, any specific violations by the BOCS, or its members or employees, of the allegations made by the complainant, he nonetheless has determined that the ordering of certain remedies is appropriate. “Appropriate services”, as referenced in CFR 34 300.660(2)(b) of the Individuals with Disabilities Education Act (IDEA) Federal Complaint provisions, cannot be adequately

provided in circumstances such as the Federal Complaints Officer determines is the case in this Complaint, where the parent(s) and the school system representative(s) are not in adequate communication or agreement. Therefore, the Federal Complaints Officer orders the following remedies in an attempt to promote such communication and agreement.

1. Within thirty (30) days of the date of the BOCS certified receipt of this Decision, the BOCS Director of Special Education, or his designee, shall inform the complainant that the BOCS, or its designee, will convene an IEP meeting, upon the oral or written request of the complainant. If such IEP meeting is requested, it shall be held as soon as possible, but in no case later than sufficiently prior to the first day of the 2003 fall school semester to appropriately plan for this student, unless otherwise agreed to by the parties. For the purpose of being bound by this Remedy in this Decision, the BOCS, or its designee, is only required to provide such IEP meeting if the complainant requests such a meeting within thirty (30) days of his certified receipt of the written invitation by the BOCS Director of Special Education, or his designee. Also, for the purpose of being bound by this Remedy, in this Decision, the BOCS, or its designee, is only required to schedule and convene such an IEP meeting if both parents indicate that they will attend and if, in fact, both parents do attend. In addition, while every reasonable effort should be made to accommodate reasonable scheduling requests of the parents, the parents are instructed by this Remedy in this Decision that every reasonable effort should be made by the parents to accommodate the reasonable scheduling needs of the school staff.

If such IEP meeting as ordered in this Remedy is convened and conducted, a verbatim record of this meeting shall be made by the BOCS, or its designee. The means for making this record shall be determined by the BOCS, or its designee, but, whatever means is used, the record shall identify each speaker by name and title and shall be intelligible. If an audio or video record is made, this record shall be reduced to a verbatim written transcript. All expenses of recording and written transcription shall be paid by the BOCS, or its designee. There shall be no expense for such recording or transcription assessed to the parents of this student. A complete and unedited copy of the recording, if an audio or visual recording is made, and a verbatim written transcription, of this IEP meeting, shall be provided to the parents of this student, at no expense to the parents of this student.

It is the intent of the Federal Complaints Officer that if multiple sessions of this IEP meeting are necessary in order to address every issue necessary to address for the education of this student, then the school system shall convene as many sessions as necessary in order to resolve these issues. All requirements for the initial session of this IEP meeting, as has been specified by the Federal Complaints Officer, apply to all subsequent sessions of this IEP meeting. If the issues cannot be resolved to the parents' satisfaction, then the school system shall fully and clearly describe for the parents, orally and in writing, the differences between the parents and the school system, and shall similarly inform the parents of their due process hearing rights, and where they can obtain low cost legal advice. If agreement is reached, such agreement shall be made as specific as necessary, on all issues related to providing a free appropriate public education (FAPE) for this student, and such specifics shall be put in writing in this student's IEP. While the Federal Complaints Officer does not make it a part of his order in this Remedy, he nonetheless strongly encourages the school system to obtain someone, agreed to by the parents, and not employed by the BOCS or any of its members, and not otherwise having bias or giving

the appearance of bias towards either the school system or the parents, to facilitate any IEP meeting convened and conducted in compliance with this Remedy. He also strongly encourages the school system, if it has not already done so, to designate a school staff member to coordinate communications with the parents.

2. The requirement, for the purpose of compliance with this Federal Complaint Decision, of complying with Remedy number one (1), shall be waived, in its entirety, if the parties, within thirty (30) days of the date of their certified receipt of this Decision, agree to participate in mediation, and if, in fact, the parties do participate in mediation. If mediation does not take place, Remedy number one (1) is not waived. If the parties agree to participate in mediation, then the Federal Complaints Officer will assign a mediator, and the fees and expenses of the mediator will be paid by the Colorado Department of Education (CDE). If Remedy number two (2) is chosen by the parties, the BOCS Director of Special Education, or his designee, shall make the mediator aware of this Decision upon first contact by the mediator, and shall timely provide the mediator with a copy of this Decision.

CONCLUSION

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

Dated today, June _____, 2003.

Charles M. Masner, Esq.
Federal Complaints Officer