

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

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**Federal Complaint 99:508 and 99:509**

DECISION

Federal Complaints of J.S. and S.S., Nos. 99:508 and 509, respectively. Filed by their mother, Ms. W.S., represented by Ms. R.C. of Denver ARC. Filed against Denver Public Schools on March 31, 1999.

Findings: Re: J.S.

The Denver Public Schools did not give prior written notice of the February 18, 1999 IEP meeting. Notice was by telephone or in person.

Ms. W.S. did not receive notice of her procedural rights until the February 18, 1999 IEP meeting.

Neither the principal, nor the general education teacher, attended the February 18, 1999 IEP meeting.

Ms. W.S. has "learning problems" which, at least at present, require modifications of the communication process between the school and Ms. W.S.

An independent educational evaluation would help in assessing J.S.'s special education needs.

Findings: Re: S.S.

Ms. W.S. has "learning problems" which, at least at present, require modifications of the communication process between the school and Ms. W.S.

An independent educational evaluation would help in assessing S.S.'s special education needs.

Remedies: Re: J.S.

1. All communications, oral and written, regarding J.S.'s special education services, will be sent to Ms. W.S.'s advocate, Ms. R.C., of ARC. This will continue until Ms. W.S. notifies the school that this arrangement is to stop. It is hoped that this arrangement will not have to continue into the next school year. Ms. R.C. will be working with Ms. W.S. to help her do a better job of communicating with the school system. Ms. W.S. will continue to be the consent giver for all decision making regarding her son. Having communication go through Ms. R.C. in no way changes that.
2. A new IEP meeting will be convened for J.S. Appropriate school officials should contact Ms. R.C. to arrange for this meeting at a time and place when and where Ms. W. S. and Ms. R.C. can be present, along with anyone else which Ms. W.S. indicates, through Ms. R.C., that she would like to be present. Decisions of previous IEP meetings are set aside, except to the extent Ms. W.S., through

Ms. R.C., indicates otherwise. Whether IEP meetings will need to take place both after and before the independent educational evaluation, which is also being provided as a remedy, will be up to Ms. W. S. to decide and communicate, through Ms. R.C., to the appropriate school personnel. There may need to be more than one IEP meeting. This decision should be made based upon J.S.'s needs. The school should defer to Ms. W.S.'s judgment, as communicated by Ms. R.C., in determining how many meetings may be necessary.

3. An independent educational evaluation is to take place for J.S. as soon as possible. The independent evaluation shall address J.S.'s classroom educational needs. It may, however, include evaluation information already obtained by Ms. W.S. It will also include observation of J.S. in the classroom, during his extended school year during the upcoming summer of 1999. The independent evaluation will be scheduled by Ms. W.S, and the evaluation will be paid for by the Denver Public Schools. The evaluators will be provided specific questions, regarding J.S.'s classroom educational needs, by Ms. W.S., with the help of Ms. R.C. Complete information about the independent educational evaluation will be made available to the Denver Public Schools, as soon as it becomes available. As soon as the specific questions are developed for the evaluators, Ms. R.C. will provide a copy to the appropriate person(s) in the Denver Public Schools.

#### Remedies: Re: S.S.

1. All communications, oral and written, regarding S.S.'s special education services, will be sent to Ms. W.S.'s advocate, Ms. R.C., of ARC. This will continue until Ms. W.S. notifies the school that this arrangement is to stop. It is hoped that this arrangement will not have to continue into the next school year. Ms. R.C. will be working with Ms. W.S. to help her do a better job of communicating with the school system. Ms. W.S. will continue to be the consent giver for all decision making regarding her daughter. Having communication go through Ms. R.C. in no way changes that.
2. An independent educational evaluation is to take place for S.S. as soon as possible. The independent evaluation shall address S.S.'s classroom educational needs. It may, however, include evaluation information already obtained by Ms. W.S. The independent evaluation will be scheduled by Ms. W.S, and the evaluation will be paid for by the Denver Public Schools. The evaluators will be provided specific questions, regarding S.S.'s classroom educational needs, by Ms. W.S., with the help of Ms. R.C. Complete information about the independent educational evaluation will be made available to the Denver Public Schools, as soon as it becomes available. As soon as the specific questions are developed for the evaluators, Ms. R.C. will provide a copy to the appropriate person(s) in the Denver Public Schools.

#### **CONCLUSION**

While the Complaints Officer did find that there were procedural violations which took place by the Denver Public Schools, he found no evidence of any intent to deny Ms. W.S.'s children their rights to a free appropriate public education. In communications to the Complaints Officer, Ms. P.H, Director of Special Education for DPS, Ms. R.C., and Ms. W.S., all seem to agree that Ms. W. S. has some learning problems. The intent of the Complaints Officer in having communications go through Ms. R.C., for a limited time, is to provide support for Ms. W.S. which will, hopefully, decrease communications problems with the school in the present, and will help Ms. W.S. be a better communicator in the future. In addition, given the difficulties that have occurred between the school and Ms. W.S., the Complaints Officer felt that, in addition to having communications go through Ms. R.C., an independent evaluation and an IEP meeting would also be appropriate.

If the school disagrees with recommendations which occur resulting from the independent evaluation, it can make those disagreements known at a subsequent IEP meeting. The school should also feel free to pose its own questions to the independent evaluators. In any case, more evaluation information will be available to benefit J.S. and S.S., and Ms. W.S. should feel more confident that everything has been done that can be done to make her concerns known to the school district. This should at least increase the possibility that agreement between the school and Ms. W.S. can be reached at a subsequent IEP meeting.

Dated this 2nd day of June, 1999.

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Charles M. Masner, Esq.  
Federal Complaints Officer

# STATE OF COLORADO

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### **RE: Federal Complaints 99:508 and 99:509**

CLARIFICATION OF DECISIONS DATED JUNE 2, 1999  
Provided at the request of the Denver Public Schools (DPS)

1. Ms. W.S.'s advocate, Ms. R.C. of ARC, is to receive a copy of all written notices sent to Ms. W.S., including notices of meetings, and IEP meetings, until such time as Ms. W.S. notifies DPS that this practice is to stop. If oral notices of IEP meetings, or other meetings with Ms. W.S., which are intended for the purpose of identifying, evaluating, placing, or providing a free appropriate public education for Ms. W.S.'s children, are given to Ms. W.S., Ms. R.C. should also be timely notified so that she can be present at any such meetings. See Sections 300.501(a)(2)(i) and (ii) of IDEA. A meeting does not include "informal or unscheduled conversations involving public agency personnel and unscheduled conversations on issues such as teaching methodology, lesson plans, or coordination of service provision, if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting". See Section 300.501(b)(2) of IDEA.

DPS is not prohibited from communicating with Ms. W.S. in any way that it sees best for the purpose of providing a free appropriate public education to Ms. W.S.'s children. DPS should make reasonable efforts to include Ms. R.C. in this process through notice of any meetings. This is for the purpose of decreasing misunderstandings between Ms. W.S. and DPS.

2. Ms. W.S., through Ms. R.C., has no authority to dictate IEP decisions. IEP decisions are supposed to be the result of consensus. If consensus cannot otherwise be reached, mediation and the due process hearing are available to resolve conflicts. If, however, Ms. W.S. and DPS are in agreement, there is no need to wait for a new IEP meeting to proceed with educational programming for which agreement exists.
3. Ms. W.S., through Ms. R.C., has no authority to order anyone to attend an IEP meeting. She does have the right to bring anyone to the meeting that she determines would be helpful to providing a free appropriate public education for her children - as does DPS.
4. Whether IEP meetings will need to be held before and after independent evaluations are completed is unknown to the Federal Complaints Officer. The Federal Complaints Officer contemplates that, at most, there would be two such meetings. The Federal Complaints Officer conferred no authority upon Ms. W.S., or her advocate, Ms. R.C., to determine the number of such meetings that would be necessary, other than to recommend that DPS should defer to their judgment about whether one or two meetings would be necessary.

As the Federal Complaints Officer stated in his cover letter to the parties, with his decisions dated June 2, 1999, if the parties have any questions, they are free to contact the Federal Complaints Officer.

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Charles M. Masner, Esq.  
Federal Complaints Officer  
(303)866-6685

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Date