

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

Federal Complaint 2006:506

Jefferson County District R-1

Decision

I. INTRODUCTION

This Complaint was dated June 3, 2006. The original Complaint documents were received on June 9, 2006. The Federal Complaints Officer determined by telephone conversation with the complainant on June 12, 2006, that the complainant intended the documents dated June 3, 2006, and received June 9, 2006, to be considered a Complaint. June 12, 2006 is the date the Federal Complaints Officer is using as the filing date for this Complaint.

The Complaint, and a cover letter granting the school district fifteen (15) calendar days from the receipt of certified mailing to respond, was faxed to the school district on June 12, 2006, and also received by the school district by certified mail on June 14, 2006. In phone conversations of June 13 and June 22, the Federal Complaints Officer discussed with the school district's legal counsel how to proceed with a response to the Complaint, and about the possibility of mediation. The complainant was not agreeable to mediation. The Federal Complaints Officer granted the school district until July 11, 2006 to respond to the Complaint, based upon the school district's legal counsel's statement to the Federal Complaints Officer that the school district had not yet provided the school district's legal counsel with a copy of the complainant's Complaint.

On July 5, 2006 the Federal Complaints Officer received a voice mail message from the school district's legal counsel requesting additional time to respond to the Complaint, on the grounds that access to necessary school district records and personnel were not available. The Federal Complaints Officer returned the school district's legal counsel's telephone call on July 12 and confirmed an extension of the school district's response time until July 18, 2006, on the grounds as stated in the school district's legal counsel's voice mail message of July 5, 2006.

On July 18, 2006, the Federal Complaints Officer had a telephone conversation with the school district's legal counsel in which the school district's legal counsel stated that the school district needed another extension of time in which to file a response, due to the unavailability of necessary school personnel and records. The Federal Complaints Officer granted the school district until July 25 to file its response, on the grounds as stated by the school district's legal counsel.

On July 25, 2006, the Federal Complaints Officer received a telephone message from the school district's legal counsel stating that the school district's response to the Complaint, minus documents to numerous to fax, would be faxed to the Federal Complaints Officer the next day, in order to give a school district administrator time to review the response. On July 26, 2006, the Federal Complaints Officer received the school district's faxed response referenced by the school district's legal counsel's telephone message of July 25, 2006. On July 28, 2006, by cover letter dated July 26, 2006, the Federal Complaints Officer received the complete response from the school district.

By certified mailing to the complainant dated July 31, 2006, and received August 2, 2006, the complainant was sent a copy of the school district's response, and granted ten (10) calendar days to respond to the school district's response to her Complaint. By letter dated August 7, 2006, and received by the Federal Complaints Officer on August 10, 2006, the complainant filed her response. By letter to the school district's legal counsel dated August 15, 2006, with a copy mailed to the complainant, the Federal Complaints Officer closed the record.

II. COMPLAINANT'S ALLEGATIONS

The complainant's allegations, subject to the jurisdiction of the Federal Complaint process are:

- 1) Her son, who has muscular dystrophy, was not issued an Alphasmart for the 2005-06 school year, as required by his 2005-06 IEP;
- 2) Her son was not granted rest periods as needed, as required by his 2005-06 IEP;
- 3) Her son was not provided photocopied notes prior to class, as required by his 2005-06 IEP;
- 4) Her son was not scheduled to take his hardest classes in the morning, as required by his 2005-06 IEP;
- 5) Her son was not provided a tape recorder to help him with note taking, as required by his 2005-06 IEP;
- 6) Her son was not provided with a dual set of books, as required by his 2005-06 IEP.

III. SCHOOL DISTRICT'S RESPONSES

The school district's responses are:

- 1) "While Alphasmarts or portable keyboards were available for [the student] to check out from the library, [the student] never checked one out – nor does it appear he needed to do so. As noted above, [the student] declined [his special education teacher's] and [his school psychologist's] offers to obtain an Alphasmart, and neither [the student] nor his teachers reported any trouble with hand-writing or note-taking. In any event, when mom requested that an Alphasmart be provided for [the student], [the student's special education teacher] immediately checked one out for him and showed him how to use it. Notably, none of [the student's] teachers observed [the student] using the Alphasmart in class." School district's response at page 6. Bracketed information added by the Federal Complaints Officer.

- 2) “Initially, the ‘rest periods’ [the complainant] believed were denied – *i.e.*, time for to recline [the student’s] chair - - were not even a part of [the student’s] 2005-06 IEP. Furthermore, none of [the student’s] teachers indicated that [the student] ever requested a ‘rest period’ during class. Rather, the only breaks [the student] requested were bathroom breaks, which were granted upon request.” School district’s response at page 6. Quotation marks within quotation marks in original. Bracketed information added by the Federal Complaints Officer.
- 3) “Photocopied notes were provided by [the student’s] American history teacher when needed. Other teachers reported that [the student] never indicated a need, and hence, they did not provide notes for [the student]. Furthermore, as noted above, [the student] did not have trouble taking notes in class, and, in fact, had beautiful hand-writing.” School district’s response at page 6. Bracketed information added by the Federal Complaints Officer.
- 4) “[The student’s] class schedule for the 2005-06 school year was dictated by his choice of electives – all of which were physically intense classes scheduled in the a.m. Furthermore, [the student’s] father approve[ed] [the student’s] schedule at the outset of the 2005-06 school year, and neither [the student’s father] nor [the student’s mother] raised any objection to [the student’s] class schedule at any point during the year.” School district’s response at page 5 and 6. Bracketed information added by the Federal Complaints Officer.
- 5) “As with AlphaSmart, this accommodation was intended to be provided on an ‘as needed’ basis, and [the student] never indicated a need or desire to have a tape recorder. Indeed, [the student] declined [the student’s special education teacher’s] and [the student’s school psychologist’s] repeated offers to provide him with one, and even [the complainant] agreed that [a] tape recorder would only be ‘more work’ for [her son].” School district’s response at page 6. Quotation marks within quotation marks in original. Bracketed information added by the Federal Complaints Officer.
- 6) “At the outset of the 2005-06 school year, [the student] was issued a dual set of books in Mathematics and American History. None of [his] other classes required any textbook use outside of school. Additionally, upon [the complainant’s] request at the April 2006 IEP, the District provided [the student] with a third set of textbooks to replace his missing ones.” School district’s response at page 6. Bracketed information added by the Federal Complaints Officer.

IV. COMPLAINANT’S RESPONSES TO THE SCHOOL DISTRICT’S RESPONSES

- 1) “[A]n AlphaSmart was never issued before [April 26, 2006].” Complainant’s response at page 1. Bracketed information added by the Federal Complaints Officer.
- 2) “[My son] was refused ‘rest periods as needed’ as outlined in his IEP. When [my son] told his Art teacher that he needed to rest he was told ‘Oh come on, you can do it’.” Complainant’s response at page 1. Quotation marks within quotation marks in original. Bracketed information added by the Federal Complaints Officer.
- 3) “[T]he photocopied notes received in American History didn’t take place until after the meeting of April 25, 2006 when I requested that the school implement those things in

[my son's] IEP that had not as yet been implemented.” Complainant’s response at page 1. Bracketed information added by the Federal Complaints Officer.

- 4) The complainant submitted no response to the school district’s response to this allegation in her Complaint.
- 5) “On page 5 of the response it is stated that ‘the team also assured [the complainant] that [her son] could have access to an AlphaSmart or tape recorder, if requested’. I would like to know why is it that I need to ‘request’ the items listed in the IEP. Aren’t these things listed in the IEP because they have already been requested at the time the IEP meeting was held.” Complainant’s response at page 2. Quotation marks within quotation marks in original. Bracketed information added by the Federal Complaints Officer.
- 6) “[M]y son never received a dual set of books. [D]uring the last week of school another student turned in the American History book that was supposedly issued to [my son]. [A school staff person] called my home and left a message on my reorder stating that I didn’t need to worry about the fee for this book because another student had turned it in. If [my son] was in fact issued this book, then how is it that another student turned the book in. If the records do not reflect this, then the [school’s] record keeping is lacking also. I do not know if the Math book ever turned up that was supposedly issued to [my son], but I do know that [my son] never received it, and the fee was waived by [a school staff person].” Complainant’s response at page 1. Bracketed information added by the Federal Complaints Officer.

The complainant also quotes the school district’s response as stating that school district staff “repeatedly offered to obtain an AlphaSmart, a tape recorder, and/or any other assistance [the student] could suggest. [The student], in turn, declined their offers and indicated that he did not need any such help.” The complainant then states:

[My son] has no knowledge of any such ‘repeated’ or singular offers. If the assistance listed in the IEP is optional for a middle school student and is left to the student to receive or decline, then why was I not notified of such ‘repeated’ offers and refusals. I was never notified of this because it simply never took place. Complainant’s response at page 1. Quotation marks within quotation marks in original. Bracketed information added by the Federal Complaints Officer.

V. FINDINGS AND DISCUSSION

Page 13 of the student’s 2005-06 lists the following **Instructional Strategies/Accommodations:**

- Rest periods as needed
- Handicap accessible bus for field trips
- Modified PE program
- Keyboard or alphasmart
- Hardest classes in a.m.
- Photocopied notes as needed
- Tape recorder to help with note taking
- Dual set of books

- Elevator key
- Locker modifications as needed

Allegation No. 1

The Federal Complaints Officer finds the school district violated the student's IEP.

The student's 2005-06 IEP places no qualifications on the provision of an AlphaSmart for this student. Absent qualifying language in the IEP, and where the parent and the school district disagree over how the language that does exist should be interpreted, the Federal Complaints Officer finds in favor of the parent complainant's interpretation. The Federal Complaints Officer therefore finds that this student was not provided with an AlphaSmart in accord with the requirements of his 2005-06 IEP.

Allegation No. 2

The Federal Complaints Officer finds the school district violated the student's IEP.

The student's 2005-06 IEP states that rest periods were to be provided "as needed". The school district's response is that the student never requested any rest periods in class. The parent complainant references an alleged incident in which an Art teacher did not provide a rest period when requested by the student. Regardless of the accuracy of the alleged incident with the Art teacher, the student's IEP has multiple references, including references from the school district staff, that this student was "shy" or "withdrawn", or both, which, arguably, might make it more unlikely that the student would request rest periods. Moreover, there is no language in the student's 2005-06 IEP that indicates "as needed" was to be determinative in whole or part by whether the student requested rest periods. The student also has muscular dystrophy, a degenerative condition causing a diminishment in his physical strength, which, arguably, might create a need for rest periods. The Federal Complaints Officer finds the parent complainant more credible on this issue than the school district, given the lack of definition provided in the IEP for how "as needed" was to be determined.

Allegation No. 3

The Federal Complaints Officer finds the school district violated the student's IEP.

The school district states that photocopied American History notes were provided, but that other photocopied notes were not provided because the student didn't request them. The complainant mother states that the photocopied American History notes were not provided until after the April 25, 2006 IEP meeting. Regardless of when the photocopies of the American History notes were provided, there is no dispute that photocopies of other notes were not provided, and there is no qualification in the student's 2005-06 IEP that such photocopies were only to be provided upon request by the student. The 2005-06 IEP does state that they were to be provided "as needed", but provides no language about how "as needed" was to be determined, and whether such determination was to be made in whole or part based upon student request. Absent such

clarification in the student's 2005-06 IEP, the Federal Complaints Officer finds the parent complainant more credible on this issue than the school district.

Allegation No. 4

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

The Federal Complaints Officer has been presented with no information by the parent complainant or the school district, other than a copy of the student's class schedule, with which to judge what were the "hardest" classes for the student that were to be provided in the morning, according to the requirements of his 2005-06 IEP. The 2005-06 IEP does not specify what the "hardest" classes were to be for this student. However, given that the parent complainant did not provide specific classes either in her original Complaint, or in her response to the school district's response to her Complaint, the Federal Complaints Officer finds the school district more credible on this issue. Even if the parent complainant had provided a list of classes she considered "hardest" for her son, and even if this list had differed from the classes that the school district did provide in the morning, and which the school district argues were the "hardest" for the student, the Federal Complaints Officer would not have had the expertise to make the judgment about what were the "hardest" classes for this student.

While the Federal Complaints Officer has placed the burden of IEP specificity on the school district for other items in the student's IEP subject to this Complaint, the Federal Complaints Officer has determined the burden for such specificity is more appropriately placed on the parent in this instance. The need for specificity of what were to be considered the "hardest" classes for her son should have been apparent to the complainant, and, if she had any doubt about whether she and the school district were in agreement about what these classes were, she should have addressed this issue at the time of the creation of her son's 2005-06 IEP by either reaching agreement with the school district on this issue and by including a list of the agreed upon "hardest" classes in her son's 2005-06 IEP, or by taking the school district to a due process hearing, if she was unwilling to otherwise accept the school district's judgment about what these "hardest" classes were.

Allegation No. 5

The Federal Complaints Officer finds that the school district violated the student's 2005-06 IEP.

The school district argues that a tape recorder to help with note taking was to be provided on an "as needed" basis, and that, as the Federal Complaints Officer interprets the school district's response, since the student never made such a request, a tape recorder was never needed. The school district further argues that the complainant mother agreed to her son not having a tape recorder. The student's 2005-06 IEP does not use the language "as needed", and, even if it did, there is no language to demonstrate that this would necessarily have meant in whole or in part upon request by the student or upon further expression of agreement by the student's mother. The student's 2005-06 IEP states that he was to be provided with a tape recorder to help with note taking. The school district admits that this did not happen. The school district failed to meet this IEP requirement for the student.

Allegation No. 6

The Federal Complaints Officer finds that the school district violated the student's 2005-06 IEP.

Notwithstanding that the school district was not provided with an opportunity to respond to the specifics of the complainant's response to the school district's response to this allegation, the Federal Complaints Officer finds the specifics provided by the complainant to be credible. The Federal Complaints Officer therefore finds that the school district did not provide this student with a dual set of books in accord with the requirements of his 2005-06 IEP.

VI. REMEDY

Within thirty (30) days of her receipt of the certified mailing of this Decision, the Executive Director of Intervention Services for Jefferson County, Colorado School District R-1 shall submit a Statement of Assurance to the Federal Complaints Officer that assures that:

- 1) Jefferson County, Colorado School District R-1 accepts the findings of the Federal Complaints Officer, and;
- 2) Jefferson County, Colorado School District R-1 will act to avoid the reoccurrence of violations as found by the Federal Complaints Officer.

VII. CONCLUSION

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

Dated today, August 21, 2006.

Charles M. Masner, Esq.
Federal Complaints Officer