

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

Federal Complaint 2003:516

Elizabeth School District C-1

Decision

INTRODUCTION

This Complaint was dated 04/28/03 and filed on 6/24/03. The Elizabeth School District C-1 (District) received an extension of time to 07/18/03 for filing its response to the Complaint. Those parts of the District's written response that were prepared by the District's special education director were received on 07/08/03 and 07/10/03. The student's speech language pathologist [SLP] also prepared a written response which was faxed on Sunday 07/12/03 and received by the Federal Complaints Officer on 07/14/03. The Complainant received an extension of time until 08/11/03 to file her response to the District's response. The Complainant did not submit a response to the District's response. The Federal Complaints Officer closed the record on 08/12/03.

The Complainant is the parent of a child who, during the relevant time period, was identified as being a preschool child with a disability. The Complainant has also filed a federal complaint regarding the child's sibling. *See*, Federal Complaint 2003:515.

COMPLAINANT'S ALLEGATIONS

The Complainant has made the following allegations:

[Student] has had two IEPs. May of 2002 and April 18, 2003. None of them have been followed. [Student has] quite possibly never gotten the allotted amount of speech therapy per week that is [Student's] right...Periods of more than four weeks have gone by of no therapy at all...I have been told by [SLP] that her day to work in the class is Monday. If there is a holiday or school closure on Mondays, there is no make up time. If there is more that one child that is allotted one hour per week and the therapist is in the class for one hour working here and there with all of them, together or apart, *or* if she talks to the teacher about them, then they all have received the help that is legally theirs...No one received any speech therapy for the whole month of September 2002, and the whole month of January 2003. In addition to that, [Student did not receive] speech service at all in a period of a school week, periodically through out the school year, most recently the weeks of: April 21, 2003 and April 28, 2003. On April 29, the boys told me that [SLP] was in the room, but had never talked, or "played" with them. The week of May 12, was the last time they got any help with their speech, and that is questionable. One child said

she was there, and the other said he never talked with her. Last day of school was May 29, 2003.

In support of her allegations, Complainant submitted a document entitled “Speech-Language/Pre-Academic Homework.” “[SLP] started a running page of communication in [Student’s] notebook at the beginning of the year. This page would explain what [Student] worked on. A couple of times [Student] did not have [his] notebook with [him] on Mondays, because honestly, I felt it was too much weight for [his pack], when she more than likely would not been there. I am sending the pages so you can see exactly how many weeks were *not* written in.” {Emphasis in the original).

THE DISTRICT’S RESPONSE

Allegation 1. The written response prepared by the District’s special education director states as follows:

The IEPs have been followed, as closely as possible, given vacations, absences of [Student], required trainings of staff and occasional absences of staff. It is important to note that the whole preschool program, including the services of the special education paraprofessional and the COTA, is a part of the IEP that has also been followed...Services on the IEPs are a combination of “indirect” (with staff) and “direct” with the child, but seldom are delivered to only one child at a time. That is not usually the best use of the staff or the best thing for children. It is difficult to work on social skills or communication without including peers. The Homework Sheets that were sent to me are just that: homework ideas for parents. They are not indicative of which days therapy occurred and are not intended to be completed every week.

The written response prepared by the SLP states as follows:

One of the misunderstandings was that [Complainant] thought [Student] had one-on-one therapy, which was not developmentally appropriate...This year I created an individualized home program for [Student] with [his] specific sound errors that included diagrams for production of each sound and homework pages. This was a home program, which had a note page in the front so I could explain what sounds to work on. [Complainant] often forgot to bring [the] home program notebooks to school...In truth there were days that the boys were sick, I was sick, holidays, and/or special events.

With its response, the District submitted [Student’s] attendance records and speech language (S/L) services log for the 2002-03 school year.

FINDINGS OF FACT AND CONCLUSIONS

34 C.F.R. § 300.350(a)(1)¹ requires each school district to provide special education and related services to a child with disabilities in accordance the child’s IEP.

¹ Hereafter, the IDEA regulations will be cited by section number only, e.g., § 300.350 (a)(1).

A. Missed Services

The Federal Complaints Officer has carefully examined the documentation provided by the parties. With regard to the S/L Homework document submitted by the Complainant, the Federal Complaints Officer finds that it was not used routinely nor was it intended to document the provision of S/L services. The Federal Complaints Officer further finds that the District's attendance records and S/L services log documents the S/L services actually received by the student. The Federal Complaints Officer has relied on such records in making her other findings of fact.

The Federal Complaints Officer makes the additional findings of fact:

- 1) Per the 05/17/02 IEP, [Student] was to receive 15 minutes per week of indirect (consultation) S/L services and 60 minutes per week of direct S/L services in the general classroom. The projected beginning date of those services was 05/17/02.
- 2) Per the 04/18/03 IEP, [Student] was to receive 15 minutes per week of indirect S/L services, a range of 0-60 minutes per week of direct S/L services in the general classroom, and a range of 0-60 minutes per week of direct S/L services outside of the general classroom. The projected beginning date of those services was 04/18/03.
- 3) There were 36 full or partial weeks in the District's 2002-03 school year (excluding winter and springs breaks).
- 4) [Student] was scheduled to receive S/L services on Mondays.
- 5) [Student] received S/L services for 20 weeks of the school year.
- 6) [Student] did not receive services for two weeks for which no explanation was provided.²
- 7) [Student] did not receive services for 3 weeks in September 2002.³ The District did not make up those missed services.
- 8) [Student] did not receive services for 2 weeks when the speech language pathologist was sick or was required to attend an emergency meeting. The District did not make up those missed services.⁴

² The provider log does not have entries for 02/17/03 and 04/21/03. 02/17/03 was a holiday. The provider log incorrectly identifies 02/10/03 as a holiday. The Federal Complaints Officer has counted these 3 dates as dates when the student did not receive services.

³ The missed weeks in September were 09/09/02, 09/16/02 and 09/23/02.

⁴ The missed weeks due to the provider's absences were 12/16/02 and 05/12/03.

- 9) [Student] did not receive services for 5 weeks because holidays or other “no-school days” (days when instructional services are not provided) fell on [Student’s] scheduled day for services (i.e., Monday). The relevant IEPs do not state that S/L services, which are to be provided weekly, will not be made up when the day of delivery falls on holidays or other no-school days. The District did not make up those services.⁵

The Federal Complaints Officer concludes that the District violated § 300.350(a)(1) because the student’s IEPs specified weekly S/L services and the District failed to provide such services for 12 out of 36 weeks.

The Federal Complaints Officer also finds that [Student] was absent on 4 days⁶ when the S/L service provider was available to provide services. Generally, a school district is not responsible providing special education services when the services provider is available but the student is absent from school. The Federal Complaints Officer concludes that, with respect to S/L services missed due to the student’s absences, the District has not violated § 300.350(a)(1).

B. Individual vs. Small Group Services

The Federal Complaints Officer finds that none of the relevant IEPs specified that the S/L services to which the student was entitled were individual services. In the absence of such specification, how required services are delivered is a question of methodology that is left to the District’s discretion unless the methodology selected by the District fails to provide the student with a free appropriate public education (FAPE). The Federal Complaints Officer makes no such finding of a denial of FAPE with regard to the District’s provision of group rather than individual services. The Federal Complaints Officer concludes that the District has not violated § 300.350(a)(1).

DENIAL OF FAPE

§§ 300.300 and 300.321 require each State receiving assistance under Part B of the IDEA to ensure that FAPE is available to all children with disabilities, aged 3 through 21. This requirement applies to all public agencies (such as school districts) within each State. See, § 300.321(b)(i)(A).

It is well-established in the Tenth Circuit Court of Appeals that mere technical deviations from the IDEA do not render an IEP entirely invalid. “To hold otherwise would exalt form over substance.” Urban v. Jefferson County School District R-1, 89 F.3d. 924 (10th Cir. 1995).

The Federal Complaints Officer has concluded that the District violated § 300.351 (a)(1) when it failed to provide the student with all of the S/L services specified by the student’s IEP. The Federal Complaints Officer finds that the District’s failure to provide the student with 12 weeks

⁵ The missed weeks due to Monday holidays or “no school days” were 09/02/02, 01/20/02, 01/27/03, 02/17/03 and 05/26/03.

⁶ The student was absent on 10/07/02, 10/21/02, 12/09/02, and 03/10/03.

of S/L services is not a “mere technical deviation” from the student’s IEP. The Federal Complaints Officer concludes that the District has denied the student a FAPE.

REMEDY

Within thirty (30) days of the date of the District’s certified receipt of this Decision, the District’s special education director shall submit to the Federal Complaints Officer a written statement of assurance explaining how the violation found will be addressed to prevent its recurrence, not only as to [Student] but also as to all student with disabilities attending the District.

The Federal Complaints Officer orders that this student is entitled to compensatory services in the amount of 6 hours for missed direct S/L services, to be provided over the course of the 2003-04 school year.

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 14th day of August 2003.

Laura L. Freppel
Federal Complaints Officer