

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

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**Federal Complaint 2005:502**

Logan Valley RE-1 School District

**Decision**

**I. INTRODUCTION**

The allegations made in this Complaint were received on February 28, 2005, and dated February 28, 2005. The allegations were contained, with attachments, in eight separate letters from the complainant (with copies to the complainant's parent advocate), seven of which were dated January 21, 2005, and one of which was dated February 13, 2005. The Federal Complaints Officer subsequently consolidated these communications from the complainant into one Complaint, with eight allegations. This was an error by the Federal Complaints Officer. It should have been nine allegations. However, it was harmless error, since the school district did respond to this ninth allegation when it submitted its written response to the Complaint. On March 2, 2005, the parties began mediation, subsequent to a request for mediation initiated by the complainant on February 16, 2005. The school district's obligation to respond to the Complaint was held in abeyance pending a determination of progress in the mediation. On June 1, 2005, by correspondence dated May 27, 2005, the school district submitted its response to the Complaint. By telephone call of June 14, 2005, the complainant requested additional time to respond the school district's response. The Federal Complaints officer granted the complainant until July 15, 2005 in order to submit a written response to the school district's response to her Complaint.

By letter dated July 5, 2005, the mediator notified the Federal Complaints Officer that the mediation case had been partially resolved. The complainant's response to the school district's response to her Complaint, dated June 13, 2005, was subsequently received on July 14, 2005, by hand delivery from the complainant to the Federal Complaints Officer's office. The Federal Complaints Officer then closed the record. The parties, as of the time of this Decision, still have an open mediation. Due to the parties being in mediation, and the extended time period for the filing of the school district's response to the Complaint, and the extended time period for the filing of the complainant's response to the school district's filing of the Complaint, the Federal Complaints Officer finds exceptional circumstances for the extending of the time period for the deciding of this Complaint.

## **II. COMPLAINANT'S ALLEGATIONS**

The complainant's allegations, as consolidated by the Federal Complaints Officer, are:

- 1) The complainant alleges that her daughter has been inappropriately denied a positive behavioral support plan, causing her daughter to be inappropriately disciplined;
- 2) The complainant alleges that her daughter has autism which the school district is refusing to appropriately recognize, and that the school district's inappropriate educational diagnosis is causing her daughter to be denied a free appropriate public education (FAPE);
- 3) The complainant alleges that the school district has abrogated her right to appropriately participate in individualized educational program (IEP) meetings;
- 4) The complainant alleges that the school district has abrogated her right to an independent educational evaluation (IEE) for her daughter;
- 5) The complainant alleges that her daughter has been denied two years of FAPE;
- 6) The complainant alleges that the paraprofessional working with her daughter is not appropriately qualified;
- 7) The complainant alleges that the school district has implemented an "isolation room" placement for her daughter that is not authorized by her daughter's IEP, and has resulted in her daughter being denied a placement in the least restrictive environment (LRE);
- 8) The complainant alleges that the school district has failed to appropriately give her notice of changes in placement of her daughter, or refusals to change the placement of her daughter;
- 9) The complainant alleges that the school district has failed to provide her with a progress report for her daughter in order to show progress towards meeting her daughter's IEP goals.

## **III. SCHOOL DISTRICT'S RESPONSE**

### Allegation No. 1

The district has provided five positive behavioral support plans for [the student]. Since enrolling in our district, the district has brought in an independent behavioral consultant that was approved by the parent. [The independent behavioral consultant] provided observation, assessments, and participated in the development of each behavior plan along with school staff. Suspension discipline provided by the building principal this fall after being knocked to the ground from behind by the student was within the prerogatives of [the principal], and that discipline action was well within the 10 days per year allowed for any student with or without a handicap. The parent's perspective, in our opinion, seems to be that NO discipline could be administered because her child is handicapped.

School district's response at page one. Citations omitted. Capitalization as in original.

### Allegation No. 2

The district IEP team meeting (10-20-2004) with the parent and advocate present thoroughly discussed this possible diagnosis from [Children's Hospital expert obtained by parent]. The IEP team requested a phone conference with [Children's Hospital expert obtained by parent] to try to clarify her report but this request was denied by the parent. The team was also explicitly told not to contact Children's Hospital with questions surrounding their evaluation. Also discussed was an opinion from [another outside of school district expert] stating the autism condition did not exist according to DSM IV criteria which was [a] verbal opinion expressed to the sped director. The parent requested that the opinion be supplied in written form and later was followed up with a written opinion and placed in the file. There are differing professional opinions on this issue of the existence of autism in this student. The district offered to pay for third evaluations in autism and sensory-motor integration by recognized experts[.] [S]ee letter to parent offering further evaluation dated October 28, 2004. The district offered to contract for additional sensory motor and autism evaluation on condition that the parent would sign a release for the district to release educational records and assessments. The parent did not respond to our offer. In subsequent mediation meetings with the parent, the district did agree that the Autism diagnosis could be used because of a Children's Hospital diagnosis obtained independently by the parent thru Medicaid and because Colorado is a needs based state and the IEP and services would be developed based on identified student needs and not a particular label. **This agreement to use the autism label was reached during the mediation meetings with [proper name of mediator conducting mediation during the pendency of this Complaint].** At no time were any services denied because of the presence or absence of a specific handicap. The IEP team made programming recommendations based on identified student need and those interventions and services were successfully carried out per the IEP. The entire staff at [proper name of attendance center of the student at the time] elementary felt that the sped and regular education programs were working well together for the benefit of the student. The mediation agreement with [proper name of mediator] and the changing of the label to Autism should resolve this issue. School district's response at pages one and two. Citations omitted. Bold in original.

### Allegation No. 3

The district has scheduled and held **five IEP meetings** on 03-18-2004, 06-08-2004, 08-25-2004, 10-07-2004, 10-20-2004 one of which was a mediation IEP meeting with [proper name of mediator who mediated between the complainant and the school district in a mediation conducted prior to this Complaint] [on June 8, 2004]. The parent and her advocate have been properly notified and allowed to

participate in all IEP meetings. The length of these meetings have ranged from two to eight hours each and have allowed for ample participation and presentation of points of view for all parties. Documentation for any or all of these meetings will be provided upon request. School district's response at page two. Bold in original.

#### Allegation No. 4

The district has provided for independent behavioral contractor [proper name], (approved by parent) to do classroom observation as well as behavioral assessment and behavioral plan development consulting with the parent and IEP team. Additionally, the district contracted with [another out of school district expert] to do educational assessment prior to the October 20, 2004 IEP meeting. The parent never voiced an objection to either assessment and in fact cooperated in bringing her daughter in for these assessments prior to the start of school this fall. In addition, when the parent presented evaluation results from Children's Hospital, the district incorporated those findings into its deliberations during the October 20, 2004 IEP development meeting. The parent does not seem to understand that the district is required to "consider" all outside evaluation data but that ultimately the IEP team must look at all of the data available, even that brought from other schools, and not just expunge from the file all of its own data which is what the parent was asking us to do. Some items on the Children's evaluation were totally inconsistent with all of the other data and the IEP team did not feel that they were representative of the student's abilities. The parent was upset that the Children's Hospital evaluations were not given precedence over all other data. School district's response at page two. Citations omitted. Quotation marks in original.

#### Allegation No. 5

During the 2003-2004 school year the student attended Stevens elementary for a total of 160 days of school during the year receiving 1 hr. per day/4 days per week of sped resource room assistance. During that time the student received regular and special [education] services per her IEP. At parent request, the student was transferred to Campbell elementary for the 2004-2005 school year. During the first semester (8-26-2004 thru 01-14-2005), the student attended 70 of 86 days. During this time, both regular and special education services were provided per the IEP. During second semester, January, 2005 the parent and her advocate requested the student be placed at KIDZ ARK after they visited and stated they were impressed with the program. Kidz Ark is a local privately run RCCF with a DAY/TREATMENT program. The district agreed to pay for the placement but the parent refused to sign the placement agreement drafted by district's counsel. The parent then had her family doctor request that the student be placed on homebound status. The district questioned the reason given by the doctor for homebound but any discussion with the doctor was forbidden by the parent. The district honored the homebound request and started offering homebound services

on January 17, 2005 but because of numerous absences and the inability to get homebound teachers to work with [the parent complainant] and her daughter, [the school district superintendent] wrote a letter officially withdrawing the district's offer to continue with those services but did encourage the parent to reenroll her daughter at Campbell. The parent has chosen not to reenroll. School district's response at page two. Citations omitted.

#### Allegation No. 6

The para in question [possesses] an AA degree from NJC and additional hours of study from the University of Northern Colorado and meets the highly qualified requirements. The district provided additional training for the para by providing consultation time with the sped resource room teacher and the building principal. Behavior plans and positive reward systems were discussed as well as guidance was provided for proper use and instruction of the educational materials used. This is the same format used by sped staff in the training of paras for the specific needs of any student. All sped paras in this district are working on the general para certification recommended by CDE. School district's response at pages two and three.

#### Allegation No. 7

On the October 20, 2004 IEP P4 (2 of 4) under Social Emotional: the IEP states that [the student] will be allowed to choose to go with her para to the calming area (counselor's office) to leave the classroom area to do homework. It was documented elsewhere on the IEP that [the student] is distractible and that for portions of her day when **she chooses** to go to a quiet place to work, she is much more productive. This quiet study area was made available upon student request which was part of the IEP plan [and] was not done as a punishment as implied by the allegation. It was an educational process identified by the IEP team that was an effective instructional technique that was used for short portions of the day as requested by the student. School district's response at page three. Bold in original.

#### Allegation No. 8

The district has never failed to give notice of any change of placement. All discussions of change of any programming have been done within the context of numerous (5) IEP meetings that have been conducted for the parent beginning with the March 18, 2004 meeting, proceeding through the June 2004 mediation meeting and ending with the October, 2004 meeting. All of the IEP meetings are available for inspection should CDE desire. The parent was given timely notice for each meeting and has been represented by her advocate at each meeting. Both parties participated fully in the IEP process. School district's response at page three.

#### Allegation No. 9

The district has provided all required progress reports for the student over the past year and one half. This past fall the district offered transportation to bring the parent to school to participate in parent-teacher conferences but the parent declined. After that, the building principal mailed the progress reports but the parent claimed she didn't receive them. Next the district made copies of the reports available to be picked up at the administrative offices and the parent did pick them up. This issue should be resolved. School district's response at page three.

#### **IV. FINDINGS AND DISCUSSION**

##### Allegation No. 1

In the opening sentence of one of her seven letters dated January 21, 2005 – one of the eight letters received from the complainant on February 28, 2005 opening this Complaint – the complainant states: “Parent has continuously asked that a positive behavioral support plan be created as required by IDEA; district repetitively refuses to create such a plan.” Parent's Complaint letter dated January 21, 2005. The Federal Complaints Officer finds that this is not true. The Federal Complaints Officer finds that the school district's response to this Complaint allegation is accurate.

What is true, as determined by the Federal Complaints Officer, is that the complainant does not agree that the behavioral approaches taken by the IEP team, of which the complainant is a member, are designed to provide her daughter with a FAPE. It is the complainant's right to take this position. However, if the complainant and the school district cannot agree, as a part of a consensus IEP team process, about what the FAPE for complainant's daughter should be, then the complainant is entitled to a due process hearing to seek to have her definition of a FAPE for her daughter adopted and implemented by the school district, as directed by the authority of an impartial hearing officer. A Federal Complaints Officer does not have this authority.

The Federal Complaints Officer finds no violation by the school district.

##### Allegation No. 2

In a previous Complaint filed by the complainant on May 18, 2004 (Federal Complaint 2004:509 decided on July 15, 2004), against the same school district against which this Complaint has been filed, Federal Complaints Officer Laura L. Freppel wrote in her findings:

The Complaint alleges that, since February 2003, the District has misidentified the student's disability category and, as a result, the incorrect disability category (significant identifiable emotional disability or SIED) has [led] to a lack of academic support causing the child to lose ground academically, especially in the areas of math, comprehension and writing. As the Federal Complaints Officer

understands it, Complainant believes that the student should have been identified as having attention deficit disorder (ADD) which would fall within the physical disability category under Colorado's categorical disability rules. The District states that, while the parent mentioned the existence of medical records, the medical records were inconclusive and, although other disability categories were considered, there was no data to support a disability label other than SIED. Federal Complaint Decision 2004:509 at page four.

The Federal Complaints Officer found no violation by the school district. The complainant at the time of this previous Complaint was not, evidently, seeking a diagnosis of autism. In her letter dated June 13, 2005, filed with this office on July 14, 2005, with attachments, as the complainant's response to the school district's response to this Complaint, the complainant states:

[My daughter] has been diagnosed with 11 disabilities and is ... under the treatment of a physician, psychiatrist, 2 specialists and 2 psychologists for these disabilities. [My daughter's] disabilities include, ADHD, SID, Autism, Bipolar, Learning Disabilities, Migraines, Asthma, Multiple Chemical Sensitivity & Auditory Processing. Every time the student reacts in a manner typical of one her 11 disabilities the district insists, "She is just being willful and is choosing to [misbehave]." The district fails to acknowledge that her [difficulties] are a manifestation of her many disabilities. Complainant's response at pages one and two. Capitalizations and quotation marks in original. Citations omitted.

In reaching her finding of no violation by the school district in Federal Complaint 2004:509, the Federal Complaints Officer stated:

The parties disagree that the multidisciplinary team considered the medical information provided by the [parent]. 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 more credible. The federal complaints 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 circumstances to see whether they provide a definite answer. Federal Complaint Decision 2004:509 at page five.

This Federal Complaints Officer agrees and he finds no failure by the school district to appropriately and timely identify a diagnosis of autism for this student, and thus no failure of the school district to provide a FAPE for this student due to the lack of such a diagnosis. He finds the school district's response to these alleged failures to be accurate. However, in so finding, he also reaffirms, as indicated by the Federal Complaints Officer in Federal Complaint Decision 2004:509, that the parent complainant has a right to a due process hearing to argue that these were failures by the school district.

The Federal Complaints Officer finds no violation by the school district.

Allegation No. 3

The complainant offers no denial in her response that IEP meetings were held on the dates stated, and for the lengths of time stated, in the school district's response. The Federal Complaints Officer finds the schools district's statement of the dates and lengths of times for these meetings to be accurate.

However, the complainant, as the Federal Complaints Officer understands it, claims that the school district has not provided her with enough IEP meetings. The Federal Complaints Officer finds no merit to this claim.

The complainant also claims, as the Federal Complaints Officer understands it, that the IEP meetings that have been held have not been conducted in a manner consistent with her right to participate as a parent. The complainant makes this latter claim in multiple ways, but the Federal Complaints Officer finds that this latter claim is best captured in the language by complainant on page three of her response to the school district's response to her Complaint:

The BIP & IEP were handed to parent at staffings & in most instances [the] parent was not allowed to give any input on these items to the rest of the IEP team, & when she was allowed to give input to the IEP team it was always vetoed. The district runs the IEP team as majority rules not consensus as required in [the] IDEA. The district team has continuously refused to implement the positive recommendations provided to them by [the] student's personal medical team including [proper name], psychologist at Denver Children's Hospital. Complainant's response at page three.

The Federal Complaints Officer finds nothing in the record to indicate that the complainant parent has not been provided with an appropriate opportunity to give input and participate in IEP meetings. Consensus does not mean doing what the parent wants. Nor does consensus mean implementing the recommendations of any other particular person, or persons. Nor, in the view of the Federal Complaints Officer, does consensus mean, in the context of the IEP process, majority rule, unless it is a majority composed of all of the participants. Consensus, in the IEP process, means agreement amongst all of the participants. Consensus is an IDEA goal, not a mandate. Consensus cannot be mandated. When IEP consensus is not reached, it is up to the school district to offer a FAPE, and the parent must then either accept or reject the FAPE offered. If the parent rejects the FAPE offered, the parent is entitled to a due process hearing to seek to have the parent's definition of a FAPE accepted by an impartial hearing officer and ordered by that hearing officer to be adopted and implemented by the school district.

The complainant also makes an attendant claim to her claims of shortcomings in the IEP process for her daughter. The parent claims that she was denied the right to tape record IEP meetings. The parent has no right, per se, to tape record IEP meetings. However, the complainant has, as a part of her Complaint, correctly understood that she has a right to be an appropriate participant in



her daughter's IEP meetings, and that the school district has an obligation under the IDEA to provide for that appropriate participation. While the Federal Complaints Officer has determined that, on the record available to him, the school district has met this obligation, he has also determined that, as between this parent and this school district, the time has come to maintain a better record of what happens at IEP meetings. He will address this latter determination in the Remedy section of this Decision.

The Federal Complaints Officer finds no violation by the school district.

#### Allegation No. 4

In her response to the school district's response to her Complaint, the complainant states:

During mediation on 6/8/04, an agreement was reached that [proper name] would conduct [a] Functional Behavior Assessment by the end of September and the district had hired [proper name] to do a learning disability/ADHD assessment since the district disputed the medical diagnosis of ADHD in this student. The parent was never told that [proper name's] evaluation would be considered an IEE and parent was never told that she did not have to bring the student to the evaluation. The district offered to pay for a 3<sup>rd</sup> evaluation by a person the district chose who is also not trained in diagnosing Autism spectrum disorders. Again the parent was never given a choice among evaluators. Parent's response at page twelve.

In its response to Allegation No. 4 of the complainant's Complaint, the school district stated:

The district has provided for independent behavioral contractor [proper name], (approved by parent) to do classroom observation as well as behavioral assessment and behavioral plan development consulting with the parent and IEP team. Additionally, the district contracted with [another out of school district expert] to do educational assessment prior to the October 20, 2004 IEP meeting. The parent never voiced an objection to either assessment and in fact cooperated in bringing her daughter in for these assessments prior to the start of school this fall. School district's response at page two.

IDEA 1997 and its implementing regulations, and IDEA 2004, and its proposed implementing regulations, entitle the parent to an independent educational evaluation (IEE). The regulations are clear that when the school district receives a request for an IEE from the parent the school district must either ensure the provision of the IEE requested by the parent at no cost to the parent, or initiate a due process hearing to demonstrate to an impartial hearing officer that the school district's evaluation is appropriate. The school district is also required to provide the parent with a list of where the IEE sought by the parent can be obtained. Parents can, at least in some circumstances, in the view of the Federal Complaints Officer, waive rights under the IDEA. However, even if, as the school district states, the parent in this Complaint "never voiced an objection" to the evaluations being provided by the school district, this does not constitute, it is the finding of the Federal Complaints Officer, a waiver of the parent's right to an IEE. Nor

does an offer by the school district to pay for evaluations, by evaluators chosen by the school district, and conditioned upon the parent's release of the evaluation results to the school district, constitute appropriate or sufficient action by a school district to honor a parent's right to an IEE, as is argued by the school district at page one of its response. Nor, it is the finding of the Federal Complaints Officer, is the school district's letter to the parent, from the special education director, dated October 28, 2004, a sufficient response to the parent's request for an IEE – at least absent adequate proof that the parent agreed to this approach. The Federal Complaints Officer finds such adequate proof lacking.

Whether or not this student needs further evaluation is not for the Federal Complaints Officer to determine, and it is therefore not the issue before the Federal Complaints Officer. The issue before the Federal Complaints Officer is whether the school district violated the parent's right to obtain an IEE.

The Federal Complaints Officer finds that the school district has violated the parent's right to obtain an IEE.

#### Allegation No. 5

In her response to the school district's response to her Complaint, the complainant states:

Parent seeks compensatory education for the 2 years student was denied a FAPE and her IEP was not followed **due to the district not writing it appropriately**, including how/when/where related services would be provided to the student. Parent also seeks compensatory education for the 6 months [the student] was on homebound and the district's refusal to provide student with a homebound teacher, according to district policy and IDEA and the district's denial to allow student to continue in choir and attend non-academic extracurricular events that all other students were allowed to attend. Although student was on homebound, the social experience she would have gained during the extra-curricular events and choir far outweighed the need for medically prescribed homebound schooling. Complainant's response at page fourteen. Bold added by the Federal Complaints Officer.

The Federal Complaints Officer finds the school district's version of the facts more credible than the complainant's regarding the circumstances of the homebound placement. In any case, the school district continued to offer a FAPE placement at Campbell Elementary School. The Federal Complaints Officer finds no denial of a FAPE for this student due to any failure of the school district to provide appropriate homebound services or an appropriate education at Campbell Elementary School. However, the complainant is entitled to a due process hearing on these issues, during which school district staff can be required to testify under oath and have that testimony subject to cross-examination. An impartial hearing officer is entitled to reach an independent, and binding, unless overturned on appeal, determination on these issues, including a determination of the credibility of the complainant and all other witnesses.

When the complainant alleges that the school district did not write her daughter's IEP "appropriately", what she means, it is the finding of the Federal Complaints Officer, is that the school district did not provide her with the IEP for her daughter that she wanted. When that is the case, the complainant has the option of a due process hearing. A Federal Complaints Officer does not have the authority to substitute his judgment for that of an IEP team about the constitution of an IEP for the purpose of providing a student with a FAPE.

The Federal Complaints Officer finds no violation by the school district.

#### Allegation No. 6

In her response to the school district's response to her Complaint, the complainant states: "The paraprofessional does not meet the qualifications of highly qualified as required by NCLB, and CO state standards." Complainant's response at page fourteen. Citation omitted.

The Federal Complaints Officer has no jurisdiction over alleged violations of No Child Left Behind (NCLB). As for the Colorado state standards referenced by the complainant, they are guidelines, not law. In any case, the disagreement between this complainant and this school district is not about whether the paraprofessional who has worked with complainant's daughter meets the minimal highly qualified requirements of NCLB (incorporated by reference in IDEA 2004). The Federal Complaints Officer finds that this paraprofessional meets such requirements. The disagreement is about whether the educational methodology the school district deemed appropriate, and the corresponding use of the paraprofessional to help implement that methodology, were sufficient to provide the student with a FAPE. The complainant parent alleges that "the paraprofessional has never been trained on PBS [positive behavioral supports]." Complainant's response at page fourteen. The school district alleges:

The district provided additional training for the para by providing consultation time with the sped resource teacher and the building principal. Behavior plans and positive reward systems were discussed as well as guidance was provided for proper use and instruction of the educational materials used. School district's response at pages two and three.

The education that the school district provided for this student, including the behavioral methodology in which the paraprofessional assisted, were provided in accord with a valid IEP process. The Federal Complaints Officer does not have, and therefore is not going to exercise, any authority to invalidate the determination of an IEP team. If the complainant does not like the determination of the IEP team, she has a right to a due process hearing to challenge that determination. The Federal Complaints Officer makes no finding about what the outcome of such a hearing might be, as between the competing methodology claims held by the complainant and the school district.

The Federal Complaints Officer finds no violation by the school district.

### Allegation No. 7

In her response to the school district's response to her Complaint, the complainant states:

The district claims the isolation room was a "calming room" & was only used for homework & calming, yet the district refused to allow the student a quiet calm area in the classroom as specified in student's IEP. ... An autistic child who already lacks social skills must never be isolated. Complainant's response at page fifteen. Quotation marks in original.

In the second paragraph following, the complainant states:

Parent has requested many times a person trained in autism spectrum disorders be hired & a conceptualized classroom be created for the student. District has chosen to ignore student's many disabilities and place her in the mainstream classroom which is not the least restrictive or most appropriate for the student. Complainant's response at page fifteen.

In the next paragraph, the complainant states: "Continuing the student's current placement at The Aspen Center for Autistic Children would dramatically increase the student's educational benefits and would ensure that the student is being provided with FAPE in the least restrictive environment." Complainant's response at page fifteen.

The Federal Complaints Officer is not privy to the circumstances of the student attending The Aspen Center for Autistic Children. This occurrence stated by the complainant occurred during the time of the most recent mediation between the complainant and the school district. A mediation that is still open as of the time of this Decision. In any case, it is the finding of the Federal Complaints Officer that the use of the isolation room was another IEP team decision that the complainant is entitled to challenge in a due process hearing. It is but one piece of the complainant's larger, and ongoing, dispute with the school district about what should constitute a FAPE for her daughter.

The Federal Complaints Officer finds no violation by the school district.

### Allegation No. 8

In her initial Complaint letter, and repeated in her response, the complainant lists 75 school district refusals of her requests, for which she alleges she was entitled to written notice of refusal from the school district, or implementation of her request. The Federal Complaints Officer is not reproducing this list in this Decision. It is a part of the record. The complainant also states that this is not an exhaustive list. The complainant evidently believes that every time she asks for something from the school district, the school district is required to either respond in writing or give her what she wants:

Parent formally requests that you compel the district to provide prior written notice for each of the 75 items listed on the attached letter or you compel the

district to implement the items they have refused to implement to this date.  
Complainant's Complaint, page two of a letter dated January 21, 2005.

The Federal Complaints Officer does not interpret the school district to be under the obligation to write the complainant a letter every time, and no matter how many times, the complainant asks for something with which the school district disagrees, or which the school district believes it has already provided. The school district is required to offer the complainant's daughter a FAPE, and notify her of the procedural safeguards available to her, including her right to a hearing, if she disagrees with what the school district is offering. The Federal Complaints Officer finds that the school district did so. Even if the Federal Complaints Officer were to find in this Complaint that the school district had committed procedural errors in its legal obligation to appropriately respond to the complainant, they would be harmless errors. The Federal Complaints Officer finds the complainant lacking any credibility to claim that she does not understand the procedural safeguards available to her in continuing her dispute with this school district.

The Federal Complaints Officer finds no violation by the school district.

#### Allegation No. 9

The Federal Complaints Officer finds that the school district has met its legal obligation to provide progress reports for complainant's daughter. Again, even if the Federal Complaints Officer were to have found that the school district procedurally erred in providing the complainant with progress reports for her daughter, it would be harmless error. The complainant cannot on the one hand credibly claim, without end to repetition, that the school district is failing to make progress with her daughter's education sufficient to provide her daughter with a FAPE, and at the same time claim that the school district is not providing her with progress reports. What the complainant is really claiming is that she does not like the progress her daughter is making, no matter how the school district reports that progress.

The Federal Complaints Officer finds no violation by the school district.

## **V. REMEDIES**

### **1. IEP Meetings**

In Federal Complaint Decision 2003:514, this Federal Complaints Officer ordered the school district to provide the complainant with an IEP meeting, upon the complainant's request. As a part of that Remedy, the Federal Complaints Officer also ordered that:

Any such IEP meeting(s) held shall be recorded. It shall be determined by the school district whether the recording is by audio, sound video, or by court reporter. In any case, the recording shall be intelligible and shall identify by name and title all speakers when they speak. The record, whether audio, sound video, or by court reporter, shall be made into a verbatim transcription. A complete and verbatim copy of this written transcription, and an unedited copy of any audio or

sound video recording made, shall be provided to the complainant parent. All expenses for recording, transcription, and complainant's copy, shall be paid by the school district. Federal Complaint Decision 2003:514, at page six.

On appeal by the school district of the Federal Complaints Officer Decision, in Case No. ED 2003-023, the Administrative Law Judge (ALJ), The Honorable Michelle A. Norcross, affirmed in part, and reversed in part, this Remedy ordered by the Federal Complaints Officer. In doing so the ALJ stated:

The record before the ALJ establishes that the parties have a history of disagreements, which may have resulted from mutual misunderstandings and miscommunications. In this regard, the ALJ finds the FCO's requirement that the IEP meeting(s) be recorded appropriate to remedy the found violations and appropriate future provisioning of the Student's services. Therefore, the ALJ upholds the requirement that the District record the IEP meeting(s). However, there is no evidence in the record that supports the FCO's additional requirement [for] the District to transcribe the record and provide a copy to the Complainant free of charge. Case No. ED 2003-023, at page ten.

Regardless of fault, the Federal Complaints Officer finds that the parties to this Complaint have a similar "history of disagreements" that warrants a Remedy that orders the school district to record all future IEP meetings, consistent with the instructions in Federal Complaint Decision 2003:514, for so long as this student is a student enrolled in this school district and covered by the IDEA, unless waived by the parent and the school district, with two qualifications. The Federal Complaints Officer is not ordering, for the purpose of complying with this Complaint Decision, that the school district provide the complainant with any additional IEP meeting, or meetings, beyond any such meeting or meetings, if any, to which she may already be entitled. Nor is the Federal Complaints Officer ordering, for the purpose of complying with this Complaint Decision, consistent with the ALJ's Decision in Case No. ED 2003-023, that the school district transcribe the record and provide a copy to the complainant free of charge.

## **2. Independent Educational Evaluation (IEE)**

As a part of her initial Complaint filing, in one of her letters dated January 21, 2005, the complainant parent states:

During the October 7, 2005 IEP parent formally requested a neuropsychological evaluation and a independent speech, learning and language assessment be conducted on the student. [Proper name], special education director said "the student has been tested enough and I don't think that's necessary." During the October 20 meeting, [proper name of the special education director] stated that he disputed Children's Hospital's diagnosis of Autism and wanted parent to agree to have her retested by a [proper name of a doctor]. This is in direct contrast to his refusal to allow the student further testing that could benefit her and allow the district to create a proper educational program for the student. Complainant's

letter dated January 21, 2005, at page one. Capitalizations, quotation marks as in original.

The Federal Complaints Officer does not know whether, as the complainant has alleged the special education director stated, this student has been “tested enough”. Nor is he otherwise making a determination as to the accuracy of the complainant’s quote of the special education director, except to say that the quoted language “tested enough” appears to accurately reflect the Federal Complaints Officer’s interpretation of the school district’s position as reflected by the record. Moreover, as previously quoted by the Federal Complaints Officer, the school district stated in its response to this Complaint, with regard to behavioral evaluations that the school district initiated, that: “The parent never voiced an objection to either assessment and in fact cooperated in bringing her daughter in for these assessments prior to the start of school this fall.” School district’s response at page two.

The record, as interpreted by the Federal Complaints Officer, indicates that the school district has tried to manage the complainant’s request for an IEE in a way, whatever the motivations of the school district, which is inconsistent with the right of the complainant to request and obtain an IEE. It is the determination of the Federal Complaints Officer that this issue should have already been joined by the school district by either agreeing to provide the complainant with the evaluation she requested, or convening a due process hearing in order to provide a forum with an evidentiary hearing within which a determination could be made as to the appropriate evaluation the student needs. In so stating, the Federal Complaints Officer is not proposing that doing so would end the disagreements between the parents and the school district. However, an appropriate evaluation is the foundation upon which an appropriate education is built. If the IEE request of the parent is granted by the school district, or by order of a hearing officer, after an evidentiary hearing, or if the hearing officer denies the request by finding the school district’s evaluation to be adequate, also after an evidentiary hearing, then there will at least be an evidentiary record of evaluation upon which any disagreements between the school district and parent can be focused. When the school district does not appropriately respond to a parent’s request for an IEE, it does not allow for a process of closure to take place for deciding the evaluation needs of the student. The parent can accept, or reject, the outcome of that process, but the process will have accomplished the task of providing the parent, if agreed to by the school district or ordered by a hearing officer, with the second opinion which the parent’s right to request an IEE can provide, or with a determination that the school district’s evaluation is found to be sufficient, and therefore that further evaluation will be at the parent’s expense, unless a different result is obtained on appeal.

In this Complaint, the complainant parent obtained an evaluation from Children’s Hospital. If the parent wishes for that to be her IEE, she shall submit her request for reimbursement, in writing, to the Director of Special Education for the school district, within thirty days of the date of her receipt of this Decision. The school district shall then, within thirty days of its receipt of the parent’s written request for reimbursement, either reimburse the complainant parent for any evaluation costs that the complainant parent has submitted, without regard to amount or other controversy, or initiate the convening of a due process hearing to resolve any disagreement, unless otherwise agreed to by the complainant. If the complainant parent does not wish for the Children’s Hospital evaluation to be the evaluation to which she is entitled, she shall submit, in

writing, within thirty days of the complainant parent's receipt of this Decision, to the Director of Special Education of the school district, her request for an IEE. The school district shall then respond as required by law, including providing, if necessary, information to the complainant about where the evaluation she is requesting can be obtained. The school district shall also, within thirty days of its receipt of the complainant parent's request for an evaluation, either agree to the provision of that evaluation, at no cost to the parent, or initiate the convening of a due process hearing to argue that further evaluation is not appropriate. The school district's responses shall be in writing, by certified mail, and postmarked within two weeks of the school district's receipt of the parent's written request for an IEE, unless this time for response is extended by agreement with the parent.

## **VI. CONCLUSION**

Since 1998, when the Colorado Department of Education (CDE) began keeping and posting Federal Complaint Decisions on its website, the Logan Valley RE-1 school district has been the respondent in three Complaints. Two of these Complaints have been filed by the complainant. Also, since 1998, the respondent school district has been a participant in four mediations. In two of these mediations the complainant in this Complaint has been the parent participant. One of those mediations, begun on March 2, 2005, is still open, with all of the issues addressed in this Complaint, save, perhaps, the issue of the diagnostic label of autism, still in contention between the complainant parent and the school district. This school district has not been, as of yet, at least since 1998 when CDE began posting hearing decisions on its website, a participant in a due process hearing. Nor has the parent, at least with this school district, been a participant in a due process hearing.

Whether or not there is a due process hearing, and whether or not there are further mediations, and whether or not there are further administrative complaints, this parent and this school district must find a way to maintain a relationship sufficient to provide this student with a FAPE, for so long as this student is enrolled in this school district. Hearings, mediations, and complaints, whatever their outcome, do not provide for a different parent, or a different student, or a different school district. And hearings and complaints do not provide forums conducive to the fostering of positive relationships between and amongst parents, students, and school district staff. And positive relationships are a form of positive behavioral supports without which providing a FAPE is, if not impossible, certainly difficult, and certainly less pleasant for the participants. It may be time, or past time, for this parent and school district to consider the involvement of a third party, agreed to by the parent and the school district, to resolve ongoing disagreements between the parent and the school district, for so long as this student remains enrolled in this school district and disagreements continue.

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, August 4, 2005.

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Charles M. Masner, Esq.  
Federal Complaints Officer



