

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

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**Federal Complaint 2000:534**

Aurora Public Schools

**Decision**

**INTRODUCTION**

This Complaint letter was dated October 6, 2000, and received by the Federal Complaints Officer on October 10. The school's response was dated and received October 26. The complainant responded to the school's response in a letter dated and received October 30. The Federal Complaints Officer then closed the record.

**COMPLAINANT'S ALLEGATIONS**

The complainant alleges that on October 5 and 6, 2000, her son, who has been diagnosed with autism, had his special education placement changed without the complainant's consent, when the school did not appropriately provide him with full time support from a paraprofessional, as required by his Individualized Education Program (IEP) plan. The complainant's son is a fourth grader and on October 5, 2000 he spent at least part of the school day - the school says the afternoon, the complainant implies from mid to late morning and then throughout the afternoon - with a teacher other than his regular teacher, in the second and third grade classroom, where he shared a paraprofessional service provider with other students. The teacher for that classroom, according to the school, has a background in working with children with autism. The paraprofessional was different than complainant's son's usual paraprofessional, who had called in sick. On October 6, 2000 the complainant states she removed her son from the school in the morning, because the school placed him in a situation where a fellow student who has a history of harassing her son was provided further opportunity to do so.

The complainant alleges that the way in which the school provided services to her son on October 5 and 6, 2000 was a change in placement, and that it was an unlawful change in placement since it took place without her consent. The complainant alleges that, on October 5 and 6, 2000, as a result of this change in placement, the school denied her son a free appropriate public education (FAPE), which includes the requirement that a student be educated in the least restrictive environment (LRE).

**SCHOOL'S RESPONSE**

The school denies the complainant's allegations. The school indicates that administrative necessity, due to personnel shortages, required that changes be made in the way the complainant's son was provided special education services on October 5 and 6, 2000. The school also indicates that it was not required to inform the complainant of the changes in service

provision for her son on those dates, nor was it required to provide the complainant with an IEP meeting to discuss these changes. The school claims that it met its obligation to provide FAPE to complainant's son, despite the changes in service provider personnel and classroom setting which were made for complainant's son on October 5 and 6, 2000.

## **FINDINGS AND DISCUSSION**

There is apparently no disagreement between the complainant and the school that complainant's son is assigned a paraprofessional, although the extent to which the paraprofessional is to be individual to the complainant's son is not made entirely clear to the Federal Complaints Officer by the complainant's son's IEP. The IEP refers to "adult assistance as needed". The Federal Complaints Officer is deciding this Complaint based upon a factual finding that the complainant's son's IEP provides that special education services for complainant's son be delivered with the help of a full time paraprofessional assigned individually to work with him.

A paraprofessional is a service provider – not a service. On a given set of facts, a school's failure to provide services by means of a particular service provider, in a particular way, in a particular setting, could so denigrate the services provided as to constitute a change in placement and a denial of FAPE. The Federal Complaints Officer finds such facts do not exist in this Complaint.

The law does not provide guidance to tell us what constitutes a change of placement for every set of facts. The Colorado Code of Regulations provides the following definition for change of placement at 1 CCR 301-8 §5.04:

### **5.04 Placement**

*Placement of a child for special education services as stated on the IEP and assignment of special staff responsibilities shall be made by the director of special education or designee, who shall place the child with disabilities in the least restrictive environment consistent with the recommendations of the individualized education planning team, of which the parents are a part.*

#### **5.04(1) Change in placement.**

##### **5.04(1)(a) Change in Location/Facility**

*A change in class location, a change in program location, a change of location of a related service and a transfer from one school to another with the same district are administrative decisions and may or may not constitute a change in placement. Such decisions should be made on a case by case basis with consideration for the impact programs and services and with consideration for the impact on the child's total education. Such changes do not require written notice in accordance with section 6.02 of these Rules nor an IEP meeting.*

5.04(1)(b) *Change in program/services.*

*When a child's educational program is materially altered, such as a change in the amount of a given service, and not an instance which involves only a change in the physical location of the program, the change in program/services is considered a change in placement and must be determined by an IEP team.*

5.04(1)(b)(i) *Written notice of such changes must be provided to the parent.*

5.04(1)(b)(ii) *Consent is not required.*

5.04(1)(b)(iii) *A non-significant change in placement may be made by an IEP team without reassessment.*

5.04(1)(c) *Change in building level.*

*When a child changes level (i.e. from elementary school to middle school) this may be considered either a change in location or a change in program/services, depending on the circumstances.*

5.04(2) *Significant change in placement.*

5.04(2)(a) *A significant change in placement for educational purposes would include addition or termination of an instructional or related service, other than graduation, or any change which would result in the following:*

5.04(2)(a)(i) *the child being educated with non-disabled children for an additional or lesser period of time,*

5.04(2)(a)(ii) *the child having different opportunities to participate in nonacademic and extracurricular services, and*

5.04(2)(a)(iii) *the new placement option being a different option on the continuum of alternative placements in accordance with Section 5.03 (3) of these Rules.*

5.04(2)(b) *A significant change in placement shall be made upon consideration of reassessment. Such change shall be made only by an IEP team with the addition of those persons conducting such assessment. Id.*

In the view of the Federal Complaints Officer, the circumstances of complainant's son do not constitute a change in placement as defined by Colorado law. Services for complainant's son were to be provided by different personnel, with shared paraprofessional assistance, in a different classroom setting, for two (2) days – October 5 and 6, 2000. The complainant took her son home early on the second day, albeit for reasons she believed were justified, so the school-planned services were not provided for the remainder of the second day, October 6, 2000.

The Federal Complaints Officer recognizes that complainant's son is a special needs student who has been diagnosed with autism, and therefore changes to his educational programming may be difficult for him. However, the experience of some difficulty, by itself, and minor in intensity and duration – as the Federal Complaints Officer finds was the case here- is not sufficient to constitute the change of placement contemplated by the law, and therefore is not sufficient to trigger the written notice requirement of 1 CCR 301-8 §5.04(1)(b)(i), nor the requirement of an IEP determination as specified in 1 CCR 301-8 §5.04(1)(b), nor the written notice and consent requirements of 1 CCR 301-8 §6.02, nor to deny complainant's son FAPE. Neither were the federal notice requirements of 34 CFR 300.503 of the Individuals with Disabilities Education Act (IDEA), which require the school to describe and explain its actions or inactions upon a change of placement, and includes a requirement that the school inform parents of their right to a hearing under 34 CFR 300.507, triggered. However, that said, it is also true that to the extent that changes in educational programming for complainant's son would be of greater magnitude, or for a more significant continuous period of time, or, though not continuous, would be intermittent and ongoing for a significant period of time, the school would be required to meet the requirements of 1 CCR 301-8 §5.04 and 1 CCR 301-8 §6.02, and the requirements of 34 CFR 300.503, and provide opportunity for the hearing described in 34 CFR 300.507, and meet all other relevant state and federal requirements. In such circumstances, the issue of FAPE would also be present. Moreover, while the Federal Complaints Officer makes no finding that the school has denied a request by the complainant for an IEP meeting, it is the view of the Federal Complaints Officer that the school would also have to meet the federal regulatory requirements of 34 CFR 300.503 and 34 CFR 300.507 if the school denied a parental request for such a meeting. See the comments to 34 CFR 300.343 at page 12581 of the Federal Register, Vol. 64, No. 48/Friday March 12, 1999. See also 1 CCR 301-8 §4.02(1)(d).

The complainant is entitled to request a hearing as described in 34 CFR 300.507, and 1 CCR 301-8 § 6.03, and to make her argument to a hearing officer that her son has experienced a change in placement, and as a result has been denied FAPE, and that he is therefore entitled to compensatory education. The complainant is also entitled to an IEP meeting to seek to have placed in her son's IEP more specific requirements about how the school is to educate her son, than is currently contained in her son's IEP, and to request a due process hearing if the school disagrees with the specifics she seeks. The complainant is also entitled to file a complaint with the Office for Civil Rights (OCR), if she believes her son has been unlawfully discriminated against because of his disability. However, on the facts of this Complaint, the Federal Complaints Officer finds that the complainant's son did not experience a change in placement and that he was not denied FAPE. On the facts of this Complaint, the Federal Complaints Officer finds no violation by the school.

## **CONCLUSION**

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

Dated today, November \_\_\_\_\_, 2000.

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Charles M. Masner, Esq.  
Federal Complaints Officer