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

Federal Complaint 2000:511

(Adams County School District 50)

Decision

INTRODUCTION

This Complaint was dated March 8, 2000, and received by the Federal Complaints Officer on March 13. The school's response was dated April 11 and received by the Federal Complaints Officer, by fax, on the same date. The complainant subsequently responded to the school's response, in a letter dated April 24, and faxed to the Federal Complaints Officer that same date. In correspondence dated April 27, the Federal Complaints Officer sent a copy of the complainant's response to the school, with cover letter, and copy of cover letter to the complainant, and closed the record.

DISCUSSION AND FINDINGS

According to the complainant, the school became aware that complainant's son was residing in the school district, and was going to need special education services, at least as early as May 20, 1999, when Consumer Empowerment, the host home service provider for complainant's son, began calling the school. According to the complainant, the school never returned these telephone calls, which occurred between May 20, 1999 and August of 1999. In its response, the school did not deny this statement of the facts by the complainant. In his Complaint letter, the complainant also stated that his son had previously been a student in the school district, attending the Special Education Transition Program, as recently as the fall of 1998. In its response, the school did not deny this statement of facts by the complainant. According to the complainant, an in-person meeting took place on August 23, 1999, during which the Westminster High School Principal denied the complainant's son admission to Westminster High School. In its response, the school confirmed that the complainant's son was denied admission to Westminster High School in August of 1999. The school stated that this was because complainant's son had a felony record. The school further stated that there was no pending request for special education services at the time of this denial of admission. The complainant and the school agree that some homebound special education services began in March of 2000. The complainant states that these services are in the amount of three (3) hours per week. Since March of 2000, various discussions have evidently been ongoing about appropriate educational services for the complainant's son.

The school has not denied that complainant's son needs special education services. The Federal Complaints Officer is aware of no law, and the school has cited him to none, that made it legal for the school to deny complainant's son special education services, to which he is entitled under IDEA, notwithstanding the provisions of CRS 22-33-106. It is undisputed that the complainant's son was residing in the respondent school district as early as the spring of 1999

and that the complainant made the school aware of his son's need for educational services. The school's claim that there was no request for special education services from the complainant at the time of his denial of admission in August of 1999 is not persuasive, given that the complainant had not gotten a response from the school to his request for help until August of 1999, and then the response was to deny his son's admission to school. The school was non-responsive to complainant's son's need for special education services for his son. The school knew, and can be held to should have known, because of the telephone calls to the school, because of the August 1999 meeting at the school, because of complainant's son's past history with the school, and because of his felony conviction, that complainant's son was likely going to need the special education services that the school began providing, at least to some extent, in March of 2000. The school violated its child find responsibilities as required by 1 CCR 301-8, §2220-R-4.00, pursuant to 34 CFR 300.125 of the Individuals with Disabilities Act (IDEA). It should not be held against parents that they have not met the official referral niceties for special education services, when the school won't return telephone calls and denies their son admission. Indeed, its hard to see how an official referral could be made or required until an official admission was allowed, which the school's actions prevented.

If the complainant's son had been admitted to the school, and had committed some behavior otherwise warranting disciplinary removal, he would nevertheless have been entitled to all the protections of a special education student subject to discipline, even if not yet identified as a special education student, given the school's prior knowledge of the complainant's son's problems. See 34 CFR 300.527. If, nevertheless, the school believed that the complainant's son was a danger to himself or others, there are provisions in IDEA which allow the school to address its concerns. See 34 CFR 300.521. These provisions have never been invoked by the school.

At some point, evidently, the complainant's son was admitted to school. In its response to this Complaint, the school recites a communication initiated by complainant's Arc representative on September 20, 1999, and a subsequent meeting held on February 24, 2000. According to the school, the February 24 meeting made provision for a triennial review which, as of the date of the school's response to this Complaint, April 11, had been completed without the complainant and his wife, due to their lack of cooperation. The complainant, in his response to the school's response, denied this lack of cooperation. In any case, some homebound services were begun in March of 2000, and a triennial review was held without the complainant and his wife on April 4. The school subsequently placed the complainant's son on a wait list for Laradon Hall, a placement away from Westminster High. A subsequent communication from the school to the Federal Complaints Officer, dated May 2, 2000, indicated that the school was seeking the complainant and his wife's permission for placement of their son at Laradon Hall.

In the view of the Federal Complaints Officer, disputes between parents and schools about what are appropriate special education services, selected from a continuum of services, are best addressed in due process hearings, if they cannot otherwise be resolved through negotiation or mediation between the parents and the school. However, the dispute here, beginning at least as early as May 20, 1999, when Consumer Empowerment notified the school of complainant's son's needs, has not been about which services the school should provide, but about whether any services were going to be provided by the school. In these circumstances, it is appropriate for the Federal Complaints Officer to issue a Decision determining what educational services should have been provided. To do otherwise would inappropriately burden the complainant, by expecting him to go through another dispute resolution process, the due process hearing, which was made more difficult for him to access until his son was admitted to school. Moreover, there

is nothing in the record before the Federal Complaints Officer demonstrating how the school informed the complainant of his rights either before or after the admission of his son to the school district. Under these facts, the Federal Complaints Officer has determined that the complainant should not be expected to go through a due process hearing in order to get the Decision he is seeking.

The complainant's son has been denied a Free Appropriate Public Education (FAPE), as required by 34 CFR 300.13. This denial began possibly as early as May 20, 1999, and continued at least until March 10, 2000, when the school began providing some homebound services to complainant's son. Whether or not the complainant's son has received FAPE since March 10, 2000, is an issue, which, if there is disagreement between the complainant and the school, should be resolved in a due process hearing, if it cannot otherwise be resolved through negotiation or mediation between the complainant and the school, since, in the view of the Federal Complaints Officer, once the school began providing some services the issue between the complainant and the school became the nature of the services to be provided, including least restrictive environment, rather than whether any services were going to be provided.

REMEDY

The school shall provide the complainant's son with compensatory education necessary to compensate him for educational services that he was entitled to receive between May 20, 1999, and March 10, 2000. Whether such compensation should include the summer of 1999, is a question the Federal Complaints Officer leaves open for the complainant and the school to submit argument to him, if they cannot reach agreement.

The complainant is given fifteen (15) days from the date of his receipt of this Decision within which to submit to the Federal Complaints Officer his request for compensatory education for his son. The school will then be given fifteen (15) days to respond. If the complainant or the school believe they need more time, they will need to obtain an extension from the Federal Complaints Officer. The Federal Complaints Officer encourages the complainant and the school to enter into mediation to resolve this issue. The state will provide and pay for the mediator. In any case, the Federal Complaints Officer directs the complainant and the school to be specific in their responses and to justify how the compensatory education they are advocating compensates the complainant's son. This will require an analysis of the harm complainant's son is deemed to have suffered.

CONCLUSION

This Decision will not become final until the Federal Complaints Officer has entered an Order of Compensatory Education. At that time, the appeal time will begin to run. A copy of the appeal procedure is attached to this Decision.

Dated today, May _____, 2000.

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Charles M. Masner, Esq.
Federal Complaints Officer