

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

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**Federal Complaint 99:546**  
(San Luis Valley BOCES)

**Decision**

**INTRODUCTION**

This Complaint was dated November 4, 1999, and received by fax by the Federal Complaints Officer on November 9, 1999. In a letter dated January 6, 2000, and received by the Federal Complaints Officer on January 10, 2000, the school responded to the Complaint. An additional response from the school, dated January 11, 2000, was received by the Federal Complaints Officer on January 17, 2000. In correspondence dated January 25, 2000, the complainant responded to the school's response. In a letter dated February 14, 2000, and received by the Federal Complaints Officer on February 16, 2000, the school responded to this response. In a letter dated March 8, 2000, and received by fax by the Federal Complaints Officer on March 11, 2000, the complainant responded to the school's response. The Federal Complaints Officer then closed the record.

**COMPLAINANT'S ALLEGATION**

Complainant alleged that her son's IEP, at the time she filed her Complaint dated November 4, 1999, stated her son was to receive, from April 6, 1999, until March 13, 2000, direct services adaptive physical education for twenty – five (25) minutes three (3) times per week, for a total of one (1) hour and fifteen (15) minutes per week. The complainant alleged that these services were not being provided. The complainant provided a copy of the Special Education and Related Services page of her son's IEP, in support of her allegation. A copy of that page, with the relevant portions highlighted in yellow, is attached to this Decision. The complainant repeated her allegation in subsequent responses.

**SCHOOL'S RESPONSE**

In its response dated January 11, 2000, and received by the Federal Complaints Officer on January 17, 2000, the school stated, in relevant part:

It is the position of the San Luis Valley Board of Cooperative Services that (complainant's son's) adaptive physical education needs have been met in the regular education class. He has appropriately participated in P.E. since the beginning of school. There is nothing on his present IEP to suggest that his needs for adaptive P.E. services could not be met in such a setting. The IEP does not require 1:1 adaptive P.E. services. Thus, there are no damages for which he must be compensated.

In addition, in its response dated February 14, 2000, and received by the Federal Complaints Officer on February 16, 2000, the school states, in relevant part: "Since there was nothing on (complainant's son's) IEP to indicate otherwise, (complainant's son) was provided his physical education services in the least restrictive environment, a regular education classroom twice a week." And, "(Complainant's son's) IEP contained no parameters as to how the adaptive physical education services were to be provided."

## **FINDINGS AND DISCUSSION**

In deciding issues of whether or not an IEP has been appropriately implemented, the Federal Complaints Officer first has to decide whether the IEP is clear enough as to what was intended for the Federal Complaints Officer to have jurisdiction. If the IEP is not clear enough, then it is the view of the Federal Complaints Officer that the due process hearing is the more appropriate forum for resolving a dispute about what the IEP meant. However, ambiguity cannot be created simply by disagreement of interpretation between the complainant and the school. Were that the case, the Federal Complaints Officer could always be deprived of jurisdiction over whether an IEP had been appropriately implemented, simply by one side saying they disagreed with the interpretation of the other side. In this case, the Federal Complaints Officer reads the complainant's son's IEP to state that he was to receive adaptive physical education (PE) three (3) times a week, for twenty-five (25) minutes, for a total of one (1) hour and fifteen (15) minutes per week, Direct Outside General Classroom, emphasis added. Whether this was to be one on one is not at issue. The complainant has not alleged that it was supposed to be one on one. However, if there was to be a different interpretation placed on the language, Direct Outside General Classroom, then the one given by the complainant, which was, and is, that this meant her son was to be pulled out of his regular physical education class to get adaptive physical education, then, in this instance, the Federal Complaints Officer finds that the school should have made this clear in the IEP, which, the Federal Complaints Officer finds, the school did not make clear.

The Federal Complaints Officer does not understand what other sufficiently rational interpretation could be placed on the complainant's son's IEP, then the interpretation made by the complainant, and the school has not offered him one. While the school's stated desire to educate the complainant's son in the least restrictive environment is laudably consistent with the law, the determination of what least restrictive environment means is what the IEP says it means. Here, according to the best interpretation of the Federal Complaints Officer, it meant, for physical education, three (3) times a week for twenty-five (25) minutes, for a total of one (1) hour and fifteen (15) minutes, direct outside of the general classroom, meaning outside of regular physical education, or whatever other classroom he was going to be taken outside of to get these services. To interpret the language "direct outside general classroom" otherwise, renders the language useless for describing service delivery. There is a box on the IEP form entitled "Direct in General Classroom". If the time had been recorded in this box, it could have been consistent with the school's interpretation, and this would have most rationally meant in the regular physical education classroom, unless specified otherwise, since one would normally expect physical education to be provided during physical education class, as opposed to art, or music, or some other subject. The time was not recorded in this box.

The Federal Complaints Officer therefore finds that the complainant's son did not receive required IEP services for adaptive physical education for the period covered by the IEP. The

Federal Complaints Officer finds, therefore, that the complainant's son did not fully receive a free appropriate public education for the period covered by the IEP. This was a violation of 34 CFR 300.13.

### **REMEDY**

The school shall provide compensatory educational services to the complainant's son sufficient to compensate him for the IEP required services he did not receive. If the complainant and the school cannot agree on what this is to be, the Federal Complaints Officer will decide the issue. The complainant has fifteen (15) days from the date of her receipt of this Decision to submit to the Federal Complaints Officer her proposal for compensatory education. The school will then have fifteen (15) days to respond.

### **CONCLUSION**

This Decision will not become final until the Federal Complaints Officer has entered an order for compensatory education. At that time the appeal time will begin to run. A copy of the appeal procedure is attached to this Decision.

Dated today, March \_\_\_\_\_, 2000.

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Charles M. Masner, Esq.  
Federal Complaints Officer

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**COMPENSATORY EDUCATION**

The Federal Complaints Officer accepts the agreement of the parties. Specifically: twenty-one hours of adaptive physical education, as approved by Ms. [REDACTED]. See attached letter, mis-dated January 6, 2000, from Ms. Salazar to the Federal Complaints Officer.

The Decision is now final as dated by the Federal Complaints Officer's signature on this document. The appeal time begins to run as stated in the appeal procedure previously mailed to the parties.

Dated today, April \_\_\_\_\_, 2000.

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Charles M. Masner, Esq.  
Federal Complaints Officer