

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

Federal Complaint 2005:504

Jefferson County School District R-1

Decision

INTRODUCTION

This Complaint was dated 03/12/05 and filed on 03/30/05. The written response of the Jefferson County School District R-1 (District) was received on 04/21/05. The Complainant's written response to the District's written response was received on 05/11/05. The Federal Complaints Officer contacted the attorney for the District on 04/25/05 and requested additional information, which was received on 05/06/05. On 05/19/05 the Federal Complaints Officer contacted the Complainant and the District's attorney by telephone for additional information. The Federal Complaints Officer closed the record on 05/19/05.

The Complainant is the parent of a child with a disability.

COMPLAINANT'S ALLEGATIONS

The Complaint contained the following allegations that were accepted by the Federal Complaints Officer:

- 1) The Complaint alleges that “[change] of disability was done on January 10, 2005 without adequate assessment being done. The only ‘assessment’ was the Conners’ Rating Scale which was used to determine that [Student] has a secondary disability of Significant Identifiable Emotional Disability.¹ The team was unwilling to listen to my concerns regarding this label or to take into account any professional reports provided by me. I was unable to effectively advocate for my child, for example, I was told after I refused to sign the IEP on 1/10/05 that the school did not need my signature, that this IEP would be put in place with or without my approval and to read my rights.” It appears from the Complaint that the Complainant believes that the District has violated the following IDEA regulations: 34 C.F.R. §§ 300.343(c)(2)(iii),² 300.346(a)(1)(i), 300.532, 300.535

¹ As is set forth in Attachment 1, the Federal Complaints Officer does not have the authority to set aside an IEP team decision and substitute her own judgment for that of the IEP team. However, the Federal Complaints Officer does have the authority to review whether the *process* used by the IEP team complied with IDEA and its implementing regulations.

² Hereafter, the regulations implementing IDEA 1997 will be referred to by section number only (e.g., § 300.343).

and 300.501(a)(2).³ In her response to the District's response to the Complaint, Complainant states that, while looking for counselors, she was informed that the Conners' Rating Scales-Revised is a screening tool for ADD or ADHD, could only be affirmed by a pediatrician and is not a proper test for determining SIED. The Complainant further states that she has no information that the BASC was actually given and has neither received the scores nor results from that test.

- 2) The Complaint also alleges a violation of § 300.350 as follows: "The final copy of the IEP printed on January 10, 2005 did not include services minutes therefore, it was my understanding that the minutes from 10/14/05 (sic) were still in place. [Student] is not receiving the minutes outlined in the IEP dated 10/14/05 (sic). Interestingly enough when I called the teacher to ask for another copy of his IEP she sent home a copy with a print date of 3/11/05 which had changed the services minutes." The Complaint and its attachments specifically referenced the minutes of service to be provided by [Student's] special education teacher and aide. In her response to the District's response to the Complaint, Complainant states that she remains unsure about whether [Student] is still receiving the minutes of service specified in the 10/14/04 IEP. "When I ask [Student] where he spends most of his school day he indicates that it is mostly in the mainstream classroom, [Regular Education Teacher's] class." In response to questions asked by the Federal Complaints Officer on 05/19/05, Complainant expressed that she has been confused and concerned by what has occurred during the school year with [Student's] schedule and services because it was her understanding that the California IEP was to be implemented; however, [Student's] schedule is not consistent with the California IEP.

By letter dated 04/04/05, the Federal Complaints Officer rejected some of the allegations set forth in the Complaint. A copy of that letter is attached hereto and incorporated herein by reference as Attachment A.

THE DISTRICT'S RESPONSE

Allegation No. 1

The District denies this allegation. It contends that the results of the Conners' Rating Scale and BASC and other information available to it demonstrate that [Student] has a SIED. The District also contends that it carefully considered information from a variety of sources including the parents' concerns with having [Student] labeled with SIED as well as their belief that [Student's] behavior is linked to his frustration with homework/academics and not due to an emotional disability.

The District denies that the parent directly provided any professional reports from the parent. The District states that it had in its possession (contained in the California school records) and

³ The Complaint incorrectly cited several regulations. However, it is clear from the context of the Complaint that the Complainant intended to rely on the regulations as they are now cited in this paragraph.

considered the report of Alan Lincoln, Ph.D., a licensed California psychologist.⁴ In her response to the District's response, Complainant does not refute this contention.

Allegation No. 2

The District denies this allegation. It contends that, since the 10/14/04 direct placement meeting, [Student] has continued to receive the minutes of service specified in the 10/14/04 IEP Addendum. The District states that the IEP printed on 03/11/05 was a working draft of an IEP that was being developed for [Student's] annual IEP team meeting. As the Federal Complaints Officer understands it, the District's position is that school personnel mistakenly sent Complainant the 03/11/05 draft IEP, which was not marked as a draft, instead of a copy of [Student's] current IEP. At the request of the Federal Complaints Officer, the District submitted school schedules for [Student] and, on 05/19/05, provided clarifying information via the District's attorney in response to the Federal Complaints Officer's questions.

FINDINGS OF FACT

After carefully reviewing the information submitted by the parties, the Federal Complaints Officer makes the following findings of fact:

- 1) [Student] attends [Elementary School]. [Student] transferred to [Elementary School] from California at the beginning of the 2004-2005 school year. [Student] was identified as a child with a learning disability while attending school in California. The corresponding disability in Colorado is a perceptual/communicative disability.
- 2) [Student's] 05/07/04 IEP was developed by his California school (California IEP). The California IEP documented the following: [Student] at times had difficulty determining the best way to socially interact; health concerns were focused on social, emotional and behavioral concerns; [Student] suffers "from low self-image as evidenced by very low frustration tolerance and anger related to how he feels about his academic ability, including verbal and physical aggression, tantrums, negative self-comments and highly inappropriate language"; and [Student] "needs a great deal of support to maintain stable functioning through adults assisting him through his frustration." The California IEP also documented that "[behavioral] deficits, social emotional skills and academic levels interfere with his ability to work within a general education setting" and "Student's behavior DOES impede learning of self or others." Three of the eleven annual goals on the California IEP were behavioral in nature. [Student's] placement was in small instructional groups within a special day class.
- 3) On 10/14/04, [Student]'s IEP team [Elementary School] met for the first time for a direct placement meeting. The parents were timely notified of and attended that meeting. The IEP team generally adopted the California IEP, including the annual goal and objectives

⁴ Dr. Lincoln's report is undated. However, it does reflect that the testing that formed the basis of the report was conducted on 08/04/03.

but with some modifications. The behavior plan developed by the California school was also adopted with modifications. Placement was modified from the California IEP in that [Student] was placed primarily in the special education resource classroom with special education support but he was to be in the general education classroom for specials, science and social studies with paraprofessional support. The 10/14/04 IEP Addendum documents that [Student] would gradually move into the regular education classroom with modified work and paraprofessional support. The 10/14/04 IEP Addendum documents the school's concerns around [Student's] emotional behaviors at school. It also documents the parents' input and opinion that the [Student's] behaviors at school were linked to his learning disability and were not due to an emotional disability. The 10/14/04 IEP Addendum further documents the parents' input that, at home, the family was not seeing the behaviors that the school personnel were seeing at school; however they were seeing increased emotional behavior at home when [Student] was frustrated.

- 4) The 10/14/04 IEP specifies that Student is to receive 1860 minutes per week of service from the special education teacher and paraprofessional (combined minutes).
- 5) Following the 10/14/04 direct placement meeting, the school social worker administered the Conners' Rating Scales-Revised to [Student's] service providers and to the parents.⁵
- 6) On 01/10/05, the school convened the IEP team for an eligibility and IEP review meeting to discuss "test results." The only test results documented in the 01/10/05 IEP Addendum were the results of the Conners' Rating Scales-Revised. The Conners' Rating Scales-Revised is used for assessing ADHD as well as conduct problems, learning problems, psychosomatic behavior, impulsive hyperactivity and anxiety.
- 7) The 01/10/05 IEP Addendum documents that, in addition to the results of the Conners' Rating Scales-Revised, the following information from other sources was collected and included the following: review of [Student's] California school records -- described in the IEP Addendum as being extensive; observation of [Student]; time spent with [Student]; and conferences with parents, teachers, and the school principal. The California school records included a report completed by Alan Lincoln, Ph. D. That report was completed in late August or early September of 2003.
- 8) At the 01/10/05 Eligibility and IEP review meeting, the IEP team completed the SIED criteria checklist. Based on the SIED checklist, the IEP team determined that [Student] had a secondary disability of SIED. The parents disagreed.

⁵ The District's written response states that the Behavior Assessment System for Children (BASC) was also administered. At the Federal Complaint Officer's request, the District submitted the BASC evaluation data, which shows that BASC surveys were completed by [Student's] teachers and parents. However, because the results of the BASC were not considered during the 01/10/05 eligibility and IEP review meeting, the Federal Complaints Officer has not considered the BASC results and has analyzed this case based on the premise that the Conners' Rating Scales-Revised was the only test that was both administered and considered by the IEP team for purposes of determining that [Student] has a SIED.

- 9) In all other respects, [Student's] IEP remained unchanged following the 01/10/05 meeting, including the minutes of service and [Student's] annual goals and objectives, which included three behavioral goals originally developed as a part of the California IEP and subsequently adopted by the IEP team during the 10/14/04 direct placement meeting.
- 10) The 01/10/05 IEP Addendum documents that, in November 2004, [Student] was able to move into the regular classroom for reading and writing with the support of an aide. Since November 2004, [Student] has spent and is still spending the bulk of his time during the school day in the regular classroom with the support of an aide. He does, however, continue to receive math instruction in the special education resource room.
- 11) The copy of an IEP printed on 03/11/05 and sent by school staff to Complainant is incomplete and in a draft state. The District's explanation -- i.e., the IEP in question was a draft IEP developed for [Student's] 2005 annual IEP review meeting and was sent by mistake to Complainant -- is credible, and the Federal Complaints Officer finds such to be the case.
- 12) The 10/14/04 IEP Addendum specifies that [Student] is to receive 1860 minutes per week of direct service from the special education teacher and aide (combined minutes). Student's schedules for the 2004-05 and clarifying information supplied by the District show that Student has received at least 1,885 combined minutes of service per week from the special education teacher and aide. Throughout the day student is with his aide or his special education teacher unless he is receiving services from the social worker or the speech/language therapist.
- 13) The District and Complainant agree that [Student] has made good progress in learning to manage his behavior during the 2004-2005 school year. The Federal Complaints Officer finds such to be the case.

ANALYSIS AND CONCLUSIONS OF LAW

Allegation No. 1

1) Did the IEP Team Consider the Parent's Concerns and Opinions Concerning the Identification of [Student] as a Child with a SIED?

Parents must be afforded the opportunity to participate in meetings regarding the identification, evaluation and educational placement of their child. See, § 300.501(a)(2). When developing and revising an IEP, the IEP team is required to consider the parents' information and concerns for enhancing the education of their child. §§ 300.343 (c) (iii) and 300.346 (a)(i). When interpreting evaluation data, the public agency is required to draw upon information from a variety of sources, including parent input. § 300.535 (a).

The parties disagree about whether the IEP team considered the parents' input that [Student's] behavioral problems are due to frustration arising out of his learning disability rather than attributable to an educational emotional disability. Complainant states that

the IEP team would not listen to her. The District states that the IEP team carefully considered the information provided by the parents. The Federal Complaints Officer has no transcript or recording of the IEP team meetings. Even if she did, so long as the parents were allowed to attend and speak at the IEP meetings in question and to present any documents that they wanted to present, the threshold procedural requirements of §§ 300.343(c)(iii), 300.346(a)(1), 300.501(a)(2) and 300.535(a) were met. The Federal Complaints Officer finds that such was the case. Therefore, the Federal Complaints Officer concludes that the District did not violate the parent participation requirements of §§ 300.343(c)(iii), 300.346(a)(1), 300.501(a)(2) and 300.535(a).

The parties dispute whether the parents submitted any professional reports to the District for its consideration. The only report referenced by the parties is a report completed in August or September of 2003 by Alan Lincoln, Ph.D., a California psychologist. The District states that the Lincoln report was contained in [Student's] California school records. Complainant did not refute this contention in her response to the District's response. Regardless of whether the District considered the Lincoln report or not, the District was not required to do so because the Lincoln report was completed more than 12 months prior to the 01/10/05 eligibility and IEP review meeting. See, Rule 4.01(3)(f) of the Rules for the Administration of the Exceptional Children's Act, 301-8, 2220-R-1.00 *et seq.*⁶

2) Did the District Comply with the IDEA's Procedural Requirements When It Determined that [Student] Has a SIED?

§ 300.532 establishes minimal requirements for procedures that are to be used in evaluating a child to determine whether the child has an educational disability. Among those procedures is the requirement that "a variety of assessment tools and strategies are used to gather relevant and functional and developmental information...." § 300.532 (b). In addition, no single procedure may be used as the sole criterion for determining whether a child is a child with a disability. § 300.532 (f). While these regulations require the public agency to use more than one procedure for determining whether a student is eligible for special education, it does not require the public agency to administer more than one test. See, Eagle Point School District #9, 18 IDELR 1268 (Oregon SEA 1992). So long as a particular test or evaluation meets the regulatory requirements under the Individuals with Disabilities Education Act (IDEA), the selection of evaluation instruments is left to the discretion of the public agency. See, Letter to Anonymous, 20 IDELR 452 (OSEP 1993).

In this case, the District used a variety of procedures for evaluating whether [Student] has a SIED. Exercising its discretion, the District selected, administered, documented and considered the test results of one assessment, the Conners' Rating Scales-Revised. The District also used a variety of other procedures to collect information about [Student] – the review of school records, observation of [Student], time spent with [Student], and

⁶ Rule 4.01(3)(f) provides as follows: "Assessment procedures used for the determination of eligibility shall have been completed no more than 12 months prior to the meeting at which eligibility is determined."

conferences with teachers, the parents and the school principal. The Federal Complaints Officer therefore concludes that, in evaluating the [Student], the District met the IDEA's minimum evaluation requirements. In reaching this conclusion, the Federal Complaints Officer makes no judgment about whether the Conners' Rating Scales-Revised is an appropriate assessment for purposes of evaluating whether a child has a SIED.

The Federal Complaints Officer also makes no judgment regarding whether [Student] was properly identified as having a SIED as that decision is an IEP team decision. It is not the role of the Federal Complaints Officer to substitute her judgment for that of the IEP team.

If Complainant disagrees with an IEP team decision, she is entitled to request a due process hearing to resolve her disagreements with the District. Further, if Complainant disagrees with the District's evaluation, she has the right to request from the District an independent educational evaluation pursuant to the provisions of § 300.502 (b).

Allegation No. 2

Has the District Failed to Implement [Student's] 10/14/04 IEP?

§ 300.350 (a)(1) requires the District to provide special education and related services to a child with a disability in accordance with the child's IEP.

The Federal Complaints Officer has found that the copy of the IEP printed on 03/11/05 was a draft IEP and was mistakenly sent to Complainant instead of [Student's] then current IEP. That document does not, by itself, substantiate Complainant's allegation that the District is failing to provide [Student] with the minutes of service to which he is entitled. Complainant is concerned and admittedly confused that [Student's] schedule does not mirror the California IEP. The confusion appears to be due to the fact that [Student], in accordance with the plan established in the 10/14/05 IEP Addendum, has gradually been transitioning from receiving instruction in the special education resource room to the regular education classroom.

The District maintains that, throughout the 2004-2005 school year, [Student] has and continues to receive the minutes of services specified by the 10/14/04 IEP Addendum. At the Federal Complaint Officer's request, the District has submitted [Student's] schedules for the 2005-2006 school year. Student's schedules for the 2004-05 and clarifying information supplied by the District demonstrate, to the satisfaction of the Federal Complaints Officer, that Student has received at least 1,885 combined minutes of service per week from the special education teacher and aide. Throughout the day [Student] is with his aide or his special education teacher except for the time when he is receiving services from the social worker or the speech/language therapist. The Federal Complaints Officer concludes that the District has not violated § 300.350 (a)(1).

REMEDY

Having found no violation, the Federal Complaints Office orders no remedy.

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 this 19th day of May 2005

Laura L. Freppel
Federal Complaints Officer