

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

Federal Complaint 2005:507

Estes Park School District R-3

Decision

INTRODUCTION

This Complaint was undated and filed on 04/19/05. The response of the Estes Park School District R-3 (District) to the Complaint was faxed to the Federal Complaints Officer on 05/10/05. The original copy of the District's response was received on 05/11/05. The Complainants' response to the District's response was received on or about 05/23/05. The Federal Complaints Officer closed the record on 05/31/05.

The Complainants are the parents of a child with a disability.

COMPLAINANTS' ALLEGATIONS

The parents have made the following allegations:

- 1) "Kindergarten – School year 2003/2004: placement agreed upon at IEP meeting held on 05/06/03 was changed without notice to the parent, or reconvening an IEP meeting. The last 2 pages of the IEP containing this placement information were removed from the student's file by school personnel in an attempt to hide this violation. In addition, we were kept from receiving a copy of this IEP."
- 2) "At approximately two weeks into the 2003/2004 school year, the student was replaced from the regular classroom to the SPED Resource Room, again without notice to the parents, and thereby denying the student access to the regular curriculum. This replacement was made by the classroom teacher & principal without consulting any other IEP team members or convening an IEP meeting. No adequate reason was provided for this change at the time the change was made. It was later discovered, through conversations with the regular education teacher, that there were some very minor behavioral issues which may have prompted the teacher to request this change. No functional behavior assessment was done, nor did a manifestation determination review take place."
- 3) No accommodations were provided to [Student] during placement testing for kindergarten.

- 4) The parents did not receive a copy of the 05/06/03 IEP until they requested a copy. The copy of the 05/06/03 IEP that was sent to the parents was missing pages 7 and 8. Pages 7 and 8 of that IEP would have contained placement information. The parents allege that pages 7 and 8 were intentionally removed to hide the unilateral placement made by the District for the 2003-2004 school year.
- 5) Prior to the 2003-04 school year, the mother attempted to meet with [Student's] regular education teacher, who refused to meet. The school principal stated that it was his policy that "teachers not meet with or discuss anything with parents before the school year so that the teachers won't have any preconceived notions about a student."
- 6) The regular education teacher refused to send [Student] to the resource room when he was having trouble finishing his work in the regular classroom and made arbitrary decisions without consulting other team members.
- 7) "During the same conversation, [Regular Education Teacher] stated that she did not have any classroom goals. This indicated to me that she did not think that any of the IEP goals applied to her or her classroom and that she should have separate goals. She clearly had no understanding of her responsibility to comply with and carry out the IEP."
- 8) "There was little to no communication between [Regular Education Teacher] and [Resource Room Teacher] for the entire school year. This situation made all of my dealings with the school extremely difficult because I had to be the messenger between these 2 teachers. It is my perception that [Resource Room Teacher] did her best to try to be informed and made numerous attempts to initiate communication without much success. I feel that this situation had an extremely negative impact on [Student's] progress throughout the year. I also felt that [Principal] gave [Regular Education Teacher] his unwavering support regardless of the appropriateness of her behavior. This situation was so extreme that I felt exheedingly (sic) helpless to do anything about it. Any complaints I had about this teacher were dismissed as being without merit simply because they came from me.
- 9) "Throughout the 2003/2004 school year, I noticed that [Special Education Teacher] seemed to be very uncomfortable around me and unwilling to talk openly with me when I would meet with her. I began to feel uncomfortable as well. I felt very uptight and anxious when I entered the school building. I felt I did not know whom I should trust, or talk to, and that I had to be careful about what I said to school staff. No one was willing to tell me what was really going on. In December, I called [School Board President] and had a conversation with him about it. It was not until near the end of the 3rd quarter that I learned that [Special Education Teacher] had been admonished for speaking with me about my son and had been disciplined for a statement she was alleged to have made about [Regular Education Teacher]. [Principal] claimed we had told him [Special Education Teacher] had made this statement to us. He had also, apparently announced in a staff meeting that we had threatened to sue the school district. Neither of these things were true, nor was anything ever said by us to [Principal] that he could have misconstrued as such. Therefore, we can only conclude that he consciously made up

these lies to suit his own purposes, whatever they may be. We obviously developed a great distrust of [Principal] as a result of all these experiences and therefore made a specific request that he not be present at any further IEP meetings for our [Child]. This request was not honored and he showed up at our next meeting in May, 2004, which we then felt we had to audio tape in order to prove what was said or not said. We also considered further requests that would limit his contact with our son, however, in light of his resignation, we chose to set aside those requests.

10) In summary, we feel that all of these situations greatly hampered [Student's] changed for a successful Kindergarten year, and indeed caused a serious lack of progress and failure to achieve the goals set forth in the IEP.

THE DISTRICT'S RESPONSE

Allegation No. 1

The District denies that the placement for [Student] for the 2003-2004 school year was determined for [Student] during [Student's] 05/06/03 annual IEP review meeting. The District denies that pages 7 and 8 of Student's 05/06/03 IEP were removed; rather, it contends, that the pages in question were never completed. The District neither admits nor denies that the District failed to provide the parents with a copy of the 05/06/03 IEP.

Allegation No. 2

The District admits that [Student] started school in the fall of 2003 in the general classroom without a services plan in place and "[Student] may not have received services for the first two weeks of kindergarten..." The District also admits that, during the 09/11/03 IEP team meeting, [Student's] regular education teacher, with the support of the school principal, unilaterally changed [Student's] placement from the general classroom to the special education resource classroom. The District asserts that, as soon as the District's special education coordinator learned about the unilateral change in placement, the IEP was team reconvened on 10/02/03 and "based on classroom observation and some testing, developed a services plan, with special education services, to gradually return [Student] back to the general education classroom." The District further states that "[Between] the September Meeting and the October Meeting, [Student] received services that conform with his needs as stated on his October IEP. Furthermore, there is no proof that [Student's] progress has been hindered by any violations that may have been committed by the District." The District agrees that the District did not conduct a manifestation determination review. The District asserts that a manifestation determination review was not required because [Student] was not removed from the general classroom for disciplinary reasons.

Allegation No. 3

The District did not address Allegation No. 3.

Allegation No. 4

The District neither admits nor denies that the District failed to provide the parents with a copy of the 05/06/03 IEP. “If [Student’s] parents failed to receive a copy of the May IEP, it may also have been due to skill level and inexperience of the special education teacher involved.”

Allegation No. 5

The District did not address Allegation No. 5.

Allegation No. 6

The District did not address Allegation No. 6.

Allegation No. 7

The District did not address Allegation No. 7.

Allegation No. 8

The District did not address Allegation No. 8.

Allegation No. 9

The District did not address Allegation No. 9.

Allegation No. 10

The District contends that “[at] the October Meeting [Student’s] need for special education services was properly considered and since then he has received appropriate services and has made adequate progress on goals and objectives outlined in his IEPs.

FINDINGS OF FACT AND CONCLUSIONS

After carefully reviewing and considering the information submitted by the parties, the Federal Complaints Officer makes the following findings of fact and conclusions of law:

Allegation No. 1

Each public agency is required to have an IEP in effect for each enrolled student with a disability at the beginning of each school year. 34 CFR §§ 300.342(a).¹ The IEP must meet minimal content requirements, including an explanation of the extent to which the child will not participate with nondisabled children in the regular classroom. § 300.347(a). After the IEP is developed, the public agency is required to provide the parent with a copy of the IEP within a reasonable time after the meeting in which it was developed. §300.345(f). See, Eugene School District 4J, 102 LRP 3430 (Oregon SEA, 07/03/00). The educational placement for a child with a disability is to be determined by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of evaluation data and placement options.

§ 300.552(a)(1). One of the procedural safeguards afforded to the parent of a student with a disability under the IDEA is the right to participate in educational placement decisions.

§ 300.501(a)(2). The parent is also entitled to prior written notice when the public agency proposes a change in educational placement. § 300.503(a)(1)(i).

In this case, the parties dispute what occurred during the 05/06/03 IEP team meeting. When facts are in dispute, the usual process in most legal settings for resolving the dispute is through an evidentiary hearing in which individuals testify under oath, and the testimony is then subject to cross-examination. It is through this process that the fact finder determines the credibility of the individuals and, by extension, which version of the facts is the more credible. The Federal Complaint process, unlike the due process hearing, makes no provision for an evidentiary hearing. Another way of resolving a factual dispute is to examine the documentation submitted by the parties and the surrounding circumstance to see whether they provide a definite answer.

With regard to this allegation, the Federal Complaints Officer finds that the parties have submitted sufficient documentation to resolve the factual disputes. Therefore, the Federal Complaints Officer makes the following findings of fact and conclusions:

- A. The purpose of the 05/06/03 IEP meeting, as stated on the 04/28/03 Notice of Meeting, was an annual review meeting to “determine how well the current program is meeting the identified needs and to determine [Student’s] special education services and placement. We will also be discussing transiting (sic) [Student] into kindergarten at this meeting.”
- B. During the 05/06/03 IEP review meeting, the IEP team determined what the Student’s preschool services were to be through 06/07/03.
- C. During the 05/06/03 IEP review meeting, the IEP team determined that Student would continue to receive 1 hour of physical therapy services per week when school was in session through 05/06/04.

¹ Hereafter, the regulations implementing the Individuals with Disabilities Educational Act (IDEA) are referred to by section number only – i.e., § 300.501.

- D. During the 05/06/03 IEP review meeting, the IEP team determined what the [Student's] annual goals and short-term objectives/benchmarks would be beginning 05/06/03 through 05/06/04.
- E. The 05/06/03 IEP states that “[there] will need to be a change of services as [Student] enters kindergarten”² and “[Student] will have some testing done before placement into kindergarten.”³ The IEP team discussed [Student's] transition from preschool to kindergarten but made no formal decisions about Student's placement and services (other than physical therapy services) for the 2003-2004 school year because of the need for kindergarten placement testing. Based on the 05/03/03 IEP, it is clear that the IEP anticipated that it would need to reconvene following [Student's] kindergarten placement testing to determine [Student's] services and educational placement for the 2003-2004 school year.
- F. The 05/06/03 IEP were not completed by the District. The page entitled “Recommended Placement in the Least Restrictive Environment (Special Education Instructional Setting)” was not completed.
- G. The District failed to provide the parents with a copy of the 05/06/03 IEP until the parents requested such a copy.
- H. Following the administration of the kindergarten placement test to [Student] and prior to the start of the 2003-2004 school year, the District failed to reconvene [Student's] IEP team to determine the remainder of [Student's] services and placement for the 2003-2004 school year.
- I. At the beginning of the 2003-2004 school year, [Student] was placed in the general classroom without any special education services for the period of time beginning with the start of the 2003-2004 school year through 09/11/03. The parties agree that this was an approximate period of two weeks.
- J. The [Student's] placement into the general education classroom without any special education services at the start of the 2003-2004 school year was a unilateral change in placement made by the District without written prior notice to the parents. If the parents agreed to [Student's] placement in the regular education classroom without the provision of special education services, it was incumbent on the District to document the agreement. The District has failed to provide any credible evidence of such an agreement.

Based on these factual findings, the Federal Complaints Officer concludes that the District violated 34 CFR §§ 300.342(a) [IEPs to be in effect as the beginning of the school year], 300.347(a) [IEP content], 300.345(f) [public agency required to provide parent with a copy of the IEP], 300.501(a)(2) [parent participation in meetings regarding educational placement],

² See, 05/06/03 IEP at page 6b, page 6 of 8.

³ See, 05/06/03 IEP at page 6a, page 6 of 8.

300.552(a)(1) [placement to be made by a group of people knowledgeable about the child, including the parents] and 300.503(a)(1)(i) [prior written notice by the public agency].

Allegation No. 2

When reviewing and revising an IEP, the IEP team is required to consider a number of factors including (1) the strengths of the child and the concerns of the parents for enhancing the education of their child, (2) the results of the initial or most recent evaluation of the child, and (3) positive behavioral interventions to address the behavior that impedes the child's learning. § 300.346(b).

The IEP must meet minimal content requirements, including (1) a statement of special education and related services, (2) a statement of program modifications or supports for school personnel that will be provided for the child, (3) an explanation of the extent to which the child will not participate with nondisabled children in the regular classroom, (4) the projected date for the beginning of services and modifications as well as the anticipated frequency, location and duration of those services and modifications, and (5) a statement of how the child's progress toward annual goals and objectives will be measured and how the parents will be regularly informed of such progress. § 300.347(a).

As set forth in Allegation No. 1, above, the IEP team, including the parents, are required to make educational placement decisions. §§ 300.501(a)(2) and 300.552(a)(1). Further, the public agency is required to give the parents prior written notice a reasonable time before it proposes to initiate or change the educational placement of the child. § 300.503(a)(1)(i).

School officials may remove a child from the child's current educational setting for not more than ten consecutive school days for any violation of school rules without being required to convene the child's IEP team to determine whether the behavior is a manifestation of his/her disability or to conduct a functional behavioral assessment for the child. §§ 300.520(a), 300.520(b) and 300.523.

With regard to Allegation No. 2, the Federal Complaints Officer makes the following findings of fact and conclusions:

- A. During the first two weeks of the 2003-2004 school year while [Student] was unilaterally placed in the regular classroom, the regular education teacher sent [Student] to the principal's office for behavior problems. There is insufficient evidence in the record for purposes of determining the number of times that the regular education teacher sent [Student] to the principal's office. Regardless, the parents do not allege that [Student] was suspended, expelled or otherwise removed from school in excess of ten consecutive school days between the start of the 2003-2004 school year and 09/11/03 nor is there any factual basis in the record to find that [Student] was removed from school in excess of ten consecutive school days between the start of the 2003-2004 school year and 09/11/03.
- B. On 09/11/03, the District unilaterally changed [Student's] placement from the regular classroom to the special education resource room. In so doing, the District failed to

follow the procedures for developing [Student's] IEP. The District also failed to include in the IEP that was developed for [Student] statements of (1) the special education and related services for [Student], (2) The program modifications or supports for school personnel that would be provided for [Student], (3) the extent to which [Student] would not participate with nondisabled children in the regular classroom, (4) the projected date for the beginning of services and modifications as well as the anticipated frequency, location and duration of those services and modifications, and (5) how the child's progress toward annual goals and objectives would be measured and how the parents would be regularly informed of such progress.

- C. Between 09/11/03 and 10/02/03, the parties generally agree that [Student] spent most of his time in the resource room and received special education services that matched the services specified in the 10/02/03 IEP.⁴
- D. On 10/02/03, the IEP team reconvened. The parties dispute the reason for reconvening the IEP team. The Federal Complaints Officer finds that there is insufficient evidence in the record for determining why the IEP team reconvened. At the 10/02/03 IEP meeting, an IEP was developed in a manner consistent with the requirements for IEP development and content. [Student] was placed in the general classroom 21% to 60% of his time with a plan to increase his time in the regular classroom. The parents agreed to the 10/02/03 IEP.⁵

Based on these facts, the Federal Complaints Officer concludes that during the 09/11/03 IEP team meeting, the District violated §§ 300.346(b) [IEP review and revision], 300.347(a) [IEP content], 300.501(a)(2) [educational placement determination], 300.552(a)(1) [parent participation – educational placement] and 300.503 [prior written notice by the public agency].

The Federal Complaint Officer further concludes that the District did not violate §§ 300.520(b) and 300.523 which are the legal requirements for when a public agency must conduct functional behavioral assessments and manifestation determination reviews.

Allegation No. 3

The parents allege that the District failed to provide [Student] with accommodations during the kindergarten placement testing. No evidence has been submitted by the parents demonstrating that [Student] was entitled to testing accommodations at the time that the kindergarten placement test was administered. The Federal Complaints Officer therefore concludes that, with regard to this Allegation, the District has not violated the IDEA.

⁴ While the parents agree that [Student] received services conforming with the 10/02/03, they disagree that [Student] received services in the least restrictive environment. See, Complaints' response at p. 3.

⁵ In their response to the District's response and in reference to the 10/02/03 IEP, the parents state that "We agreed to this placement only because after all was said and done, we saw a teacher and an administrator who were just not willing to make any effort towards [Student's] success in the regular classroom." If the parents disagreed with the 10/02/03 IEP, they were entitled to request mediation and/or a due process hearing to resolve their disagreement.

Allegation No. 4

The Federal Complaints Officer has already addressed this allegation. Please see the findings of fact and conclusions for Allegation No.1, above.

Allegation No. 5

The facts alleged in the Complaint, even if true, do not state a violation of the IDEA.⁶

Allegation No. 6

§ 300.350(a)(1) requires the public agency to implement each child’s IEP. With regard to Allegation No. 6, the Federal Complaints Officer makes the following findings of fact and conclusions:

The IEPs and related Addenda in effect during the 2003-2004 school year generally provide that [Student] will receive support with social/emotional needs and some academics in the resource room.” Those documents do not specify how or under what circumstances [Student] was to access the special education resource room. The Federal Complaints Officer therefore concludes that there is insufficient evidence demonstrating that the District violated § 300.350(a)(1).

Allegation No. 7

The facts as alleged in the Complaint, even if true, do not constitute a violation of the IDEA.

Allegation No. 8

The facts as alleged in the Complaint, even if true, do not constitute a violation of the IDEA.

Allegation No. 9

The facts as alleged in the Complaint, even if true, do not constitute of violation of the IDEA.

Allegation No. 10

The statutory and regulatory requirements and case law applicable to whether [Student] was denied a free appropriate public education (FAPE) may be summarized as follows:

- A. §§ 300.121 and 300.300 require each State receiving assistance under Part B of the IDEA to ensure that a FAPE is available to all children with disabilities, ages 3 through 21. This requirement applies to all public agencies (such as school districts) within each State. See, § 300.121(b)(2)(i)(A).

⁶ The Federal Complaints Officer authority is limited to investigating special education violations under the IDEA and Colorado’s Exceptional Children’s Educational Act and their implementing rules and regulations.

- B. The test for determining whether the requirements of the IDEA have been met has two prongs: First, did the public agency comply with the procedures set forth in the IDEA? Second, was the IEP developed through the IDEA's procedures reasonably calculated to enable the child to receive educational benefits? Hendrick Hudson Dist. Bd. of Ed. v. Rowley, 458 U.S. 176, 206-207 (1982).
- C. In providing a FAPE, a public agency is not required to maximize the potential of the child; rather, the purpose of the IDEA is to provide a basic floor of educational opportunity. Rowley at p. 200.
- D. The accountability provisions of the IDEA require the public agency to "[provide] special education and related services to a child with a disability in accordance with the child's IEP, and [make] a good faith effort to assist the child to achieve the goals and objectives or benchmarks in the IEP...the [IDEA] does not require that any agency, teacher or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives." § 300.350.
- E. The Tenth Circuit Court of Appeals has held 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, between the start of the 2003-2004 school year and 10/02/03, the District violated §§ 300.346(b) [IEP review and revision], 300.347(a) [IEP content], 300.342(a) [IEPs to be in effect as the beginning of the school year], 300.345(f) [public agency required to provide parent with a copy of the IEP], 300.501(a)(2) [parent participation in meetings regarding educational placement], and § 300.503 [prior written notice by the public agency].

With respect to the violations arising out of the District's unilateral change in placement of [Student] at the beginning of the 2003-04 school year up to 09/11/03, the Federal Complaints Officer finds that the District denied [Student] a FAPE for that two-week period of time because [Student] received no special education services. With respect to the violations arising out of the 09/11/03 unilateral change in placement by the District, the Federal Complaints Officer finds that such violations did not deprive [Student] of a FAPE because, during the period between 09/11/03 and 10/02/03, [Student] received special education services that matched those specified in the 10/02/03 IEP.

NEW CLAIMS NOT RAISED IN THE ORIGINAL COMPLAINT

In their response to the District's response, the parents have made additional allegations as follows:

- A. [Student] was not in the least restrictive environment (LRE) between 09/11/03 and 10/02/03.⁷
- B. The special education resource room is not now the LRE for [Student].⁸ The District should already be providing paraprofessional support to [Student] in the regular classroom.⁹
- C. “[Student’s] primary difficulties in achieving his functional goals in the classroom revolve around his inability to focus on tasks. He is unable to work independently. This will not ever be overcome without one on one support in the classroom.”¹⁰
- D. “[Student’s] behavior plan is rarely implemented in settings other than the resource room “due to the inability of the general education teachers or specials teachers to devote sustained individual attention to only one student in the classroom. This problem could be easily remedied by the presence of a paraprofessional across all settings.”¹¹
- E. “Use of a visual schedule has been a recommendation on every IEP ever written for [Student] and the school has yet to successfully implement this plan because he is in 5-7 different places throughout his day and there is no one consistent across these different settings to help him learn how to utilize this.”¹²

These are new allegations to which the District has not had an opportunity to respond. For that reason, the Federal Complaints Officer does not consider them a part of this Complaint. The parents are not limited in the number of federal complaints that they may file although, depending on the circumstances, they may be limited to a one (1) year statute of limitations. If the parents wish to file an additional federal complaint within the applicable time limits, they are entitled to do so.

However, the Federal Complaints Officer notes that the new claims tend to implicate one or more IEP team decision(s) concerning LRE placement and/or whether [Student] requires a one-on-one paraprofessional in the regular classroom and/or across all settings within the school. The parents must understand that the Federal Complaints Officer does not have the authority to overturn *any* IEP team decision, including decisions about LRE or the assignment of a one-on-one paraprofessional to [Student]; rather, the Federal Complaints Officer’s authority is limited to determining whether the District followed the procedures required by federal and state special education law and their implementing rules and regulations. If the parents disagree with an IEP team decision, they are entitled to request mediation and/or a due process hearing to resolve the disagreement.

⁷ Complainants’ Response at p. 3

⁸ Complainants’ Response at p.p. 3 and 6

⁹ Complainants’ Response at p. 7

¹⁰ Complainants’ Response at p. 6

¹¹ Complainants’ Response at p. 3

¹² Complainants’ Response at p. 9

REMEDIES

1. 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 that the District recognizes and accepts as valid every violation found by the Federal Complaints Officer. The written statement shall include a statement of assurance explaining in detail how the violations found will be addressed (e.g., through policy and procedure revision, staff training, etc.) to prevent their recurrence not only as to [Student] but as to all children with disabilities for whom the District is responsible. The Federal Complaints Officer reserves the right to request documentation demonstrating the steps that the District has taken or is taking to prevent the recurrence of the cited violations.

2. The Federal Complaints Officer orders that this student is entitled to compensatory education for the two week time period between the start of the 2003-2004 school year and 09/11/03. Compensatory education is an equitable remedy when a child with a disability has lost services. In some instances, equal time lost is awarded and in other instances a fact specific analysis is applied. There is no legal obligation to provide a day-for-day compensation for time missed. See, Parents of Student W. v. Puyallup School District No. 3, 31 F.3d 1489 (9th Cir. 1994). The Federal Complaints Officer orders the District to provide compensatory services to [Student] as follows: [Student] shall receive one (1) hour of direct service from the school psychologist, two (2) hours of direct service from the physical therapist and nine (9) hours of direct one-on-one special education instruction from the special education teacher. Such compensatory services shall be provided on or before 12/31/05. In determining this award, the Federal Complaints Officer has carefully considered the information contained in [Student's] 05/06/03 and 10/02/03 IEPs and the information supplied by the parties on this specific issue.

The District shall document in writing the dates when the ordered compensatory services were provided as well as the name and title of the individuals who provided such services. The District shall simultaneously submit said documentation to the Federal Complaints Officer and to the parents within twenty (20) days following the date when all compensatory services have been provided but in no event later than 01/20/06.

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, June 8, 2005.

Laura L. Freppel
Federal Complaints Officer