

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

Federal Complaint 2002:527

Douglas County School District RE-1

Decision

INTRODUCTION

This Complaint was dated 10/23/02 and filed on 10/28/02. The response of the Douglas County School District RE-1 (District) to the Complaint was dated 11/15/02 and received by fax on that same date. The Complainant's response to the District's response was due on 11/30/02. On 11/27/02 the Complainant requested and received an extension of time to 12/06/02 to file her response to the District's response. The Complainant's response to the District's response to the Complaint was dated 12/03/02 and received on 12/06/02. On 12/19/02, the Federal Complaints Officer contacted the District's assistant special education director for additional information. The Federal Complaints Officer then closed the record on 12/19/02.

The Complainant is the parent of an elementary school student who has been identified as having a primary hearing disability and a secondary speech/language disability.

COMPLAINANT'S ALLEGATIONS

- 1) The District has failed to provide interpreting services as required by the student's 10/24/01 IEP, presumably¹ in violation of 34 C.F.R. § 300.350(a) (1).²
- 2) The 10/24/01 IEP fails to state the anticipated frequency, location and duration of services, presumably in violation of § 300.347(a)(6).
- 3) The parent has recently received a draft IEP for an upcoming IEP team meeting, and the draft IEP has changed the provision of interpreting services for her son without any notice in writing to the parent, presumably in violation of § 300.503.
- 4) IEP team meetings have occurred without the appropriate designee from the District, presumably in violation of § 300.344(a)(4).

¹ The Complaint did not contain any cites to statutory authority in support of the allegations.

² Hereafter the IDEA regulations will be cited by section number only, e.g., § 300.350(a)(1).

- 5) The 10/24/01 IEP was corrected and revised on or about 01/29/02 without convening the student's IEP team, presumably in violation of §§ 300.343, 300.345 and 300.346(b).
- 6) The student's IEP goals and objectives for the last two years call for teacher observation which is a subjective and not an objective measure, presumably in violation of §300.347(a)(2)(i). Because this claim is alleged as a continuing violation, the Federal Complaints Officer concludes that she has jurisdiction over this claim.
- 7) With regard to the student's OT goals, the District has failed to provide the parent with information regarding her son's progress towards those goals as required by the student's IEP (i.e., "...parent(s) will be regularly informed of progress to the extent of nondisabled children...."), presumably in violation of §§ 300.343(c) and 300.347(a)(7).
- 8) For the last two years, the District has failed to provide the mentoring services established by the student's communication plan, presumably in violation of § 300.350(a)(1).
- 9) In February 2002, the parent was informed by the school principal that her son was no longer qualified to attend the DHH program at [Elementary School] and the parent would have to apply for open enrollment if the parent wanted the student to remain at [Elementary School], presumably in violation of §§300.501(a)(2) and 300.552(a).
- 10) Meetings have taken place regarding the student without the parent's knowledge, and those meetings have resulted in changes in the student's service provision and delivery. The Complaint does not set forth specific details in support of this allegation. Absent specific details, the Federal Complaints Officer interprets this allegation as duplicating Allegation #5, above.
- 11) The DHH teacher has persistently ignored the parent's request for written information regarding service delivery for her son, presumably in violation of § 300.562.

THE DISTRICT'S RESPONSE

The District concedes that it did not provide all of the interpreting services called for on [Student's] IEP during the beginning of the 2002-2003 school year and that it has not provided an adult mentor with a cochlear implant for the student. The District generally denies the remaining allegations. The District's specific responses are noted below.

FINDINGS OF FACT AND CONCLUSIONS

Allegation 1. The District has failed to provide interpreting services as required by the student's 10/24/01 IEP, presumably in violation of § 300.350(a)(1).

§ 300.350 establishes the standard of accountability for public agencies (e.g., school districts) in the provision of special education services to students with disabilities. § 300.350(a)(1) provides that each public agency must provide special education and related services in accordance with the child's IEP.

In its response, the District concedes that it did not provide all of the interpreting services called for on [Student's] IEP during the beginning of the 2002-2003 school year. A letter dated 08/23/02 written by the student's DHH teacher to the Complainant states that "[Student] is owed 21 hours of missed signing para/interpreter hours. We have made up 6 of those hours so far. Due to the increase of time the interpreters are with him during the day, we will have the time made up in 6 weeks." The District further states in its response that, although [Student] did not initially receive all of the interpreting services called for by his IEP, [Student] is "achieving at grade level in reading, science, social studies and math concepts. The areas where he is challenged are those that involve fine motor skills for writing." During a telephone interview on 12/19/02, the District's assistant special education director stated that the reason that the District did not provide [Student] with all of the specified interpreter hours was due to a breakdown in communications and not due to a hiring issue. The assistant special education director did not know whether all of the "owed" interpreter hours had been made up. She further stated that it was not clear that providing compensatory services would serve any purpose because the interpreter services are intended to allow [Student] to access academic instruction. The Complainant has made the same point on page 2 of her Complaint letter – "This representation of the issue as communication access support equaling a number of hours that can be 'made-up' vs. its true purpose to provide equivalent access to the communication in [Student's] classroom based on his IEP is a grave concern to me."

The Federal Complaints Officer finds that, during the relevant time period (07/08/02 through approximately 08/23/02), [Student's] 10/24/01 IEP required the District to provide [Student] with 1.5 hours of indirect services and 16 hours of direct services per week by an interpreter/signing paraprofessional. The Federal Complaints Officer finds that, during the relevant time period, the District failed to provide [Student] with 21 hours of interpreting services. The Federal Complaints Officer concludes that the District violated § 300.350(a)(1).

Allegation 2. The 10/24/01 IEP fails to state the anticipated frequency, location and duration of services, presumably in violation of § 300.347(a)(6).

§ 300.347(a)(6) in relevant part requires that the IEP for each child with a disability include the anticipated frequency, location and duration of the special education services, related services and supplementary aids and services to be provided to a child. The amount of services to be provided must be sufficiently stated in the IEP so

that the level of the agency's commitment of resources will be clear to parents and other IEP team members. *Notice of Interpretation*, Appendix A to 34 CFR Part 300, Question 35. Weekly allocations of time, rather than precise daily allocations, are appropriate where the child's disability is such that the services necessary to meet the child's needs could not be reflected through a daily allocation. *Letter to Copenhagen*, 21 IDELR 1183 (OSEP 1994). An IEP is not intended to be a detailed instructional plan. *O'Toole v. Olathe District Schools Unified School District No. 23*, 144 F. 3d 692 (10th Cir. 1998).

The Federal Complaints Officer finds that [Student's] disabilities and unique needs are such that the services to be provided to him cannot be reflected through a daily allocation of time, especially with respect his unique needs that are the result of his hearing disability. Specifically, [Student] does not require an interpreter/signing paraprofessional at all times, and the precise times when [Student] does require interpreter/signing services are not necessarily predictable with regard to frequency or duration. For that reason, it is not feasible to precisely state on [Student's] IEP the frequency and duration of the services to be received by [Student]. The Federal Complaints Officer finds that the 10/24/01 IEP does specify that [Student] is to receive "DHH, S/L, interpreter/signing para, OT services in class/pullout to access the general curriculum during regularly scheduled school days; *PT staff consult .5-6 hours/semester for safety issues w/PE, OT, staff." The Federal Complaints Office also finds that the 10/24/01 IEP states the specific amount of weekly services and the location where those services will be provided, i.e., indirect (consultation), integrated services in the general classroom and direct services outside the general classroom. The Federal Complaints Officer concludes that the 10/24/01 IEP meets the minimum requirements of §300.347(a)(6).

Allegation 3. The parent has recently received a draft IEP (dated 9/4/02) prior to an upcoming IEP team meeting, and the draft IEP has changed the provision of interpreting services for her son without any notice in writing to the parent, presumably in violation of § 300.503.

Written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the educational placement of the child. § 300.503(a)(1)(i). However, school personnel may come to an IEP meeting prepared with proposed recommendations regarding IEP content. In such a case, school personnel must make it clear to the parent that the services proposed by the school are only recommendations for review and discussion with the parent. *Notice of Interpretation*, Appendix A to 34 CFR Part 300, Question 32.

In its response, the District states that the draft IEP was sent to the Complainant prior to the IEP meeting with an attached note asking the Complainant to review it and to bring any questions or comments to the IEP team meeting. The District submitted a copy of the draft IEP and the note. In her response, the Complainant does not dispute the District's explanation of what occurred.

The Federal Complaints Officer finds that the draft IEP was a recommendation for services and not a formal proposal to change [Student's] educational placement. The Federal Complaints Officer finds that the District informed the Complainant prior to the IEP team meeting that the IEP was a draft and subject to the Complainant's prior review and further discussion at the IEP team meeting. The Federal Complaints Officer concludes that the District did not violate § 300.503 (a)(1)(i).

Allegation 4. IEP team meetings have occurred without the appropriate designee from the District, presumably in violation of § 300.344(a)(4).

§ 300.344 (a)(4) requires that the IEP team include a representative of the public agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; who is knowledgeable about the general curriculum; and who is knowledgeable about the availability of resources of the public agency. "Each public agency may determine which specific staff member will serve as the agency representative in a particular IEP meeting, so long as the individual meets these requirements. It is important, however, that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided." *Notice of Interpretation*, Appendix A to 34 CFR Part 300, Question 22.

The parties are in disagreement regarding whether [Student's] DHH teacher is an appropriate designee of the District in connection with the IEP team meeting that was originally scheduled for 09/04/02. The Complainant has stated that the DHH teacher admitted during that meeting that she did not have the authority to commit the District's resources and that the IEP meeting was rescheduled for this reason. However, in its written response, the District states that the DHH teacher is an authorized designee for the District and does indeed have the authority to commit the District's resources. During a telephone interview on 12/19/02, the District's assistant special education director stated that the DHH teacher did tell the Complainant that she did not have the authority to approve the Complainant's request that the District pay for extra parts for [Student's] cochlear implant because such an expense was not, under any circumstance, an appropriate expenditure by the District. According to the assistant special education director, that conversation was taken out of context by the Complainant. The assistant special education director reaffirmed that the DHH teacher is an authorized designee of the District who has the authority to commit the District's resources.

When facts are in dispute, the usual process in most legal settings for resolving the dispute is through an evidentiary hearing in which individuals testify under oath, and the testimony is then subject to cross-examination. It is through this process that the fact finder determines the credibility of the individuals, and, by extension, which version of the facts is the more credible. The Federal Complaint process, unlike the due process hearing, makes no provision for an evidentiary hearing. Another way of resolving a factual dispute is to examine the documentation submitted by the parties and the surrounding circumstance to see whether they provide a definite answer.

The Federal Complaints Officer has no transcript or recording of the conversation between the Complainant and the DHH teacher. The Federal Complaints Officer has carefully examined the information submitted by the parties. The Federal Complaints Officer finds that there is insufficient evidence to conclude that that District violated § 300.344 (a)(4).

Allegation 5. The 10/24/01 IEP was corrected and revised on or about 01/29/02 without convening the student's IEP team, presumably in violation of §§ 300.343, 300.345 and 300.346(b).

The parties agree that the 10/24/01 IEP was changed on or about 01/29/02. The District contends that the changes were ministerial corrections only and that no substantive changes were made. In her response to the District's response to the Complaint, the Complainant does not dispute the District's explanation that the changes made to the 10/24/01 IEP were merely ministerial in nature.

The Federal Complaints Officer has carefully compared the original 10/24/01 IEP with the revised version. The Federal Complaints Officer finds that the corrections to the IEP were merely ministerial. The Federal Complaints Officer concludes that, with respect to this allegation, the District did not violate §§ 300.343, 300.345 or 300.346(b)

Allegation 6. The student's IEP goals and objectives for the last two years call for teacher observation which is a subjective and not an objective measure, presumably in violation of §300.347(a)(2)(i).

§ 300.347 (a)(2)(i) requires that the IEP contain a statement of measurable annual goals and objectives, including benchmarks or short-term objectives (1) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, and (2) meeting each of the child's other educational needs that result from the child's disability.

Goals and objectives must be measurable, and the IEP must describe how the goals will be measured so that the student's progress toward his or her goals and objectives can be determined. However, nothing in the IDEA, its implementing regulations or in Colorado's Exceptional Children's Educational Act (ECEA) and its implementing rules prohibits the use of teacher observation as method for measuring student progress.

The Federal Complaints Officer finds that teacher observation is a valid method for measuring student progress. The Federal Complaints Officer has carefully examined the goals and objectives contained in the 09/02/00 and 10/24/01 IEPs. The Federal Complaints Officer finds that those goals and objectives are measurable and that those IEPs do specify how the goals and objectives will be measured. The Federal Complaints Officer concludes that the District has not violated §300.347(a)(2)(i).

Allegation 7. With regard to the student's OT goals, the District has failed to provide the parent with information regarding her son's progress towards those goals as required by the student's IEP (i.e., "...parent(s) will be regularly informed of progress to the extent of nondisabled children..."), presumably in violation of §§ 300.343(c) and 300.347(a)(7).

§ 300.343(c) requires the IEP team to review each child's IEP at least annually. § 300.347(a)(7)(ii) provides that the IEP must contain a statement of how the child's parents will be informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of their child's progress toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the annual goals by the end of the year.

The 10/24/01 IEP (at P7-Page 1 of 10) provides that the parent will be regularly informed of progress to the extent of nondisabled children. The parties do not agree regarding whether the District informed the Complainant of [Student's] progress toward his OT annual goal. The Complainant states that when she asked [Student's] OT provider during a recent IEP meeting for information regarding "what progress [Student] has made since he started at the [Elementary School] in July 2000, [the OT provider] told me that she was unable to provide me with that information." In its response, the District provided documentation (Exhibit E, pp. 5-6) showing that [Student] had made some progress towards his OT goals. During a 12/19/02 phone conversation, the District's assistant special education director stated that the information contained in Exhibit B had been provided to the Complainant on or about 10/14/01, 2/19/02, 5/16/02 and either 8/29/02 or 09/03/02.

As was indicated above, the Federal Complaints process, as it is currently constructed, is not well-suited for resolving factual disputes. The Federal Complaints Officer has no transcript or tape recording of the conversation referenced in the previous paragraph. The Federal Complaints Officer has carefully reviewed the documentation submitted by the parties. The Federal Complaints Officer finds that the District has submitted credible documentary evidence that it did inform the Complainant of its assessment of [Student's] progress toward his OT annual goal on 4 different occasions between 10/14/01 and 09/03/02. The Federal Complaints Officer concludes that the District did not violate §§ 300.343(c) and 300.347(a)(7).

Allegation 8. For the last two years, the District has failed to provide the mentoring services established by the student's communication plan, presumably in violation of §300.350(a)(1).

The District concedes that it was unable to locate an appropriate adult mentor with a cochlear implant for [Student] as was specified by [Student's] communication plan, and the Federal Complaints Officer finds that that was the case. The Federal Complaints Officer concludes that, with respect to this allegation, the District violated §300.350(a)(1).

Allegation 9. In February 2002, the parent was informed by the school principal that her son was no longer qualified to attend the DHH program at [Elementary School] and that the parent would have to apply for open enrollment if the parent wanted the student to remain at [Elementary School], presumably in violation of §§ 300.501(a)(2) and 300.552(a).

The parties agree that no unilateral change of placement occurred in connection with the facts supporting this allegation. The Federal Complaints Officer finds that the District did not unilaterally change the educational placement of [Student] in February 2002. The Federal Complaints Officer concludes that, with respect to this allegation, the District did not violate §§ 300.501(a)(2) and 300.552(a).

Allegation 10. Meetings have taken place regarding the student without the parent's knowledge, and those meetings have resulted in changes in the student's service provision and delivery. The Complaint does not set forth specific details in support of this allegation. Absent specific details, the Federal Complaints Officer interprets this allegation as duplicating Allegation #5, above.

Please see the findings and conclusion set forth in Allegation 5, above.

Allegation 11. The DHH teacher has persistently ignored the parent's request for written information regarding service delivery for her son, presumably in violation of § 300.562.

§ 300.562(a) provides that participating agencies (e.g., school districts) shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under Part B of the IDEA. The term "education records" under the IDEA has the same meaning as "education records" under the Family Educational Rights and Privacy Act of 1974 (FERPA). § 300.560(b). FERPA defines "education records" as records that are directly related to a student and that are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 C.F.R. § 99.3. The school district must comply with a parent's request to inspect and review his or her child's education records "without unnecessary delay and before any meeting regarding an IEP or a due process hearing] and in no case more than 45 days after the request has been made." § 300.562(a). If an education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information. § 300.564.

It is undisputed that the Complainant has requested an accounting of the hours of interpreter services provided to her son, and the District does not dispute this fact. To the extent that Complainant claims that she is entitled to a daily log documenting the hours of interpreter services that have been provided to her son, the Federal Complaints Officer finds that [Student's] 10/24/01 IEP did not require the District to create such a daily log.

However, during a 12/19/02 telephone interview, the District's assistant special education director stated that the [Elementary School] does maintain a master schedule that documents the hours of service provided to each students with a disability at the school (including [Student]) by the interpreter paraprofessionals. The Federal Complaints Officer finds that the master schedule is an educational record as defined by § 300.560(b), and that the Complainant has requested access to the kind of information relating to her son that is documented on the master schedule. The Federal Complaints Officer finds that the District is not required to allow the Complainant to inspect the master schedule because it contains information concerning students with disabilities in addition to information concerning [Student]. The Federal Complaints Officer does find that the District is required to inform the Complainant of the information on the master schedule relating to [Student], and that the District has failed to do so. In this respect, the Federal Complaints Officer concludes that the District has violated § 300.562(a).

Additional Allegations Raised by Complainant. In her response to the District's response to the Complaint, the Complainant has raised the following new allegations: (1) For the last 3 years the District has constantly undermined the Complainant's role as an equal member of the IEP team; (2) During the 1999-2000 school year, the Complainant worked with her son at home because the District did not offer an appropriate placement for her son; (3) The District refused to implement the majority of the recommendations made by from Lenox Hill Hospital after [Student's] cochlear implant surgery in 1999; and (4) the District delayed in implementing its SWAAC evaluation recommendations made in a report dated 09/12/00.

These allegations are outside the scope of the Complaint that went to the District and to which the District was asked to respond. The Complainant is not limited to the number of federal complaints that she can file, although, depending on the circumstances, she may be limited to a one (1) year regulatory statute of limitations. See, § 300.662(c).

REMEDY

The Federal Complaints Officer has found that the District has violated §§ 300.350(a)(1) and 300.562(a). The Complainant has not alleged in either her Complaint or in her response to the District's response to the Complaint that any of the District's violations have deprived [Student] of a free appropriate public education, and the Federal Complaints Officer makes no such finding or conclusion. With regard to interpretive services, both the Complainant and the District agree that compensatory services for the hours of interpretive services that were not provided to [Student] would serve no useful purpose.

Therefore, the Federal Complaints Officer orders the following remedies:

- 1) Within 20 days of the District's certified receipt of this Decision, the District shall inform the Complainant of the information contained on [Elementary School's] master schedule or any other education record as defined by § 300.560(b) that

documents the amount of interpreter services that have been provided to date to [Student] since 07/08/02. Within 30 days of the District's certified receipt of compliance with this letter, the District's special education director shall submit to the Federal Complaints Officer a letter describing how compliance with this remedy was accomplished.

- 2) Within thirty (30) days of the date of the District's certified receipt of this Decision, the District's special education director shall submit to the Federal Complaints Officer a written statement that the District recognizes and accepts as valid every violation found by the Federal Complaints Officer. This statement shall include a statement of assurance explaining how the violations found will be addressed to prevent their recurrence.

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 December 23, 2002.

Laura L. Freppel
Federal Complaints Officer