

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

Federal Complaint 2000:501
(Arapahoe County School District 5)

Decision

INTRODUCTION

This Complaint was dated February 10, 2000, and received by the Federal Complaints Officer on February 14, 2000. The complainant had previously written the Federal Complaints Officer in a letter dated January 5, 2000, and received by the Federal Complaints Officer on January 10, 2000. In a letter to the complainant dated January 19, 2000, and received by the complainant by certified mail on January 24, 2000, the Federal Complaints Officer limited the time period, and the scope, of complainant's allegations. The complainant indicated in her Complaint letter dated February 10, 2000, that she accepted those limitations.

In a letter dated February 15, 2000, and received by the school on February 16, 2000, the Federal Complaints Officer notified the school of the Complaint. In a subsequent letter dated February 24, 2000, and received by the school on February 25, 2000, the Federal Complaints Officer did his best to explain to the school, and by copy to the complainant, what was expected from the school in its written response to the Complaint. The school's response was dated March 13, 2000, and received by the Federal Complaints Officer on March 16, 2000. The complainant subsequently responded to the school's response in a letter dated April 14, 2000, and received by the Federal Complaints Officer on April 17, 2000. The Federal Complaints Officer then closed the record.

DISCUSSION AND FINDINGS

In his letter dated February 24, 2000, to the school, with a copy to the complainant, the Federal Complaints Officer stated:

I wish to make clear that the Federal Complaints Officer is only addressing issues of procedural violations, including allegations of failure to appropriately create or implement IEPs. The Federal Complaints Officer will not be addressing issues between the parent and the school about what appropriate services, or placement should be.

Unfortunately, this clarification has not been sufficiently understood. In her response to the school's response to her Complaint, the complainant writes for twenty three and one half pages. Much of the complainant's response addresses placement or services issues in a way that is not appropriate for the Federal Complaints Officer to resolve. The due process hearing, a court of law, mediation, the local school board and administration (for relevant personnel issues), might be appropriate forums for addressing some of the complainant's concerns, depending

upon the nature of the respective concern. Some of the complainant's concerns may not be able to be addressed in any forum in a way that is acceptable to the complainant.

The Federal Complaints Officer may have unintentionally fostered the detailed and dissective expansiveness of the complainant's response, by being insufficiently narrow in his letter of clarification, dated February 24, 2000, to the school, with a copy to the complainant. The Federal Complaints Officer was trying to be sufficiently responsive to the complainant's concerns. In any case, the Federal Complaints Officer will now do his best to focus his findings on issues relevant to the items indicated in his letter of February 24, 2000, in a way appropriate to the Federal Complaint process.

Re: Ms. Becky McCain: "She sometimes came late or canceled (sic) (sic) at the last minute. In particular, I once asked her to send a copy of (complainant's son's) IEP to our advocate at ACL and she called the next day to say she could not provide (complainant's son) with direct services that day because of my demands." (Quoting from the complainant's letter of January 5, 2000. Indication of (sic) for misspelling of canceled was the mistake of the Federal Complaints Officer. Canceled is not misspelled.)

The Federal Complaints Officer finds no wrongdoing by Ms. McCain, sufficient to rise to the level of a violation of relevant special education law, subject to the jurisdiction of the Federal Complaint process.

Re: Ms. Becky McCain: "While she was working in my home, I had opportunity to observe her use physical restraint on my son, and also perform 'therapeutic' pressure in ways I felt were excessive and unsafe to (complainant's son)." (Quoting from the complainant's letter of January 5, 2000.)

The Federal Complaints Officer finds no wrongdoing by Ms. McCain, sufficient to rise to the level of a violation of relevant special education law, subject to the jurisdiction of the Federal Complaint process.

Re: "Laradon Hall was presented to me as the only placement option, and I accepted it." (Quoting from the complainant's letter of January 5, 2000.)

The Federal Complaints Officer does not find that Laradon Hall was the only option presented to the complainant. If the dispute is about which placement should be selected from amongst competing placements, the due process hearing is the appropriate forum for resolving such disputes, if they cannot be resolved through negotiation or mediation.

"I requested copies of (complainant's son's) records and was told his file is so big it would cost me two or three hundred dollars to get it. I told them this was prohibitive for me. It was suggested that I apply to the community centered board or a charitable institution for the money, or that I make an appointment to come in and have a district employee go over the file with me. Since I am with my son 24/7, this latter option is not practical." (Quoting from the complainant's letter of January 5, 2000.)

The Family Education Rights and Privacy Act (FERPA) does allow for the charging of reasonable costs when an appropriate person requests copies of records. FERPA also provides a right to a hearing to challenge record contents, and perhaps, the Federal Complaints Officer does not know, such a hearing could be a vehicle for resolving the issue of reasonable

costs. However, the Individuals with Disabilities in Education Act contemplates an informed parent, and, it seems to the Federal Complaints Officer that having copies of appropriate student records in the school's possession, can be, at least in some instances, an appropriate part of being an informed parent. However, having said this, the Federal Complaints Officer does not find, in this instance, that the school has violated relevant special education law, subject to the jurisdiction of the Federal Complaint process, with regard to its handling of complainant's request for records.

"In the meantime, (complainant's son) is being given services in my home by a non-credentialed behavior specialist from DDC, and by two paraprofessionals. Theoretically, (complainant's son) is to receive 14.5 hours per week of direct services from these people, but this has not happened. For reasons similar to those in these segregated situations in the past, people do not show up at the appointed time. As of this moment, the behaviorist has canceled (sic) (sic) or simply failed to show up for five of the last eight appointments, and was 45 minutes late for the most recent one. One of the paras has not shown up, for one reason or another, for over two weeks. Theoretically, the paras are to do community activities, but the district tells me I must provide transportation for that, and I do not have a car. Again, this is not school. And again, the district is offering no compensatory services for this time period." (Quoting from the complainant's letter of January 5, 2000. Indication of (sic) for misspelling of canceled was the mistake of the Federal Complaints officer. Canceled is not misspelled.)

The Federal Complaints Officer finds no wrongdoing by the school, sufficient to rise to the level of a violation of relevant special education law, subject to the jurisdiction of the Federal Complaint process. That is, IEP implementation violations. The due process hearing, if resolution through negotiation or mediation cannot otherwise be reached, is the appropriate forum for resolving what services should be in the IEP.

"During this time, while (complainant's son) is out of school, Dixie has rewritten his IEP to reflect what he is (theoretically) getting, saying she cannot write an IEP specifying what he needs as no more services are available. I have rejected this IEP both verbally and in writing. There has been no response." (Quoting for the complainant's letter of January 5, 2000.)

The Federal Complaints Officer finds no wrongdoing by the school, sufficient to rise to the level of a violation of relevant special education law, subject to the jurisdiction of the Federal Complaint process.

"The district is also providing some occupational therapy through an independent clinic. However, they will not provide the equipment for the out-of-clinic support of this therapy, and as I have been unable to work since the end of last school year, I have no money." (Quoting from the complainant's letter of January 5, 2000.)

The Federal Complaints Officer finds no wrongdoing by the school, sufficient to rise to the level of a violation of relevant special education law, subject to the jurisdiction of the Federal Complaint process.

"Complainant's sole intelligible language is Signed Exact English, but the district continues to insist that (complainant's son) does not need staff who understand or 'speak sign'." (Quoting from the complainant's letter of January 5, 2000.)

The Federal Complaints Officer finds no wrongdoing by the school, sufficient to rise to the level of a violation of relevant special education law, subject to the jurisdiction of the Federal Complaint process.

CONCLUSION

This Decision will become final as dated by the signature of the Federal Complaints Officer on this Decision. A copy of the appeal procedure is attached to this Decision.

Dated today, May _____, 2000.

Charles M. Masner, Esq.
Federal Complaints Officer