

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

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**Federal Complaint 2002:521**

Mountain Board of Cooperative Educational Services

**Decision**

**INTRODUCTION**

This Complaint was dated August 26, 2002 and filed on August 28, 2002. The Mountain BOCES' (hereafter referred to as the "District") response to the Complaint was dated 09/23/02 and received on 09/27/02. The Complainants' response to the District's response was due on 10/12/02. The Complainants requested and received an extension of time to 10/21/02 to submit their response to the District's response. On 10/15/02, the Federal Complaints Officer interviewed by phone the student's father and the District's special education director to obtain additional information. The Complainants' response to the District's response was dated 10/16/02 and received on 10/20/02. On 10/24/02, the Federal Complaints Officer interviewed the District's special education director, the middle school special education teacher and the student's father for additional information. The Federal Complaints Officer closed the record at the end of the day on 10/25/02.

The Complainants are the parents of a middle school student who has been identified as having a significant identifiable emotional disability (SIED).

**FINDING OF EXCEPTIONAL CIRCUMSTANCES**

The Decision in this case was required to be issued on Sunday, October 27, 2002. The Complaint contains numerous allegations. Neither the Complainants nor the District are represented by counsel and the Federal Complaints Officer was required to contact both the Complainants and District personnel for additional information.

34 C.F.R. § 300.661(1) permits an extension of time for processing a Complaint if "exceptional circumstances" are found. The District received a copy of the Complaint on 09/09/02 and mistakenly believed that its response was due on 09/27/02, which was when the Federal Complaints Officer received the Complaint. The Complainants' response to the District's response was due on October 12, 2002. The Complainants requested an extension of time in order to review and respond to the large number of documents submitted by the District with its response to the Complaint. The Federal Complaints Officer granted an extension of time until October 21, 2002 for the Complainants to submit their response which was received on October 20, 2002. After reviewing the Complainants' response to the District's response, the Federal Complaints Officer found it necessary to contact both the Complainants and the District for additional information, which was accomplished on October 24, 2002. Given the time required by both the District and the Complainants to provide their responses, the number of allegations to be resolved and the volume of documents and other information submitted by the parties, the

Federal Complaints Officer finds that exceptional circumstances have warranted a two-day extension of time for the issuance of this Decision.

### **COMPLAINANTS' ALLEGATIONS**

The Complainants generally allege that the District violated the Individuals with Disabilities Education Act (IDEA) by violating the rights of their child to a free appropriate public education (FAPE) in the least restrictive environment (LRE) in violation of 34 C.F.R. §§ 300.300 and 300.550.<sup>1</sup>

The Complainants' specific allegations follow:

1. The Complainants allege that the District violated § 300.504(a) when it failed to make sure that the parents understood their procedural safeguards before the District changed their child's placement (1) from 11/29/01 until 12/03/01, when the student was reassigned to his special education teacher's classes from regular classroom classes, and (2) on 12/03/01 when the student's individualized education program (IEP) team met and recommended that the student's placement be changed to the District's self-contained SIED classroom housed at the Buena Vista Adolescent Day Treatment Program (BVADT), which is located in an off-campus facility.<sup>2</sup>
2. The procedural safeguards notice provided by the District to the Complainants does not comply with §300.504(b) relating to the required explanations for independent educational evaluations, prior written notice, parental consent, access to educational records, opportunity to present complaints to initiate due process hearings, the child's placement during pendency of due process hearings, procedures for students who are subject to placement in an interim alternative educational setting, mediation, due process hearings, state-level appeals, civil actions, attorneys' fees and state complaint procedures.
3. The District failed to provide proper notifications regarding the 10/25/01 and 12/01/01 IEP team meetings in violation of §300.345 (b)(1). Specifically, the Complainants allege as follows:
  - a) The Complaint alleges that the 10/25/01 IEP team was scheduled to meet for an eligibility meeting but that school personnel treated the meeting as an IEP development meeting. The Complainants have subsequently clarified that the essence of this allegation is that the 10/25/01 IEP team meeting was not long enough in time to properly develop an IEP for their child. The Complainants also clarified that they are not claiming that the District violated the IDEA by combining the eligibility and IEP development functions in one meeting.
  - b) On 12/03/01, a regularly scheduled review of the student's behavioral intervention plan (BIP) was held. An individual from the BVADT, who was not a member of their son's IEP team, was present. The true function of the meeting was to place the student in an alternative school.
4. With regard to both the 10/25/01 and the 12/03/01 IEP team meetings, the parents allege that they were either excluded from participating in those meetings or the IEP team refused to listen to their input and concerns in violation of §§ 300.346 (a)(1) and 300.501 (a)(2).

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<sup>1</sup> The IDEA regulations will hereafter be cited by section number (e.g., §300.300, §300.501, etc.)

<sup>2</sup> BVADT has since been renamed the Arrowhead Learning Center.

5. Following the 10/25/01 IEP team meeting, the student was placed in a resource room before the parents received the final IEP and started special education in violation of §§ 300.505 (a)(1)(ii) and 300.345(f).

6. The Complaint generally alleges that the District has violated § 300.347 (a)(1)(2),(3)(4), (6) and (7). As the Federal Complaints Officer interprets it, the Complainants are alleging that the 10/25/01 IEP does not contain certain required statements as follows:

- a) The IEP does not contain a statement about how their child's disability affects the child's involvement and progress in the general curriculum;
- b) A statement of measurable annual goals, including benchmarks or short-term objectives;
- c) A statement of special education and related services and supplementary aids and services;
- d) A statement of the program modifications and/or supports for school personnel that are to be provided for the child;
- e) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and to participate in extracurricular and other nonacademic activities;
- f) A statement of the projected date for the beginning of services and modifications; and
- g) A statement of how the child's progress toward annual goals will be measured and how the parents will be regularly informed of their child's progress.

7. The Complaint alleges that during the 10/25/01 IEP team meeting, the IEP team failed to consider strategies to address their son's behavior. The Complainants also allege that their son's BIP is flawed both as to the process used to develop the BIP and as to the BIP's content. The Complaint further alleges that school personnel failed to use the parents' input, to obtain the parents' agreement for the BIP or to document the parents' disagreement with the BIP. The Complaint does not cite the IDEA statutory provision(s) or regulation(s) on which the Complainants rely in making the latter allegation.

8. The "time-out" methods used by school personnel failed to follow Colorado law and IDEA guidelines. With regard to this allegation, the Complainants do not cite any provision of the IDEA, the ECEA, and/or their implementing regulations/rules. The Complainants do cite to the definitions' section of The Protections of Persons from Restraint Act, Colo. Rev. Stat. § 26-20-102. The Complainants also rely on the Time-Out Guidelines developed by the Colorado Department of Education in making this allegation. .

9. School personnel failed to comply with the parent's 11/09/01 request for an emergency IEP meeting in violation of § 300.350(c).

10. School personnel unilaterally changed their son's educational placement on 11/29/01 without prior written notice to the Complainants in violation of §§ 300.501(c), 300.503(a) and 300.552(a).

11. School personnel failed to comply with the IDEA's accountability provisions in violation of § 300.350.

12. The District has violated §§ 300.380 through 300.382 because the child's special education teacher "has passed herself off as a special education teacher, yet does not understand IDEA regulations, how to work with challenging students, and finds ways to rid the school of these children."

13. The child's special education teacher disclosed information from their child's educational records without the parents' consent in violation of §300.571 and the Federal Educational Rights and Privacy Act (FERPA) and its implementing regulation, 34 C.F.R. § 99

14. The District places behaviorally disordered students in segregated, off-campus programs in violation of §§ 300.550-300.553.

15. Students placed by the District in alternative programs are forced to use unequal off-campus facilities (such as off-campus library and gym facilities), and are deprived of non-academic classes such as music and extracurricular activities (such as school dances) afforded regular education students. The Complaint does not identify the IDEA rule on which the complainants rely in making this allegation. The student's father clarified during the 10/15/02 telephone conference with the Federal Complaints Officer that he was alleging that (1) students with disabilities placed by the District in alternative programs receive unequal access to facilities as compared to nondisabled students, and the facilities, nonacademic activities and extracurricular activities available to students with disabilities placed in alternative programs are unequal as compared to those available to nondisabled students.

16. The District's violations of the IDEA have deprived the Complainants' son of a FAPE in the LRE in violation of §§ 300.300 and 300.550.

### **THE DISTRICT'S RESPONSE**

The District generally denies the Complainants' allegations. The District's specific responses are noted below.

### **FINDINGS OF FACT and CONCLUSIONS**

**Allegation #1. The District failed to make sure that the parents understood their procedural safeguards before the District changed their child's placement (1) from 11/29/01 until 12/03/01, when the student was reassigned to his special education teacher's classes from regular classroom classes and other activities with nondisabled peers, and (2) on 12/03/01 when the student's IEP team met and recommended that the student's placement be changed to the District's self-contained SIED classroom located at the BVADT in violation of § 300.504 (a).**

In its response, the District submitted a letter dated 11/09/01, which had been prepared by the principal of the middle school. That letter notified the parents that "[w]ith further charges having been filed with the police department...please be advised that we will be changing [Student's] schedule until the situation is settled." It is undisputed that this class change went into effect on 11/29/01. The District concedes that the change in schedule resulted in [Student] being

educated with nondisabled peers for a lesser period of time. Under Rule 5.04(2)(a)(i) of the Rules for the Administration of the Exceptional Children's Educational Act (ECEA),<sup>3</sup> this change in schedule constituted a significant change in placement, albeit for no more than three (3) school days (from 11/29/01 through 12/03/01).

On 12/03/01, the student's IEP team met to review the student's BIP, which was entitled "Behavior Teaching Plan." During that meeting, the school personnel of the IEP team recommended that the student be placed in the District's self-contained SIED classroom, which was located within the BVADT. At the end of the IEP team meeting, the parents said that they would think about the recommended placement and let the District know what their decision was. By letter dated 12/04/01, the parents agreed to the recommended placement change. In its response, the District submitted a copy of a meeting notice dated 11/27/01 for the 12/03/01 IEP team meeting. That notice contains a statement in bold type stating that "[a] parent's rights document which explains your educational rights is enclosed with this letter. Please read it carefully, and if you have any questions, please contact [Special Education Teacher]. The Complainants do not dispute that they received a copy of this document or that they received the parents' rights document.

§ 300.504 (a) provides that a copy of the procedural safeguards notice available to the parents must be given to the parents, at a minimum, (1) Upon initial referral for evaluation, (2) Upon each notification of an IEP meeting, (3) Upon reevaluation of the child, and (4) Upon receipt of a due process hearing request. § 300.504 (a) does not expressly require that a school district provide parents with a copy of the procedural safeguards notice upon a change of placement. However, a significant change in placement may occur only upon the decision of the IEP team during an IEP team meeting. § 300.552(a)(1) and ECEA Rule 5.04. Schools are required to notify parents of IEP team meetings and to provide parents with a copy of a procedural safeguards notice with the IEP meeting notice. § 300.504(a)(2).

With regard to the 11/29/01 change of placement, the Federal Complaints Officer finds that the District should have provided the parents with a copy of the District's procedural safeguards notice with the 11/29/01 letter notifying the parents of this change of placement. The Federal Complaints Officer concludes that the District's failure to provide the complainants with a copy of the procedural safeguards notice with its 11/29/01 letter to the Complainants violated § 300.504(a)(2).

With regard to the 12/03/01 change of placement, the Federal Complaints Officer finds that the District has submitted sufficient documentation to demonstrate that it included the District's procedural safeguards notice with the 11/27/01 meeting notice. The Federal Complaints Officer concludes that, with respect to the 12/03/01 IEP team decision changing the student's placement to a self-contained SIED classroom setting, the District did not violate § 300.504(a).

**Allegation #2. The Complainants allege that the procedural safeguards notice provided by the District to the Complainants does not comply with those portions of § 300.504 (b) relating to the required explanations for independent educational evaluations, prior written notice, parental consent, access to educational records, opportunity to present complaints to initiate due process hearings, the child's placement while due process hearings are pending, procedures for students who are subject to placement in an**

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<sup>3</sup> Rules under the ECEA will be hereafter cited by Rule (e.g., ECEA Rule 5.04).

**interim alternative educational setting, mediation, due process hearings, state-level appeals, civil actions, attorneys' fees and state complaint procedures.**

The District and the Complainants do not agree on which document was given to the Complainants. The District states that it provided a copy of a document entitled "Educational Rights of Parents," which is six pages in length and is a Colorado Department of Education (CDE) publication (August 1999). The Complainants provided a copy of a document entitled "Special Education Law," which is two pages in length and also a CDE publication (January 2001). Since late October or early November 2001, the District has been using the CDE's most recent version of the "Educational Rights of Parents" brochure, which was published in October 2001.

§ 300.504 (b) establishes the content requirements for the procedural safeguards notice that public agencies (such as school districts) must provide to parents. The regulation requires that the procedural safeguards notice "must include a full explanation of all of the procedural safeguards available under Secs. 300.403, 300.500-300.529, and 300.560-300.577, and the State complaint procedures available under Secs. 300.600-300.662...."

The Federal Complaints Officer has carefully examined both documents. The Federal Complaints Officer finds that neither document complies with the "full explanation" requirement of § 300.504(b), most notably with respect to information student discipline, the manifestation determination process and removals of students to interim alternative educational settings. The Federal Complaints Officer concludes that the District violated § 300.504(b).

**Allegation #3(a). The Complainants allege that they were unaware that the 10/25/01 IEP team meeting was scheduled to serve as both an eligibility determination and an IEP development meeting. The Complainants also allege that the 11/25/01 IEP team meeting was not long enough to adequately develop their child's IEP.**

With regard to the 10/25/01 IEP team meeting, the school district submitted a copy of the 10/18/01 notice for that meeting. The meeting notice states as follows:

The purpose of this meeting is to discuss the evaluations that have been completed; determine whether there is need for a specific special education services, and if the need exists, how those services can be provided; **and to develop an individualized education program (IEP).** [Emphasis added]

The 10/25/01 IEP team meeting began at 7:00 A.M. Both parents attended this meeting. A draft IEP was distributed during the meeting. According to the Complainants, the meeting was about an hour in length.

§300.345(a) requires that a school district notify parents of IEP meetings early enough to ensure that parents will have an opportunity to attend the meetings. Subsection (b) of the regulation provides in relevant part that the notice must indicate the time, purpose and location of the meeting and who will be in attendance. The express purpose of the regulation is to ensure that one or both of the parents are present at each IEP meeting or are afforded the opportunity to participate. Neither the IDEA nor any of its implementing regulations prescribe the time length for IEP meetings.

The Federal Complaints Officer has carefully reviewed the information provided by both the Complainants and the District with regard to this allegation. The Federal Complaints Officer finds that the District properly notified the parents that the 10/25/01 meeting was both a disability/eligibility determination meeting and an IEP development meeting. The Federal Complaints Officer also finds that the parents attended the meeting and had the opportunity to participate. The Federal Complaints Officer finds that, except for the goals and objectives, [Student's] initial IEP was developed at this meeting. If the parents disagreed with any the decisions made by the IEP team during that meeting, they were entitled to request an impartial due process hearing. The Federal Complaints Officer concludes that, with respect to the 10/25/01 IEP team meeting, the District did not violate §300.345(a).

**Allegation #3(b). On 12/03/01 a regularly scheduled review of the student's IEP and behavioral plan was held. An individual from the BVADT, who was not a usual member of the student's IEP team, was present. The Complainants claim that the true function of the meeting was to place the student in an alternative school in violation of §300.345.**

The 11/27/01 meeting notice identifies the 12/03/01 meeting as an "Additional meeting" and states that the meeting's purpose was "to review [Student's] Behavioral Support Plan." This meeting was convened pursuant to the student's BIP, which states that the IEP team "will reconvene every 20 school days to monitor the plan." The meeting notice identifies the positions of individuals who "may be in attendance" including a "School Counselor." The meeting notice did not identify the potential attendees by name. The school counselor who attended the 12/03/01 IEP team meeting was an employee of the Mountain BOCES and was assigned to the BVADT. The District states in its response that this individual was in attendance to provide information about the continuum of services available if the IEP team decided that a more restrictive environment would be appropriate for the student. According to the District, the "true function" of the 12/03/01 meeting was "to review [Student's] progress or lack of progress in his placement and behavior plan, and to determine if an alternative placement was needed." Both parents attended the 12/03/01 IEP team meeting.

The purpose of §300.345(a) is to ensure that one or both of the parents are present at each IEP team meeting or are afforded the opportunity to participate. The Federal Complaints Officer finds that the 11/27/01 meeting notice did not apprise the parents that the meeting discussions would include discussions to determine whether an alternative placement was necessary for their son. The Federal Complaints Officer finds that the Complainants attended the 12/03/01 IEP team meeting and had the opportunity to participate at that meeting. The Federal Complaints Officer concludes that the District met the minimal threshold requirements of §300.345(a).

**Allegation 4(a). The complainants allege that the eligibility testing results were not discussed with the parents.**

The District denies this allegation, contending that [Special Education Teacher] reviewed the achievement testing that she administered as well as the psychological and testing reports of the school psychologist, who was ill on the morning of the meeting.

§ 300.534 (a) provides that, upon completion of the administration of tests and other evaluation materials, a group of qualified professionals and the parent must determine whether the student is a child with a disability. The school district must also provide a copy of the evaluation report

and the documentation of determination of eligibility. There is no requirement that the results of the eligibility testing be provided to the parents in advance of the eligibility meeting.

Whether the results of the eligibility testing were discussed at the 10/25/01 IEP team meeting is in dispute. When facts are in dispute, the usual process in most legal settings for resolving the dispute is through an evidentiary hearing in which individuals testify under oath, and the testimony is then subject to cross-examination. It is through this process that the fact finder determines the credibility of the individuals, and by extension, which version of the facts is the more credible. The Federal Complaint process, unlike the due process hearing, makes no provision for an evidentiary hearing. Another way of resolving a factual dispute is to examine the documentation submitted by the parties and the surrounding circumstance to see whether they provide a definite answer.

The Federal Complaints Officer has no transcript or recording of the 10/25/01 IEP team meeting between the complainants and the school. The Federal Complaints Officer has carefully examined the information submitted by the parties. The parties agree that the 10/25/01 IEP team meeting was an eligibility meeting. The parties also agree that a draft IEP was distributed during the 10/25/01 IEP meeting. The District submitted a copy of the draft IEP (District's Exhibit B). The complainants do not dispute that Exhibit B is an accurate copy of the draft IEP used at the 10/25/01 IEP team meeting. Exhibit B contains the initial evaluation testing results and Exhibit B contains notations that the eligibility testing results were discussed. The Federal Complaints Officer finds that there is credible evidence that the eligibility testing results were discussed during the 10/25/01 IEP team meeting. With regard to this allegation, the Federal Complaints Officer finds that the District did not violate § 300.534 (a).

**Allegation 4(b). The Complaint alleges that, at the 10/25/01 IEP team meeting, school personnel presented the parents with an IEP document marked "Draft" that was prepared prior to the meeting. According to the complainants, school personnel told the parents that the draft IEP was the student's IEP. No parental input was required, requested or allowed in connection with the preparation of the draft IEP in violation of the parent participation provisions of §§300.346(a)(1) and 300.501(a)(2). The Complainants' major complaint seems to be that they were not allowed to participate in the process of finalizing their son's IEP following the 10/25/01 meeting.**

The District contends that that [Special Education Teacher] explained at the beginning of the 10/25/01 IEP team meeting that (a) the IEP was in draft form; (b) the IEP team would make changes to it as the meeting progressed (by penciling in changes); (c) after the meeting the [Special Education Teacher] would incorporate the changes into the draft IEP by computer; and (d) a copy of the final IEP would be given to the parents. The District also states that "[both] parents were involved in conversations throughout the IEP meeting and offered their input and opinions frequently."

The District and the parents agree that an IEP document, which had the word "Draft" written on it, was distributed at the 10/25/01 IEP team meeting. The parties do not agree on what was said by school personnel regarding the status of the draft IEP, what was discussed during the meeting, or what the level of the parents' participation was during the IEP meeting

§ 300.346 (a)(1) requires the IEP team to consider the parents' concerns for enhancing their child's education. §300.501(a)(2) requires that parents be afforded an opportunity to participate in meetings involving the identification, evaluation and educational placement of their child.



These regulations do not require a school to agree with the concerns expressed by the parents in an IEP meeting nor do they require the parents to be in agreement with the outcome of the meeting. If the parents disagree with the outcome of a meeting, they may request a due process hearing to resolve the disagreement.

§300.501(b)(2) states that preparatory activities engaged in by school personnel to develop a proposal that will be discussed at a later meeting are permissible. School personnel may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but school personnel must make it clear to the parents at the outset of the meeting that the services proposed by the school are only recommendations for review and discussion with the parents. See, Question 32 of Appendix A, at p.12478, Federal Register: March 12, 1999 (Volume 64, Number 48).

The Federal Complaints Officer has carefully reviewed copies of the draft and final 10/25/01 IEPs and finds that many sections of the draft IEP were not complete as compared to the final IEP. The Federal Complaints Officer finds that an incomplete draft IEP was prepared by school personnel as a permissible preparatory activity prior to the meeting. The Federal Complaints Officer concludes that the District did not violate §§ 300.346 (a)(1) or 300.501(a)(2) with regard to the allegation that the District improperly prepared a draft IEP prior to the 10/25/01 IEP team meeting.

Whether school personnel adequately explained to the Complainants the status of the draft IEP at the start of the meeting is in dispute. The parents claim that they were told that the draft IEP was the student's IEP. The District contends that it was made clear to the parents that the draft IEP would be changed over the course the meeting. As was indicated above, the Federal Complaints process, as it is currently constructed, is not well-suited for resolving factual disputes. In this case, the Federal Complaints Officer has no transcript or recording of the 10/25/01 IEP team meeting between the Complainants and the District. However, as long as the Complainants were allowed to attend and speak at the IEP meeting and to present any documents that they wanted to present, the threshold requirements of §§ 300.346 (a)(1) and 300.501(a)(2) were met. The Federal Complaints Officer finds that this was the case. The Federal Complaints Officer concludes that the District did not violate §§ 300.346 (a)(1) or 300.501(a)(2) with regard to the allegation that the parents were not allowed to participate during the 10/25/01 IEP team meeting.

The Complainants also contend that the draft IEP could not be finalized without another IEP team meeting. The following facts are undisputed:

The Federal Complaints Officer has already found that, at the end of the 10/25/01 IEP team meeting, [Student's] IEP was not completed. Specifically, no goals and objectives were developed during that meeting. The parents and [Special Education Teacher] verbally scheduled another meeting for 11/01/01. The attendees at this meeting were the parents, the student's special education teacher, and the school psychologist. No regular education teacher was in attendance. At the meeting, [Special Education Teacher] distributed a draft BIP. The draft BIP was discussed. The student's father questioned the incentives and rewards that were proposed in the behavior plan.

According to [Special Education Teacher], there was some discussion concerning student's goals and objectives but the goals and objectives were not written during this meeting. Following this 11/01/01 meeting, [Special Education Teacher] wrote the goals and objectives for

the student's the student and incorporated those goals and objectives into the student's final IEP.

The Federal Complaints Officer finds that the 11/01/01 meeting was not an IEP team meeting. The purpose of that meeting was to develop the student's BIP. The Federal Complaints Officer further finds that the student's goals and objectives were written without benefit of the entire IEP team's consideration, including that of the parents. The IEP team should have been reconvened for another IEP team meeting after [Special Education Teacher] wrote the goals and objectives so that the entire IEP team could consider and reach a consensus on them. The Federal Complaints Officer concludes that the District violated §§ 300.346(a) and 300.501(a)(2) with regard to the allegation that the student's IEP was completed without the Complainants' participation.

**Allegation (4)(c). With regard to the 12/03/01 IEP team meeting, the Complainants allege that school personnel discussed an alternative placement for the student over the father's objection and that "further discussions regarding the student's situation were continued by the professionals involved as if the parents were not in the room" in violation of §§ 300.346(a)(1) and 300.501(a)(2). The Complainants also allege that the paperwork containing the placement recommendation (Staffing Notes) was completed when they received it.**

The District contends that [Student's father] participated fully in the discussions of the 12/03/01 IEP team meeting. According to the District, no one recalls any objection from the Complainants regarding the recommended placement. "[Student's father] said that he would 'let us know' his decision after the court hearing later in the day, since it could potentially impact [Student's] placement. The full IEP team was involved in the recommendation." The District denies that the paperwork was filled out prior to the hearing.

It is undisputed that both parents attended the 12/03/01 IEP meeting. It is also undisputed that the parents agreed in writing, by letter dated 12/04/01, to their son's change of placement to the District's self-contained SIED classroom at the BVADT.

The parties dispute whether school personnel allowed the Complainants to meaningfully participate in the discussions during the meeting and whether the District had prepared the staffing notes in advance, and thus predetermined [Student's] placement. The Federal Complaints Officer has no transcript or recording of the 12/03/01 IEP team meeting, and a careful examination of the record fails to provide a definite answer as to which version of the facts is the more credible.

However, the Federal Complaints Officer does find that the parents were present at the 12/03/01 meeting, that the parents had the opportunity to express their concerns and opinions regarding both the conduct of the 12/03/01 meeting and alternative placement issues, and that the parents agreed to the placement of their son into the District's self-contained SIED classroom. The Federal Complaints Officer finds that there is insufficient evidence to conclude that the District decided to place the student in an alternative placement prior to the 12/03/01 IEP team meeting or that it prepared the staffing notes in advance. For these reasons, the Federal Complaints Officer concludes that the District did not violate §§ 346 (a)(1) and 300.501 (a)(2).

With regard to the 12/03/01 IEP team meeting, it does appear from the documentation and from information provided by the parties that none of the student's regular education teachers were in attendance at the 12/03/01 IEP team meeting. The 11/27/01 Notice of Meeting does not identify a regular education teacher as a potential participant, and the 12/03 Staffing Notes do not bear the signature of a regular education teacher. The 12/03/01 staffing notes did include then current information regarding the student's behavior from at least two of the student's regular education teachers.

§ 300.344 (a)(2) requires that the IEP team include at least one regular education teacher of the child. § 300.346 (d) requires that the regular education teacher of the child must, to the extent appropriate, participate in the review of the child's IEP.

The Federal Complaints Officer finds that the District failed to include a regular education teacher as a participant of the IEP team for the 12.03/01 IEP team meeting. The Federal Complaints Officer concludes that the District violated §§ 300.344(a)(2) and 300.346 (d).

**Allegation #5. The Complaint alleges that, following the 10/25/01 IEP team meeting, the student was placed in a resource room before the parents received the final IEP and started special education in violation of §§ 300.505 (a)(1)(ii) and 300.345(f).**

The Federal Complaints Officer has already found that, at the end of the 10/25/01 IEP team meeting, the student's IEP was incomplete as it related to goals and objectives. It is undisputed that the student was placed in a resource room and began receiving special education services on 10/25/01 before the parents received a copy of the final 10/25/01 IEP. It is also undisputed that on 10/25/01, the parents signed a parent consent form for their son's initial placement and the initiation of special education and related services. The consent form documents the Complainants' acknowledgement that they had been "informed of (in my primary language) and understand my special education and procedural rights."

§ 300.505(a)(1)(ii) requires that the public agency obtain informed parent consent before the public agency provides initial special education and related services to a child with a disability. § 300.342(b) requires a public agency to ensure that an IEP is in effect before special education and related services are provided to an eligible child and that the IEP is implemented as soon as possible following the IEP development meeting.

After carefully reviewing the documents and information provided by the parties, the Federal Complaints Officer finds that during the 10/25/01 IEP team meeting, the IEP team determined (1) that the student was eligible for special education and related services under the IDEA, (2) what the student's present levels of performance and needs were in the educational, physical, socio/emotional/adapative behaviors areas, (3) the special education and related services that were to be provided to the child; and (4) the student's placement. The Federal Complaints Officer finds that the student's IEP became effective as to those portions of the IEP on 10/25/01. The Federal Complaints Officer finds that the parents provided informed written consent to the IEP team's recommended placement and to the initiation of special education services for their child. The Federal Complaints Officer concludes that the District did not violate §§ 300.505 (a)(1)(ii) or 300.342(b).

**Allegation 6(a). The Complainants allege that the 10/25/01 IEP does not contain a statement about how their child's disability affects the child's involvement and progress in the general curriculum.**

The Federal Complaints Officer finds that the 10/23/01 IEP contains adequate statements describing how the [student's] disability affects the student's involvement in the general curriculum that meet the requirements of § 300.347(a)(1)(i), including "[Student] demonstrates average skills in all areas except math calculations. Teachers indicate that he has the ability to do the work in general education classes. The concerns are in refusal to do work in class and not turning in assignments. [Student] is easily distracted." (page 3); "Can the child receive reasonable educational benefit from general education alone? No." (page 6); and "Academic functioning: An inability to receive reasonable educational benefit from regular education which is not primarily the result of intellectual, sensory, or health factors but due to the identified emotional [disability]. (Form 7(a), Page 2 of 9). The Federal Complaints Officer finds that the District did not violate § 300.347(a)(1)(i).

**Allegation 6(b). The Complainants allege that the 10/25/01 IEP does not contain a statement of measurable annual goals, including benchmarks or short-term objectives. The Complaint states "When asked, [Middle School Principal] stated 'We don't use short term goals with long term goals.'"**

§ 300.347 (a)(2)(i) requires that the IEP contain a statement of measurable annual goals and objectives, including benchmarks or short-term objectives (1) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, and (2) meeting each of the child's other educational needs that result from the child's disability. The purpose of a short-term objective or a benchmark is "to enable the child's teacher, parents, and others involved in developing and implementing the child's IEP to gauge, at intermediate times during the year, how well the child is progressing toward achievement of the annual goal." See, Question 1 of Appendix A, at p.12471, Federal Register: March 12, 1999 (Volume 64, Number 48).

The Federal Complaints Officer finds that the 10/25/01 IEP contains a statement of 3 annual behavioral goals, each with related measurable objectives. The target date for each objective was 10/25/02. There are no intermediate dates. The Federal Complaints Officer finds that the 10/25/01 IEP does not contain short-term objectives or benchmarks. The Federal Complaints Officer concludes that with District has violated § 300.347 (a)(2)(i).

**Allegation 6(c). As the Federal Compliance Officer interprets this allegation, the complainants allege that the 10/25/01 IEP does not contain a statement of special education and related services and supplementary aids and services and a program of modifications and supports, with the result that the [Student] does not have the same opportunity to attend non-academic activities that nondisabled peers have – "School dances are for [Middle School] students and cannot be attended by alternative students...."**

To the extent that this allegation is asserting that disabled students are denied opportunities to participate in nonacademic activities equal to the opportunities afforded nondisabled peers, this allegation is stating a claim of discrimination under Section 504 of the Rehabilitation Act of 1973 (Section 504). The Federal Complaints Officer does not have jurisdiction over Section 504 claims. However, such claims may be filed with the Office for Civil Rights (OCR). OCR's Denver phone number is (303) 844-5695.

To the extent that this allegation is asserting that the 10/25/01 IEP does not contain the required statements of special education, related services, supplementary aids and services, and program modifications, the Federal Complaints Officer finds that the 10/25/01 IEP at page 8 does contain sufficient statements to satisfy the requirements of § 300.347.(a)(3). The Federal Complaints Officer concludes that the District did not violate § 300.347(a)(3).

**Allegation 6(d) The Complaint alleges that the 10/25/01 IEP does not contain an explanation of the extent, if any, to which [Student] will not participate with nondisabled children in the regular class and to participate in extracurricular and other nonacademic activities in violation of § 300.347(a)(4).**

The Federal Complaints Officer finds that the 10/25/01 IEP at page 9 contains a statement to the effect that [Student] will be receiving special education services at his home school and outside of the general classroom 21% to 60% of the time. Additional language on that same page states “Currently [Student] is in the Resource Room 90 minutes everyday for Read/Write class. He is also allowed to come to the Resource Room for any class he feels he needs to remove himself (sic) or if the teacher feels he needs to be removed. Please refer to the current Behavior Plan.” The Federal Complaints Officer finds that such statements are sufficient to comply with the requirements of § 300.347(a)(4). The Federal Complaints Officer concludes that the District did not violate that regulation.

**Allegation 6(e). The Complaint alleges that the 10/25/01 IEP does not contain a statement identifying the projected date for the beginning of services in violation of § 300.347(a)(6).**

The Federal Complaints Officer finds that the 10/25/01 IEP at page 8 contains the date of 10/25/01 as the beginning date for services. The Federal Complaints Officer concludes that the District did not violate § 300.347(a)(6).

**Allegation 6(f). The Complaint alleges that the 10/25/01 IEP does not contain a statements of how [Student’s] progress toward his annual goals will be measured and how the parents will be regularly informed, at least as often as parents are informed of their nondisabled children’s progress, of [Student’s] progress in violation of § 300.347(a)(7).**

The Federal Complaint Officer finds that [Student’s] 10/25/01 IEP does contain sufficient statements describing how [Student’s] progress toward his annual goals will be measured and how the parents will be regularly informed, at least as often as parents are informed of their nondisabled children’s progress, of [Student’s] progress. Each objective of [Student’s] three annual goals contains a baseline of [Student’s] current skill level, criteria describing what skill level will constitute achievement of the objective by [Student], criteria describing how progress will be recorded and criteria describing who will document progress. Page 8 of the IEP also contains a statement that “Parents will be advised of progress toward goals at the end of each semester.”

The Federal Complaints Officer concludes that the District did not violate § 300.347(a)(7).

**Allegation 7. Complaint alleges that, during the 10/25/01 IEP team meeting, the IEP team did not consider whether appropriate strategies were needed to address their child’s behavior in violation of § 300.346(a)(2). The Complaint also alleges that [Student’s] behavior intervention plan (BIP) is flawed both as to process and content. The Complaint**

**further alleges that, in developing the BIP, school personnel failed to use the parents' input, to obtain the parents' agreement for the BIP or to document the parent's disagreement with the BIP.**

The District contends that parent input was used to develop the BIP.

In the case of a child whose behavior impedes his/her learning or the learning of others, § 300.346(a)(2) requires the IEP team to "consider, if appropriate, strategies, including positive behavioral interventions, strategies and supports, to address that behavior." If the IEP team decides that the child is in need of such strategies and supports, the IEP team is required to include a statement to that effect in the child's IEP. § 300.346(c).

The Federal Complaints Officer finds that the 10/25/01 IEP at page 8 contains a statement that [Student] requires a behavior support plan, indicating that the IEP team did consider behavioral interventions for the student. The Federal Complaints Officer concludes that the District did not violate § 300.346(a)(2).

With regard to the allegation that the process used to develop [Student's] BIP was flawed, the Complainants argue that school personnel were required to use the Complainants' input, to obtain the Complainants' agreement for the BIP and to document the Complainants' disagreement with the BIP.

The Complainants do not cite any provision of the IDEA or its regulations in support of this claim nor is the Federal Complaints Officer aware of any such requirements. The IDEA does require that the IEP team develop a BIP for a child who is about to be subjected to disciplinary removal for more than 10 school days in a school year. In such a case, all of the protections accorded parents and all of the requirements governing IEP team meetings apply. See, §300.520(b)(1). The Federal Complaint Officer finds that §300.520(b)(1) is not pertinent to this Complaint because, during the relevant time period, [Student] was never suspended for more than 10 school days in the 2001-2002 school year. The Federal Complaints Officer finds that the District was entitled to develop [Student's] BIP in whatever manner it deemed appropriate. Therefore, the Federal Complaints Officer concludes that the District did not violate the IDEA with respect to the process that was used to develop [Student's] BIP.<sup>4</sup>

The parents contend that the BIP developed by the District was flawed. As an intervention and as a support, a BIP is one element of an array of special education services that affects whether a child with a disability is receiving a FAPE. The IDEA, however, does not set forth content requirements for a BIP.

The Federal Complaints Officer has carefully examined [Student's] BIP. The BIP describes the [Student's] problem behaviors, the functions that those behaviors serve, the desired replacement behaviors, a behavioral objective incorporating the replacement behavior, the data collection system that would be used to monitor replacement behavior and desired criteria,

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<sup>4</sup> The Colorado Department of Education does not require that a BIP be a part of the IEP. It leaves that policy decision to the administrative unit. By way of a telephone conversation with the Federal Complaints Officer on 10/15/02, the District special education director stated that the BOCES does not require that a BIP be a part of the IEP. However, as a best practice, the BOCES encourages IEP teams to develop BIPs whenever possible in conjunction with IEP planning if the student's behavior is likely to impede his learning.

instructional strategies to teach [Student] the desired replacement behavior, antecedent strategies that will accompany the instructional strategies, consequent strategies for the problem and replacement behavior and consequences if [Student] engages in verbal and/or physical aggression. The Federal Complaints Officer does not find the BIP to be inadequate on its face. The Federal Complaints Officer further finds that school personnel were not required to use the parents' input, to obtain the parents' agreement for the BIP or to document the parent's disagreement with the BIP.

The Federal Complaints Officer finds that during the course of the BIP's implementation from 11/01/01 through 12/03/01, a total of 20 school days, the BIP ultimately proved to be ineffective in controlling the student's problem behaviors. The Federal Complaints Office finds that the District recognized this to be the case within a reasonable period of time. The Federal Complaints Officer concludes that the District did not violate the IDEA with respect to the development process, the content or the implementation of [Student's] BIP.

**Allegation 8. The Complaint alleges that the "time-out" methods used by school personnel failed to follow Colorado law and IDEA guidelines. With regard to this allegation, the Complainants do not cite any provision of the IDEA, the ECEA and/or their implementing regulations/rules in support of this allegation. Rather, they rely on the Time-Out Guidelines developed by the Colorado Department of Education.**

Absent a claim that the time-out methods used by the District violated the IDEA or its regulations, the Federal Complaints Officer does not have jurisdiction over this claim, and for that reason, may not consider or decide the claim.

The Complaint also references Colo. Rev. Stat. § 26-20-102, which is the definitional section for Colorado's Protection of Persons from Restraint Act. The Federal Complaints Officer does not have jurisdiction over claims that the District has violated Colorado's Protection of Persons from Restraint Act, and, therefore, may not consider or decide this claim.

**Allegation 9. School personnel failed to comply with the parent's 11/09/01 request for an emergency IEP meeting in violation of § 300.343(c).<sup>5</sup>**

In their 11/09/01 letter, the Complainants requested "an emergency IEP meeting at the earliest time possible. We feel that before [Student] returns to school the following must take place...a behavioral assessment that results in a Behavior Plan that is specifically designed for [Student]...an IEP written inclusive of behavioral goals...[utilizing] the Colorado Department of Education format..."

By letter dated 11/09/01, the District responded to the Complainants' 11/09/01 letter. The District's letter enclosed copies of [Student's] final 10/25/01 IEP and the behavioral assessment that was used to develop the BIP for [Student]. The final BIP was attached to the IEP. The District's 11/09/01 letter also stated "I have contacted our Administrator for Mountain BOCES...to let her know of your concerns. She has asked that I provide you with her phone numbers and asks that you call her at your convenience to discuss the concerns." The letter provided both cell phone and office numbers for the special education director. The student's father states that he attempted to contact the special education director several times without

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<sup>5</sup> The Complainants have cited 34 C.F.R. § 300.350(c) in support of their allegation that the District violated the IDEA when it did not schedule an emergency IEP team meeting at their request. However, § 300.343(c) is the regulation properly implicated by this claim.

success. He does not recall whether he left any voice mails. The District's special education director states that she did not receive any calls from the parents.

As the Federal Complaints Officer understands the District's response to this allegation, the District believed that the parents were requesting copies of the final IEP and BIP, which the parents had not yet received. By supplying copies of those documents to the parents, the District believed that it was adequately addressing the parents' requests for those documents because the IEP team, including the parents, had recently met on 10/25/01 to develop [Student's] IEP, and that school personnel and [Student's] father had met just 8 days earlier to develop [Student's] BIP.

§ 300.343(c) provides in pertinent part that each public agency must review the child's IEP at least annually. Pursuant to this regulation, each public agency must also ensure that the IEP team revises the child's IEP as appropriate to address (1) any lack of expected progress by the child toward annual goals; (2) the child's anticipated needs; or (3) other matters. The Office of Special Education Services (OSERS) has interpreted this section to mean that there should be as many meetings a year as any one child may need, and public agencies should grant any reasonable parent request for an IEP meeting. If the public agency refuses to convene an IEP meeting to determine whether the child's IEP should be changed, the public agency must provide written notice to the parent of the refusal, including an explanation of why the agency determined that conducting the meeting is not necessary to ensure that provision of FAPE to the student." See, Question 20 of Appendix A, pp. 12476-12477, Federal Register: March 12, 1999 (Volume 64, Number 48).

The Federal Complaints Officer interprets the District's 11/09/01 letter to the Complainants to be its refusal to convene an emergency IEP team meeting. The Federal Complaints Officer finds that the District's refusal to convene the IEP team was reasonable. The Federal Complaints Officer finds that the District's 11/09/01 letter to the Complainants failed to provide adequate written notice to the parents of its refusal to convene the IEP meeting. The District concludes that the District's did not violated § 300.343(c) by refusing to convene the requested IEP meeting but that it did violated § 300.503(b) which sets forth the content requirements for prior written notice.

**Allegation 10. On November 29, 2001, school personnel unilaterally changed the student's educational placement without providing prior written notice in violation of §§ 300.501(c), 300.503 and 300.552(a).**

It is undisputed that on 11/29/01, the District notified the parents in writing that it was changing the student's schedule by removing him from all regular education classes and from all other settings involving non-disabled peers. The reason stated in the District's 11/29/01 letter was that further criminal charges had been filed against [Student] which involved another student. In its response, the District stated that a restraining order had been issued against [Student]. In their response to the District's response, the Complainants clarified that a no-contact order had been had been issued by the Probation Department of the 11<sup>th</sup> Judicial District. It is undisputed that the change in the student's schedule continued through 12/03/01, or a total of 3 school days, when the student's IEP team met and recommended that the student be placed in the District's self-contained SIED classroom.

§ 300.501(c) in relevant part requires that parents of a child with a disability be afforded the opportunity to participate in meetings about the educational placement of their child.



§ 300.552(a) requires placement decisions to be made by a group of persons, including the parents. A significant change in placement occurs when a child with a disability is being educated with non-disabled children for an additional or lesser period of time. ECEA Rule 5.04(2)(a)(i). Written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes to change the educational placement of the child.

§ 300.503(a)(1). Pursuant to § 300.503(b), the prior written notice provided to the parent must contain:

- a) A description of the action proposed or refused by the agency
- b) An explanation of why the agency proposes or refuses to take the action
- c) A description of any options the agency considered and the reasons why those options were rejected
- d) A description of each evaluation procedure, test, record or report the agency used as a basis for the proposed or refused action
- e) A description of any other factors that are relevant to the agency's proposal or refusal
- f) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of the description of the procedural safeguards can be obtained; and
- g) Sources for parents to contact to obtain assistance in understanding the provisions of this part.

The Federal Complaint Officer finds that on 11/29/01 the District unilaterally made a significant change in the student's placement without convening the student's IEP team. The Federal Complaints Officer finds that the District's 11/29/01 letter to the parents notifying them of the change in their son's schedule was not provided a reasonable period of time prior to the schedule change. The Federal Complaints Office also finds that the 11/29/01 letter failed to (1) advise the parents of their procedural safeguards under the IDEA, (2) how a copy of a description of the procedural safeguards notice could be obtained, and (3) advise the parents of sources for the parents to contact to obtain assistance in understanding the provisions of special education. The Federal Complaints Officer finds that the District violated §§ 300.501(c), 300.503 and 300.552(a).

**Allegation 11. The Complaint alleges that the District has violated § 300.350. This regulation establishes the standard of accountability for public agencies in the provision of special education services to students with disabilities. The Complaint states "Does not address (1) & (2)." As the Federal Complaints Officer interprets this allegation, Complainants are claiming that District failed to provide their son with special education services in accordance with their son's IEP and the District failed to make good faith efforts to assist their son to achieve the goals and objectives or benchmarks listed in the IEP.**

The Federal Complaints Officer finds that the facts agreed to by the parties do not establish a violation of this regulation The Federal Complaint Officer finds that the facts alleged by the

Complainants in their Complaint and in their response to the District's response that might support this allegation are disputed by the District. As was stated earlier, the Federal Complaint process is not well-suited to resolving disputes of facts. The Federal Complaints Officer has carefully examined the documents and information supplied by the parties and the Federal Complaints Officer finds that such information does not provide a definite answer resolving the disputed facts. The Federal Complaints Officer concludes that there is insufficient evidence to conclude that the District violated § 300.350.

**Allegation 12. The Complainants claim that the District has violated §§ 300.380-300.382 because the child's special education teacher "has passed herself off as a special education teacher, yet does not understand IDEA regulations, how to work with challenging students, and finds ways to rid the school of these children."**

§§ 300.380-300.382 addresses the State of Colorado's responsibility to develop and implement a comprehensive system of personnel development. The District is not charged with this responsibility. The Federal Complaints Officer concludes that this allegation does not state a legitimate claim against the District.

**Allegation 13. The child's special education teacher disclosed information from their child's educational records without the parents' consent in violation the FERPA and its implementing regulation, 34 C.F.R. § 99.**

The Federal Complaints Officer does not have jurisdiction over FERPA claims. The complainants may file a complaint regarding FERPA directly with the District.

§300.571(a) provides that parental consent must be obtained before a public agency releases personally identifiable information about a child with a disability to anyone other than officials of "participating agencies" under Part B of the IDEA, or before personally identifiable information is used for any purpose other than for meeting a requirement under Part B. The regulation exempts disclosures made by the public agency to law enforcement officials in reporting a crime to law enforcement authorities pursuant to § 300.529(b). In this context, the IDEA is more protective than FERPA with regard to the disclosure of personally identifiable information about a child with a disability.

It is undisputed that on 12/03/01 the student's special education teacher prepared and sent a letter to the prosecuting district attorney that identified [Student] as a student with a disability and described the behavioral difficulties he was having at school. It is also undisputed that the letter was sent to the prosecuting district attorney without the consent of the student's parents. The Federal Complaints Officer finds that the District disclosed personally identifiable information about the [Student] to the prosecuting district attorney without the consent of the parents. The Federal Complaints Officer concludes that the District violated § 300.571(a).

**Allegation 14. The District has places behaviorally disordered students in segregated, off-campus programs "outside the actual school building and off school grounds" in violation of §§ 300.550-300.553. As the Federal Complaints Officer interprets it, the parents claim that the District has a "one-fits-all" policy with regard to the placement of SIED students, and those students are placed in a segregated setting in violation of the least restrictive environment (LRE) requirement.**

Under the IDEA, each public agency must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled. Special classes, separate schooling or other removal of children with disabilities may occur only if the nature or the severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Each public agency must also ensure that a continuum of alternative placements is available to meet the needs of children with disabilities, including regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. The child's placement should be as close as possible to the child's home. Unless the child's IEP requires a different arrangement, the child is to be educated in the school that (s)he would attend if nondisabled. In providing or arranging for the provision of nonacademic and extracurricular services and activities, each public agency must ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

§§ 300.550-300.553. The IDEA does not, as the parents contend, require that a child with a disability "attend a school that is as close to the regular school setting." Further, although it may be preferable for a student with a disability to attend his/her neighborhood school, the student does not have a right under the IDEA to attend his/her neighborhood school if that school does not have an appropriate program available for the student. Murray v. Montrose School County School District, 51 Fed. 3d. 921 (10<sup>th</sup> Cir. 1995)

In its response, the District states that the District maintains a continuum of services for its SIED students that includes supports in the regular classroom; part-time or full-time placement in a resource room; placement in the SIED self-contained classroom at the Arrowhead Learning Center, or part or full-time placement in the District's day treatment program. The parents do not dispute that the District maintains this continuum of placements. If a parent is in disagreement with the IEP team placement decision or with IEP team decisions regarding which nonacademic and extracurricular services are appropriate to the needs of their child, they may initiate a due process hearing to resolve that disagreement.

The Federal Complaints Officer finds that the District maintains an appropriate continuum of placements for students with an SIED disability. The Federal Complaints Officer finds that District has not violated §§ 300.550-300.553.

**Allegation 15. Students with disabilities placed by the District in alternative programs receive unequal access to facilities as compared to non-disabled students, and the facilities, nonacademic activities and extracurricular activities available to students with disabilities placed in alternative programs are unequal as compared to those available to nondisabled students.**

This allegation is a claim of discrimination under Section 504. The Federal Complaint Officer does not have jurisdiction over Section 504 complaints. The Office for Civil Rights (OCR) handles Section 504 complaints. The Denver telephone number for OCR is (303) 844-5695.

**Allegation 16. The Complaint generally alleges that the District's procedural violations deprived [Student] of a free appropriate public education in the least restrictive environment in violation of §§ 300.300 and 300.550.**

§ 300.300 requires each State receiving assistance under Part B of the IDEA to ensure that FAPE is available to all children with disabilities, aged 3 through 21. Each public agency must ensure that student with disabilities are educated in the least restrictive environment. § 300.550.

The Federal Complaints Officer has found the District has violated §§ 300.344(a)(2), 300.346(a) 300.346(d), 300.347(a)(2)(i), 300.501(a)(2), 300.501(c), 300.503, 300.504, 300.552 and 300.571.

It is well-established in the Tenth Circuit that mere technical deviations from the IDEA do not render an IEP entirely invalid. “To hold otherwise would exalt form over substance.” Urban v. Jefferson County School District R-1, 89 F.3d. 924 (10<sup>th</sup> Cir. 1995).

The Federal Complaints Officer finds that, although the District violated a number of the IDEA’s procedural requirements, those violations were technical in nature. Despite those procedural violations, [Student] received all of the services that he was entitled to receive under his 10/25/01 IEP. The District’s 11/29/01 unilateral change of the student’s placement into a more restrictive setting was for a very brief period of time (3 school days) during which the student continued to receive the special education and related services specified by his IEP. With regard to the IEP team’s decision to change the student’s placement to a more restrictive setting, Complainants agreed in writing on December 4, 2001 to that placement. The Federal Complaints Officer concludes that the District did not deprive [Student] of a FAPE in the least restrictive environment between 10/25/01 and 12/04/0.

#### **REMEDY**

Within thirty (30) days of the date of the District’s certified receipt of this Decision, the District’s special education director shall submit to the Federal Complaints Officer a written statement that the District recognizes and accepts as valid every violation found by the Federal Complaints Officer. This statement shall include a statement of assurance explaining how the violations found will be addressed to prevent their re-occurrence.

#### **CONCLUSION**

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

Dated this 29<sup>th</sup> day of October, 2002

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Laura L. Freppel  
Federal Complaints Officer