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

Federal Complaint 2000:504

(Arapahoe County School District 5)

Decision

INTRODUCTION

This Complaint was dated February 17, 2000, and received by the Federal Complaints Officer on February 22, 2000. The school's response was dated and received by the Federal Complaints Officer on March 13, 2000. The complainant filed a response to the school's response dated March 23, 2000, and received by the Federal Complaints Officer on March 24, 2000.

COMPLAINANT'S ALLEGATION

The allegation made by the complainant, subject to the jurisdiction of the Federal Complaint process, was that the school did not make a determination of her daughter's eligibility for special education services within the forty-five (45) day time period, as required by 1 CCR 301-8, Rule 2220-R-4.01 (2)(c).

SCHOOL'S RESPONSE

The school responded that it had not violated the forty-five (45) day requirement of 1 CCR 301-8, Rule 2220-R-4.01(2)(c).

FINDINGS AND DISCUSSION

On November 23, 1999, the complainant submitted a signed letter to West Middle School in which she stated, in relevant part, "For the above reasons I would like to request that (complainant's daughter) be retested (sic) in the WISC, LET and Woodcock Johnson areas and any other areas you might want to examine." According to the complainant, the purpose of this testing was to examine whether her daughter had any "hidden learning difficulties." The complainant submitted this letter of November 23, 1999 as support for her allegation that the forty-five (45) day referral time began to run on November 23, 1999. She argues that her letter of November 23, 1999 constituted this referral, which included the necessary written permission for assessment required by the law.

The school responded that the letter of November 23, 1999 did not begin the forty-five (45) day clock because 1 CCR 301-8, Rule 2220-R-4.01(2)(c)(ii) required that a referral include written permission to assess. Without expressly saying so, the school rejects the complainant's

contention that her letter of November 23, 1999 included written permission to assess. The school recites its version of historical events in which it claims that the school was engaged with the complainant, and appropriate school staff, in a process of trying to determine what tests were appropriate for complainant's daughter. The school's version of these events is favorable to the school. The complainant's version of these events is not favorable to the school. The school subsequently obtained the complainant's written permission to assess on January 31, 2000, which, the school claims, triggered the forty-five (45) day eligibility clock.

The Federal Complaints Officer agrees with the school that the forty-five (45) day eligibility clock is not triggered until the parent's written permission to assess is obtained. That leaves two (2) issues for the Federal Complaints Officer to decide:

(1) Did the complainant's letter of November 23, 1999 include legally sufficient written permission to assess complainant's daughter?
(2) Was the complainant adequately informed of her rights regarding the eligibility referral process for her daughter?

The Federal Complaints Officer finds that the answer to the first question is no. The Federal Complaints Officer defers the school to the judgement of its own attorney, but the requirements of informed consent are such that the Federal Complaints Officer finds it appropriate that the school would want a specially designed form in order to document the obtaining of such consent. Not to do so, and to treat the complainant's letter of November 23, 1999 as informed consent, would not be in the best interests of the school in protecting itself against accusations that it had not obtained informed consent. Nor would it be in the best interests of protecting the rights of parents to insure that their consent was, indeed, informed.

The second question is not so easy for the Federal Complaints Officer to answer. The Federal Complaints Officer understands the school's desire to appropriately assess the complainant's daughter and that this logically would require consultation with the complainant and appropriate school staff. However, for purposes of deciding this Complaint, the Federal Complaints Officer takes the complainant at her word that she understood her letter of November 23, 1999 to be sufficient in order to begin the forty-five (45) day clock, which included her permission to assess her daughter. It seems to the Federal Complaints Officer that the complainant's letter of November 23, 1999 should have made clear to the school that this was complainant's understanding. That being the case, it also seems to the Federal Complaints Officer that better practice would have been to inform the complainant that the forty-five (45) day clock was not going to begin to run until legally sufficient written permission to assess was obtained. If this was done, the school has not supplied the Federal Complaints Officer with any information to show that it was done, and the complainant alleged that it was not done. Not informing the complainant that the forty-five (45) day clock was not going to begin to run until the permission to assess form was signed, left the complainant without knowledge that, if she had possessed, might have engaged her participation in a way that enabled her to sign the necessary permission form sooner and thus speeded up the evaluation process. At least, if the school could document that the complainant knew that the forty-five (45) day clock was not going to begin to run until written permission on the necessary form was signed, the complainant could not forcefully argue that she did not have sufficient information necessary to pursue her daughter's right to a forty-five (45) day eligibility determination.

Having said all this, however, there is no provision of which the Federal Complaints Officer is aware, in either relevant state or federal special education law, that the school has expressly, or

by sufficient implication, violated. Absent such a provision, or relevant case law, school practices alone are not subject to the jurisdiction of the Federal Complaint process. Therefore, the Federal Complaints Officer finds that the complainant, as a matter of law, was not inadequately informed of her rights regarding the eligibility referral process for her daughter.

DECISION

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

Dated today, April _____, 2000.

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Charles M. Masner, Esq.
Federal Complaints Officer