

FEDERAL COMPLAINT NUMBER 98.510
FINDINGS AND RECOMMENDATIONS

I. PRELIMINARY MATTERS

- A. This complaint was received by the Federal Complaints Coordinator, Colorado Department of Education (“CDE”), on March 12, 1998.
- B. The complaint was filed by Ms.[parent] on behalf of her daughter [student], against the Englewood Public School, Dr. Roscoe Davidson, Superintendent, and Ms. Joan Diedrich, Director of Special Education (“the District”).
- C. The timeline within which to investigate and resolve this complaint expired on May 11, 1998, but was extended by one week, to May 18, 1998, to allow for a meeting of all the parties and synthesis of information from that meeting.
- D. The process for receipt, investigation and resolution of the complaints is established pursuant to the authority of the Individuals With Disabilities Education Act 20 U.S.C. 1401 et. seq., (“the Act”), and its implementing regulations concerning state level complaint procedures, 34 C.F.R. 300.660-300.662, and Colorado State Board of Education Policy No. 1280.0.
- E. The complaint was brought against the District as a recipient of federal funds under the Act. It is undisputed that the District is a program participant and receives federal funds for the purpose of providing a free appropriate public education (“FAPE”) to eligible students with disabilities under the Act.
- F. The complaint was accepted for investigation based upon a determination that CDE had jurisdiction over the allegation contained in the complaint pertaining to violations of federal law and rules in a federally funded program administered by CDE.
- G. [student] is a student with disabilities eligible for services from the District under the Act.
- H. The investigation of the complaint included a review of the documents submitted by the parties; interviews with persons named in those documents or who had information relevant to the complaint; and consideration of relevant case law and federal agency opinion letters.

I. ISSUE

A. STATEMENT OF THE ISSUE:

Whether or not the District has violated the provisions of the Act by failing to provide special education and related services to [student] upon her transfer into the District. Specifically, did the District implement one of the following three options upon her transfer into the District:

- 1) Provide services immediately in accordance with her individualized education program (“IEP”).

- 2) Provide her with interim special education and related services agreed to by the parents and the director of special education, for no more than 15 school days while waiting for a copy of the IEP, or
- 3) Refer her for a complete assessment and planning, during which time provide her with services as indicated on the last agreed upon IEP or with interim services agreed to by the parents and the director of special education, while the assessment and planning are completed within 30 school days.

B. RELEVANT STATUTORY AND REGULATORY CITATIONS

20 U.S.C. 1401(a)(16), (17), (18), (19), (20), and 1414

34 C.F.R. 300.2, 300.7, 300.8, 300.11, 300.14, 300.16, 300.17, 300.121, 300.130, 300.180, 300.235, 300.300, 300.340, 300.346, 300.350, and 300.533

Fiscal Years 1995-97 State Plan Under Part B of the Act.

C. FINDINGS

1. At all times relevant to the complaints, the District was receiving funds under the Act pursuant to an approved application for funding.
2. The funds were paid to the District, in part, based on the assurances contained within its application.
3. One of the assurances made by the District is that in accordance with the Act, it will provide a FAPE, including special education and related services, to each eligible student with disabilities within its jurisdiction to meet the unique needs of that child.
4. [student] is an eleven year old student with hearing and speech/language disabilities as identified on an IEP developed in North Carolina in May, 1997. That IEP indicates that [student] is to receive the following services:
 - Direct special education services, 60 minutes per day, 5 days per week = 5 hours
 - Direct speech/language services, 30 minutes per day, 2 days per week = 1 hourThese services would total 6 hours per week of special education and related services.
5. [student] enrolled in the Englewood Schools on 9/10/97, at which time the complainant/parent provided the District with the above completed IEP which the school copied and entered into her file. [student] began school on 9/15/97.
6. The complainant/parent attended a parent teacher conference on 10/22/97, at which time, concerns about [student]'s progress were discussed. According to the complainant, neither of the primary 4th grade teachers knew [student] had an IEP. (The District's psychologist denies that the teachers told this to Ms. [parent].)

7. The complainant immediately made another copy of the IEP, gave it to school personnel and began inquiring as to the problem.
8. The school psychologist had been in possession of the IEP brought at the beginning of school, but indicated she had misinterpreted it to mean [student] had been dismissed from special education. This "misinterpretation" was due to the fact that the North Carolina IEP had recommended that [student] "exit from audiology related service". Upon re-reading the IEP she indicated that the District was not able to serve [student] until additional records were received from North Carolina or until the District did a full assessment and conducted a triennial review.
9. Records from North Carolina were received on 10/31/97.
10. The complainant/parent provided consent for assessment on 11/10/97 and an IEP was scheduled for 12/15/97.
11. Meanwhile, the special education teacher indicated that she began working with [student] on 10/6/97, one hour per week, based on her North Carolina IEP. [Note: the North Carolina IEP indicated [student] was to receive 5 hours per week of special education services]. This was increased to 5 hours per week plus make up time beginning 12/1/97, based on the direction of the special education director. Thus, no special education instruction was provided during the first three weeks of school and only one hour of service (as opposed to the 5 hours indicated) for the next seven weeks of school.
12. Meanwhile, the speech/language specialist began working with [student] on 10/23/97 for ½ hour per week which was increased to 1 hour plus make-up time beginning on 12/1/97, based on the direction of the special education director. Thus no services were provided during the first six weeks of school and only one half hour of service during the next two weeks.
13. Each of these specialists calculated the time they had missed from the beginning of the school year. The special education teacher calculated [student] did not receive 43 of instruction, based on her North Carolina IEP; and this was the amount of compensatory service owed. These 43 hours of compensatory services were started on 12/1/97 and completed on 2/13/98. The speech/language specialist calculated [student] did not receive 7 hours of related service, based on the North Carolina IEP, and this was the amount of compensatory service owed. These seven hours of compensatory services were started on 12/1/ 97 and completed on 2/24/97. (See schedule attached to these findings.)
14. The IEP developed on 12/15/97 indicates the following services are to be given:
 - Direct special education instruction 1-1 and ½ hour per week
 - Direct instruction by the hearing specialist, ½ hour per week
 - Direct instruction by the speech/language specialist, 1 hour per week
 - Direct instruction by the psychologist ½ hour per week.

This totals 3-3 and ½ hours per week of instruction.
15. Although services were scheduled and allegedly in place, the complainant/parent believes they were often not provided. Having acquired a schedule from school, the

complainant asked [student] each day about each of the scheduled special education periods. [student] often responded that she did not see that person that day. These responses led to the filing of this complaint.

16. The District acknowledges its initial error but, in its response to the complaint, states, “we believe that we have provided additional services that fully compensate [student] for the error. She is performing well. Her new IEP was agreed to by the staffing team and [student]’s mother and is being fully implemented.
17. Due to the extreme difference in perception of what was or was not being provided to [student], this complaint investigator scheduled a meeting with all the parties to, hopefully, understand why perceptions were so discrepant. The meeting was attended by the complainant, the speech/language specialist, the psychologist, the special education teacher, the hearing specialist, the director of special education and the District’s attorney.

The psychologist acknowledged responsibility for the initial misinterpretation of the IEP.

The special education teacher and speech/language specialist each reviewed their services, including the initial limited services and subsequent increased services. When asked why each of them gave only limited services initially [less than the IEP called for], each responded they did not know what she needed as they did not have her records. When asked what goals and objectives they based her service on, they each stated they followed the North Carolina IEP.

At one point during the meeting, a dialog between the psychologist and the complainant was one of each suggesting the other was not telling the truth.

18. This complaint investigator spoke with the complainant after the meeting (outside the school) and a few days later when contacted by telephone. The complainant stated that she sincerely believes District personnel were not completely honest and that many of the services were not provided, particularly prior to December.

D. DISCUSSION

19. This complaint investigator is impressed with the strong commitment on the part of the parent/complainant to [student]’s attaining a good education. The sincerity with which she expresses her concerns is noteworthy.
20. The District has provided ample documentation of services provided, including compensatory services for those not initially provided. Having listened to District personnel describe initial services or reasons for non-provision of services, this complaint investigator, however, has many concerns.

The psychologist states that she believed, erroneously, that [student] was dismissed from special education in North Carolina based on the statement on the IEP that she was to exit from audiology related service. Yet the IEP clearly stated she was to receive 5 hours per week of direct special education and 1 hour per week of speech/language related service.

The special education teacher, for the first three weeks of school provided no service, then provided [student] with one hour per week of services for the next

seven weeks, although there was no IEP in existence that indicated one hour. The North Carolina IEP indicated 5 hours. When questioned as to why, she stated that she did not have records that allowed her to know what [student] needed. Later, when questioned as to what goals and objectives she based her services on, she stated emphatically that it was based on the goals and objectives in the North Carolina IEP. On the one hand, the District indicates it did not know what services [student] needed; on the other hand, the District indicates that the limited services provided were based on her IEP. These two positions appear to be in conflict.

The speech/language specialist initially did not provide any services during the first six weeks of school, then provided services only one half hour per week, even though the IEP stated clearly one per week. That reasoning is unclear.

The District denies that the two regular fourth grade teachers stated to Ms. [parent] on 10/22/97 that they did not know [student] had an IEP; yet, it appears that, as a result of Ms.[parent]'s supplying a second copy of that IEP to the school, speech/language services were initiated on 10/23/97. Even though speech/language services were initiated, they were not equal to the amount listed on the IEP, until that time when the director of special education became involved.

The psychologist's rationale, although not completely understood, is accepted, as she acknowledged her error. However, once acknowledged, it does not make sense that the special education services began on 10/6 but the speech/language services did not begin until 10/23. Both were listed together on the North Carolina IEP. It also does not make sense that when each of these services were initiated it was not in the amount listed on the IEP.

It also does not make sense that special education instructional services were begun on 10/6, when the psychologist had stated that no services could be provided until the records were obtained or assessment was completed. Records were obtained on 10/31 and assessment was completed in November.

21. It is obvious that the District's and the complainant's perceptions of services provided are quite disparate. The process of complaint resolution, however, does not allow for taking testimony under oath for determining credibility. Therefore, this investigation must rely on documentation. It does not make sense however, that Ms. [parent] would fabricate information about the regular education teacher's not knowing [student] had an IEP and that she subsequently brought a second copy of the IEP to school. The fact that speech/language services were begun the following day also contributes to the credibility of this information.
22. At best, the District was aware of the North Carolina IEP from the beginning, the regular education teachers knew [student] had an IEP, however, special education instruction was not begun until 10/6 (part time) and speech/language services were not begun until 10/31. Once the complaint was filed, all of the services were increased, at the request of the special education director, to be commensurate with the IEP and to compensate for the time missed. Documentation reveals that all hours, including compensatory hours were provided.

At worst, although the psychologist had a copy of the IEP, others (including the regular education teachers) were not aware of it. The psychologist unilaterally

interpreted the IEP without consultation of the director of special education or the parent, and communicated that services could not be provide until records were received or assessment and IEP development was completed. Some services may have been provided, but not in an organized fashion until that time in which the complaint was filed.

It is not within the scope of this complaint investigation to issue an opinion as to credibility. Documentation indicates that although special education and related services were not begun upon [student]'s transfer into the District, they subsequently were provided and compensatory services were provided to make up that time which was missed.

III. CONCLUSIONS

The District has admitted to violating the provisions of the Act by failing to provide special education and related services to [student] upon her transfer into the District. It did not provide services immediately in accordance with the [student]'s North Carolina IEP, nor did it provide services commensurate with an interim IEP.

The District has provided documentation that, upon becoming aware of its error, it provided compensatory services to [student] commensurate with those which were initially not provided. Although the complainant disputes this, there is not sufficient evidence to suggest otherwise.

IV. REMEDIAL ACTION

None.

Dated this 18th day of May, 1998

Carol Amon, Federal Complaints Investigator