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

Federal Complaint 99:536

(Pikes Peak BOCS)

Decision

INTRODUCTION

This Complaint was dated October 31, 1999, and received by the Federal Complaints Officer on November 4, 1999. On November 5, 1999 a copy of the Complaint letter was sent to Pikes Peak BOCS Director, Dr. Brian Printz, with copies to the complainants and Ms. Linda Williams-Blackwell. The copy of the Complaint letter was accompanied with a cover letter from the Federal Complaints Officer stating, in relevant part, that "…if substantiated, the facts as stated by (the complainants) could be a violation of relevant special education law." The cover letter asked for a response from the school within fifteen (15) days of the school's receipt of the Complaint, unless an extension of time was granted by the Federal Complaints Officer. The Federal Complaints Officer received proof of receipt of this correspondence, by Dr. Printz, dated November 8, 1999. In a letter dated November 17, 1999, and received by the Federal Complaints Officer on November 19, 1999, the school filed a response to this Complaint, and seven (7) other individual Complaints filed by other complainants, as well as a group Complaint filed by all the complainants. The letter dated November 17, and received by the Federal Complaints Officer on November 19, was less than one and one half pages long and was the school's response to Complaints concerning eight (8) students.

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

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

dated December 6, 1999, the Federal Complaints Officer told the complainants that the school had estimated that additional responses would be forthcoming to their Complaints within ten (10) days. It is the recollection of the Federal Complaints Officer that this was the time period agreed on with Mr. Anderson. The Federal Complaints Officer told the complainants that he would send them copies of any individual responses received from the school. He also told the complainants that they could file a response to the school's initial response now, or wait and respond after they had received any additional responses the school provided. In a letter from the school's attorneys, dated December 17, 1999, and received by the Federal Complaints Officer on December 17, 1999, the school submitted a response to the individual Complaint. The Federal Complaints Officer mailed a copy of this additional school response to the complainants in correspondence dated December 21, 1999, and received by the complainants on December 23, 1999, according to proof of receipt of certified mailing. The Federal Complaints Officer failed to notify the complainants of their opportunity to respond to this additional response from the school. Upon discovering his mistake, the Federal Complaints Officer did notify the complainants of their opportunity to respond, in correspondence dated January 21, 2000.

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

In correspondence dated January 5, 2000, and received by the Federal Complaints Officer on January 10, 2000, the school provided an additional response to the group Complaint. In correspondence dated January 13, 2000, the Federal Complaints Officer sent, by certified mail, a copy of this additional response to the group Complaint, to the complainants, and gave them fifteen days to respond if they wished. On that same day, January 13, 2000, the Federal Complaints Officer received, in a letter signed by all of the complainants, dated January 11, 2000, a response to the school's initial response to the Complaint, dated and received November 17, and 19, respectively. In correspondence dated January 18, 2000, the Federal Complaints Officer sent the school a copy of this response from the complainants.

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

that the complainants and the school had identified as the persons with whom they wanted the Federal Complaints Officer to meet.

COMPLAINANTS' ALLEGATIONS

In their Complaint letter dated October 31, 1999, and received by the Federal Complaints Officer on November 4, 1999, the complainants' alleged:

- There was no current IEP on file for their daughter, who was a new student in the school district, having transferred from a school district in Illinois. The complainants' stated:

  > Beginning with the enrollment process in early August, 1999, all proper paperwork, medical records, authorization forms, etc. were filled out at the administration building to enroll (complainants'daughter) at the Middle School. It was at this time that the district was responsible for obtaining all school records, copies of IEP's, and related documents necessary for preparing an appropriate schedule for (complainants' daughter) for the eighth grade. The first day of school began with no preparation and no schedule prepared for her, and all teachers and counselors wondering what to do with her. Decisions were haphazardly made, and a schedule was given to us quickly. After two weeks into the school year we went to visit at the Open House and discovered that the regular education teachers listed on the schedule had never met our daughter, even though we had been given reports by the aides that (complainants' daughter) was attending and enjoying her classes. After confronting the special ed teacher, principal, and vice principal regarding our daughter's whereabouts, their initial response was "I don't know". (To date, this issue has been pushed aside with no one taking responsibility for where (complainants' daughter) had been for the first two weeks of school). At this point an immediate staffing was scheduled, (as required by law), to provide for a transfer staffing IEP. At this meeting, parental input was given stressing many key goals and needs for (complainants' daughter). We discovered at this time that the school had not even attempted to get any additional information regarding (complainants' daughter's) past history, even though we had requested many times that it would be beneficial for them in order to prepare an appropriate goal plan. After almost a month, we finally received a copy of the IEP to sign and were appalled to see it. Nothing we had said or indicated was in the IEP. It is commonly known that participation of parents in an IEP process is essential if the education program proposed is to be appropriate for the child. Again, we discovered that this district has no regard for parental input. We had to ask the special education director, Linda Williams-Blackwell if she had actually been in the same room we had been in because the goals and objectives were grossly inaccurate and inappropriate. When brought to her attention, she admitted that the IEP was incorrect. Yet, to date nothing has been changed to reflect changes necessary to the IEP. Therefore, technically, Lewis Palmer Middle School is operating without a current IEP on file for (complainants' daughter).
  >
  > In addition to this, we have requested many times that her old IEP's goals and objectives be implemented as well as additional suggestions made by us. As of this date, we have seen absolutely nothing from the special education teacher,

> regular teachers, or administrators that any key goals have even been worked on since the start of the school year. A conversation with Linda Williams-Blackwell resulted in her admitting that she was aware that IEP's were not being implemented at the middle school. This is evident as we work with (complainants' daughter) at home, and can witness the extent of her regression since the middle of August.

- Their daughter was not being provided an education in the least restrictive environment;
- Their daughter was being denied a free appropriate public education. The complainants' stated:

> According to (complainants' daughter's) IEP, she is to have modified academics in all areas. This would include monitoring of her work, and (sic) well as suggestions for improvements in her work process. For proper modifications, aid support is necessary. We were informed by one of the aides that they no longer could work with her because they were understaffed. To date, we have seen no modifications to any of her classes, (with the exception of Social Studies), as well as any type of follow up or communication from either the regular division teachers or special education teacher. Actually, to date, we have seen nothing from anyone regarding any type of work she has been doing at all. Communication from the school has been extremely lacking. We know that typically, junior high students have a substantial amount of homework each night. However, (complainants' daughter) has yet to bring home homework in any class on a regular basis or at an appropriate level. She is used to being challenged academically in all areas, (from her prior school), but at Lewis Palmer, there is no regard for her learning process.
>
> In addition to the above, we believe that the school district is guilty of neglect towards (complainants' daughter) in several occasions. There has been many days that (complainants' daughter) was left unassisted and unmonitored for getting to her classes. It was agreed upon at her IEP meeting that she would learn to get to class independently, however, the teachers and the assistants did not take it upon themselves to teach (complainants' daughter) this task. Instead, she has been left alone to fend for herself. In this learning process she has gotten lost several times, and has been found wandering the halls in tears not knowing where she needed to be. We have been told that (complainants' daughter) shows up late to every class every day. When we asked the special ed teacher about this, we were told that this was (complainants' daughter's) fault, instead of the special ed staff taking proper steps in monitoring and supervising (complainants' daughter's) actions (as required for (complainants' daughter) to learn her schedule). Neither the regular teachers, special education teacher, aides, nor administration have made any attempt to be accountable for this neglect. In addition, no one seems to want to be accountable for anything in this system.

- They were not being informed of their daughter's progress as often as regular education students. Specifically: "On (complainant's daughter's) first semester 1999 report card there was a note from the school that said, 'No grades were available prior to long-term sub position being filled. Present grades reflect progress observed by long-term sub and classroom aides.' The long-term sub had been there for approximately one week, so

effectively, (complainants' daughter) was not graded during the first 6 weeks of class. In addition, observations and grades by the aides are not appropriate under any circumstance, especially not in this situation where the aides hired at Lewis Palmer are not properly trained or educated to teach my child."

- The principal was discriminating against special education students;
- The principal combined the moderate and severe needs classrooms without parent notification, in violation of student IEPs;
- Special education students were not routinely given a locker. After they complained for five weeks, their daughter finally got one.

SCHOOL'S RESPONSE

In its response, dated and received December 17, 1999, the school responded to the complainants' allegations as follows:

- LPSD had a current and appropriate IEP in place for (complainants' daughter). The school stated:

  "Complainants registered (complainants' daughter) for school in LPSD on August 9, 1999. The enrollment form did not notify LPSD that (complainants' daughter) had a diagnosis of Down's Syndrome, nor did it indicate what type of special education classes she attended in Illinois."

  "Upon enrollment, LPSD immediately requested (complainants' daughter's) school records from Illinois. The records were received on August 17, 1999, the first day of classes of the 1999-2000 school year."

  "LPSD received from Illinois, an IEP for (complainants' daughter) dated February 25, 1999. This IEP is valid until February of 2000."

  "A transfer staffing was held on September 9, 1999. Complainants participated in the transfer staffing. The input of Complainants was included in the IEP. A copy of the IEP developed at the transfer meeting was sent to Complainants on September 27, 1999. Complainants indicated dissatisfaction with the goals in the IEP. The Director of Special Education revised the goals in the IEP and sent the revisions to Complainants on September 30, 1999. Complainants never commented on the changes nor did they return a signed IEP."

  "As LPSD did not have (complainants' daughter's) IEP until classes started, (complainants' daughter) was initially to attend scheduled regular classes. On the first day of classes, it was determined it was appropriate to schedule (complainants' daughter) to the SMN Program."

- LPSD was providing (complainants' daughter) an education in the least restrictive environment;
- LPSD had not denied (complainants' daughter) a free appropriate public education. Specifically: "(Complainants' daughter's) IEP requires modified academics in all areas. LPSD has complied with this requirement."

- LPSD had not violated IDEA, nor had it denied information to complainants. Specifically: "(Complainants' daughter's) IEP does not require that she receive letter grades. (Complainants' daughter) did receive a report card for the first six week period of the school year. Pass/fail grades, not letter grades, are the appropriate measurement for (complainants' daughter's) progress. The report cards issued by LPSD did not violate the IDEA."
- The allegations of discrimination were without merit;
- "Complainants' concerns regarding program changes and room changes to the SMN program do not constitute violations of the IDEA. LPSD made personnel and room changes which it believed were necessary to improve the quality of the SMN program."
- Many students didn't get lockers, including regular education students. (Complainants daughter) got one, upon request, by the end of the second week of school.

FINDINGS

- The Federal Complaints Officer does not find it credible that the school was not aware, or reasonably could not have been aware, that the complainants' daughter, a student with Downs Syndrome, was going to need special education services when school began on August 17, 1999. It does appear, however, that, after receiving the complainants' daughter's records from Illinois, including the February 25, 1999 IEP, the school acted diligently by holding a transfer staffing on September 9, 1999. However, this staffing was not satisfactory to the complainants, and, according to the complainants, and not denied by the school, evidently not satisfactory to the Director of Special Education either. As stated by the complainants: "We had to ask the special education director, Linda Williams-Blackwell if she had actually been in the same room we had been in because the goals and objectives were grossly inaccurate and inappropriate. When brought to her attention, she admitted that the IEP was incorrect." According to the school, the complainants were mailed a revised IEP on September 30, 1999, which the complainants did not acknowledge. Since the complainants' Complaint was dated as prepared on October 31, 1999, and in it they state " … to date nothing has been changed to reflect changes necessary to the IEP", the Federal Complaints Officer presumes that complainants were not satisfied with the revised IEP. The school subsequently has provided the Federal Complaints Officer with a completed IEP dated December 14, 1999.

  Disputes over what should be contained in an IEP are better addressed in a due process hearing, where competing evidence can be more adequately explored. However, the process of creating an IEP is subject to the jurisdiction of the Federal Complaints' Officer, and he finds that the process was inadequate for at least the time period from August 17, 1999 until September 30, 1999. This was a violation of IDEA. See generally 34 CFR 300.340 – 300.350.

- The due process hearing is a more appropriate forum for considering what would be competing evidence about what "least restrictive environment" should mean, that is what the IEP should contain, than is the Federal Complaint process which is better suited to investigate complaints about whether what the IEP does contain is, in fact, being provided. However, having said that, it is also true that, whatever "least restrictive environment" means, it is a part of a "free appropriate public education". If a "free appropriate public education" has not been sufficiently provided then the "least restrictive environment" requirement cannot be said to have been met, whatever that was intended to be. That's

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

- The school does not respond to the details of the complainants' allegation in their Complaint that their daughter was not receiving a "free appropriate public education", except to deny the allegation and to state that academics were modified. As proof of the modified academics, the school provided the oral statements from teachers at the on-site on February 1 and 2, 2000. Against the prepared and un-cross-examined statements of the teachers, with attorneys from the school present, and no parent representatives present, are the facts that a teacher started the school year on August 17, 1999, and was removed from her duties on September 15, 1999 for incompetence, and was replaced by a substitute until October 25, 1999, when a new permanent teacher came to work. And, the fact that, this was a student who, by the school's own admission, did not have a revised IEP, with which at least the school was happy, until September 30, 1999. A revised IEP was completed on December 14, 1999. Under these circumstances, and weighing the credibility of the parents' written statements against the written response by the school and the teachers' oral statements, the Federal Complaints Officer does not find it credible that appropriate modifications for complainants' daughter were being appropriately implemented. The Federal Complaints Officer finds that the complainants' daughter did not fully receive a free appropriate public education during the fall semester, 1999. This was a violation of IDEA. See 34 CFR 300.13.
- Whether or not letter grades were appropriate, and it appears the parents expected letter grades, like all other Lewis Palmer students, the school has not denied that – "No grades were available prior to long-term sub position being filled. Present grades reflect progress observed by long-term sub and classroom aides." The complainants were not adequately informed of their daughter's progress during the first six (6) weeks of the fall 1999 semester. This was a violation of IDEA. See 34 CFR 300.347(a)(7).
- The allegations of discrimination against the school principal are not subject to the jurisdiction of the Federal Complaint process.
- The complainants should have been notified about program changes that affected their daughter. It is inconsistent with a regulatory scheme that requires that parent participation be actively sought to conclude otherwise. Even if the administrative exigencies of the situation required that immediate action be taken, which did not allow for informing the parents beforehand, and the Federal Complaints Officer finds nothing in the record to indicate that this was the case, the complainants should have been informed of the the changes immediately afterwards. The school did not keep the complainants adequately informed about major programming changes affecting their daughter's IEP. This was a violation of IDEA. See generally 34 CFR 300.340 – 300.350, regarding IEPs. See also 34 CFR 300.503 and 34 CFR 300.507.
- The Federal complaints Officer finds no violation of IDEA based upon how Lewis Palmer Middle School distributes available lockers to its students.

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

In its response to the Federal Complaint, dated and received December 17, the school states that the "magnitude of the deprivation is a critical factor in determining whether equitable relief should be granted." The school then cites the Federal Complaints Officer to Bean v. Conway

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

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

REMEDIES

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

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

APPEAL RIGHTS

This decision will not become final until the Federal Complaints Officer has received the requested information about compensatory educational services, and has ordered what those services will be. At that time the decision will become final, and the appeal time will begin to run. A copy of the appeal procedure is attached to this decision.

CONCLUSION

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

Dated today, March _____, 2000.

_____
Charles M. Masner, Esq.
Federal Complaints

Federal Complaint 99:536

Decision

COMPENSATORY EDUCATION

INTRODUCTION

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

DISCUSSION

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

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

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

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

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

FINDINGS

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

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

The Federal Complaints Officer accepts the school's computation of the special education services hours missed by complainants' daughter. That computation was supplied by Ms. Linda Williams Blackwell, who can qualify as an expert in special education. The Federal Complaints Officer also accepts that compensatory educational services should be provided through one on one (1:1) tutoring. However, the Federal Complaints Officer believes that because these are special needs students, and because the denial of FAPE occurred not only in a denial of hours of special education classroom programming, but also in qualitative aspects of the student's educational programming in and out of the special education classroom, the one on one (1:1) tutoring should be for the total number of hours of special education services denied. Special education students generally receive instruction with a lower pupil:teacher/aide ratio than the non-special education student population. Some of that instruction is one on one (1:1). Therefore, the number of hours of compensatory education to be provided shall be 110.4 hours. The tutor(s) shall be paid at a reasonable hourly rate necessary to hire the appropriate person(s) to do the job. This could be more or less than the twenty dollars per hour proposed by the school. These services shall include any necessary related services. If the complainants and the school cannot agree on an appropriate rate, or on other necessary terms for the delivery of these services, they shall submit their disagreement to the Federal Complaints Officer and he will decide the issue.

IT IS SO ORDERED.

CONCLUSION

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

Dated today, May _____, 2000.

_____
Charles M. Masner, Esq.
Federal Complaints Officer

Federal Complaint 99:536

CLARIFICATION OF COMPENSATORY EDUCATION ORDER

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

Dated today, May _____, 2000.

_____
Charles M. Masner, Esq.
Federal Complaints Officer