

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

Federal Complaint 2001:520

AURORA PUBLIC SCHOOLS

Decision

INTRODUCTION

This Complaint letter was dated May 11, 2001, and received by fax on the same date. The original was received by regular mail on May 14, 2001. The school's response was dated May 31, 2001, and received by fax on June 6, 2001. The original was received on June 8, 2001. The complainant's response to the school's response to the Complaint was dated June 16, 2001, and received, by fax, on June 19, 2001. The Federal Complaints Officer then closed the record.

COMPLAINANT'S ALLEGATION

In the words of the complainant, with personally identifiable information deleted: "(My son) has an IEP that states he will receive sensory integration input starting each day for twenty minutes (please see attached page from IEP). The district has not provided (my son) with this mandated service as noted in his IEP since March due to scheduling changes for transportation (they have added two students to the route, causing the morning bus to be late in arriving to my son's school). As of today, (my son) has been consistently arriving at (attendance center) on or after 8:13 am and he's required to be in class at 8:20 am with (teacher). He has been unable to access his prescribed twenty minutes of SI for weeks now, and the school district refuses to restore his schedule." Complainant's Complaint letter dated May 11, 2001.

SCHOOL'S RESPONSE

The school responded as follows, as excerpted by the Federal Complaints Officer, with personally identifiable information deleted:

(Complainant's son's) sensory input time was scheduled to occur between 8:00 a.m. and 8:20 a.m. immediately following his 8:00 a.m. arrival at school via district school bus. Immediately thereafter, (complainant's son) would meet his special education teacher, from approximately 8:20 a.m. to 8:30 a.m. in preparation for his language arts class at 8:30 a.m. Despite some bus irregularities resulting in a 5-10 minute delay in arrival time, (complainant's son's) special education teacher was not aware of any decrease in sensory integration time as she saw no decrease in his alertness, attentiveness, participation, or speed of work (i.e., no change in performance from day to day.)

In preparation for (complainant's son's) 3-8-01 triennial, the occupational therapist rated his performance on a scale of 1-5 (with 5 indicating highly alert, attentive, etc.). (Complainant's son) typically scored within the 4-5 range. She reported no difference in his performance on days he received the full twenty minute routine versus days when the time was reduced.

While we regret inconsistencies which arise from time to time relative to bus pick-up and delivery times, such is inevitable in a district which covers 100+ square miles. The bus schedule issue is further exacerbated by the fact (complainant's son) does not attend his neighborhood school. This issue has been resolved, however, by initiating a new route with a different drive and an earlier pick-up time.

It is the district's position that enough of the service was provided to deliver the IEP and provide FAPE. In fact, evidence supports the fact this time could be permanently shortened. (Complainant's son) continues to receive sensory input on a daily basis, and his alertness, attentiveness, participation, and work speed have not been impacted adversely. School's response, dated May 31, 2001.

FINDINGS AND DISCUSSION

The school does not deny that complainant's son's IEP dated March 8, 2001 – the IEP relevant to this Complaint – requires twenty (20) minutes of sensory integration input to be provided to him as soon as his arrival at school, from 8:00 am until 8:20 am. The school also does not deny that this service has not been fully provided. The school argues that: "It is the district's position that enough of the service was provided to deliver the IEP and provide FAPE." School's response, dated May 31, 2001. To which the complainant responded, with personally identifiable information deleted: "(My son) has, as a result of being unable to obtain full connectedness (SI 'revs' your brain, allowing thought processes to quicken and, in (my son's) case, lessen his anxious feelings about school) been severely depressed as a direct result of his failing to feel like any other child at school." Complainant's response to the school's response to the Complaint, dated June 16, 2001.

The extent to which missed service(s) constitute a violation of an IEP and a denial of a free appropriate public education (FAPE), must be decided on a case by case basis. As a general rule, the Federal Complaints Officer views the burden to be on the school to show no denial of FAPE when IEP designated service(s) have not been fully provided. On the facts of this Complaint, the Federal Complaints Officer finds that the school has not met this burden.

The school argues that even though the IEP designated service was not fully provided for complainant's son "...enough of the service was provided to deliver the IEP and provide FAPE."

School's response dated May 31, 2001. In support of this view the school stated that – “Despite some bus irregularities resulting in a 5-10 minute delay in arrival time, (complainant's son's) special education teacher was not aware of any decrease in sensory integration time as she saw no decrease in his alertness, attentiveness, participation, or speed of work (i.e., no change in performance from day to day.)” – and – that the school's occupational therapist “...reported no difference in (complainant's son's) performance on days he received the full twenty minutes routine versus days when the time was reduced.” Id. Personally identifiable information deleted. According to the school “... evidence supports the fact this time could be permanently shortened. (Complainant's son) continues to receive sensory input on a daily basis, and his alertness, attentiveness, participation, and work speed have not been impacted adversely.” Id. Personally identifiable information deleted. The complainant, obviously, does not agree. Therefore, if the school believes that evidence does, indeed, support permanently shortening complainant's son's sensory integration input time, then the school needs to convene an IEP team to present that evidence to the team, of which the complainant/parent is a member. If the complainant/parent disagrees with the evidence, as presumably she would do in this case, then consensus will not be reached and the complainant will be entitled to a due process hearing to contest any result with which she does not agree. That's what the law provides, and the school, outside of the IEP process, through non-IEP team members, is not entitled to retroactively determine that FAPE does not require the services that the IEP team has designated be provided.

The Federal Complaints Officer finds that the school has violated the FAPE requirements of the Individuals with Disabilities Education Act (IDEA) with regard to this student, by not sufficiently implementing his IEP according to the determination of the IEP team, as designated on the IEP document. See 34 CFR 300.13 – Free appropriate public education – most specifically 34 CFR 300.13(d), which references the IEP provisions in 34 CFR 300.340-300.350.

REMEDIES

- 1) The Director of Special Education shall submit to the Federal Complaints Officer, within thirty (30) days of his receipt of this Decision, a statement of assurance that complainant's son's IEP will be appropriately implemented in the future, and that any changes in complainant's son's IEP will be made using appropriate IEP processes.
- 2) At the written request of the complainant, the school shall convene an IEP meeting, no later than prior to the beginning of the 2001-2002 fall semester at complainant's son's attendance center, for the purpose of determining whether complainant's son can benefit from compensatory education and, if so, what that compensatory education will be, and how it will be delivered. Once a determination has been made by the IEP team, the school shall provide the complainant with notice sufficient to meet the requirements of 34 CFR 300.503 and 300.504.

Compensatory education is not a fine or damages. It is available as a remedy if an educational harm has occurred which can be compensated. The Federal Complaints Officer has determined that complainant's son has been denied FAPE. On the facts of this Complaint, it is also the determination of the Federal Complaints Officer that the IEP team is in the best position to determine whether the complainant's son has experienced a harm that can be remedied by compensatory education, and, if so, how.

In order for the complainant to exercise her right to this Remedy, she must present her written request to the school within thirty (30) days of the date of this Decision. If she does not do so, the school shall not be obligated to convene an IEP meeting for the purpose of determining whether, and if so how, compensatory education is to be provided – and therefore the school shall not be required, in order to comply with this Decision, to further consider providing compensatory education to complainant's son.

CONCLUSION

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

Dated today, June _____, 2001.

Charles M. Masner, Esq.
Federal Complaints Officer