

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

Federal Complaint 2007:511

Cherry Creek Schools

Decision

INTRODUCTION

This Complaint, dated June 6, 2007, was filed by Student's parents (hereafter, the "Complainants") and was received in the office of the Federal Complaints Officer on June 26, 2007. The response of Cherry Creek Schools (hereafter, the "District") was timely received on July 23, 2007. The response attached Student's February 20, 2007 Individualized Education Program (IEP), and e-mail correspondence between Complainants and the District. On August 8, 2007, Complainants submitted a written reply to the District's response including two IEP pages as attachments. The record in this matter was closed after receipt of Complainants' reply.

ISSUE

Whether the District properly recorded Complainants' dissenting views in Student's IEP document developed at the February 20, 2007 meeting.

CONTENTIONS OF THE PARTIES

The Complainants allege that the District failed to record their position, maintained at the IEP team meeting of February 20, 2007, that Student required a certain level of supervision – expressed as a ratio of students to District staff – in the document developed at that meeting.

The District contends that Complainants' "minority" position may properly be recorded in an addendum attached to the IEP document, so long as the IEP identifies the existence of the addendum. In this case, the District maintains that by including e-mail correspondence in Student's special education file, it has properly documented the views expressed by Complainants at the meeting.

FINDINGS OF FACT

1. Student is an [age] year-old male living with his parents within the boundaries of Cherry Creek School District 5. Student is eligible for special education services in the category of [disability].
2. During all times relevant to this Complaint, Student was enrolled in the [grade level] at [school].
3. On February 20, 2007, Student's IEP team convened to review his special education program. The team documented that fact that Student required a behavior intervention plan due to his problems with attention, boredom and a lack of understanding of safe and harmful situations.
4. During the course of the IEP team meeting, the Complainants expressed their concern regarding Student's safety in connection with his behavioral problems. The behavior plan reflects this concern in general terms. The Complainants also communicated their desire that supervision of Student be expressed in the IEP document as a ratio of students to staff. The rest of the IEP team rejected this suggestion and the IEP was written without any ratio.
5. The IEP document provided with the District's response includes no reference to any statements or opinions on the part of Complainants with regard to the level of supervision they felt necessary to properly implement the IEP, including the behavior plan. Nor is there any reference in this document to an addendum or other attachment where Complainants' minority position was recorded as part of the IEP.
6. Complainants' reply attached two pages from a copy of the IEP document delivered to them in June, 2007. One page, entitled "IEP Special Education and Related Services" includes a typewritten notation that reads, "Please see minority report on additional information page." As noted above, this language is not present in the IEP document provided from the District's file. A second page, entitled "Additional Information" contains a typewritten addition clearly expressing Complainants' position regarding the supervision ratio. The "Additional Information" page included with the District's response also omits this language.
7. The documents furnished by the District also include email correspondence between the parties from May and June, 2007. This correspondence comprises nearly 13 pages and does not succinctly state Complainants' position regarding supervision as does the "Additional Information" page attached to the reply. Also, as stated in Finding of Fact No. 5, above, this correspondence is not referenced in the IEP as an addendum or an attachment.

8. The computer software system used by the District to generate IEP documents does not permit modification of the document forms once the file is “closed.” For this reason, any required information not put into the system at the time of the IEP meeting must be added to the printed forms by hand or typewriter at a later time.

9. The District’s response also included a page entitled “Instructions for Adding Minority Opinions – Cherry Creek School District – July 16, 2007.” The document sets forth the policy that minority opinions of IEP team members need be recorded and a procedure for doing so. The procedure states that the majority position should be recorded in the electronic version of the IEP and that minority opinions should be added later by typing them onto an addendum page or the Additional Information page. The IEP document should also “record a statement that a minority opinion exists” pursuant to this procedure.

CONCLUSIONS OF LAW

An IEP is developed by an IEP team. 20 U.S.C. §1414(d)(3). An IEP team is comprised of educators, administrators, parents and others who are involved in the education of the student. 20 U.S.C. §1414(d)(1)(B). Meaningful participation of parents is essential to the success of the IEP process and special education as a whole. 34 C.F.R. §300.501(b). In enacting the Individuals with Disabilities Education Act, Congress stated its specific intent to strengthen the role and responsibility of parents to ensure such meaningful participation. 20 U.S.C. §1400(c)(5)(B). In Colorado, IEP teams should reach decisions through group discussions and consensus. If consensus cannot be reached on an issue, then the majority and minority opinions of the team members shall be recorded as part the IEP document. ECEA Rule 4.02(6)(c). An IEP document must also include a statement of the concerns of the student’s parents for enhancing the education of their child. ECEA Rule 4.02(4)(b).

Here, the Complainants expressed a minority opinion at the time of the meeting and asked that it be included in the IEP document as required. The District’s response was that its computer system did not allow information to be added to the electronic version of the form. Its proposed solution was to include the Complainants’ emails in the Student’s special education file. As demonstrated by the record here this solution was inadequate.

As pointed out in Complainants’ reply, the computer problem described in this case is no justification for noncompliance. The District’s computer system is a tool and if that tool does not function properly then it should be repaired, replaced or supplemented by an effective policy such as the one described in Finding of Fact No. 9. The District maintains that the computer system cannot be changed. Moreover, there is no indication in the record that the policy regarding minority opinions was adopted prior to July, 2007, or, if it was, that it was followed in this instance.

The District's response accurately states that an addendum to an IEP can effectively supplement the information contained in the pages of the form itself. The response uses the example of a legal description as an attachment to a real estate deed to illustrate this point. The differences between that example and the IEP here are manifold, however. First, a legally effective addendum must be referenced in the primary document. The District concedes this when it states "language should be inserted somewhere on the IEP document indicating that an appendix containing the parents' dissenting opinion is attached, and is part of the IEP." No such statement appears in the IEP provided from the District's file. Additionally, the addendum itself – as with a legal description of real property – is ineffective if not clear and unambiguous. The 13 page assemblage of emails included with the District's reply does not clearly state the minority view of Complainants. The pages included with Complainants' reply seem to have been created with the above concerns in mind. But as these pages were not included with the District's response, it is impossible to conclude that these forms were attached to Student's IEP and actually made part of his special education file. For all of these reasons, the IEP document in this case does not adequately record the Complainants' views and therefore does not comply with ECEA Rule 4.02(6)(c).

REMEDY

Complainants established that the District failed to properly document the minority view expressed at the February 20, 2007 IEP meeting. Accordingly, the District shall immediately modify the IEP document in its file to include, at a minimum, those changes reflected in the pages provided with Complainants' reply. The policy and procedures dated July 16, 2007, appear to adequately address the defect with the IEP document in this case. However, the discrepancy between what the District provided to the Complainants (pages with typewritten amendments) and what it provided to the Federal Complaints Officer from its file (no amendments) demonstrates that the policy and procedure have not successfully been implemented to date. Consequently, the District is directed to implement the July 16, 2007, (or equivalent) modifications as follows: by informing District staff of the contents of the policy, training staff in its implementation, and ensuring that subsequently-developed IEP's appropriately record minority viewpoints. The District shall submit to the Federal Complaints Officer valid documentation of its compliance with the terms of this Decision no later than October 26, 2007. The Complaints Officer reserves the right to request additional information if the documentation submitted by the District is not sufficient to show that ordered corrective action has been completed.

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 this 24th day of August, 2007.

Keith J. Kirchubel
Federal Complaints Officer