

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

Federal Complaint 2004:501

Weld County School District No. 6

Decision

I. INTRODUCTION

This Complaint was dated January 29, 2004, and received by the Federal Complaints Officer on February 6, 2004. The school district's response was dated February 27, 2004, and received by the Federal Complaints Officer on the same date. The complainants' response to the school district's response to their Complaint was undated, and was received by the Federal Complaints Officer on March 11, 2004. The Federal Complaints Officer then closed the record.

On March 13, 2004, the Federal Complaints Officer received voice mails from the complainants asking that they be able to submit additional information, due to new developments at school. The complainants were told that they could submit the information, and the Federal Complaints Officer would determine after reviewing it whether it would be considered as a part of this Complaint. The Federal Complaints Officer subsequently reviewed the information and determined that it contained allegations not subject to the jurisdiction of the Federal Complaint process. Therefore, this additional information submitted by the complainants was not considered in deciding this Complaint.

II. COMPLAINANTS' ALLEGATIONS

The complainants allege:

1. They were not appropriately informed of their right to file a Complaint;
2. During the extended school year (ESY) 2003, their daughter did not receive IEP required updates for her AC device;
3. IEP required transition services have not been appropriately implemented for their daughter;
4. Their daughter was not timely provided with the services of an IEP required special education teacher until September 22, 2003;
5. Progress notes are inconsistent or missing from their daughter's file.

III. SCHOOL DISTRICT'S RESPONSE

The school district responds:

1. The complainants were timely and appropriately informed, orally and in writing, of their right to file a Complaint, and of their other dispute resolution rights;
2. The school district states that it does not know the basis for this allegation, nor does it understand why the allegation constitutes a failure to implement the student's IEP;
3. The school district states that the complainants' daughter's IEP transition services have been appropriately implemented;
4. The school district states that complainants' daughter has always been provided with the services of a certified special education teacher;
5. The school district maintains that complainants' daughter has received her report cards at least as often as other students, and even if progress notes are inconsistent or missing from the student's file, this has not affected complainants' ability to participate in their daughter's educational program planning.

IV. FINDINGS AND DISCUSSION

1. The Federal Complaints Officer finds no violation by the school district. The school district has submitted documents going back to January 29, 2001, including a document as recent as September 24, 2003, indicating that the complainants had received the Educational Rights of Parents publication, written and approved by the Colorado Department of Education. The school district also states that the director of special education orally informed the parents of their rights on multiple occasions, and the complainants did not deny that these communications had occurred.
2. The IEP effective for the extended school year of 2003 was the IEP created on October 22, 2002, a copy of which was submitted by the school district as Exhibit N. That IEP indicates that the complainants' daughter was entitled to extended school year services, and includes specific goals and objectives written for ESY 2003, submitted by the school district as Exhibit G. That IEP also indicates that the student required assistive technology services and/or devices, and describes those services and devices as: "[S]tudent requires use of computer, switches, augmentative and communicative devices to let her needs be known." The complainants claim that this included updates for an AC device, and that these updates were not provided. The school district claims that it "... does not know the basis for this allegation, nor does it understand why this allegation constitutes a failure to implement [the student's] IEP." The Federal Complaints Officer does not find the school district's response credible. However, neither does the Federal Complaints Officer find evidence sufficient to conclude that any failure of the school district to provide AC updates for this student has necessarily resulted in the denial of a free appropriate public education (FAPE) for this student. If this determination is going to be litigated, the appropriate forum is a due process hearing, which the complainant parents are entitled to request.
3. This student's birthday, according to copies of her IEPs submitted by the school district, is [DOB]. At the time the most recent reauthorization of the IDEA was passed, 1997, the student was fourteen (14) years of age and entitled to have her transition needs identified on her IEP. At age sixteen (16), the 1999-2000 school year, transition services are to be listed on the IEP. The parent complainants, as a part of their Complaint,

submitted a timeline of concerns going back to 1988. The school district, in accordance with the request of the Federal Complaints Officer, also submitted documentation going back to 1988. It is clear that some transition services have been stated on this student's IEP, and provided by the school district. It is also clear that the complainant parents and the school district do not agree on the adequacy or quality of the services provided. The Federal Complaint process is not the appropriate forum for resolving this disagreement. The Federal Complaint process does not provide for an evidentiary hearing, nor does the Federal Complaints Officer have subpoena power. For the Federal Complaints Officer to attempt to determine whether this student is entitled to additional transition services, based upon information as ambiguous as exists in the record presented to him for this student, would not be fair to the complainant parents, the school district, and, most importantly, the student. If the parents and the school district cannot agree, through voluntary negotiation or mediation, about possible further services, and possible compensatory education, for this student, then the parents are entitled to a due process hearing to resolve these issues.

4. The Federal Complaints Officer finds no violation by the school district due to any failure to provide a certified special education teacher for this student. The complainant parents state concerns about high turnover of staff, and dissatisfaction with at least one of their daughter's teachers. These are legitimate concerns. However, based upon the information presented to him by the complainants and the school district, the Federal Complaints Officer does not have sufficient evidence to find that any staff problems of the school district have resulted in the school district depriving this student of FAPE.
5. The Federal Complaints Officer finds the complainant parents allegation that expected progress notes are "inconsistent or completely missing" from their daughter's file to be credible. However, he does not find that the school district has violated its obligation to keep the parents informed of their daughter's progress at least as often as her non disabled peers, or that the complainants' daughter has been denied FAPE solely because of inconsistent or missing progress reports.

V. REMEDIES

Having found no violations by the school district, no remedies are ordered.

VI. CONCLUSION

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

Dated today, March 29, 2004.

Charles M. Masner, Esq.
Federal Complaints Officer