BEFORE THE DIVISION OF ADMINISTRATIVE HEARINGS
STATE OF COLORADO

CASE NO. ED 2004-0007

DECISION UPON STATE LEVEL REVIEW

MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51,

Appellant,

v.

THE LEGAL CENTER FOR PEOPLE WITH DISABILITIES AND OLDER PEOPLE,

Appellee,

And Concerning [STUDENT] A/K/A [STUDENT],

The Child.

This is a state level review of a decision of a Federal Complaint Officer issued pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 *et seq*., 34 C.F.R. §§ 300.660-662 and the Colorado Department of Education (CDE) Procedure for Resolving Complaints About Programs Funded Under the Individuals with Disabilities Education Act Administered by CDE, September 22, 1999 ("CDE Federal Complaints Procedure").

PROCEDURAL BACKGROUND

On April 15, 2004, Federal Complaints Officer Laura L. Freppel (FCO) received a complaint letter filed on behalf of [STUDENT] a/k/a [STUDENT] (Child) by The Legal Center for People With Disabilities and Older People (the Center) against Mesa County Valley School District No. 51 (the District). The complaint alleged that the District had failed to comply with IDEA with respect to the education of the Child by failing to enroll the Child in school. The District filed a written response on May 7, 2004, in which the District challenged the jurisdiction of the FCO, asserted the Center lacked standing, denied Complainant's allegations, and affirmatively stated the Child was enrolled in the District by April 14, 2004. The Center filed a reply in which it agreed that the principal issues raised by the Complaint had been rendered moot by the Child's enrollment. Complainant asserted the only issues left for the FCO's consideration was a request for compensatory education and attorneys' fees.

The FCO reviewed the documents and written arguments submitted to her by the

parties and conducted an investigation but did not hold a hearing concerning the complaint. Following this review, the FCO issued a decision on June 14, 2004 (Decision). In that decision, the FCO determined: 1) she had jurisdiction; 2) the District violated the IDEA by failing to provide the Child with special education services to which he was entitled between March 31, 2004 and April 14, 2004; and 3) the District violated the IDEA by failing to make a timely request to the Colorado Department of Education to appoint an educational surrogate parent (ESP) for the Child. However, the FCO determined the record failed to establish the District's IDEA violations denied the Child a free appropriate public education. As a remedy, the FCO ordered the District to submit to the FCO a statement of assurance explaining how the violations found by the FCO would be addressed by the District to prevent recurrence. The FCO further ordered the District to revise its policies to assure children with disabilities timely receive all special education services to which they are entitled when placed out-of-the-home into the District by public agencies and to assure ESPs are timely assigned, as appropriate, to such students. The FCO declined to award attorneys' fees, noting she has no authority to award such fees.

The District appeals the FCO's Decision pursuant to 34 C.F.R. ∋300.660(a)(ii) and CDE Federal Complaints Procedure, paragraphs 15-26. Pursuant to that appeal, a state level review proceeding has been conducted. The parties have filed briefs and, in addition, oral argument was conducted by telephone. The oral argument was tape recorded, using tapes numbered 8718 and 8775.

The parties stipulated to the FCO's findings of facts 1-22 as contained in the Decision and did not seek to present any additional evidence before the ALJ. The parties additionally agreed that the ALJ may make additional findings based on the record before the FCO if the ALJ determines that making such findings is appropriate.

In this appeal, the District is represented by David A. Price, Groves & Price. P.C. The Center is represented by William J. Higgins, Managing Attorney.

SCOPE AND STANDARD OF REVIEW

The decision of the Administrative Law Judge on state level review of the decision of the FCO is to be an "independent" one. CDE Federal Complaints Procedure, paragraph 21. In the context of court reviews of state level decisions under the current and prior versions of the IDEA, such independence has been construed to require that "due weight" be given to the administrative findings below, *Board of Education v. Rowley*, 458 U.S. 176, 206 (1982); *Roland M. v. Concord School Committee,* 910 F.2d 983 (1st Cir. 1990); *Doe v. Board of Education of Tullahoma City Schools*, 9 F.3d 455 (6th Cir. 1993), while still recognizing the statutory provisions for an independent decision and the taking of additional evidence, if necessary. *Doyle v. Arlington County School Board*, 953 F.2d 100 (4th Cir. 1991); *Blackmon v. Springfield R-XII School District*, 198 F.3d 648 (8th Cir. 1999). It is appropriate to apply this standard by analogy at the state FCO administrative review level. Thus, in this proceeding the Administrative Law Judge gives "deference" to the FCO's findings of fact, *see Jefferson County School District R-1*, 19 IDELR 1112, 1113 (SEA Colo.

1993) (addressing the deference to be given on state level review to the findings of an impartial hearing officer), and accords the FCO's decision "due weight," while reaching an independent decision based on a preponderance of the evidence. *Sioux Falls School District v. Koupal*, 526 N.W.2d 248 (S.D. 1994).

ISSUES ON REVIEW

On appeal, the District asserts: (1) the FCO erred in failing to dismiss the complaint for lack of jurisdiction due to the Center's lack of standing to file the complaint on behalf of the Child; (2) the FCO erred in ruling the District violated the IDEA by failing to provide educational services to the Child prior to April 14, 2004; (3) the FCO erred in ruling the District violated the IDEA by failing timely to appoint an ESP for the Child; and 4) the FCO exceeded her jurisdiction in ordering the District to revise its policies.

The Center has responded by asserting the FCO's decision was proper. The Center asserts the FCO had jurisdiction over its complaint because the Center had standing under controlling regulations to file the complaint in this matter. Additionally, the Center argues the FCO correctly determined that the District violated the IDEA by failing timely to provide the Child with special education services and by failing timely to appoint an ESP for the Child, were proper. The Center also asserts that FCO was within her authority in ordering the District to revise its policies.

The Administrative Law Judge determines that the Center had standing to file the complaint in this matter and thus FCO had jurisdiction over this proceeding. Additionally, the Administrative Law Judge concludes the District did not violate the IDEA in connection with the timing of the Child's enrollment but did violate the IDEA by failing timely to appoint an ESP for the Child. The Administrative Law Judge also concludes the FCO had authority to enter an order requiring the District to revise its policies. However, the FCO's ordered remedy is modified in light of the Administrative Law Judge's other determinations in this matter.

FINDINGS OF FACT

Based on the stipulation of the parties, the Administrative Law Judge enters the following findings of fact as contained in the FCO's Decision:[1]

1. The Child is a child with a disability under the IDEA and is therefore eligible for special education services.

[1] Some of the determinations in numbered paragraphs 1-22 in the FCO's Decision are more properly characterized as conclusions of law or mixed findings of fact and law, rather than strictly as findings of fact. However, based on the parties' stipulation and for the sake of simplicity, the ALJ has included all these matters in the current section. Some of these matters are repeated as conclusions of law.

2. On or before March 18, 2004, the Garfield County District Court (Court) issued a Shelter Care Order, which removed the Child from his home with his aunt and uncle (his guardians) in Rifle, Colorado. The Court placed the Child in the temporary legal and physical custody of the Garfield County Department of Social Services (Garfield County DSS) in an emergency out-of-home placement. On or before March 24, 2004, the Court issued a second order, which maintained temporary legal and physical custody of the Child with Garfield County DSS. A written Continued Shelter Care Order (Order) to this effect was issued on March 24, 2004. Garfield County DSS did not supply the District with a copy of the Order until April 14, 2004, when it was submitted by the Child's Garfield County DSS caseworker upon registering the Child with the District.

3. On or about March 23, 2004, the Child became a resident of the District by virtue of his placement with foster parents who lived in the District, specifically in Grand Junction. *See* Section 19-1-115.5(1)(a)(I), C.R.S. (children in foster home placement are residents of school district in which foster home is located)[2].

4. Prior to placing the Child with his foster parents, Garfield County DSS failed to comply with various state statutory provisions governing the placement of children with disabilities when other agencies are involved. *See* Section 22-20-108(7)(b) (agency responsible for out-of-home placement of a child with a disability, prior to placement of the child, shall work cooperatively with the prospective administrative unit of attendance to ensure appropriate educational and residential services are available) and 19-1-115.5(2)(b) (in making recommendations to the court concerning a proposed out-of-home placement of a child, the county department shall consider the special needs of the child, including the ability to the school district in which the proposed out-of-home placement is located to provide necessary services to met those needs). Such provisions contemplate that there will be prior cooperation and collaboration by county social service departments with school districts in which out-of-home placements may be made to consider the ability of the districts in which proposed foster homes are located to provide special education services. *See also* 1986 Interagency Agreement between the Colorado Department of Education (CDE) and the Colorado Department of Social Services (now known as the Colorado Department of Human Services) (Interagency Agreement).[3]

5. At all times relevant to this matter, the rights of the Child's natural parents had not been terminated under state law. Although Garfield County DSS may have the legal authority to enroll the Child in the District (a regular education decision), Garfield County DSS did not have the legal authority to make special education decisions for the Child under the IDEA. *See* 34 C.F.R. Sections 300.20 (for the purposes of IDEA a parent includes a guardian but not the State if the child is a ward of the State) and 300.515(c)(2)

[2] The FCO decision erroneously references Section 19-1-115(1)(a)(2).
[3] *See* Section B.1.a.1 at p.2 of the Interagency Agreement (requiring the county social services department to provide written notice of emergency placement to the administrative unit's special education director within five working days of the emergency placement).

(surrogate parent who is not an employee of agency involved in education or care of child to be selected if child is a ward of the State).

6. At all times relevant to this matter, the Child's foster parents had no educational decision-making authority for the Child.[4] Specifically, with regard to special education decision-making authority, the foster parents were not "parents" of the Child under the IDEA because the rights of the Child's natural parents had not been terminated and the foster parents did not a long-term relationship with the child. *See* 34 C.F.R. Section 300.20(b).

7. The Court did not give the Child's guardian *ad litem* educational decision-making authority for the Child.

8. The Child's foster parent attempted to enroll the Child in the District on March 23, 2004. At that time, the foster parent submitted two documents to school staff on Garfield County DSS forms.[5] Collectively, these forms provided identifying information regarding the Child and brief descriptions of his current circumstances, including: the Child's name, the Child's placement with the foster parents, who were identified by name and address; identification of the Child's home school district as Garfield County School District; the Child's social security number, Medicaid number and place of birth; a statement that legal custody was with Garfield County DSS; the name and phone number of the Child's caseworker; the last school attended by the Child and school contact information; a checked box indicating that the Child was receiving a BOCES curriculum; and a statement the "the child is visually disabled." Underlying supporting documents (such as copies of a birth certificate, court orders, social security card, etc.) did not accompany the Garfield County DSS forms.

9. By March 23, 2004, the District knew that Garfield County DSS had legal and physical custody of the Child.

10. By March 23, 2004, the District knew that the Child was residing in the District and that the Child was a public school student.

11. On or before March 26, 2004, District personnel had obtained the Child's IEP from his sending school.

12. On March 26, 2004, the District convened a meeting, which was not an IEP team meeting, to discuss the Child's IEP and placement. Just prior to that meeting, Garfield County DSS had faxed to the District copies of the Child's birth certificate and

[4] During a telephone conversation with the FCO on June 7, 2004, Denise Young, Assistant County Attorney for Garfield County and Garfield County DSS, stated that the foster care parent did not have the legal authority to enroll the Child in the District.

[5] Both forms were dated March 18, 2004. The first document was an untitled two-page Garfield County DSS form. The second document was a five-page Garfield County DSS form signed and dated by the Child's intake caseworker entitled "Individual Child Plan/Record of Admission."

social security card. The Child's special education teacher from the sending school, who was familiar with the Child's needs and special education program, was invited to attend. The Child's Garfield County DSS caseworker was not invited to attend. At that meeting, the attendees agreed that the Child's current IEP should be implemented, but that it was in the Child's best interest, based on his disability, age and other needs, to remain at the school he had been attending in Garfield County prior to his out-of-home placement. It was also discussed that the District would need to recruit and hire a bilingual classroom aide to work with the Child on a full-time basis in order to comply with his IEP should Garfield County DSS elect to enroll the Child in the District. The District communicated this information to Garfield County DSS on March 29, 2004. The District also notified Garfield County DSS that it would not enroll the Child without additional documentation/information from Garfield County DSS, *i.e.,* copies of the court's custody order; an immunization verification; and the identification and designation of the Garfield County DSS employee who was authorized to make educational decision for the Child, including registering him for school.

13. On March 30, 2004, the school principal contacted the Director of Garfield County DSS to elicit Garfield County DSS' help in this matter and also to file a complaint regarding the conduct of Garfield County DSS staff in handling the Child's out-of-home placement. According to the school principal, the Director of Garfield County DSS informed the principal that Garfield County did not know whether the Child was staying in his current placement or going back to Garfield County. The Director informed the school principal that a case management meeting was scheduled for April 2, 2004, and also that she would send someone to the District to enroll the Child.

14. On March 23, 2004, the District did not have services/program available for the Child. However, by March 31, 2004, the District was ready and available to implement the Child's current IEP.

15. Even though the District was ready and able to serve the Child by implementing his current IEP from Garfield County School District by March 31, 2004, Garfield County DSS, acting as the Child's legal custodian, was considering various options. Between April 2, 2004, and April 13, 2004, Garfield County DSS apparently decided that the Child should continue to receive his educational services with the Garfield County School District even though he was residing with foster parents in Grand Junction. Garfield County DSS developed a plan to transport the Child on a daily basis to his prior school. The plan was finalized sometime prior to April 14, 2004. Between April 2, 2004, and April 13, 2004, the attorneys for the District and Garfield County DSS were intermittently in contact with each other. When Garfield County DSS tried to enroll the Child in the Garfield County School District, Garfield County School District refused to admit the Child because he was no longer a resident of Garfield County School District.

16. On April 14, 2004, the Child's Garfield County DSS caseworker appeared at the District to enroll the Child and the District immediately admitted the Child.

17. At all times relevant to this matter, the Child's special education needs and program, and not his regular education program, were the primary issues of concern to both the District and Garfield County DSS.

18. The Child did not receive any educational services between March 23, 2004, and April 14, 2004.

19. The District did not request CDE to appoint an ESP for the Child until April 30, 2004.

20. Between April 15, 2004, and the end of the 2003-2004 school year, the Child received the services specified by his IEP while attending the District. Although the number of hours received by the Child from the District remained unchanged, the nature of the services was more intense in that the Child's special education teacher/providers worked directly with the Child two hours every day, except on shortened school days. As a result, the Child achieved a number of his IEP goals between April 15, 2004, and the end of the 2003-2004 school year.

21. On June 2, 2004, the Court transferred legal and physical custody from Garfield County DSS back to the Child's aunt and uncle. The Child now resides in Rifle, Colorado.[6]

22. During all times relevant to this matter, none of the Child's legal custodians, guardians or his ESP requested that the Complaint be filed and investigated.

Additional Findings of Fact

Based on a review of the record, the Administrative Law Judge enters the following additional findings of fact:

23. The Center's complaint in this matter is dated April 12, 2004. It was received by CDE on April 15, 2004.

24. The Center is the protection and advocacy system for individuals with disabilities in Colorado and is charged with promoting and protecting the legal and human rights of disabled individuals.

25. The complaint filed by the Center with CDE in this matter indicates the complaint is being filed "on behalf of the Child" and that the Center is aware of acts and omissions by the District, a program administered by CDE, which violate federal law and

[6] During interviews conducted by the FCO on June 7 and 8, 2004, the FCO was notified by the District, the attorney for the Garfield County DSS, the Special Director for Mountain BOCES, and the Child's uncle that the Court, during a hearing on June 4, 2004, transferred legal and physical custody back to the child's aunt and uncle, who live in Rifle, Colorado. As a result, the child is no longer a resident of the District.

program requirements.

26. The Child's foster mother is an employee of a private placement agency under contract with Garfield County DSS. That placement agency placed the Child with the foster parents in March 2005.

27. The Center was initially contacted by the Child's foster mother in connection with this matter in late March 2005, concerning difficulties the foster mother was experiencing in her efforts to enroll the Child in the District. Following this contact, counsel for the Center made a number of contacts with the District and its counsel and Garfield County DSS and its counsel, in an effort to secure prompt school enrollment for the Child. When these efforts were not immediately successful, counsel for the Center recontacted the foster mother on or about April 1, 2005. At this point, the foster mother declined to discuss the matter with counsel for the Center, stating she was in trouble with her supervisor for contacting the Center in the first place and had been instructed by her employer to have no further contact with the Center.

28. There is no indication in the record that the Center had any further contact with the foster mother after April 1, 2005. As is also true for the Child's legal custodians, guardians (including his guardian *ad litem*) and his later-appointed ESP (*see* finding of fact 22), the Child's foster parents did not request that the Complaint be in this matter be filed.

29. Apart from the assertion that the Center is the protection and advocacy systems for individuals with disabilities in Colorado, the Complaint contains no allegation that the Complainant has any legally recognizable relationship to the Child, or that the Child's parent or legal representative have engaged or authorized the Center or its attorneys to act on behalf of the Child.[7]

30. The Center's complaint seeks relief only for the Child and not for itself or for any class of disabled children. The Complaint does not contain any allegation of systemic violations by the District.

31. At the time the complaint was filed the Child was eight years old. He is legally blind.

32. The record does not support a finding that there was a dispute between Garfield County DSS and the District or that the District declined to provide services to the Child as a result of any such dispute. The fact that the District lodged a complaint with Garfield County DSS concerning the inappropriate manner in which the out-of-district placement occurred does not support a determination that the District refused to enroll the Child because it was having a dispute with Garfield County DSS. Similarly, assertions in the Center's response brief that the District pressured Garfield County DSS, engaged in aggressive and confrontational tactics with Garfield County, and did all it could to keep the

[7] The Center has not made such an assertion at any time in connection with this appeal.

Child out of its schools are without foundation in the FCO's findings and are not supported by reasonable inferences from those findings or other evidence in the record.

33. The District's Board of Education has adopted various policies regarding the efficient administration of the affairs of the District, including the following admission and enrollment requirements:

a. Submission of a birth certificate or other satisfactory evidence of age (policy JF);

b. Submission of proof of immunization as required by law (policy JLCB-R);

c. Submission by the custodial parent, in the case of children of divorced or separated parents, of a copy of the court decree governing delineation of parental rights (policies KBBA, KBBA-R);

d. Special note is to taken by school officials in the case of students who have special custody arrangements, so that the District knows who is responsible for the education and welfare of the student and to assure that Board policies concerning custody, student records, educational conferences, visitation and release of students are followed. (policies KBBA, KBBA-R).

34. The record does not support a determination that the Child's foster care provider possessed delegated authority (or any other type of authority) to enroll the Child in school. The documents supplied by the foster mother to the District, and other documents provided to the FCO by the District, do not direct or authorize the foster parent to take any action regarding the Child's education, either expressly or by implication. The mere fact that Garfield County DSS provided necessary information concerning the Child to the foster parents does not establish any such delegation occurred.[8]

35. There is no indication in the record that the Garfield County DSS objected to providing to the District the documentation requested by the District on March 29, 2004. Nor is there any indication in the record that it was difficult for Garfield County DSS to obtain or provide the requested documentation.

36. Documents provided by Garfield County DSS to the District reflect that legal custody of the Child, which would include authority to make regular education decisions on behalf of the Child, was with the Garfield County DSS at all times relevant to this proceeding.

[8] Furthermore, any determination that the foster care providers had such delegated authority would conflict with the explicit agreement reached by the parties at the commencement of this appeal that they were accepting the FCO's findings in full. FCO finding of fact 6 and its accompanying footnote unambiguously determined that the foster care providers had no such authority.

37. The record indicates that Garfield County DSS, was notified that the Center filed a complaint in this matter with CDE and willingly participated in the procedure. There is no indication in the record that Garfield County DSS objected to the procedure or to the relief sought by the Center on behalf of the Child. There is also no any indication that Garfield County sought party status in this matter.

DISCUSSION

Jurisdiction of Administrative Law Judge

The Administrative Law Judge has jurisdiction to conduct this review pursuant to the IDEA, 20 U.S.C. ∋∋1400 *et seq*., 34 C.F.R. ∋∋300.660-662, the Colorado Exceptional Children=s Education Act, Title 22, Article 20, C.R.S. (ECEA), and the CDE Federal Complaints Procedure.

Statutory Background and Appeal Procedures

The IDEA, 20 U.S.C. ∋∋1400 *et seq*., is a comprehensive federal education statute that grants disabled students the right to a public education, provides financial assistance to states to meet their educational needs, and conditions a state=s federal funding on its having in place a policy that ensures that a free appropriate public education is available to all children with disabilities. 20 U.S.C.∋1412(a)(1); *Weber v. Cranston School Committee*, 212 F. 3d 41 (1st Cir. 2000). The IDEA requires the District to provide each child with a disability with a free appropriate public education (FAPE), tailored to the unique needs of the child through the establishment of an individualized education program (IEP). 20 U.S.C. ∋1401(8); 20 U.S.C. ∋1412(a)(1); 20 U.S.C. ∋1414(d).

The IDEA provides certain procedural and substantive rights to parents of children with disabilities. In addition, it requires state educational agencies such as the CDE to establish procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education. 20 U.S.C. ∋1415(a). Included among these procedures is the "opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.≅ 20 U.S.C. ∋1415(b)(6).

IDEA implementing regulations distinguish between the impartial due process hearing procedure under 20 U.S.C. ∋1415(f) and other state and federal complaint procedures which are mandated under IDEA or otherwise available to redress complaints concerning violations of IDEA. *Compare* 34 C.F.R. ∋∋300.507-300.510 *with* 34 C.F.R. ∋∋300.660-300.662. In the present case, the Center, on behalf of the Child, is pursuing a complaint under 34 C.F.R. ∋∋300.660-300.662, the federal complaint resolution process ("CRP"), rather than the due process hearing procedure. As a result, the Complaint letter

filed by the Center on behalf of the Student was referred to a Federal Complaints Officer who issued her Decision on June 14, 2004, pursuant to 34 C.F.R. ээ300.660-300.662.

The District has appealed the FCO's Decision. Although the federal regulations governing the CRP procedure specify certain minimum procedures that must be adopted by each state concerning the initial filing and handling of complaints (which procedures are distinct from IDEA due process hearing procedures), they do not provide a specific appeal process. Colorado has adopted the CDE Federal Complaints Procedure, paragraphs 15-26 (Appeal Procedure), which governs this appeal. Pursuant to this procedure, either party may obtain state level review of the decision of the FCO. Such review is to be conducted on behalf of the Commissioner of Education by a Colorado administrative law judge. CDE Federal Complaints Procedure, paragraph 15.

Under the CDE Federal Complaints Procedure, the parties may offer and the administrative law judge may seek or accept additional evidence, if needed. CDE Federal Complaint Procedure, paragraph 21. In this case, neither party sought to offer additional evidence. Instead, the parties stipulated to the findings of the FCO as found at paragraphs 1-22 of the FCO's Findings of Fact and Conclusions. The parties additionally agreed that the Administrative Law Judge could make additional findings based on the record before the FCO if the ALJ determined that making such findings was appropriate. After reviewing the record, the ALJ has made limited additional findings as set forth above and otherwise relies on the findings of the FCO as also set forth above.

ISSUES RAISED ON APPEAL

I.

Standing

The District asserts that the FCO lacked jurisdiction to hear this matter because the Center lacked standing to file its complaint. The District asserts that although the Center is an organization authorized in general to bring a complaint in this matter under the CRP, because the Center had no specific relationship with the Child or the Child's legally authorized representative, the Center was without authority to invoke the CRP process to vindicate the Child's individual rights. While the ALJ acknowledges the force of the District's arguments, after considering relevant case law and in view of the controlling regulations and agency interpretations of those regulations as well as the Center's role as a protection and advocacy system for disabled individuals, ultimately the ALJ is persuaded that the District has standing to bring this action.

A.

The IDEA and federal regulations provide two separate administrative processes for dispute resolution regarding implementation of the IDEA by local school districts: the

impartial due process hearing procedure under Part B of IDEA, including 20 U.S.C. Section 1415(f) and implementing regulations, and a federal complaint resolution process, the CRP, set forth in 34 C.F.R. §§300.660-300.662. The Center has brought this action under the CRP procedure.

CRP regulations provide that states must adopt procedures for "resolving *any* complaint, including a complaint filed by *an organization* or an individual from another State" and further provide that "*an organization* or individual may file a . . . complaint under the procedures described in §§300.660-300.661." 34 C.F.R. §§300.660(a)(1), 300.662(a) (emphasis supplied). Such complaint must include a statement that a public agency has violated a requirement of Part B of the IDEA or its implementing regulations. 34 C.F.R. §300.662(b). Colorado has adopted procedures, the CDE Federal Complaints Procedure, to comply with these requirements. Colorado's procedures track the federal requirements by providing that "[a] Complaint is a signed, written document alleging that there has been a violation of IDEA." CDE Federal Complaints Procedure, paragraph 1. The Colorado guidelines also indicate that "[t]he Complaint may be filed by an organization or individual who is aware of an action of a program participant . . .which violated the federal program requirements through that participant's policy, procedure or practice." CDE Federal Complaints Procedure, paragraph 2.

CRP processes are "different in purpose, scope and procedure" from the due process hearing procedure. *Megan C. v. Independent School District No. 625,* 30 IDELR 132,139 (D. Minn. 1999), *quoting Richards v. Fairfax County School Board*, 798 F. Supp. 338 (E.D. Va. 1992). At least in the absence of more expansive state regulations,[9] only a parent, child above the age of majority, or a public agency may initiate a due process proceeding, 34 C.F.R. §§300.503(a)(1), 300.507; *Letter to Douglas*, 35 IDELR 278 (OSEP, April 19, 2001), whereas the CRP procedures must be available to resolve *any* complaint filed by "an organization or individual." 34 C.F.R. §§300.660(a)(1), 300.662(a); CDE Federal Complaints Procedure, paragraph 2. Additionally, due process hearing issues are limited to matters relating to the identification, evaluation, or educational placement of a specific child or the provision of a FAPE to a specific child, 20 U.S.C §1415(b)(6); 34 C.F.R. §300.507(a). In contrast, a CRP complaint may relate to any violation of a requirement of Part B of the IDEA or its regulations. 34 C.F.R. §300.662(b); CDE Federal Complaints Procedure, paragraph 2.

The process by which information is gathered in response to the two types of complaints is also different. Due process hearings include procedural safeguards such as the right to be accompanied and advised by counsel, the right to cross-examine and compel the attendance of witnesses, and the absolute right to appeal and to file a civil action. 20 U.S.C. §1415; 34 C.F.R. §§300.506-300.515. Such rights are not available under CRP, *see Megan C. supra,* 30 IDELR at 137, and in fact the CRP process is

[9] *See* discussion of *Family & Children's Center v. School City of Mishawaka,* 13 F.3d 1052 (7th Cir. 1994), *infra.*

intended to be informal and investigative rather than adversarial or adjudicatory. *See, Megan C,* 30 IDELR at 140 (noting that the purpose of CRP is "more amicable and informal" than the due process hearing procedure and thus "the need for each individual party to conduct discovery, investigation, and research" is negated and the need for retention of counsel to perform such tasks is precluded).

The District argues that despite the broad scope of the CRP complaint process (authorizing any organization or individual to file a CRP complaint placing in issue any violation of a requirement of Part B of the IDEA or its implementing regulations), the process does not eliminate all jurisdictional constraints, including traditional standing requirements. The District notes the Center is not asserting a systemic pattern of improper conduct by the District and is not seeking relief for itself or for any class of disabled children; instead, the Center seeks relief only for an individual child. Despite this, however, the District notes the Center has no authorization from the Child's parents or legal representatives to pursue this matter and, in fact, has filed the complaint in this matter on behalf of a child with whom it has no legal relationship and without the consent or knowledge of the Child's parents or legal representative. Under these circumstances, the District argues that the Center has failed to meet the basic requirements of standing and is therefore barred from pursuing this action.

B.

(i)

The question of standing involves a consideration of whether a plaintiff has asserted a legal basis on which a claim for relief can be predicated. *Romer v. County Commissioners of Pueblo* ("*Romer*"), 956 P.2d 566 (Colo. 1998); *Board of County Commissioners v. Bowen/Edwards Assoc.,* 830 P.2d 1045, 1052 (Colo. 1992). Standing is a justiciability doctrine that tests a litigant's right to raise legal arguments or claims and is a threshold jurisdictional question. *Greenwood Village v. Petitioners for Proposed City of Greenwood Village,* 3 P.3d 427 (Colo. 2000) ("*Greenwood Village*"). In Colorado, parties to lawsuits benefit from a relatively broad definition of standing. *Ainscough v. Owens,* 90 P.3d 851 (Colo. 2004) ("*Ainscough*").

Colorado's standing requirement, like the federal requirement, consists of both constitutional and prudential considerations. *Romer, supra.* The constitutional prong of Colorado's standing requirement is based on Article VI, section 1 of the Colorado Constitution, under which inquiries are limited to the resolution of actual controversies. *Greenwood Village, supra,* and on Article III of the Colorado Constitution, which provides for separation of powers. *Ainscough, supra.* To satisfy this prong, the plaintiff must establish the existence of an "injury in fact." This requirement assures that an actual controversy exists and ensures a "concrete adverseness which sharpens the presentation of issues" argued in court. *Greenwood Village, supra; Romer, supra.*

In the present case, the Center asserts the Child was injured by the District's delay in enrolling the Child in school and appointing an ESP. The Center asserts the District had an obligation to provide educational services to the Child that complied with the requirements of the IDEA, including timely enrollment and appointment of an ESP.

It is undisputed that the Child is disabled within the meaning of the IDEA and entitled to the protections of the Act. The IDEA requires school districts to provide each disabled child with a FAPE, defined as "special education and related services" which are provided at public expense, under public supervision and direction, meet state standards and comply with the child's individualized education program. 20 U.S.C. ∋1401(8).

The Center alleges in its complaint that contrary to the requirements of the IDEA the District failed timely to enroll the Child in school and failed timely to appoint an ESP for the Child and that such failures caused injury to the Child because he was deprived of special education and related services to which he was entitled under the IDEA during the period he was not in school.

For the purposes of determining standing, the allegations in the Center's complaint must be accepted as true. *Colorado General Assembly v. Lamm,* 700 P.2d 508 (Colo. 1985) (in determining whether a plaintiff has asserted a sufficient injury to satisfy the test of standing, the court must accept the allegations in the complaint as true); *Dunlap v. Colorado Springs Cablevision, Inc.,* 829 P.2d 1286 (Colo. 1992) (in resolving whether a plaintiff has alleged an injury sufficient to confer standing, the court must view the allegations in complaint in the light most favorable to the plaintiff). The Center's complaint alleges substantial violations of the IDEA and asserts the Child has suffered an injury by being deprived of the very thing the Act is intended to protect and provide: special education and related services. The Center, through its complaint, has thus established sufficient "injury in fact" for the constitutional standing purposes.

(ii)

To satisfy the second prong of the standing requirement, which is not constitutionally required but instead arises from a prudential exercise of judicial restraint, the plaintiff must establish that the injury from the challenged action is to a legally protected right. *Greenwood Village* at 437. Legally protected rights encompass all rights arising from constitutions, statutes, and case law. *Ainscough* at 856. Prudential considerations are "judicially self-imposed limits on the exercise of a court's jurisdiction." *Mauer v. Young Life,* 779 P.2d 1317, 1324 (Colo. 1989). Such considerations are intended to avoid unnecessary or premature decisions and recognize that parties actually protected by a statute are generally best situated to vindicate their own rights. *Greenwood Village* 3 P.3d at 437. Thus, among prudential standing limits is the doctrine that generally prevents a party from asserting the claims of third parties who are not involved in the lawsuit. *Greenwood Village* at 439. Other prudential considerations include a rule barring adjudication of generalized grievances more appropriately addressed to the representative branch of government and

the requirement that a plaintiff's complaint fall within the zone of interest protected by the law involved. *Allen v. Wright,* 468 U.S. 737, 751 (1984). These judicially self-imposed limits on the exercise of jurisdiction eliminate cases where no individual rights would be vindicated and restrict access to the courts to those litigants best suited to assert a particular claim. *Warth v. Seldin,* 422 U.S. 490, 500-501 (1975).

While the constitutionally-mandated injury-in-fact standing requirement may not be abrogated by statute, *Pueblo School District No. 60 v. Colorado High School Activities Association,* 30 P.3d 752 (Colo. App. 2000), that is not the case with respect to prudential standing requirements. *Family & Children's Center v. School City of Mishawaka,* 13 F.3d 1052 (7th Cir. 1994) ("*FCC*"). In fact, Congress frequently has exercised this prerogative of granting expansive standing, most often in statutes that involve civil rights, consumer issues, or environmental interests." *FCC,* 13 F. 3d at 1060 (citation omitted). Moreover, when a statute grants standing to full constitutional limits, courts lack authority to create prudential barriers to standing. *FCC, Id.*

A review of the language and structure of the IDEA indicates that Congress intended to grant standing within full constitutional limits and thus intended that no prudential strictures be placed in the path of litigants. This intent is evident with respect to due process hearings pursuant 20 U.S.C. ∋1415(f) (which, as explained above, are more formal than CRP proceedings). *FCC, Id.* (by imposing procedural requirements that include "but shall not be limited to" granting due process hearing rights to specified entities, Section 20 U.S.C. 1415 permits states to enact rules authorizing additional entities to request hearings, thereby implicitly granting extended standing to a broad group of plaintiffs and signaling a Congressional intent to remove all prudential standing restraints that courts would otherwise impose). It is even more evident in the very broad language of 34 C.F.R. ∋∋300.660-662, implementing the CRP procedure and requiring states to establish a complaint procedure to address *any* complaint from *an organization or individual* asserting a violation of IDEA. Thus, based on the plain language of the IDEA and consistent with related regulations, it is apparent that Congress intended to grant standing under the IDEA and related complaint procedures to the limits of constitutional requirements, without imposing additional prudential requirements.

Because the Center has met the constitutionally-mandated injury-in-fact requirement and prudential standing requirements are not applicable to this proceeding, the Center has fulfilled the necessary standing requirements to file the complaint in this matter.

(iii)

The District asserts the Center has failed to adequately establish standing because it asserts an injury-in-fact only to the Child and does not allege any injury to itself. The ALJ is unpersuaded by the District's argument.

Commonly, standing on behalf of another individual is appropriate only where, among other things, the party in question asserts an injury to itself as well as to others. *In*

Re DeWitt, 54 P.3d 849 (Colo. 2002); *People v. Rosburg,* 805 P.2d 432 (Colo. 1991). However, several factors permit the Center to pursue the present action without alleging any injury to itself.

First, as noted above, the specific CRP provisions under which the Center seeks redress, 34 C.F.R. ∋∋300.660-662, are very expansively drawn and contain no explicit standing limitations. Additionally, those provisions have been construed by the U.S. Department of Education Office of Special Education Programs (OSEP) broadly to authorize "*any* organization or individual" to file a complaint alleging an IDEA violation. OSEP 00-20, Part III, answer to question 1 (emphasis supplied). Moreover, these provisions are intended to provide an informal investigatory procedure, rather than a more formal adversarial procedure, thereby minimizing the likelihood that formal standing limitations were intended.

Also of importance is the Center's organizational status. The authority of an organization to sue on behalf of members or constituents is sometimes referred to as associational standing. When such standing is derived from legislation enactments (rather than judicial action), the statute itself establishes what prudential limitations, if any, will be imposed. *See Pennsylvania Protection and Advocacy, Inc. v. Houston,* 136 F. Supp. 2d 353 (E.D. Pa 2001) (organization's standing to sue on behalf of others, referred to as associational standing, can derive from a Congressional grant of authority; such authority was given to protection and advocacy groups under the Developmental Disabilities Act and, if certain conditions are met, the DDA authorizes such groups to redress the grievances of members without a showing of injury to the association itself). *See also Heritage Village Owners Assn, Inc. v. Golden Heritage Investors, Ltd.,* 89 P.3d 513 (Colo. App. 2004) (provisions of the Colorado Common Interest Ownership Act control the determination of whether a home owners' association had standing to assert claims for construction defects in both individual units and in common areas).

The Center is a designated protection and advocacy system in Colorado for disabled individuals pursuant to 42 U.S.C. ∋15043 (developmentally disabled). *See also* 42 U.S.C. ∋∋10801 *et seq.* (mentally ill); 42 U.S.C. ∋∋3001 *et seq.* (older Americans) and 29 U.S.C. ∋7945 (legal and human rights of individuals with disabilities). In this role, the Center is authorized to pursue "legal, administrative and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights" of such individuals within this state. *See, e.g.,* 42 U.S.C. ∋15043(a)(2)(A)(i).

By virtue of this statutory authority, agencies designated as protection and advocacy systems in other states have been granted standing to assert the rights of disabled individuals in situations similar to the one at issue here. For example, in *Rubenstein v. Benedictine Hospital,* 790 F. Supp. 396 (N.D.N.Y. 1992), the court held that given the broad remedial purposes of the federal legislation in question and the statutory provision authorizing a protection and advocacy agency for the mentally ill to pursue redress as a party on behalf of named individuals whose constitutional rights had allegedly been violated, the protection and advocacy agency had standing without having to show the

agency itself suffered any injury in fact. Similarly, in *Goldstein v. Coughlin*, 83 F.R.D. 613 (W.D.N.Y. 1979), the court held a protection and advocacy agency had statutorily-conferred standing to sue on behalf of a disabled individual and did not need to claim injury to itself in order to sue. Additionally, in *Tennessee Protection and Advocacy, Inc. v. Board of Education of Putnam County,* 24 F. Supp. 2d 808 (M.D. Tenn. 1998) the court held that under 42 U.S.C. ∋6042 (now 42 U.S.C. ∋15043) Congress implicitly granted standing to protection and advocacy groups to advocate for disabled individual to the full extent permitted by the Constitution. The court further held that a protection and advocacy agency would have standing to pursue an action on behalf of an injured individual under the IDEA in situations where the agency did not allege harm to itself but did allege harm to a specific named individual.

Thus, on the basis of the statutory and regulatory authority under which it is proceeding and its status as a protection and advocacy agency, the Center has standing to pursue this action on behalf of the Child without the need to establish any injury to the Center itself.

(iv)

The District additionally claims that the Center lacks standing because it has no legal relationship to the Child and is seeking redress solely on behalf of an individual Child rather than systemic relief on behalf of a group of individuals. The ALJ is unpersuaded by this argument.

As explained above, the Center has fulfilled all constitutionally-mandated standing requirements. The applicable legislation and regulations as well as the status of the Center combine to obviate the need for compliance with prudential standing requirements.

Additionally, the Center has met the standing requirements mandated by the CRP rules. It is an organization that has filed a signed written complaint containing the elements required by 34 C.F.R. ∋300.662: a statement that a public agency has violated a requirement of the IDEA, a statements of facts, and an allegation the violation occurred within the time limits described in the rule. The Center's complaint also complies with the requirements of CDE's Federal Complaint Rules: the complaint was filed by an organization that is aware of an action of a program participant which violates the federal program requirements through that participant's policy, procedure or practice. CDE Federal Complaint Rule 2. Although the District asserts an additional requirement is implicit in these regulations—that the Center have the permission of the Child's parents before filing the complaint or in the absence of such permission limit itself to seeking systemic relief without reference to an individual child—no basis exists from the plain language of the rules to discern such a prerequisite. Simply stated, the rules contain no such limitations. Furthermore, there is no basis from which to infer any statutory or regulatory intent to impose such limitations.

Significantly, the OSEP has addressed this very issue in OSEP Memorandum 00-20. OSEP was asked the following question: "When an organization or individual, other than a

parent or public agency, files a State complaint regarding FAPE for a specific child, how should an SEA proceed?" In response, OSEP replied: "An SEA is required to resolve *any* complaint that meets the requirements of Section 300.662, including a complaint alleging that a public agency has failed to provide FAPE to a child with a disability. Thus, the SEA would be required to follow the State complaint procedures outlined in ∋300.661 as it would any other case where a violation of Part B [of the IDEA] is alleged." OSEP continued in its response: "If a complaint is filed by someone other than the parent, the SEA may not provide personally identifiable information to the non-parent complainant as part of the decision without parent consent."

This response clearly contemplates the situation presented in the current proceeding: a complaint filed by someone other than a parent (and without prior parental consent) that involves issues relating to an individual child. OSEP's response clearly indicates that such a complaint is permissible under the CRP procedures and must be handled by the SEA. Furthermore, as indicated by the OSEP comments and contrary to the arguments of the District, the fact that certain personally identifiable information may not be releasable to a non-parent complainant is unrelated to the issue of standing. Even if, as posited by the District, lack of parental consent to release documents were to prevent the full investigation of the complaint, any inability to complete the investigation would be conceptually unrelated to the issue of standing. While such lack of permission might prevent completion of an investigation, it would not constitute a basis for finding the complainant lacked the legal right to raise the legal arguments or claims in question.

The District cites *Letter to Douglas,* 35 IDELR 278 (OSEP 2001) in support of its assertion that that while the CRP process is available to parents to address individual child complaints, it is only available to "other parties" for the purpose of raising systemic issues "not involving a specific child." The District also cites *Letter to Rutten* (OSEP, September 9, 2003) in support of the proposition that an advocacy group can only become involved in a CRP complaint if requested by a parent. The District's reliance on these letters for the propositions cited is misplaced.

Contrary to the District's assertion, *Letter to Douglas* in fact distinguishes between complaint procedures under 34 C.F.R. ∋300.662 which provide an "opportunity for anyone to file a written complaint against a public agency that raises systemic issues, *among other issues*" (emphasis supplied) from due process procedures which are limited to complaints relating to the "child's identification, evaluation, or educational placement or the provision of FAPE to the parent's child." Thus, *Letter to Douglas* allows for the possibility of "anyone" filing a complaint that raises "systemic" or "other" issues and thus would not prohibit the complaint filed in the present proceeding. Additionally, *Letter to Rutten* simply does not address the issue for which it is cited by the District and instead addresses a limited fact situation not pertinent to the standing issues raised in this proceeding.

The District also asserts that in order to avoid a conflict with 34 C.F.R. 300.571 (parental consent must be obtained before, among other things, personally identifiable

information is released to individuals or entities other than the participating agency), and as a prerequisite for establishing standing, a third party organization such as the Center must, at a minimum, demonstrate that it has obtained the requisite parental consent to obtain and divulge confidential educational and other records and information regarding the child. The Administrative Law Judge disagrees. First, even without such consent, it may be possible to conduct an investigation without disclosing protected information. Additionally, as referenced above, even if it is ultimately not possible to fully investigate a complaint filed by a protection and advocacy group, the inability to complete the investigation is simply not an issue that implicates standing to file the complaint.

(v)

The District maintains the Center's expansive view of standing, which allows the Center to seek relief on behalf of an individual child without the knowledge, authorization or consent of either the child's parents or his legal representatives or custodians, is inconsistent with the protection of the rights of parents of children with disabilities. The District argues that "parental rights are necessarily undermined if, as the Center suggests, anyone, including third parties such as school teachers or grandparents, may file a complaint seeking relief on behalf of an individual child." District's Reply Brief, p. 4. The Administrative Law Judge recognizes the force of the District's argument in the abstract but concludes the argument is not applicable to the facts of this case. Additionally, to the extent applicable in future cases, the issue raised by the District could be addressed by an FCO through the implementation of procedures that would assure notification and participation of parents or guardians and protection of their rights, thereby avoiding the issues raised by the District, including standing concerns.

The arguments raised by the District are not applicable to this proceeding because the Child's guardian, the Garfield County DSS, was notified of the Center's complaint and willingly participated in the procedure. There is no indication in the record that Garfield County DSS objected to the procedure or to the relief sought by the Center on behalf of the Child. Nor is there any indication that Garfield County sought party status in this matter. Thus, while the District, with no legal relationship to the Child, asserts the rights of the Child's guardian will be unprotected if the Center is granted standing, the Child's guardian, although fully notified of the proceeding, has raised none of those concerns. The Administrative Law Judge therefore concludes that in the present proceeding the rights of the Child's guardian were appropriately protected and not undermined. Therefore, no basis exists to determine the Center should be denied standing in this matter in order to protect the rights of the Child's guardian.

The District also argues granting an organization such as the Center standing could jeopardize the rights of parents under other circumstances in the future. Such a situation is not before the ALJ and therefore need not be addressed here. The ALJ notes, however, that such issues could be avoided by assuring parents and guardians are notified of any third-party or associational complaints involving an individual child and allowing the parents or guardians to participate in the process with a potential veto not only with respect to

disclosure of individually-identifiable educational or medical information but also with respect to any ultimate recommended remedy.

(vi)

Thus, the ALJ concludes the Center has standing to pursue the complaint in this matter. In summary, the Center has established it has adequately alleged an injury-in-fact to the Child and has established that as a protection and advocacy organization it has enhanced standing to assert the rights of disabled individuals without being required to satisfy the prudential standing requirement of an injury to itself. Additionally, the IDEA evidences an overall Congressional intent that prudential standing requirements are not to be imposed in IDEA proceedings. Furthermore, the CRP provisions under which the Center is proceeding explicitly indicate that organizations may file complaints and the OSEP has specifically construed those provisions to authorize *any* organization or individual to file a CRP proceeding. In addition, no provision requires the Center to have parental consent or authority prior to filing a child-specific complaint and no provision limits a protection and advocacy agency to filing complaints alleging systemic violations of the IDEA, even when the agency lacks specific parental authority to file on behalf of an individual child. Finally, there is no indication in the record that the rights of the Child's guardian were undermined by allowing the Center to proceed with its complaint in this matter.

II.

Providing Timely Services Following Enrollment Request

The FCO ruled that by failing to provide the Child with special education and related services during the two-week period from March 31, 2004 to April 14, 2004, the District violated its general obligation under 34 C.F.R. ∋300.350(a)(1) to provide special education and related services to a child with a disability in accordance with the Child's IEP. The FCO concluded the District's failure to provide services during this period of time resulted from the District's unreasonable application of its admissions policies and procedures. She concluded that the District should have commenced services as of March 31, based on the information and records it had received by that date. In so ruling, the FCO relied in particular on the provisions of CDE Rule 2220-R-4.03, implementing the provisions of ECEA.

The District contests this determination, asserting the District enrolled the Child as soon as it received all necessary enrollment documentation, as required by its written policies, from Garfield County DSS, the only entity that had authority to seek enrollment for the Child. In particular, the District maintains the Child was admitted to the District on April 14, 2004, the same day Garfield County DSS made a definitive determination to enroll the Child in the District and provided the necessary documentation. The District therefore

asserts it complied with all its obligations under the IDEA and timely enrolled the Child in school.

A.

The IDEA requires that all students with disabilities be provided a FAPE. 20 U.S.C. §§1412(a)(1)(a); 34 C.F.R. §300.300(a)(1). As the local educational agency, the District has an obligation to provide special education to disabled students in compliance with the requirements of the IDEA, including procedural requirements, and the student's individualized education program ("IEP"). *See, e.g.,* 34 C.F.R. §§300.350, 300.342; 300.343; 300.500.[10]

Furthermore, such services must be provided promptly. For example, pursuant to federal regulations, each public agency must have an IEP in effect for each special education child at the beginning of each school year, which IEP is to be implemented as soon as possible following all required IEP meetings and accessible to all of the child's teachers. 34 C.F.R. §§300.342 and 300.343.

Colorado regulations implementing ECEA, Section 22-20-101, C.R.S. *et seq.*, establish explicit procedures for providing special education services to intrastate transfer students. When a child known to have been receiving special education services moves into a district, CDE Regulation 2220-R-4.03 directs school districts to: (1) implement the child's current IEP; (2) provide interim special education services while awaiting the child's IEP; or (3) refer the child for an assessment while providing services as indicated on the IEP or as agreed upon in writing by the parents and the director of special education. Furthermore, the rule provides explicit time limits within which these services must be provided: services must be provided immediately or within a maximum of three days of requested enrollment unless another option is agreed upon in writing by the parents.[11]

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[10] A "public agency" as referenced in these rules includes a local educational agency (LEA) such as the District. 34 C.F.R. 300.22.

[11] Rule 4.03, Procedures for Transfer Students, provides in pertinent part as follows:

> If a child moves into an administrative unit and is known to have been receiving special education services, the director of special education or designee, shall pursue one of the following options:
>
> (1) Provide services immediately in accordance with the child's IEP . . . .
>
> (2) Provide the child with interim special education and related services agreed to by the parent(s) and the director of special education or designee, while waiting for the record of the IEP. Such interim services shall be documented in the student's record and provided for no more than 15 school days . . . .
>
> (3) Refer the child for a complete assessment and planning in accordance with these Rules in the meantime providing services as indicated on the last agreed upon IEP or providing special education and related services as agreed to by the parents and the director of special education and documented in the student's record. Such assessment and planning shall be completed within 30 school days.

As noted, in her decision the FCO determined the District failed to comply with this rule, effective March 31, 2004, when, according to the FCO, the District had sufficient documentation to enroll the Child but did not do so until April 14, 2004, and therefore failed to comply with its obligation under 34 C.F.R. ə.300.350(a)(1) and the IDEA to provide special education to the Child in accordance with his IEP. The ALJ disagrees that any violation of Rule 4.03, 34 C.F.R. ə300.350(a)(1), or the IDEA occurred under the circumstances of this case with respect to the timing of the Child's enrollment in the District.

B.

In order to address the arguments raised by the parties concerning this issue, a short recap of the relevant facts is appropriate. The Child's foster mother originally sought to enroll the Child in the District on March 23, 2004. At that time, she submitted to school staff within the District two Garfield County DSS documents containing identifying information concerning the Child and his foster care placement in Grand Junction, but she did not submit any underlying supporting documentation such as the Child's birth certificate, court orders, or social security card. Based on the information supplied, as of March 23, 2004, the District was aware that Garfield County DSS had legal custody of the Child, that the Child was residing with foster parents in the District, and that the Child was a public school student.[12]

By March 26, 2004, the District had obtained the Child's IEP from his sending school. Also on that date, copies of the Child's birth certificate and social security card were faxed to the District by Garfield County DSS. On March 26 the District held a meeting to discuss the Child's IEP and placement. Although no one from Garfield County DSS was invited or attended, the Child's special education teacher from the sending school was present and participated. Attendees at the meeting agreed that the Child's existing IEP should be implemented but also determined it was in the Child's best interest to remain at his sending school. The participants also discussed the fact that in order to comply with the Child's IEP the District would have to recruit and hire a bilingual classroom aide to work full-time with the Child.

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(4) Services to a child moving into an administrative unit and known to have been receiving special education services, utilizing one of the above three options, shall commence according to the following:

(a) immediately, if the services/program are available,

(b) within 3 school days of requested enrollment if the services/program need to be developed, or

(c) other options agreed to in writing by the parent(s).

[12] The District had no prior indication the Child was being placed in the District (and thus had no opportunity to make advance plans for his arrival) because Garfield County DSS failed to comply with its statutory and related obligations to provide any notice to the District of the Child's transfer. *See* finding of fact 4.

On March 29, 2004, the next school day following the March 26, 2004 meeting, the District communicated the information developed at the meeting to Garfield County DSS and informed Garfield County that the District required additional documentation before in could enroll the Child, including the custody court order, immunization verification, and designation of the Garfield County DSS employee who was authorized to make education decision for the Child, including registering him for school. There is no indication in the record that Garfield County DSS objected to providing this documentation to the District, nor is there any indication in the record that it was difficult for Garfield County DSS to provide the requested documentation.

On March 30, 2004, the school principal contacted the Director of Garfield County DSS. The Director informed the principal that the Department of Social Services was uncertain if the Child would stay in his current placement or would return to Garfield County. The Director also noted that a case management meeting was scheduled for April 2, and that the Director would send someone to the District to enroll the Child (presumably if it was decided the Child would remain in his current placement).

Although on March 23 the District did not have appropriate services and programs available to address the Child's needs, by March 31 the District had made all necessary arrangements and was ready and available to implement the Child's IEP. However, despite the District's readiness to provide services to the Child on March 31, Garfield DSS had not decided at that point to enroll the Child with the District. Instead, Garfield County DSS, as the Child's legal custodian and the only entity authorized to make educational decisions for him, was considering several options. Between April 2 and April 13, the Garfield County DSS apparently finalized plans to have the Child return to his sending school in Garfield County even though the Child was residing with foster parents in Grand Junction. However, when Garfield County DSS ultimately attempted to enroll the Child in the Garfield County School District, Garfield County School District refused to admit the Child because he was no longer a resident of that district. Consequently, Garfield County DSS altered its plans and decided to enroll the Child with the District. The Child's Garfield County DSS caseworker appeared at the District to enroll the Child on April 14, 2004, and the District immediately admitted the Child at that time.

Following the Child's admission to the District, no issues arose concerning the implementation of the Child's IEP by the District. The Child received more intense services from the District than required by his IEP and achieved a number of his IEP goals between his enrollment with the District and the end of the 2003-2004 school year.

C.

Contrary to the determination of the FCO, these facts do not establish the District applied its admissions policies and procedures in an unreasonable manner or that its failure to enroll the Child as of March 31, 2004, constituted a failure to comply with Regulation 2220-R-4.03, 34 C.F.R..300.350(a)(1) or the IDEA.

(i)

Pursuant to Section 22-32-109(1)(b), C.R.S., the District's board of education is charged with adopting policies and prescribing procedures necessary and proper for the efficient administration of the affairs of the district. Additionally, Colorado law recognizes that admission to public school may be made subject to requirements for admission fixed by the board of education for the school district in which admission in sought. *See* Section 22-1-115, C.R.S. In this case, the District's board of education has adopted a number of such requirements, including requirements for submission of a birth certificate or other satisfactory evidence of age (policy JF) and proof of immunization as required by law[13] (policy JLCB-R). In addition, the District's board of education has provided by policy that information is to be submitted concerning the marital status of a student's parents, and, in the case of children of divorced or separated parents, that the custodial parent provide a copy of the divorce decree delineating parental rights. Additionally, pursuant to these policies school officials are required to take special note of students who have special custody arrangements to assure the District knows who is responsible for the education and welfare of the student and to assure compliance with District policies concerning custody, student records, educational conferences, visitation, and release of students (*See* policies KBBA and KBBA-R).

When enrollment of the Child was sought, the District properly complied with these enrollment and admission policies. As of March 23, 2004, when the foster mother sought admission, the District was aware the Child was a ward of the state. Further, the District had no information that would indicate the foster mother had legal authority to enroll the child. The District was also lacking documents required by its policies to be submitted prior to enrollment, even after it received copies of the child's birth certificate and social security card on March 26. On March 29, following a March 26 District meeting concerning the Child, the District informed Garfield County DSS that before enrollment could be completed the District needed the Child's custody court order and immunization records as well as a designation of the Garfield County DSS employee authorized to make education decisions for the Child. Such a request was consistent with the requirements of District policies and complied with the District's statutory obligations under Sections 22-32-109(1)(b), 22-1-115 and 25-4-902. Moreover, there is no indication Garfield County DSS objected to this request for documentation or indicated it would have difficulty complying with the request. Thus, no basis exists to conclude the District's request for this information as a prerequisite for enrollment somehow constituted an "unreasonable application" of the District's admissions policies, as the FCO concluded.

The District's actions following March 29, 2004, also complied with its policies and statutory obligations and did not constitute an unreasonable application of its policies. On March 31, Garfield County DSS informed the school principal that a decision had not been

[13] Section 25-4-902 provides, with certain exceptions not applicable here, that no child shall attend any school in the state of Colorado unless the child has submitted a current certificate of immunization.

made to enroll the Child with the District and, instead, Garfield County DSS was pursuing other options. After an alternative arrangement proved unworkable, the Child's Garfield County DSS caseworker appeared at the District, provided necessary information, and sought enrollment for the Child. In response, the District immediately enrolled the Child.

Thus, the evidence does not establish the enrollment delay that occurred between March 29, the date the District requested additional documentation, and April 14, the actual date of enrollment, was due to the District's policies or its application of those policies. Instead, the record reflects the delay was caused by action or inaction on the part of the Garfield County DSS. Garfield County DSS, as the Child's legal custodian and the only entity authorized to enroll the Child in school, affirmatively chose between March 29 and April 14, not to enroll the Child in the District's schools. The record does not support a determination the delay was related in any way to the District's request for submission of documentation to comply with state law and its own policies; instead, such delay was based initially on indecision on the part of Garfield County DSS as to where the Child should be enrolled and subsequently on an affirmative determination by the Garfield County DSS to enroll the Child in Garfield County. It was only after the Garfield County School District plan proved unsuccessful that Garfield County DSS formally requested enrollment of the Child in the District. As soon as that formal request was made, the District immediately enrolled the Child.

(ii)

The FCO rejected the District's attempt to justify the enrollment delay in this matter on the basis of the Garfield County's failure promptly to comply with the requirements of the District's admissions policies. Relying on Section 22-33-106(2), C.R.S., the FCO determined any failure by Garfield County DSS to comply with the District's admissions policies did not relieve the District of its obligations under ECEA and did not constitute a legal basis to refuse admission to the Child. The ALJ disagrees with the FCO's analysis for several reasons.

(a)

Section 22-33-106, C.R.S. addresses grounds for suspension, expulsion and denial of admission. Section 22-33-106(2), C.R.S. provides that "subject to the district's responsibilities under [ECEA]," specified factors are grounds for expulsion or denial of admission to a public school. Among the specified grounds for denial of admission are age requirements fixed by the district's board of education, residency in the district, and immunization certification. Section 22-33-106(3)(b), (d) and (e). Although the FCO focused on the qualifying language of Section 22-33-106(2) to sustain her determination that the District was not authorized to enforce its admissions requirements in this matter, the ALJ is unconvinced the language in question is supports the result reached by the FCO.

As a preliminary matter, the relevance of this provision to the FCO's factual findings is somewhat unclear. The FCO did not determine any enrollment delay that

occurred between March 23 and March 31, 2004, constituted a violation of either IDEA or ECEA or their implementing regulations. Instead, she held that statutory and regulatory violations began March 31 and lasted until the April 14 enrollment. However, as discussed above, there are no underlying factual findings and there is no other supporting evidence in the record to establish the District's enforcement of its policies was the cause of any enrollment delay at all from March 31 until April 14; that delay was caused solely by the Garfield County DSS' failure to make a decision to enroll the Child in the District. Thus, although the FCO held that the District should have applied its policies as of March 31 to allow the Child's enrollment without waiting for further underlying documentation, the FCO failed to recognize that based on her own findings, as of March 31 and continuing until April 14, there existed no valid outstanding enrollment request by an entity (specifically, the Garfield County DSS) authorized to register or enroll the Child in the District. To the contrary, the Garfield County DSS Director had informed the District as of March 30 that the Garfield County DSS was in the process of making a decision on where to enroll the Child. The Director further informed the District that if a decision was made to enroll the Child in the District, a DSS representative would be sent to the District to accomplish the enrollment.

Thus, based on the facts as found by the FCO and as supported by the record, the delay in enrollment following March 31 was unrelated to enforcement of the District's admission policies and instead related to a lack of an enrollment request. In light of those facts, Section 22-33-106(2) has no direct relevance to this matter.

(b)

Even assuming Section 22-33-106(2) is relevant under the facts of this case, the ALJ is not convinced that the section supports a determination that a violation of ECEA occurred in this case.

Although Section 22-33-106(2) provides that listed grounds for denial are "subject to the district's responsibilities under [ECEA]," the ALJ agrees with the District that this provision cannot be read to disable the District from enforcing reasonable requirements for registration and enrollment. Neither ECEA nor its regulations expressly provide that enforcement of reasonable registration and enrollment requirements, including statutorily-mandated requirements, are prohibited, and common sense indicates that no such prohibition should be implied. For example, Section 25-4-902 prohibits enrollment of students who have not complied with immunization requirements. Nothing in Section 25-4-902 or ECEA indicates an exception to this requirement is to be made for exceptional students or students with disabilities. Thus, enforcing compliance with state immunization requirements (as implemented by reasonable District policies) does not conflict with the District responsibilities under ECEA. Consequently, the failure to comply with such provisions constitutes a basis for the denial of admission under Section 22-33-106(3) and denial of admission on that basis is not prohibited by Section 22-33-106(2) or the provisions of ECEA and its implementing regulations.

Similarly, enforcement of other reasonable District admission and registration policies, to the extent authorized by Section 22-33-106(3), is not contrary to the District's responsibilities under ECEA and is thus not prohibited by Section 22-33-106(2). Such a determination is consistent with the holding in *School District of Philadelphia,* 25 IDELR 473 (SEA 1996). In that case, the state appeal officer imposed a compensatory education remedy from the date the parents proved residency. The decision thus determined the district's obligation to provide services arose after the parents satisfied the district's requirement to supply proof of residency (including a driver's license showing a district address), and thereby acknowledged enforcement of reasonable enrollment requirements is consistent with a district's obligations under IDEA.

(c)

The provisions of Regulation 2220-R-4.03 do not change this result. Rule 4.03 defines the type of services that must be provided to a special education student who is known to have moved into a district. The rule also provides that such services are to commence according to the following schedule: immediately if services are available; within three schools of requested enrollment if the services/program need to developed; or other options agreed to in writing by the parent. As the District convincingly argues, Rule 4.03 did not require the District to provide services to the Child in advance of April 14 under the facts of this case because no valid request for enrollment from an entity authorized to seek enrollment occurred prior to that date.

In this case, the Child became a resident of the District on or before March 23 by virtue of his placement with the foster parents who resided in the District. Section 19-1-115.5(1)(a)(I). Although the foster mother made a registration request on March 23, she had no legal authority to make educational decisions for the Child and thus could not make a binding enrollment request. Because the County Department had full legal custody of the Child pursuant to Court order and did not delegate that authority by means any document provided to the District or otherwise, the District was simply unable to act on the foster mother's request in the absence of the specific agreement of the County Department. Such agreement was not forthcoming until April 14, at which point the District immediately acted to enroll the Child.

Although the FCO cited Rule 4.03 in her decision, she did not apply the rule as it is literally written. It is therefore difficult to discern exactly how the FCO believed the Rule applies to this case. The FCO determined that a request for enrollment was made on March 23 and she apparently determined such request was effective despite the foster mother's lack educational decision-making authority. However, the FCO also apparently concluded that the Rule 4.03 provision requiring that services be provided within three days of an enrollment request was not strictly applicable here, as evidenced by the fact that she found the District did not violate the provision until March 31, when the FCO determined the District had received "sufficient information" to enroll the Child. The FCO did not clarify on what basis she determined the three-day provision of Rule 4.03 could be extended or why she believed a valid enrollment request was made on March 23.

Contrary to the decision of the FCO, the ALJ concludes under the circumstances of this case the three-day provision of Rule 4.03 was simply inapplicable to this matter until the Garfield County DSS definitively decided to enroll the Child in the District on April 14. Once Garfield County DSS made its enrollment request on that day the District fully complied with the three-day requirement of Rule 4.03 by enrolling the Child and commencing special education services on that same day.

(d)

In reaching her determination regarding the District's obligation to enroll the Child and provide services by March 31, the FCO relied in part on an Interagency Agreement between CDE and the State Department of Human Services. This agreement provides that, in the event of disagreement between the administrative unit of residence (in this case, the District) and the county department of social services, such disagreement shall not interfere with providing appropriate educational services prior to the dispute being resolved.

The District has noted in its brief that it has no quarrel with the FCO's interpretation of the Agreement, but asserts the Agreement has no applicability to the facts of this case. The ALJ agrees with the District. While the Agreement requires that special education services cannot be withheld during the pendency of a dispute between public agencies, the record in this matter simply does not support a determination that any such dispute existed in this case. The facts reflect that the District did not provide educational services during the period in question (and specifically from March 31 until April 14) because Garfield County DSS, the agency with legal custody of the Child, did not elect to proceed with the Child's admission to the District until April 14—at which point, the District immediately enrolled the Child. Thus, the existence of the Interagency Agreement has no bearing on this matter.[14]

(iii)

The Center has urged in its brief that the District did everything in its power to assure the Child would not attend school in the District and otherwise utilized aggressive and confrontational tactic in an attempt to browbeat Garfield County DSS into making other arrangements for the Child. The ALJ has found that such allegations are not supported by the FCO's findings or by other evidence in the record. Additionally, the FCO's finding that the District was ready and able to serve the Child as of March 31 by implementing his current IEP belies the Center's accusations. As found by the FCO, the District had determined on March 26 that it would need to recruit and hire a bilingual aide for the Child. By finding the District was ready to implement the Child's IEP on March 31, the FCO implicitly found that the District had completed all the necessary background work, including recruiting the required aide, within just a few days of learning of the Child's presence in the

[14] Because the ALJ has found there was no dispute between the parties, the ALJ concludes Decision on State Level Review in *Montrose School District RE-1J,* No. ED 2001-015 is not dispositive of any issue in this case.

District. Such action was not consistent with an allegation that the District was recalcitrant and unwilling to enroll the Child and was doing everything it could to intimidate the Garfield County DSS into enrolling the Child elsewhere.

D.

Thus, the evidence failed to establish the District violated its general obligations under 34 C.F.R. 300.350(a)(1) or the IDEA to provide special education and related services to the Child in accordance with his IEP. The evidence also failed to establish any violation of CDE Rule 2220-R-4.03.

III.

Appointment of An Educational Surrogate Parent

The FCO determined the District violated 34 C.F.R. ∋300.515 by failing timely to appoint an educational surrogate parent for the Child. The ALJ agrees that under the specific facts of this case the District should have requested the appointment of an ESP earlier than April 30, 2004, when the District in fact made the request in this case.

Regulation 34 C.F.R. ∋300.515 provides that each public agency such as the District must ensure the rights of a child are protected by appointing an individual to act as a surrogate for the parents if no parent can be identified, the parents whereabouts cannot be discovered, or the child is a ward of the state. Pursuant to ∋300.515(e), the surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. If permitted by state law, foster parents may serve as ESPs but only if the rights of the natural parents have been terminated, the foster parent has a long-term relationship with the child, and no conflicts of interest exist. 34 C.F.R. ∋300.20(b).

Section 300.515 applies to this matter because the Child was in the custody of Garfield County DSS and therefore was a ward of the state. *See* Section 15-14-102(15), C.R.S. (a ward is someone for whom a guardian has been appointed). Further, 34 C.F.R. 300.20(a) explicitly excludes the state from the definition of parent for the purposes if IDEA regulations if the child is a ward of the state. *See also* Regulation 2220-R-Rule 2.07 (under ECEA regulations a parent does not include the state if the child is a ward of the state). Thus, although Garfield County DSS was authorized to make regular education decisions for the Child, it was not authorized to make special education decisions for him. Additionally, the Child's foster parent was ineligible to act as a surrogate because parental rights had not been terminated and the foster parents did not have a long-term relationship with the Child.

By no later than March 23, the District was aware of the fact that the Child was living in the District and was a ward of the state. Nevertheless, the District waited until April 30 to request that CDE appoint an ESP for the Child. This delay was excessive under the

facts of this case, particularly once it became apparent to the District that the Child was residing in the District and yet was receiving no educational services because Garfield County DSS was "mired in indecision" about the Child's educational placement. By no later than March 30, when the school principal spoke with the Director of Garfield County DSS, the District was aware that Garfield County was undecided as to where the Child would attend school. As of that date the Child, a ward of the state, had been a resident of the District without receiving educational services for in excess of one week and his legal custodian, the Garfield County DSS, had no immediate plans to correct that situation. Additionally, the District was aware that while Garfield County DSS had exclusive authority to make regular education decision on behalf of the Child, it had no authority to make special education decisions for the Child. 34 C.F.R. ∋300.20(a); Regulation 2220-R-Rule 2.07. Under these circumstances, the District in whose attendance zone the Child was currently residing had an obligation to ensure the rights of the Child were protected and therefore had an obligation timely to seek appointment of an ESP.

The District asserts it was not required to seek appointment of an ESP for any child who was not enrolled in the District and that appointment of an ESP could potentially result in a conflict if the Child was subsequently enrolled in a different district. The ALJ disagrees. Section 300.515 does not limit the ESP appointment obligation to enrolled students. The District was aware the Child was residing in the District, was a public education student with an IEP, and was a ward of the state with no available "parent" for the purposes of IDEA. In addition, by March 30, the District was aware the Child had not been enrolled in school and had not been receiving any special education services for at least a week and there were no immediate plans to place him in school. In view of these factors, the District had an obligation under ∋300.515 to request appointment of an ESP for the Child. Furthermore, if Garfield County DSS ultimately decided to enroll the Child in another district, arrangements could have been made at that time to transfer the ESP to the new district or appoint a new ESP.

The District also argues there was no basis for appointment of an ESP before the Child was enrolled in a school because the authority of ESPs is limited to special education matters and ESPs have no authority over general education enrollment decisions. The ALJ is unpersuaded by this argument. ESPs have authority to address issues relating to educational placement and provision of FAPE. 34 C.F.R. ∋300.515(e). A child who is not enrolled in school at all has no "placement," either in terms of regular education or special education. In addition, when a child remains out of school and receives no special educational services and no immediate plans exist to enroll the student and begin providing special education services, the provision of FAPE is certainly a potential issue properly addressed by an ESP. Thus, even though an ESP would not have been authorized to make a regular education enrollment decision on behalf of the Child, an ESP would have had authority to advocate for the Child and the Child's need to be enrolled in school in order to receive needed special education services to which he was entitled.

Accordingly, ∋300.515 authorized the appointment of an ESP for the Child under the facts of this case and by March 30 the District was required by ∋300.515 to request

such an appointment. The District's failure to request such an appointment by March 30 constituted a violation of ə300.515 and therefore was a violation of IDEA.[15]

IV.

FCO's Authority To Order the District to Revise Its Policies

As a remedy in this matter the FCO ordered the District to provide a letter of assurance to the FCO explaining how the violations found would be addressed to prevent recurrence, including how the Division's policies would be revised to insure that (1) children with disabilities will timely receive all of the special education services to which they are entitled when placed out-of-the-home into the District by other public agencies, and (2) ESPs will be timely assigned, as appropriate. The District argues that in entering this order the FCO exceeded her authority under the CDE Federal Complaint Procedure and the CRP regulations. Specifically, the District argues the FCO failed to find the District "substantially" failed to comply with a program requirement as required by CDE Federal Complaint Procedure, paragraph 14. The District also argues the CDE Federal Complaint Procedures do not authorize the FCO to require a change in District policies unless the FCO identifies specific policies that do not comport with legal requirements and indicates what changes are need, which the District argues FCO failed to do in this case. The District also argues the FCO order exceeded her authority under 34 C.F.R. ə300.660. That provision states that in resolving a complaint in which a failure to provide appropriate services had been found, an SEA, pursuant to its general supervisory authority under Part B of the IDEA, must address how to remediate the denial of services and appropriate future provision of services for all children with disabilities.

Because the District's construction of the provisions cited is excessively narrow, the ALJ finds the District's arguments unpersuasive. The provisions, taken together, indicate the SEA has general supervisory authority over the provision of special education services. Additionally, the remedies listed in the regulations are not express limitations on the authority of SEA but instead are generalized remedial requirements. Thus, ə300.660 indicates that in the event of a failure to provide appropriate services the SEA *must* address certain matters in resolving the complaint. Similarly, the CDE Federal Complaint Procedure at paragraph 14 provides that in the event of a determination of a substantial failure to comply with a program requirement the FCO *will as part of the resolution of the Complaint* notify the program participant of actions that are deemed necessary in order for the program participant to come into compliance. Nothing in either of these provisions limits SEA remedial authority to the precise remedies listed in the regulations; other, similar remedies may also be appropriate. Additionally, nothing in paragraph 14 of the CDE rules explicitly limits the imposition of remedial measure to instances in which a substantial failure has been found.

[15] It was the decision of the FCO that the District's IDEA violations did not result in the denial of FAPE to the Child. That decision was not appealed by the Center and is not at issue in this case.

The FCO's ordered remedies were well within the types of remedies contemplated by the regulations in question. Accordingly, the FCO had jurisdiction to impose the remedy that she entered, based on the findings and conclusions reached by the FCO. Nevertheless, because the ALJ's findings and conclusions differ from those of the FCO, it is appropriate to modify the remedy imposed by the FCO as set forth below.

DECISION AND ORDER

The Administrative Law Judge determines and orders as follows:

1. The Center has standing to bring the complaint in this matter and the ALJ has jurisdiction to hear this matter.

2. Contrary to the determination of the FCO, the record failed to establish the District violated the IDEA, its implementing regulations, or CDE Rule 2220-R-4.03 by failing enroll the Child or provide special education services to the Child by March 31.

3. The District violated 34 C.F.R. ∋300.515 by failing to request the appointment of an educational surrogate parent for the Child by March 30, 2004.

4. In place of the FCO's remedy, it is ordered the Mesa County Valley School District No. 51 shall provide a letter of assurance to the FCO within 100 days of the date of this order indicating that in the future it will promptly (and without waiting for the child to be enrolled in the District) seek the appointment of an educational surrogate parent whenever the District becomes aware that a child is residing in the District who: (1) is eligible for special education services; (2) is a ward of the state; (3) is in an out-of-home placement; and (4) is not receiving educational services because the child's public agency custodian has failed to enroll the child in school.

5. Because the circumstances at issue in this matter are very specific to the Child's individual situation, the ALJ declines to order the District to write a District-wide policy specifically addressing the circumstance presented by this case.

6. This decision made upon a state level review shall be final except that either party has the right to bring a civil action in an appropriate court of law, either federal or state, if administrative remedies have been exhausted.

DONE AND SIGNED

June ____, 2005

JUDITH F. SCHULMAN
Administrative Law Judge

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above **DECISION UPON STATE LEVEL REVIEW** was served by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado addressed to:

William J. Higgins
The Legal Center for People with
Disabilities and Older People
322 North 8th Street
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David A. Price
200 Grand Avenue, Suite 315
P.O Box 3177
Grand Junction, CO 81502-3177

on this ___ day of June, 2005.

_____
Technician IV