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

Federal Complaint 99:531

(Pikes Peak BOCS)

Decision

INTRODUCTION

This Complaint was dated October 28, 1999, and received by the Federal Complaints Officer on November 1, 1999. On November 3, 1999 a copy of the Complaint letter was sent to Pikes Peak BOCS Director, Dr. Brian Printz, with copies to the complainants and Ms. Linda Williams-Blackwell. The copy of the Complaint letter was accompanied with a cover letter from the Federal Complaints Officer stating, in relevant part, that "…if substantiated, the facts as stated by (the complainants) could be violations of relevant special education law." The cover letter asked for a response from the school within fifteen (15) days of the school's receipt of the Complaint, unless an extension of time was granted by the Federal Complaints Officer. The Federal Complaints Officer received proof of receipt of this correspondence, by Dr. Printz, dated November 4, 1999. In a letter dated November 17, 1999, and received by the Federal Complaints Officer on November 19, 1999, the school filed a response to this Complaint, and seven (7) other individual Complaints filed by other complainants, as well as a group Complaint filed by all the complainants. The letter dated November 17, and received by the Federal Complaints Officer on November 19, was less than one and one half pages long and was the school's response to Complaints concerning eight (8) students.

In a telephone conversation of November 29, the Federal Complaints Officer spoke with the school's attorneys', Mr. Robert I. Cohn and Mr. Bruce Anderson. Federal Complaint procedure was discussed and the Federal Complaints Officer told Mr. Cohn and Mr. Anderson that he did not believe the school's response to the Complaints was sufficient because it did not address each Complaint individually with enough specificity to the allegations that had been made. Mr. Cohn and Mr. Anderson told the Federal Complaints Officer that they would get back to him that week with an answer about whether and when the school would be filing further responses. In a letter to the Federal Complaints Officer dated December 3, 1999, and received by the Federal Complaints Officer on December 6, 1999, from Mr. Cohn, the Federal Complaints Officer was told in writing what had already been conveyed to him orally by Mr. Cohn – that Mr. Cohn's firm was representing the school and all communications with the school from the Federal Complaints Officer, regarding the Complaints, should be through Mr. Cohn's law firm. The Federal Complaints Officer has not spoken to anyone at the school regarding the Complaints, with the exception of the on-site, since he received, on December 6, 1999 the letter of notification from Mr. Cohn dated December 3, 1999.

In correspondence to the complainants, dated December 6, 1999, the Federal Complaints Officer sent the complainants a copy of the school's response, dated November 17, 1999, and received by the Federal Complaints Officer on November 19, 1999. The Federal Complaints

Officer received proof of receipt of certified mailing, for this Complaint and the group Complaint, 99:531 and 99:537, respectively, dated December 15, 1999. In his correspondence dated December 6, 1999, the Federal Complaints Officer told the complainants that the school had estimated that additional responses would be forthcoming to their Complaints within ten (10) days. It is the recollection of the Federal Complaints Officer that this was the time period agreed on with Mr. Anderson. The Federal Complaints Officer told the complainants that he would send them copies of any individual responses received from the school. He also told the complainants that they could file a response to the school's initial response now, or wait and respond after they had received any additional responses the school provided. In a letter from the school's attorneys, dated December 17, 1999, and received by the Federal Complaints Officer on December 17, 1999, the school submitted a response to the individual Complaint. The Federal Complaints Officer mailed a copy of this additional school response to the complainants in correspondence dated December 21, 1999, and received by the complainants on December 22, 1999, according to proof of receipt of certified mailing. The Federal Complaints Officer failed to notify the complainants of their opportunity to respond to this additional response from the school. Upon discovering his mistake, the Federal Complaints Officer did notify the complainants of their opportunity to respond, in correspondence dated January 21, 2000.

On December 14, 1999, the complainants filed an addendum to their Complaint. In correspondence dated December 16, 1999, the Federal Complaints Officer mailed this addendum to the school and provided an opportunity for the school to respond. The school responded in correspondence dated January 5, 2000, and received by the Federal Complaints Officer on January 10, 2000.

On December 20, 1999 the Federal Complaints Officer called Mr. Cohn and left a voice mail asking whether there was going to be any further response forthcoming to the complainants group Complaint, and asking for a list of staff and student schedules for the purpose of doing an on-site at the school as a part of the investigation. The Federal Complaints Officer had previously requested this information from Ms. Linda Williams-Blackwell, prior to Mr. Cohn's law firm representing the school, and in correspondence to Mr. Cohn dated December 16, 1999, and subsequently received by Mr. Cohn's firm, by certified mail, on December 17, 2000, the Federal Complaints Officer had also requested this information. On December 20, that same day, the Federal Complaints Officer received a voice mail back from Mr. Cohn. The voice mail did not answer the question of whether there was going to be a further response to the group Complaint. The voice mail did say that Mr. Anderson, Mr. Cohn's colleague, had mailed the Federal Complaints Officer a list of staff and schedules on Friday. In correspondence to Mr. Anderson, Mr. Cohn's colleague, dated December 21, the Federal Complaints Officer again asked whether a further response to the group Complaint would be forthcoming, and again asked for a list of staff members and schedules. In faxed correspondence from Mr. Anderson, to the Federal Complaints Officer, dated and received December 27, 1999, Mr. Anderson stated that they would provide a "more specific response to the group complaint" and also faxed the Federal Complaints Officer staff and scheduling information. Mr. Anderson explained that he had been out of the office on December 21, 22, and 23.

In correspondence dated January 5, 2000, and received by the Federal Complaints Officer on January 10, 2000, the school provided an additional response to the group Complaint. In correspondence dated January 13, 2000, the Federal Complaints Officer sent, by certified mail, a copy of this additional response to the group Complaint, to the complainants, and gave them fifteen days to respond if they wished. On that same day, January 13, 2000, the Federal

Complaints Officer received, in a letter signed by all of the complainants, dated January 11, 2000, a response to the school's initial response to the Complaint, dated and received November 17, and 19, respectively. In correspondence dated January 18, 2000, the Federal Complaints Officer sent the school a copy of this response from the complainants.

As a part of the investigation of this Federal Complaint, as requested by the complainants and the school, the Federal Complaints Officer conducted an on-site at Lewis Palmer Middle School. This was done on February 1 and 2, 2000. The Federal Complaints Officer met with persons that the complainants and the school had identified as the persons with whom they wanted the Federal Complaints Officer to meet.

COMPLAINANTS' ALLEGATIONS

In their Complaint letter, dated October 28, 1999, and received by the Federal Complaints Officer on November 1, 1999 the complainants alleged:

- A behavior plan for their son, required by a May 18, 1999 staffing to be in place by August, 1999, was not in place;
- Staff were not adequately implementing the on-site services provided by a hearing specialist;
- Assistants to their son in his special education class were not sufficiently providing for implementation of their son's IEP in a way that assured measurable progress;
- Between August 17, 1999, and September 17, 1999 there was no documentation to verify IEP implementation. Their son's report card for the first grading period in 1999 had no grades on it. The reasons given were a substitute teacher and absences. Their son was only absent the last five (5) days of the grading period;
- No flashing alarm for safety had been installed, as required by his IEP;
- Their son had no daily schedule for IEP implementation until they created one. Even so, it was not being "routinely followed";
- Augmentative communication with picsyms were not being used in the identified areas of life/community survival. He had no picsym board or paper to introduce subjects, events, or routines;
- Their son was being denied an education in the least restrictive environment by withholding supplemental supports in his IEP;
- Their son was denied needed supplemental supports from his parents for his educational experience due to parents not receiving critical information about program changes;
- A regular education teacher was not present at their son's IEP meeting on May 18, 1999.

The complainants raise other legitimate concerns about their son's education. However, these other concerns are not subject to the jurisdiction of the Federal Complaint process because they are either personnel concerns, which must be addressed by local authorities, or because they are placement and/or appropriate services concerns which are more appropriately resolved by a due process hearing, if they cannot otherwise be resolved between the complainants and the school.

SCHOOL'S RESPONSES

In its response to the Complaint, dated and received December 17, the school responded to the complainants' allegations as follows:

- "(Complainants' son's) IEP dated 05/18/99, states 'Write a behavior intervention plan regarding how to intervent (sic/sic) when he is demonstrating self-stim/self abusive behaviors in the Fall.' It is incorrect as stated in the Complaint that a behavior plan was to be 'in place by August 1999'. A behavior plan has been developed and is in place. LPSD has complied with the requirement that the behavior plan be done during the fall semester."
- "The hearing impaired therapist has taught signs to the staff and given information to the staff on communicating with (complainants' son). Several modalities have been implemented. The paraprofessionals assigned to the SMN Program are providing the hands on assistance required by the IEP. Signing instruction for staff is scheduled for every other Monday."
- "The paraprofessionals assigned to the SMN Program are providing the hands on assistance required by the IEP."
- The school does not really deny this, since school began on August 17, 1999, and the former teacher was placed on administrative leave, according to the school, beginning September 15, 1999. The school states in its response that it took immediate corrective action when it recognized "performance deficiencies" by this teacher, and that LPSD acted appropriately when it discovered that the "teacher…was not performing adequately". The school does say that – "(Complainants' son's) IEP does not require that he receive letter grades. Whether he received grades for an interim period of time, is not a violation of the IDEA. Pass/fail grades, not letter grades, are the appropriate measurement for (complainants' son's) progress";
- "(Complainants son's) IEP requires a flashing alarm as one of the physical environment accommodations. There are two flashing fire alarms, one in the class room and one outside in the hallway";
- "A daily schedule for (complainants' son) has been developed that addresses his needs and goals. … (T)he substitute, began working with the family in early October to complete the schedule";
- "Augmentive picsyms were available and used by (complainants' son) during the 1998-1999 school year. It is difficult to determine what (the teacher) did on this issue for the first weeks of the school year. Augmentive picsyms are available for (complainants' son's) use in the classroom";
- "LPSD has provided the supplemental services and supports identified in (complainants' son's) IEP" – and – "(Complainants' son) has not been denied an education in the least restrictive environment. (Complainants' son's) IEP states that the most appropriate and least restrictive environment is placement outside the general classroom greater than 60 % of the time. This option was selected because it is most conducive to successful participation and interaction with peers while remediating academic, communication, pro-social and daily living needs. (Complainants' son's) placement has been consistent with the requirements of the IEP";
- "Complainants' concerns regarding program changes to the SMN Program do not constitute violations of the IDEA";
- The school did not provide a response to this allegation.

FINDINGS

It may have been incorrect to interpret the IEP to mean that a behavior plan be in place on the first day of school, August 17, 1999. Maybe. Maybe not. However, the complainants' Complaint, dated October 28, 1999, and received by the Federal Complaints Officer on November 1, 1999, alleges that there was no behavior plan in effect as of that date. The school did not deny this in its response, dated and received December 17, 1999, nor did the school state when the behavior plan had been developed or put into effect. A rational interpretation of the May 18, 1999 IEP is that a behavior plan be in place early enough in the fall semester 1999, so that the complainants' son could reasonably benefit from that plan during the fall semester 1999. This did not happen. This was a violation of the complainants' son's IEP. This was a violation of IDEA. See generally CFR 34 300.340 – 300.350 regarding IEPs. See especially CFR 34.342(a),(b) and 300.350 (a).

Given the personnel turmoil during the fall semester, 1999, it seems more likely than not that the staff were not doing an adequate job of implementing recommendations of the hearing specialist, or other requirements of the complainants' son's IEP. The school's response does not provide the Federal Complaints Officer with any specifics about how this was occurring, and the Federal Complaints Officer finds statements of the staff at the on-site do not outweigh reasonable conclusions that can be drawn from the circumstances and the complainants' statements. As the school stated in its response to the Complaint, dated and received December 17, 1999, the teacher who was in the classroom from August 17, until September 15, 1999 had "performance deficiencies" and did not "perform adequately". It therefore seems more likely than not that she was not providing necessary supervision to the paraprofessionals. It also seems more likely than not that since there was then a subsequent substitute teacher, and subsequent new full time teacher that followed, that there would have been some further time that would pass before adequate supervision could be provided to the paraprofessionals. Moreover, since the filing of this Complaint, the school has agreed to the hiring of a second full time teacher to meet the needs of the group of students of which the complainants' son is a part. The Federal Complaints Officer therefore finds that, for at least a substantial portion of the fall semester 1999, the paraprofessionals did not do an adequate job of implementing recommendations of the hearing specialist, or other requirements of the complainants' son's IEP. This was a violation of the complainants' son's IEP. This was a violation of IDEA. See generally CFR 34.300.340 – 300.350 regarding IEPs. See especially CFR 34.342 (a), (b) and 300.350 (a).

The key issues in the grading dispute are whether the school adequately measured the complainants' son's progress during the fall semester of 1999, and whether the school kept the complainants' adequately informed of that progress during the fall semester of 1999. The Federal Complaints Officer finds that it is more likely than not that this did not happen from August 17, 1999 until September 15, 1999, when there was a teacher in charge who, according to the school, had "performance deficiencies" and did not "perform adequately". It is true that letter grades are not required by IDEA. However, the implication of the complainants' Complaint is that they were expecting letter grades, not pass/fail grades. This would seem to be a rational expectation if non special education students were receiving letter grades and if a different grading system for the complainants' son had not been explained to them. Pass/fail grading is not stated as the method of measurement in the complainants' son's IEP. Also, the school does not deny that the complainants' son did not get graded, pass/fail or otherwise, for a six week "interim period" of time. Complainants' son, a special education student, is entitled to be graded for the same "interim period(s)" of time that non special education students are graded. The

school should have been adequately measuring the complainants' son's progress towards meeting his goals and objectives during this period of time. The complainants' son's IEP states, regarding how, and how often, the parents were to be informed of their son's progress towards annual goals – "Progress report on objectives at the end of 6 weeks period." The school does not deny that this did not occur. The Federal Complaints Officer finds that the school violated IDEA by not keeping the complainants sufficiently informed of their son's progress, for at least the first six (6) weeks of the fall 1999 semester. See 34 CFR 300.347 (7).

As of October 28, 1999, the date of the complainants' Complaint letter, the complainants stated that they were "not aware" of the installation of a flashing alarm. In the school's response dated December 17, 1999 the school stated that necessary flashing alarms were in place. The school's response does not say when they were installed. So long as Dr. Brian Printz and Ms. Linda Williams-Blackwell provide the Federal Complaints Officer with a written statement of assurance that necessary flashing alarms are in place, the Federal Complaints Officer's finding will be that the IEP requirement has been met.

At best, the school's response indicates that there was not a daily schedule in place until October of 1999. The school does not respond to the complainants' allegation that the schedule was not "routinely followed." Without a daily schedule, it is hard to see how the complainants' son's IEP could have been adequately implemented. The Federal Complaints Officer finds that this did not happen until at least early October, 1999. This was a violation of IDEA. See generally 34 CFR 300.340 – 300.350, regarding IEPs. See especially 34 CFR 300.342 (a), (b) and 300.350 (a).

The school's response does not deny that, at least for the period of time that the 1999 fall semester beginning teacher was employed, augmentive picsyms may not have been available to complainants' son. The school says – "It is difficult to determine what (the teacher) did on this issue for the first weeks of the school year." The school goes on to say, in its response dated and received December 17, 1999, that augmentive picsyms are available to complainants' son. The school does not say when they became available, and does not dispute the complainants' allegation that, as of the date of the complainants' Complaint, October 28, 1999, they were not being used in the identified areas of life/community survival. The Federal Complaints Officer finds that augmentive picsyms were not available for complainants' son, as required by his IEP, for at least the period August 17, 1999 until October 28, 1999. This was a violation of the complainants' son's IEP. This was a violation of IDEA. See generally 34 CFR 300.340 – 300.350, regarding IEPs. See especially 34 CFR 300.350 (a).

The school correctly states that complainants' son's IEP states that he is to be outside the general classroom greater than sixty (60) per cent of the time. The IEP does state inclusion should be emphasized for "pro social and daily living needs", among others, and that complainants' son should be excluded from general education "… only when behavior and/or academic objectives can not be met in a general education setting." If the complainants' believe that their son is not being appropriately included in the general curriculum, they need to have the IEP made more specific, so that it is clear when and how inclusion is to occur. If the complainants' and the school cannot agree on the specifics of how and when inclusion is to occur, the complainants' ultimate means of resolving this disagreement would be a due process hearing. However, having said that, it is also true that, whatever "least restrictive environment" means, it is a part of a "free appropriate public education". If a "free appropriate public education" has not been sufficiently provided, then the "least restrictive environment" requirement cannot be said to have been met, whatever that was intended to be. That's what

happened here, and, therefore, the Federal Complaints Officer finds that complainants' son was not provided an education in the "least restrictive environment". This was a violation of IDEA. See 34 CFR 300.550 –300.556, and 34 CFR 300.13.

Complainants' should have been informed about program changes which put moderate and severe needs children in the same room. This was a major, not a minor, change. Arguably, it was a change in placement, triggering procedural protections for the complainants'. Even though this issue is not expressly addressed in the complainants' son's IEP, it is clear that this would be the type of change that could have a dramatic impact on meeting the goals and objectives that were in the complainants' son's IEP. It is inconsistent with a regulatory scheme that requires that parent participation be actively sought in the IEP process, to conclude otherwise. Even if the administrative exigencies of the situation required that immediate action be taken, which did not allow for informing parents beforehand, and the Federal Complaints Officer finds nothing in the record to indicate that this was the case, the complainants' should have been informed of the change immediately afterwards. The school does not deny that this did not occur, and instead argues that these program changes did not constitute violations of IDEA because – "LPSD made personnel changes which it believed were necessary to improve the quality of the SMN Program." When changes occur in a way that impacts the ability of required IEP services to be delivered, especially abruptly, during the first part of the first semester of a school year, the parents are entitled, at a minimum, to be notified that this has occurred, so that they can help their sons and daughters adjust accordingly. The school did not keep the complainants' adequately informed about major programming changing affecting their son's IEP. This was a violation of IDEA. See generally 34 CFR 300.340 – 300.350, regarding IEPs. See also 34 CFR 300.503 and 34 CFR 300.507.

The school does not deny that there was no regular education teacher at the May 18, 1999 IEP meeting. This was a violation of IDEA. See 34 CFR 300.344 (a) (2).

DISCUSSION: FINDING OF DENIAL OF FAPE AND NEED FOR COMPENSATORY EDUCATION

In its response to the Federal Complaint, dated and received December 17, the school states that the "magnitude of the deprivation is a critical factor in determining whether equitable relief should be granted." The school then cites the Federal Complaints Officer to Bean v. Conway School District, 18 IDELR 65, 69 (D.N.H. 1991). A Federal Complaints Officer in Colorado, considering a Complaint arising out of the state of Colorado, is not bound by a U.S. District Court decision settling a dispute that arose in the state of New Hampshire. However, even if he was, and even if the school has correctly interpreted the court, it is clear that the magnitude of the deprivations suffered by the complainants' son in this case warrant relief. The complainants' son has not fully received a free appropriate public education during the fall semester, 1999. The school's own response, dated and received December 17, 1999, is at least a partial admission of such, since the school states the historical facts as follows: school began on August 17, 1999; shortly after the commencement of classes, (the principal) "observed that (the teacher) was not meeting the required performance standards"; (the teacher) was placed on administrative leave beginning on September 15, 1999; a full time substitute took over until another teacher was hired on October 25. At this point, half the semester was gone. The school has since agreed to employ two (2) full time teachers to meet the needs of the group of

students of which the complainants' son is a part. In addition, the school initially considered compensatory education.

In its response to the Federal Complaint, dated and received December 17, the school states that the "courts have recognized that a school district may not be able to act immediately to correct a problem as some time may be necessary to respond to a complex problem." The school then cites the Federal Complaints Officer to M.C. & G.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996). Citing the same case, the school states – "A child is not entitled to the remedy of compensatory education unless a school district fails to rectify the problem within a reasonable period of time." Even if the school has correctly interpreted the third federal circuit, a Federal Complaints Officer in Colorado, considering a Complaint arising out of the state of Colorado, is not bound by a decision of the third federal circuit. The fact that injuries resulting from a deprivation of special education services, which occur because the school failed to provide those services, may require more complex solutions that take more time to resolve, does not change the fact that a student has suffered an injury that s/he should be entitled to have the school compensate – even if it were to be determined that the school was doing its best to correct the problems. The school, in this case, at least initially, agreed with this view. "Compensatory education will be addressed with each parent." So said the school in its initial response to this Complaint, dated November 17, 1999, and received by the Federal Complaints Officer on November 19, 1999. The Federal Complaints Officer presumes that the school would not have been considering compensatory educational services for complainants' son, if the school had believed that complainants' son had fully received a free appropriate public education during the fall semester, 1999. See 34 CFR 300.13.

REMEDIES

The school will submit to the Federal Complaints Officer, no later than thirty (30) days from the date this Decision becomes final, a written statement of assurances, signed by Dr. Brian Printz and Ms. Linda Williams-Blackwell, explaining how the school is remedying, or has remedied, every violation that the Federal Complaints Officer has determined has occurred. The Federal Complaints Officer will determine whether this statement is sufficient. The Federal Complaints Officer will maintain continuing jurisdiction over this Complaint until compliance with this order is obtained. The Federal Complaints Officer reserves the right to impose and recommend other remedies, if he determines that the school is not making every reasonable effort to expeditiously come into compliance.

The school will provide compensatory educational services to the complainants' son. The complainants have fifteen (15) days from the date of this decision, to submit to the Federal Complaints Officer their proposal for compensatory educational services. The school will then have fifteen (15) days to respond. If the parties can agree, the Federal Complaints Officer will consider that agreement. If they cannot agree, the Federal Complaints Officer will order the compensatory educational services which are to be provided.

APPEAL RIGHTS

This decision will not become final until the Federal Complaints Officer has received the requested information about compensatory educational services, and has ordered what those

services will be. At that time the decision will become final, and the appeal time will begin to run. A copy of the appeal procedure is attached to this decision.

CONCLUSION

Throughout the investigation and resolution of this Complaint, the Federal Complaints Officer has offered mediation to the parties. The Federal Complaints Officer renews that offer. The complainants need to understand that, while the school is obligated to provide qualified staff, no one can order anyone to take a job. That includes, of course, ordering someone to take on the job of providing compensatory educational services. If the complainants cannot find a way to work with the school to provide the kind of environment in which people want to work, for an amount of money which the school is obligated to pay, then it is not unreasonable to assume that the problems at Lewis Palmer Middle School will continue.

Dated today, March _____, 2000.

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Charles M. Masner, Esq.
Federal Complaints

Federal Complaint 99:531

Decision

COMPENSATORY EDUCATION

INTRODUCTION

The Federal Complaints Officer regrets that the complainants and the school could not reach agreement about the compensatory educational services to be provided. In the conclusion to his Decision, the Federal Complaints Officer renewed his offer of mediation. No one accepted. It is now the job of the Federal Complaints Officer to resolve the issue of compensatory educational services.

DISCUSSION

To the best of the Federal Complaints Officer's knowledge, compensatory education is not defined in relevant statutory or regulatory law. If there is definition in case law, that would provide the Federal Complaints Officer with sufficient guidance to resolve the issue in this case, the parties have not provided the Federal Complaints Officer with that definition. The Federal Complaints Officer therefore is proceeding to resolve the issue of compensatory educational services using his own judgement, based, obviously, on his own education and experience, as applied to the facts of this case.

Absent express guidance in the law, the Federal Complaints Officer believes that his determination about compensatory educational services should be narrowly defined. The Federal Complaints Officer holds no elective or appointed public political office. He has not been given that kind of authoritative legitimacy. If those who have such legitimacy want to institutionalize a more expansive definition of compensatory education for consideration by Federal Complaints Officers, it is up to them to do so.

The Federal Complaints Officer's definition of compensatory education, in this context, is educational services designed to compensate a student for harm that he or she has suffered because of an inadequate provision of educational services to which the student was entitled. First, there must be a determination that harm has occurred, and second there must be a determination that it is possible to compensate the student for that harm, through the provision of educational services. Using this definition of compensation, there may be some harm that it will not be appropriate to try and compensate, because the harm either cannot be compensated by educational services, or the harm will have been compensated either wholly or in part by intervening events. Also, the harm may have been so slight that no long term loss was suffered

by the student. If the harm is compensated by intervening actions not provided by the school, it may also be true that the student and his parents have incurred burdens they might not have incurred if the harm had never occurred to the student. However, if the student and his or her parents wish to seek reimbursement for the costs of these burdens, the appropriate forum for seeking such reimbursement, absent some new express authority to the contrary, is not, in the view of the Federal Complaints Officer, the Federal Complaint process. Moreover, if the intervening actions occurred after removal of the student from school by a complainant, the appropriate forum for seeking reimbursement for any costs is, in the view of the Federal Complaints Officer, the due process hearing. Otherwise, a parent complainant could remove their son or daughter from school for allegations about inappropriate services, provide or purchase services themselves, and then file a Complaint seeking reimbursement. This would inappropriately circumvent, in the view of the Federal Complaints Officer, the due process hearing as the appropriate forum for resolving certain types of disagreements about appropriate services or placement. That does not mean, of course, that if the school proposes compensation anyway, in the form of educational services or otherwise, in circumstances where parents have provided or purchased services themselves, with or without removing their son or daughter from school, that the proposal should necessarily be rejected, where such a proposal will satisfactorily resolve a disagreement between a complainant and a school.

In his Decision, the Federal Complaints Officer did determine that some harm had occurred which could be remedied by the provision of some compensatory educational services by the school. The Federal Complaints Officer found that the complainants' son, did not fully receive a free appropriate public education during the fall semester 1999. The Federal Complaints Officer views the fall semester 1999 at Lewis Palmer Middle School as a time period which went from legally insufficient to legally sufficient, by the end of the fall semester 1999. Legally sufficient in this instance meaning sufficient to meet the basic requirement of “appropriate” in Free Appropriate Public Education (FAPE). The Decision of the Federal Complaints Officer did not address circumstances beginning with the spring semester, 2000.

FINDINGS

The complainants' request for compensatory education goes beyond compensatory education as defined by the Federal Complaints Officer. Moreover, even to the extent that the complainants' request is compatible with the definition of the Federal Complaints Officer, the complainants give insufficient supporting rationale for their request. They state what they believe should be provided with definitions of harm that are insufficiently compatible with the Decision of the Federal Complaints Officer, and they provide insufficient analysis of how what they propose compensates for the harm they perceive has occurred.

The school offers a compilation of the hours of special education services denied, and then divides that by educational school day hours, in order to arrive at a number of hours for which one on one (1:1) tutoring should be provided to compensate complainants' son. The school’s rationale being that one on one (1:1) tutoring is more intensive than classroom hours in which the student is a member of the class group, and therefore the necessary compensatory educational services can be provided in less hours than the total number of classroom hours lost. The school states that this is the same way it determines how many hours of home based services to provide a student who, for whatever reason, cannot attend classes as a part of a class group, as is normally the case for the students enrolled at the school.

The Federal Complaints Officer accepts the school's computation of the special education services hours missed by complainants' son. That computation was supplied by Ms. Linda Williams Blackwell, who can qualify as an expert in special education. The Federal Complaints Officer also accepts that compensatory educational services should be provided through one on one (1:1) tutoring. However, the Federal Complaints Officer believes that because these are special needs students, and because the denial of FAPE occurred not only in a denial of hours of special education classroom programming, but also in qualitative aspects of the student's educational programming in and out of the special education classroom, the one on one (1:1) tutoring should be for the total number of hours of special education services denied. Special education students generally receive instruction with a lower pupil:teacher/aide ratio than the non-special education student population. Some of that instruction is one on one (1:1). Therefore, the number of hours of compensatory education to be provided shall be 196 hours. The tutor(s) shall be paid at a reasonable hourly rate necessary to hire the appropriate person(s) to do the job. This could be more or less than the twenty dollars per hour proposed by the school. These services shall include any necessary related services. If the complainants and the school cannot agree on an appropriate rate, or on other necessary terms for the delivery of these services, they shall submit their disagreement to the Federal Complaints Officer and he will decide the issue.

IT IS SO ORDERED.

CONCLUSION

This Order makes final the Decision of the Complaints Officer, as dated by his signature on this Order, and the appeal time begins to run accordingly. A copy of the appeal procedure is attached to this Order.

Dated today, May _____, 2000.

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Charles M. Masner, Esq.
Federal Complaints Officer

Federal Complaint 99:531

CLARIFICATION OF COMPENSATORY EDUCATION ORDER

The Federal Complaints Officer has determined that he was mistaken and that the Federal Complaint process does give him the authority to order monetary reimbursement in the appropriate case. The Federal Complaints Officer has also determined that it is not appropriate to do so in this case.

Dated today, May _____, 2000.

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Charles M. Masner, Esq.
Federal Complaints Officer