

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

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**State Level Complaint 2008:505**

Aurora Public Schools

**Decision**

**INTRODUCTION**

This Complaint dated March 31, 2008, was filed by Student's parent (hereafter, the "Complainant") and was received in the office of the State Complaints Officer on April 7, 2008. The Complaint was transmitted by certified mail to Aurora Public Schools (hereafter, the "District") on April 17, 2008, and receipt thereof was acknowledged by the District. The transmittal also designated those issues to be investigated subject to the authority of the state complaint process.<sup>1</sup> The response of the District, with attachments, was timely received on April 30, 2008. On May 9, the State Complaints Officer confirmed with Complainant that she had received the District's materials in response. Complainant's reply, with attachments, was received on May 23, 2008. The record was closed in this matter on May 23, 2008.

**ISSUES**

Whether the District responded appropriately to the Complainant's request for an Independent Educational Evaluation and whether the District provided required copies of procedural safeguards notices to Complainant in the period between March 31, 2007, and March 31, 2008.

**CONTENTIONS OF THE PARTIES**

The Complainant alleges that she requested that the Student's current special education needs be evaluated and that the District provided no response to the requests. She also alleges that she was not provided with procedural safeguards notices by the District

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<sup>1</sup> The Complaint also alleged that Student's educational program failed to meet the substantive requirements of a free appropriate public education. The State Complaints Officer advised Complainant in a letter dated April 17, 2008, that such issues are beyond the scope of a state-level complaint and must be raised by a due process request.

during the first year of Student's special education eligibility. Because the limitations period for state level complaints is one year pursuant to 34 C.F.R. §300.153(c), the definition of this issue was modified by the State Complaints Officer.

The District contends that it responded to Complainant's requests for evaluation by providing a list of options that she could pursue at the District's expense. The District also alleges that Complainant was provided with notices of parents' procedural safeguards as required by law.

### **FINDINGS OF FACT**

1. Student is a [AGE] [GENDER] residing within the District and eligible for special education and related services in the category of [DISABILITY]. Student has been served as a child with a disability under Part B of the IDEA since August, 2006.
2. Student's IEP team met in December, 2006, and January, 2007. There is no indication in the record of IEP team meetings or changes to Student's special education program between January, 2007 and February, 2008.
3. On February 7, 2008, Student's IEP team convened a meeting at which Student's mother was present. In the course of the meeting, Student's mother acknowledged in writing that she had been informed of her special education rights and been provided with a copy of the procedural safeguards notice.
4. On March 13, 2008, Student's mother requested in writing that the District perform a "complete re-evaluation" of Student. The letter noted that Student's most recent evaluation was performed on February 27, 2007, more than one year prior to the parent's request. The letter also requested a meeting to discuss and plan what assessments were necessary to ascertain Student's current level of expressive language skills.
5. On March 21, 2008, Complainant again wrote to the District, maintaining that she had not been contacted in response to her first letter and reiterating her request that Student be evaluated. In this letter, Complainant requested to an "Independent Educational Evaluation" to be performed at public expense, although there is no evidence of a recent evaluation performed by the District with which Complainant disagreed.
6. As of March 31, 2008, Complainant had not received any verbal or written response to her requests for an evaluation.
7. On April 14, 2008, Complainant wrote to Mr. Ralph Albertson, the District Director of Exceptional Student Services requesting a meeting on the subject of Student's need for evaluation. On April 22, 2008, Complainant again wrote to Mr. Albertson to

memorialize a telephone conversation between them that day. Complainant noted that Mr. Albertson had promised that Complainant would receive a letter from the District by April 30, approving the request for an evaluation.

8. There is no evidence in the record that the District provided a written response to Complainant's request prior to May 19, 2008. Although the District's April 29 response states that it has "provided four options for outside evaluation to be paid by APS," there is no documentary support in the record for this assertion other than the response itself.

### **CONCLUSIONS OF LAW**

The right to an Independent Educational Evaluation ("IEE") arises when a parent "disagrees with an evaluation performed by the public agency." 34 C.F.R. §300.502(b)(1).<sup>2</sup> When a parent requests an IEE, the public agency has a duty to respond "without unnecessary delay" by either agreeing to the IEE request, or by denying the request and filing for due process to defend its own evaluation. Here, Complainant did not express a disagreement with a particular evaluation previously performed by the District. Rather, the Complainant requested a reevaluation of the Student, as that term is used in §300.303(a)(2). Under either scenario, an IEE or a reevaluation, the District was required to respond to Complainant's requests with prior written notice. This is true whether the District agreed or refused to conduct the requested evaluation. §300.503(a)(1) and (2).

The evidence in this case establishes that the District did not provide written notice to Complainant in response to her requests, despite the passage of more than two months. To the extent that the District's response to the Complaint references its willingness to undertake an evaluation, that reference fails to meet the requirements of prior written notice set forth in §300.503(b). Accordingly, it is the finding of the State Complaints Officer that the District failed to appropriately respond to Complainant's requests.

Turning to the issue of whether the District appropriately provided Complainant with copies of the parents' notice of procedural safeguards, an agency is generally required to furnish one copy of the procedural safeguards during each school year. §300.504(a). Additional copies of the procedural safeguards notice must also be given to a parent upon an initial referral or parent request for evaluation and upon the filing of the first state complaint in a school year. §300.504(a)(1) and (2).

Here, the record establishes that the District did provide Complainant with a copy of the procedural safeguards in February of the current school year, which delivery was acknowledged by Complainant's signature. This represents compliance with the basic requirement of §300.504(a). However, two other actions of Complainant have triggered the duty of the District to provide additional copies of the safeguards notice. First,

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<sup>2</sup> All regulatory references are to 34 Code of Federal Regulations, Part 300, unless otherwise indicated.

Complainant requested an evaluation of Student on March 13, 2008. This event occurred within the time frame encompassed by the second issue. Upon Complainant's initiating this action, the District was obligated, again, to provide an additional copy of the safeguards. However, the time for responding to the filing of this Complaint with another copy of the procedural safeguards reasonably fell after the date of March 31, 2008. The District's response does not describe any delivery of the safeguards notice to Complainant later than February, 2008. Accordingly, the District did not establish that it provided a copy in response to the request for evaluation or the filing of the state level complaint, although the latter falls outside the time specification for this issue.

### **REMEDY**

Complainant established that she requested a reevaluation for Student and that the District did not respond as required by the authorities cited herein above. The District is therefore ordered to provide prior written notice of its response to the request for reevaluation on or before June 20, 2008. The notice shall comply with the requirements of §300.503, and shall include the offer set forth in Mr. Albertson's letter of April 29, 2008, that the District will fund the requested "independent complete evaluation" of Student (i.e. in all areas of suspected need) at a facility of Complainant's choosing from among the four identified. The evaluation shall occur as soon as possible in order to permit the results to be used for the planning of Student's education program for the 2008-09 school year by his IEP team. The schedules of Complainant and Student shall be reasonably accommodated in this process. The District shall also demonstrate that it has an express policy in place to provide notice of parents' procedural safeguards at all times required under the Individuals with Disabilities Education Act and its implementing regulations. The District shall take reasonable steps to inform and/or train its staff regarding the content and proper implementation of the policy. All corrective action specified in this Decision shall be completed no later than August 31, 2008, and the District shall demonstrate its compliance herewith by submitting written evidence to the State Complaints Officer by or before September 30, 2008.

### **CONCLUSION**

This Decision shall become final as dated by the signature of the State Complaints Officer.

Dated this 6<sup>th</sup> day of June, 2008.

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Keith J. Kirchubel  
State Complaints Officer