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

Federal Complaint 2000:529

Arapahoe County School District 5

Decision

INTRODUCTION

This Complaint was dated August 21, 2000, and received by the Federal Complaints Officer on August 24. The school's response was dated and received by the Federal Complaints Officer on September 18, 2000. The complainants' response to the school's response was dated October 4, 2000, and received by the Federal Complaints Officer on October 5. The Federal Complaints Officer then closed the record.

COMPLAINANTS' ALLEGATIONS

The complainants allege violations of the following IDEA regulations:

- 34 CFR 300.552(a)(1) - PLACEMENTS
- 34 CFR 300.300(a)(3)(i)(ii)-PROVISION OF FAPE
- 34 CFR 300.346 - DEVELOPMENT, REVIEW, AND REVISION OF IEP
- 34 CFR 300.532(h) - EVALUATION PROCEDURES
- 34 CFR 300.344(a)(1)(6) – IEP TEAM
- 34 CFR 300.347(a)(1)(i)(ii) – CONTENT OF IEP

The complainants' allege all of these provisions were violated with regard to special education planning and programming for their son.

SCHOOL'S RESPONSE

The school denies all allegations.

FINDINGS AND DISCUSSION

34 CFR 300.552(a)(1) – PLACEMENTS

The complainants make two related contentions. They contend that the school did not allow them to effectively participate in the placement decision for their son, and that this was largely the result of the school's policy of excluding students who were determined to have only one

disability from a particular type of preschool classroom setting. The complainants quote the school's occupational therapist as stating – "(Complainant's son) does not qualify for preschool services because he has only one disability. It's the district's policy." While the school's response states that – "The IEP staffing team would base the placement on the particular child's unique needs after reviewing the 'global picture' of the child" – it does not respond to the complainants' claim that the school has a policy of placing pre-school students based upon the number of their disabilities, whether or not the occupational therapist was accurately quoted.

34 CFR 300(a)(3)(i)(ii) – FAPE

The complainants contend that their son was denied a Free Appropriate Public Education (FAPE), because the decision about placement and services their son was to receive was not individualized because of the school's policy of placing preschool students based upon the number of their disabilities. In addition, the complainants contend that their son had a disability, difficulty with sensory integration, in addition to his speech/language needs, which the school did not adequately consider. The complainants cite communications they received from school personnel, including a special education administrator, which confirmed to them the school's policy of making placement decisions for preschoolers based upon the number of disabilities of the student, and which communications also, in the complainants' view, did not adequately consider their son's sensory integration difficulties. The school contends that the complainants' son's sensory integration needs have been adequately addressed by his IEP. As to the complainants' allegation that the school has a policy of placing preschool students based upon their number of disabilities, two statements in the school's response are especially relevant:

> "One setting discussed was the special education preschool designed to serve students with severe or multiple needs." This is in reference to the discussion at the March 15, 2000 meeting between the complainants and school representatives, including a special education administrator.
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> "It is the District's position that it provides services to special education students in accordance with the goals and objectives stated on a student's IEP. Those services address the child's needs and may occur in a variety of settings. The controlling factor is to meet the needs of the child in the least restrictive environment so as to enable the child to participate to the greatest extent possible with non-disabled peers."

34 CFR 300.346 – DEVELOPMENT, REVIEW, AND REVISION OF IEP

The complainants contend that at the May 30, 2000, and June 15, 2000 IEP meetings, certain evaluation information for their son was not appropriately considered. The school contends that all relevant evaluation information was appropriately considered and characterizes the differences between the school and the complainants as being that – "There was a disagreement as to the severity of (complainants' son's) needs."

34 CFR 300.532(h) – EVALUATION PROCEDURES

The complainants contend that certain testing of their son was not timely done. The school responds that testing was timely done.

34 CFR 300.344 – IEP TEAM

The complainants contend that they felt "shut-out" of the May 30, and June 15, 2000 IEP meetings, and that necessary special education teachers, and at least one therapist, did not participate in these meetings. The school states that it cannot respond to how complainants felt, but that adequate IEP meetings were held. The school states that while the school occupational therapist and school speech language specialist were not present at the June 15, 2000 IEP meeting, because they were "off contract", the teacher/team leader who worked with them was present. Also, another occupational therapist, who worked with the absent staff members, participated in the IEP meeting to discuss occupational therapy services for complainants' son, and information from a private occupational therapist, about complainants' son, was also reviewed.

34 CFR 300.347 – CONTENT OF IEP

The complainants contend that their son's "…sensory, behavioral and social/emotional needs/goals were not allowed on his IEP to receive direct services." The school responds:

> "It is the District's position as evidenced by the supporting documentation and statements of special education staff members that (complainants' son's) sensory, behavioral and social/emotional needs were considered and attached to the IEP and that the staff would be monitoring (complainants' son) for the concerns expressed by the parent and their private therapists. It was and is the reported observations of staff that (complainants' son) did not exhibit significant sensory, behavioral and/or social/emotional needs which impacted his education, that indeed, observations and collective assessment data indicated a child who was very bright, with strong language comprehension, who was interacting and participating appropriately in the classroom environment. A similar observation was made by (school teacher/team leader) when she observed him in the community preschool and spoke with the teacher there."

The Federal Complaints Officer finds that there is insufficient evidence to demonstrate that the school violated 34 CFR 300.346 – DEVELOPMENT, REVISION, AND REVIEW OF IEP – as alleged by the complainants.

The Federal Complaints officer finds that there is insufficient evidence to demonstrate that the school violated 34 CFR 300.532(h) – EVALUATION PROCEDURES – as alleged by the complainants.

The Federal Complaints Officer finds that there is insufficient evidence to demonstrate that the school violated 34 CFR 300.347 – CONTENT OF IEP – as alleged by the complainants.

The Federal Complaints Officer finds that the school violated 34 CFR 300.344 – IEP TEAM. This section requires that at least one special education teacher or special education provider of the child be at IEP meetings. The Federal Complaints Officer interprets this to mean a primary special education staff person responsible for delivering the special education services the student receives. The Federal Complaints Officer finds that no such person was present at the June 15, 2000 IEP meeting. A person being "off contract" is not an acceptable excuse for legally required persons not being present at IEP meetings. However, as indicated by the Federal Complaints Officer's finding of no violation of 34 CFR 300.346 or 34 CFR 300.347, there is insufficient evidence to demonstrate that the non-attendance of a special education teacher or provider at the June 15, 2000 IEP meeting, on the facts of this case - which included that persons knowledgeable about the educational needs of complainants' son were present, and that information necessary for educational planning for complainants' son was received – rendered the resulting IEP invalid.

The Federal Complaints Officer finds that the school violated CFR 34 300.552(a)(1) – PLACEMENTS, and 34 CFR 300.300(a)(3)(i)(ii) – PROVISION OF FAPE. The complainants make express allegations that the school has a policy, either express or implied, of making placement decisions based upon the number of disabilities that a student has, and that therefore a possible appropriate placement for their son was not considered by the school. Despite being given opportunity to do so, the school has not expressly denied these allegations, other than to respond that the school pursues a process of individualizing instruction for each child. A blanket school policy, either express or implied, which routinely inhibits the ability to effectively consider special education students for otherwise valid placements, because they do not have more than one disability, is not consistent with a statutory or regulatory scheme, throughout IDEA, of individualizing instruction for each eligible student. It is true that in the text of the school's response it does include language that the precluded setting might include students with "severe" needs. However, the school's exhibit number nine (9), a letter dated April 4, 2000, from a school teacher/team leader to one of the complainants' Arc advocates states, in relevant part, referring to the precluded setting – "Most of these children have significant delays in more than one area as the basis for the complexity of their educational need. Occasionally the delay in a single area is severe enough that it warrants a recommendation for the specialized classroom placement." It is the finding of the Federal Complaints Officer that it is the school's standard policy, express or implied, to routinely conclude that preschool students who have only one disability should not be served in a specialized classroom placement. An occasional exception to such a standard selection policy does not make it valid, because the policy has the effect of inhibiting the kind of individual consideration for all students which IDEA requires. Absent such a standard selection policy in the minds of school staff, there is the possibility that preschool students without multiple disabilities might be identified for special education classroom placement more often than occasionally. This does not mean that multiple disabilities cannot be a factor that is considered for placement decisions, or that a particular placement setting that ends up serving mostly students who have multiple disabilities is per se impermissible. To the best of the Federal Complaints Officer's knowledge, there is nothing impermissible about having a specialized classroom placement option for severe needs preschoolers, with multiple disabilities being one criterion of severity. What is impermissible is a blanket school policy that can preclude students with only one disability from being effectively considered for a full continuum of special education placements. The least restrictive environment provisions of IDEA require such consideration. In addition to the sections cited by the complainants, the school's policy violates 34 CFR 300.551(b)(1) – "The continuum required…must…include…instruction in regular

classes, special classes, special schools, home instruction, and instruction in hospitals and institutions…" Id.

However, while the Federal Complaints Officer finds that the school has a policy that violates IDEA provisions for placement and FAPE, he makes no finding as to whether the complainants' son was inappropriately placed, or denied FAPE. Whether the complainants' son has been appropriately placed to receive FAPE is not a determination that is being made by the Federal Complaints Officer. If it is still relevant for the complainants' son, the complainants are entitled to now have their son considered for the specialized classroom placement. If the school and the complainants still disagree on placement, the complainants are entitled to request a due process hearing to resolve the issue. If the complainants obtain a decision from the impartial hearing officer that the specialized classroom placement was appropriate for their son, then the placement could take place and the complainants would be entitled to request any appropriate compensatory education for their son for any time during which he was wrongfully excluded from an appropriate placement. If the issue of the complainants' son's placement in the specialized classroom setting is no longer currently relevant, the complainants can still seek a due process hearing on the issue of whether it would have been an appropriate placement and, if so, whether compensatory education is appropriate.

REMEDY

The Director of Special Education shall submit to the Federal Complaints Officer, within thirty (30) days of the date of this DECISION, a statement of assurances that:

1) The school recognizes that 34 CFR 344 (a)(3) was violated and that all necessary persons will be in attendance at future IEP meetings;
2) The school recognizes that 34 CFR 300.552(a)(1), 34 CFR 300.300(a)(3)(i)(ii), and 34 CFR 300.551(b)(1) were violated, and that the school will no longer have a policy, express or implied, of excluding students with only one disability from consideration for the full continuum of placements, including special education classroom placements;
3) If the complainants so desire, the school shall reconsider the placement of complainants' son in the specialized classroom placement within thirty (30) days of the date of this Decision. This reconsideration shall take place at an IEP meeting, which includes all necessary individuals, including the complainants.

CONCLUSION

This Decision becomes final as dated by the signature of the Federal Complaints Officer. A copy of the appeal procedure is attached to this Decision.

Dated today, October _____, 2000.

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Charles M. Masner, Esq.
Federal Complaints Officer