

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

Federal Complaint 99:527
(El Paso County School District 2)

Decision

INTRODUCTION

This Complaint was received by the Federal Complaints Officer on September 29, 1999. The school's response, dated October 21, 1999, was received by the Federal Complaints Officer on October 27, 1999. The complainants responded to this response by the school, dated November 29, 1999, and received by the Federal Complaints Officer on December 2, 1999. In a letter dated December 15, 1999, and received by the Federal Complaints Officer on December 20, 1999, the school declined to provide further response and the Federal Complaints Officer closed the responsive record. An on site was conducted on February 9, 1999, which concluded the investigation.

COMPLAINANTS' ALLEGATIONS

- Changes were made to the complainants' daughter's IEP without their knowledge and input. There was no prior notification provided of the intent to change the IEP. There was no opportunity to participate in the provision of FAPE. The IEP developed on September 23, 1999 was incomplete and was missing important information from the IEP developed on April 14, 1999.
- Complainants' daughter's IEP was not appropriately implemented from May 11, 1999 through June 1, 1999, because complainants' daughter's special education teachers and complainants' daughter's interim case manager did not properly inform the substitute paraprofessionals about: the content of complainants' daughter's IEP; how to support complainants' daughter in the classroom and within the school; how to support complainants' daughter in the use of ACCESS period, resulting in complainants' daughter being injured by a male student.

Complainants' raised other concerns in their Complaint letter, but the Federal Complaints Officer has determined that these concerns are not within the jurisdiction of the Federal Complaint process.

SCHOOL'S RESPONSES

- The school admitted that there were discrepancies between the IEP of April 14, 1999, and September 23, 1999, but that these discrepancies were not intentional attempts to deny complainants their right to participate in the IEP process. The Federal Complaints Officer

characterizes the school's response as being that there were technical and administrative errors which occurred, and which the school subsequently corrected. Because of the discrepancies the school agreed to reinstate the April 14, 1999 IEP. A fact which the complainants acknowledged in their Complaint letter. According to the school, the meeting for which the complainants alleged they did not receive notice was at the request and arrangement of the complainants, and therefore there was no requirement that the school give the complainants notice of such a meeting. The complainants were not denied the opportunity to participate in the provision of FAPE for their daughter.

- The school admitted that, during the last two weeks of the school year, spring 1999 (i.e. within the time period between May 1, 1999, and June 1, 1999) – “None of the (paraprofessional) substitutes had the competencies of (substitute) or (substitute) and there was some decrement in the quality of modifications made for (complainants' daughter).” However – “Despite these circumstances, the district asserts that there was no failure to implement the IEP.” To the allegation that complainants' daughter did not receive adequate support during access period, the school stated, in relevant part, that:

“The additional Accommodations form attached to (complainant's daughter's) IEP includes a hand written phrase ‘-support use of ACCESS period.’ This statement does not say that (complainants' daughter) would be supervised during every ACCESS period. Considerable support was provided to (complainants' daughter) for productive use of ACCESS periods throughout the school year. She received instruction, coaching, prompting, and encouragement to use the ACCESS period to finish work or get help on her schoolwork. To prevent over reliance on an adult, the strategy used was to provide heavy supervision and support at the beginning of the time a paraprofessional was hired and then to gradually give (complainants' daughter) more independence. (Complainants' daughter) had demonstrated considerable growth in her relations with other students by the end of the school year. (See end of year progress report.)

“Typical students at Sierra High School are given the option of using the ACCESS period to complete work and gain teacher assistance. They are not required to do so. Many students congregate in the commons, many make purchases at the school store, many make use of the time to have a snack and talk with friends and many students take advantage of the help offered when they feel the need. The district asserts the term ‘support’ does not imply constant supervision.”

The school provided additional response information, but the Federal Complaints Officer has determined that it is unnecessary to discuss this information in order to resolve this Complaint.

COMPLAINANTS' RESPONSE TO SCHOOL

- “We do not agree with the district's view regarding the elimination and change of key components of the IEP as an oversight. This felt intentionally done.” And – “Even though the IEP dated 4/14/99 and addendum 8/27/99 has been reinstated we still ask for a determination be made to prevent this from happening again.”
- “... Our complaint specifies the districted (sic) failed to implement (our daughter's) IEP from May 11, 1999 to June 1, 1999.”

- “We feel the team on 4/14/99 understood clearly the importance of supporting (our daughter) during access period, how to support her and who would support her. We feel there should have been no confusion on how to implement this support beginning 4/14/99.”

The complainants went into greater detail on the concerns quoted, and on other concerns, either that had not been raised in their Complaint letter, or that the Federal Complaints Officer, as previously stated, had determined were not within the jurisdiction of the Federal Complaint process. The Federal Complaints Officer has determined that it is not necessary to go into the greater detail of complainants’ response in order to decide this Complaint.

FINDINGS AND DISCUSSION

The Federal Complaints Officer finds no violations by the school, subject to the jurisdiction of the Federal Complaint process, for failure of the school to appropriately work with the complainants in the creation of their daughter’s IEP. The allegations by the complainants of improprieties in the IEP process are not supported by any evidence that the school made any mistakes sufficient to deny complainants’ daughter a free appropriate public education, and, as the complainants agreed, whatever mistakes the school did make, it acted expeditiously and rectified them to complainants’ satisfaction. The Federal Complaints Officer has no ability or authority to hold the school in violation of relevant special education law because the complainants feel that something was “intentionally done.” In so saying, the Federal Complaints Officer does not mean in any way to deny the importance of the complainants’ concerns for their daughter. But, in this instance, the Federal Complaint process is not the appropriate forum to address those concerns.

The Federal Complaints Officer finds no violations by the school, subject to the jurisdiction of the Federal Complaint process, for failure to appropriately implement complainants’ daughter’s IEP during the period from May 11, 1999 to June 1, 1999. The school admitted that there was “some decrement in the quality of the modifications” made for complainants’ daughter. However, the Federal Complaints Officer finds there is insufficient evidence to show that this decrement, occurring at the end of a school year for which the complainants had not previously filed a Complaint alleging inappropriate services, rises to the level of a violation of any relevant special education law subject to the jurisdiction of the Federal Complaint process.

The Federal Complaints Officer finds no violations by the school, subject to the jurisdiction of the Federal Complaint process, for failure to adequately supervise complainants’ daughter during ACCESS period. Complainants’ daughter’s IEP did not define what “support” meant. Complainants offer one interpretation, the school offers another. It is not within the ability or authority of the Federal Complaints Officer, based upon the information available to him, to say whether the complainants and the school ever had any agreement on what “support” meant, or not. If the complainants want their interpretation to prevail, they will need to make sure that present and future IEP’s are more definitive. The Federal Complaints Officer is, of course, only speaking about the Federal Complaint process. He has no authority in any other legal forum.

CONCLUSION

This Decision will become final as dated by the Federal Complaints Officer's signature. A copy of the appeal process is attached.

Dated today, March _____, 2000.

Charles M. Masner, Esq.
Federal Complaints Officer