

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

Federal Complaint 2002:514

Jefferson County SD R1

Decision

INTRODUCTION

This Complaint was filed, by fax, on June 4, 2002. Additional written information was received from the complainants, by fax, on June 5 and June 10, 2002. The school district's response, dated June 25, 2002, was received by the Federal Complaints Officer on June 27, 2002. The complainants' response to the school district's response to their Complaint was received, by fax, on July 9, 2002. The Federal Complaints Officer then closed the record. Subsequently, the complainants submitted, by fax, on July 10, 2002, a one (1) page letter dated July 10, 2002, which the Federal Complaints Officer also made a part of the record of this Complaint.

COMPLAINANTS' ALLEGATIONS

In their Complaint letter, dated June 4, 2002, the complainants stated, in relevant part, as excerpted by the Federal Complaints Officer, with personally identifiable information deleted, as follows:

[Proper name], principal of the Rocky Mountain Academy of Evergreen, suspended our son on May 16 for 10 days as a result of a verbal altercation in an unsupervised classroom. As of June 4, we have not received notification that the school has held an IEP review meeting, a functional behavioral assessment and/or behavior plan development, or a manifestation determination review.

We believe that a change in placement has occurred because our son has been out of school for more than 10 consecutive school days and there has been no notification of his legally mandated right to determine if the incident was related to his disability. Also, there has been no provision for educational services after the 10-day suspension was concluded. The last day of school is Thursday, June 6.

On Friday, May 31, we met with [Principal/Proper Name] and [Proper Name], President of the RMAE Board of Directors to discuss the educational status of our son. [Principal/Proper Name] and [President, RMAE Board/Proper Name] stated emphatically that if we tried to reinstate our son at the school, they would immediately expel him. Attached to this complaint is a summary of our meeting with the school on May 31.

We believe our son has been denied his right to a free appropriate public education (FAPE). Additionally, we have made repeated efforts throughout the year to resolve issues concerning our son's educational program without success and there has been a pattern of retribution by the school after requests for special education services have been made.

Id. Personally identifiable information deleted by the Federal Complaints Officer.

In addition, the complainants submitted, as a part of their Complaint filed on June 4, 2002, a copy of a letter, dated April 6, 2002, to the school district's Director of Special Education, which stated, as excerpted by the Federal Complaints Officer, with personally identifiable information deleted, as follows:

- I should have been notified that eight people from the district had been invited to the [April 3rd] meeting. It was very unexpected and intimidating. I never would have involved my son in this type of confrontational meeting. It felt like an ambush to me and worse yet, it felt like a betrayal to [son/student] by his teachers and the school principal.
- While the accommodations/modifications we finally agreed upon appear appropriate, the process to reach consensus was unprofessional and unnecessarily painful and humiliating. I felt that the staff was aggressive, defensive and callous from the very beginning of the meeting considering that I was not asking for anything out of the ordinary in terms of [son's/student's] accommodations.
- [Principal/Proper Name] attended the meeting for just a very brief period of time. He did not inform me that he would be leaving the meeting. I believe his decision to leave such an important meeting does not excuse his responsibility for the actions of his staff. In fact, at the beginning of the meeting he asked me why I had invited all these people to the meeting! (I hadn't...)
- After my son withdrew from this meeting, visibly upset, he was involved in an alleged playground altercation with some children in the after school program. [Principal/Proper Name] suspended him for the day as a result. After the hostility directed at [son/student] at the meeting, this feels to me like retribution for asking for additional resources for special education.
- [Proper Name], the acting special education teacher, does not appear to understand [son's/student's] disability or the accompanying emotional issues. Despite our repeated conversations, she could not understand the need to copy assignments into his Daily Planner for him. She argued that he can remember assignments without writing them down and gave the same example of this over and over. She insinuated that he was lying to me at home when he said that he could not remember what his assignments were or when they were due. She argued this point to the end and then only reluctantly agreed to begin carrying out the accommodation.

While everyone agreed that [son/student] is engaging in avoidance tactics, [Proper Name/Acting Special Education Teacher] attacked [son/student] in a very aggressive and callous manner on a number of issues throughout the meeting. Merely asking [son/student]

how he's doing and receiving "Everything's fine" answer does not in any way meet his IEP's direct outside classroom instruction minutes or help him to progress towards meeting his goals and objectives. I felt overall that [Proper Name/Acting Special Education Teacher] defended her unfounded and inappropriate position very aggressively even though she is not trained as a special education teacher.

- The school admitted that they do not know where [son/student] is during substantial portions of the school day. [Proper Name/Math/Science Teacher] stated that she has sent [son/student] to the special education room to work on assignments while [Proper Name/Acting Special Education Teacher] indicated that [son/student] has "never" come to her room in many weeks. Apparently no one has ever followed up to find out where he is during this timeframe. This is a small school building with very few places to "hide". [Proper Name/Math/Science Teacher] also stated that she has seen [son/student] reading in the hallway when he should be in class or receiving special education instruction, but no corrective action has been taken.
- I am uncomfortable with the arrangement made to fill the special education teacher's position. I would like to know if [Proper Name/Acting Special Education Teacher's] training and background qualify her for a special education position. In my opinion, her comments and her positions indicate that she does not understand the needs of special education very well. Is it legal to have an "uncertified" person in this critical position that is only supervised casually by another special education teacher? [Proper Name] now teaches first grade full time and did not appear to be aware of many of the issues that were occurring with [son/student].
- [Proper Name/Special Education Supervisor/First grade Teacher] attacked me at the beginning of the meeting by stating that we had come to an agreement about accommodations and/or modifications for [son/student] without having any special education personnel present. I believe it is not my responsibility as a parent to ensure that the appropriate staff members attend meetings. The school scheduled a meeting on Friday, March 15 at 7:45 a.m. in response to my request for a review of [son's/student's] IEP. [Proper Name/English/Social Studies Teacher] and [Proper Name/Math/ Science Teacher] were present at this meeting. [Proper Name/Principal] was present during portions of the meeting. [Proper Name/Acting Special Education Teacher] did not inform me that she would not be at the meeting.

A follow-up meeting was scheduled for March 27 at 3:30 to review and finalize the suggestions made at the first meeting, including a request for an AT referral. The school canceled the meeting on March 27 and I agreed to reschedule on April 3. [Proper Name/Special Education Supervisor/First Grade Teacher] made a point of stating that she knew nothing about the first meeting and that we had no right to make any decisions without her being present. I believe it would be the school's responsibility to have [Proper Name/Special Education Supervisor/First Grade Teacher] attend the meeting since [Proper Name/Acting Special Education Teacher] is not qualified to make decisions or sign documents. Also, [Proper Name/Acting Special Education Teacher] could have notified me that she was unable to attend the first meeting so that we could have re-scheduled.

- [Proper Name/Special Education Supervisor/First Grade Teacher] attacked me on the issue of the request for an AT referral. She stated that [son/student] does not use his Alpha Smart consistently (true) and often does not know where it is (also true). After she stated that he

had not brought it to school in months (not true), it was discovered that the Alpha Smart was in fact in his classroom all along. She neglected to acknowledge that one of [son's/student's] IEP goals is to learn how to type and that he is not receiving any instruction in typing at the present time, despite repeated requests. [Proper Name/Special Education Supervisor/First Grade Teacher] was adamant that he does not need any additional resources to help him with his written language problems. On my own initiative, I visited [Proper Name] at the [Proper Name] School to learn how to use the Dragon Speak voice activated program and to ask him for a copy of the AT referral. He was extremely helpful and felt that [son/student] could benefit from this type of assessment. I completed an AT referral for [son/student] and gave this document to [Proper Name/Special Education Supervisor/First Grade Teacher] at the meeting.

- [Proper Name/School Psychologist] made the suggestion that we should withhold music class as a punishment for [son/student] not learning organizational skills. It is inappropriate to take away a class that other students regularly have access to and particularly inappropriate to take away a class that a disabled student enjoys. This approach is indicative of the school's philosophy of punishing [son/student] for his disability rather than accommodating the disability to teach him in the mainstream.
- In my opinion, the staff members consistently failed to acknowledge or comprehend the disability that limits [son/student] from keeping track of his written assignments and his homework despite a series of documented test results and evaluations. Both [Proper Name] and [Proper Name] attempted several times to explain that [son's/student's] problems were fairly common in students with his learning profile.

Id. Personally identifiable information deleted by the Federal Complaints Officer. Bracketed information supplied by the Federal Complaints Officer. Parentheses and quotation marks in original.

In their response to the school district's response to their Complaint, received July 9, 2002, with additional information received July 10, 2002, the complainants made further allegations, both factual and legal. The school district was not provided with an opportunity to respond to these further allegations. To the extent that the complainants' response raises allegations not raised in their Complaint filing of June 4, 2002, and to the extent any such allegations are not subject to the jurisdiction of the Federal Complaint process, the Federal Complaints Officer is not addressing such allegations in this Decision. The complainants are entitled to file further Complaint, subject to the jurisdiction of the Federal Complaint process, should they choose to do so. They are also entitled to seek a due process hearing on all issues subject to the jurisdiction of the Federal Complaint process, including issues also subject to the jurisdiction of this Complaint .

SCHOOL DISTRICT'S RESPONSE

By telephone call of June 13, 2002, the Federal Complaints Officer spoke to the school district's attorney and confirmed that the school district needed to respond to the allegations by the complainants that the school district had violated relevant disciplinary provisions of the

Individuals with Disabilities Education Act (IDEA) regulations. It was also confirmed that the school district needed to respond to the allegations made in the complainants' letter of April 6, 2002, to the Jefferson County Director of Special Education, which the complainants submitted as a part of their Complaint.

The school district's response, received June 27, 2002, states, in relevant part, as excerpted by the Federal Complaints Officer, with personally identifiable information deleted, as follows:

The District specifically denies that it has committed any procedural or substantive violation of the IDEA concerning the provision of services to [student] during the 2001-2002 school year and [student's] suspension in May of 2002. Additionally, although it appears that some mis-communication occurred during the April 3, 2002 meeting, there was certainly no intent by RMAE staff to intimidate or be purposely hostile to the Complainants or to [student] during this meeting, or during any other communication with the Complainants this past school year.

Nevertheless, it appears that the Complainants have been understandably frustrated and confused by some of the communications and events that have occurred this past school year at RMAE, especially regarding [student's] suspension in May of 2002. Moreover, it appears that despite RMAE's efforts to hire a qualified special education teacher for the second semester of the 2001-2002 school year, RMAE was unable to hire such staff and, therefore, the implementation of [student's] IEP during the spring semester of this past school year was arguably inconsistent.

Id. Personally identifiable information deleted by the Federal Complaints Officer.

FINDINGS AND DISCUSSION

The Federal Complaints Officer finds that the school district violated 34 CFR 300.523 and 34 CFR 300.503 of the IDEA regulations. In so finding, the Federal Complaints Officer is finding that this student was subject to a change of placement, including a disciplinary removal that lasted longer than ten (10) days, as defined by 34 CFR 300.519, and that a manifestation determination review was not timely held, as required by 34 CFR 300.523, and that proper notice was not timely given, as required by 34 CFR 300.503. The Federal Complaints Officer also finds that no functional behavioral assessment (FBA) or behavioral intervention plan (BIP) was timely or appropriately developed or revised as required by 34 CFR 300.520(b) (1) (i). In making these findings, the Federal Complaints Officer is also finding that there was at least one (1) day of suspension beginning on April 3, 2002, prior to the ten (10) days of suspension beginning on May 16, 2002. The Federal Complaints Officer is also finding that the school district inappropriately denied this student access to a free appropriate public education (FAPE) subsequent to the expiration of the ten (10) day suspension which commenced on May 16, 2002.

The Federal Complaints Officer also finds that the failure of the school district to provide appropriate special education services and staff for this student during the spring semester of

the 2001-2002 school year resulted in a denial of FAPE for this student during this time period. FAPE is defined at 34 CFR 300.13 of the IDEA regulations.

REMEDIES

- 1) Subsequent to the filing of this Complaint, according to information submitted to the Federal Complaints Officer by both the complainants and the school district, the complainants and the school district had discussion in an attempt to resolve their differences. As a part of that discussion, the school district offered thirty (30) hours of compensatory education. The complainants ask for thirty-four (34) hours of compensatory education. The Federal Complaints Officer finds, and orders, that thirty-four (34) hours of compensatory education should be provided. This shall be done no later than the last day of the fall school semester, 2002.
- 2) The Federal Complaints Officer orders the school district to provide in service education to the entire staff at Rocky Mountain Academy of Evergreen (RMAE) - not only in the disciplinary requirements of IDEA, but in all other requirements of IDEA. The Federal Complaints Officer leaves it to the initial discretion of the Director of Special Education to determine the scope, content, duration, and educator(s) for this in service. However, it is the expectation of the Federal Complaints Officer that this in service be extensive and thorough, and that a mechanism be put in place to insure that it is ongoing, as necessary. The Director of Special Education shall submit the in service plan to the Federal Complaints Officer for approval prior to its implementation. This shall be done no later than by the end of the first month of the fall, 2002 school semester, and the in service shall be completed no later than by the end of the fall school semester, 2002. Documentation of appropriate completion of this in service, by the entire staff of RMAE, shall be submitted to the Federal Complaints Officer within thirty (30) days of its completion.

The relief of private education at public expense that the complainants are seeking is not within the authority of the Federal Complaints Officer to determine. If the complainants wish to continue to seek this relief, they will need to request a due process hearing to do so. The Federal Complaints Officer also has no authority to order the school district to send letters to the Jefferson County Sheriff's Office, or order the school district to request that the Jefferson County Sheriff's Office drop a criminal investigation. Nor does the Federal Complaints Officer have authority to order school personnel, or anyone else, to make apologies. Allegations of harassment (retribution/hostile environment) because of disability are not, per se, within the jurisdiction of the Federal Complaints process. The Office for Civil Rights (OCR) has jurisdiction to investigate complaints based on such allegations. The complainants' request for counseling fees is denied because the Federal Complaints Officer finds the encumbrance of such fees was insufficiently related to the denial of FAPE experienced by the student. The allegation made in the complainants' letter dated July 10, 2002, of a lack of supervision for their son during lunch/recess on April 11, 2002 – which complainants allege resulted in injury to their son resulting in medical treatment costs of \$1,517.25 – is also an allegation, as stated by the complainants, and given the relief that they seek, that is not subject to the jurisdiction of the Federal Complaint process. As for any disputes over education records, the complainants are entitled to access those records, and to challenge their content, in accordance with the Family Educational Rights and Privacy Act (FERPA), incorporated by reference in IDEA. The school

district is directed to respond to the complainants' records requests in accordance with these legal provisions, if it has not already done so at the time of its receipt of this Decision.

CONCLUSION

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

Dated today, July _____, 2002.

Charles M. Masner, Esq.
Federal Complaints Officer