

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

---

**Federal Complaint 2003:512**

Adams County School District 14J

**Decision**

**INTRODUCTION**

This Complaint was dated 04/29/03 and filed on 05/05/03. On 05/13/03, the Federal Complaints Officer contacted the Complainant by telephone to make sure that she (the Federal Complaints Officer) fully understood the allegations made in the Complaint. Thereafter, the Federal Complaints Officer sent a letter to the parties identifying those allegations that were subject to the Federal Complaints process and to which the District was to respond. The District's response to the Complaint was dated 05/28/03 and received on 05/28/03. The Complainant's response to the District's response was dated 06/12/03 and received by facsimile on 06/12/03. On 06/19/03, the Federal Complaints Officer, by facsimile, requested additional information from the District, which information the District was required to submit no later than 06/30/03. The District requested additional time to provide the requested information because District staff were on vacation and unavailable to respond to the additional information request by 06/30/03. The District's response to the additional information request was faxed on 07/03/03 and received by the Federal Complaints Officer on 07/07/03. The Federal Complaints Officer contacted the Complainant by telephone for additional information on 07/09/03. The Federal Complaints Officer also contacted the District's attorney by telephone on 07/09/03 and again on 07/10/03 for clarifying information. The Federal Complaints Officer then closed the record.

The Complainant is the parent of a student who has been identified as having multiple disabilities.

**FINDING OF EXCEPTIONAL CIRCUMSTANCES**

The Decision in this case was required to be issued no later than Friday, 07/04/03. During the course of the investigation, the Federal Complaints Officer found it necessary to investigate concerns that were not raised by the Complainant regarding the implementation of the student's individualized education program (IEP). As is set forth above, the Federal Complaints Officer contacted both the District and the Complainant for additional and then for clarifying information. The Federal Complaints Officer then closed the record on 07/10/03 when all requested information was received.

34 C.F.R. § 300.661(1)<sup>1</sup> permits an extension of time for processing a Complaint if “exceptional circumstances” are found. Given the investigation of claims not raised by the Complaint, the time required by the District to respond to the Federal Complaint Officer’s request for additional information, and the unavailability of District personnel to immediately respond to the new information requests, the Federal Complaints Officer finds that exceptional circumstances have warranted an 11-day extension of time for the issuance of this Decision.

### **COMPLAINANT’S ALLEGATIONS**

- 1) The District did not conduct a review of the student’s 04/03/02 IEP prior to 04/03/03.
- 2) On 04/21/03 the parent requested a copy of the student’s current IEP from the District and, as of 04/29/03 (the date of the Complaint), the District had not given her a copy of that IEP. An IEP review meeting was scheduled for 05/15/03.
- 3) The student has a vision problem and the District’s vision specialist changed the size of the print on the student’s curriculum without the parent’s knowledge and consent. At the time of the Complaint, the parent did not have a magnification device at home to assist the student with the smaller print size.
- 4) The District has been providing group speech/language (S/L) services to the student rather than individual S/L services.
- 5) District personnel have not modified the student’s homework assignments.
- 6) District personnel have not followed the student’s IEP goals.
- 7) The student’s Health Care Plan states that the District cannot guarantee 100% safety for the student while she is at school.

### **ADDITIONAL CONCERNS ARISING IN THE COURSE OF THE INVESTIGATION**

In the course of conducting her investigation, the Federal Complaints Officer requested additional information from the District in order to determine whether, between the dates of 08/22/02 and 05/05/03, the date that the Complaint was received by the Federal Complaints Officer, the District provided the student with all of the S/L and occupational therapy (O/T) services that were specified by the student’s then current IEP.

### **ADDITIONAL ALLEGATIONS RAISED BY THE COMPLAINANT**

During a telephone conversation on 07/09/03, the Complainant alleged that the District did not provide the student with the vision services that the student was entitled to receive under the 08/22/02 direct placement documents.

---

<sup>1</sup> Hereafter, the IDEA regulations will be cited by section number only, e.g. § 300.366 (1).

## THE DISTRICT'S RESPONSE

The District generally denies the Complainant's allegations. With regard to the concerns raised by the Federal Complaints Officer, the District has provided information indicating that the student received some, but not all, of the S/L and O/T services specified by the student's relevant IEP(s). The District's specific responses are noted below.

### FINDINGS OF FACT AND CONCLUSIONS

**Allegation 1: The District did not conduct a review of the student's 04/03/02 IEP prior to 04/03/03.**

The Complainant claims that the student's IEP expired on 04/03/03. The IEP alleged to have expired was developed on 04/03/02 by the Moffat County School District RE:1.

In its written response, the District states that a direct placement of the student into special education at the District occurred on 08/22/02 and that an IEP review meeting was conducted on 10/08/02. The relevant paperwork for the 08/22/02 direct placement shows that the goals specified by the 04/03/02 IEP were reviewed by the student's IEP team as well as the related services to be provided. The relevant paperwork for the 10/08/02 meeting shows that, during that meeting, the IEP team discussed concerns regarding the student's participation in the general classroom, her academic motivation, and her needs and progress on a number of short-term objectives. The District also submitted the student's now-current IEP which was developed on 05/15/03 and 05/22/03.

§ 300.343(c) requires each public agency to ensure that the IEP team (1) reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and (2) revises the IEP as appropriate to address any lack of expected progress; the results of any reevaluation; information about the child; the child's anticipated needs; and other matters.

The Federal Complaints Officer finds that the District was required to review the student's 04/03/02 IEP on or before 04/03/03. The Federal Complaints Officer finds that the documentation submitted by the District is adequate to show that the 08/22/02 and 10/08/02 IEP meetings met the minimal requirements for the IEP review required by § 300.343(c). The Federal Complaints Officer concludes that the District did not violate § 300.343(c).

**Allegation 2: On 04/21/03 the parent requested a copy of the student's then current IEP from the District and, as of 04/29/03 (the date of the Complaint), the District has not given her a copy of that IEP. An IEP review meeting was scheduled for 05/15/03.**

The Complainant alleges that on 04/21/03, she requested a copy of the student's most current IEP, and, as of 04/29/03, she had not yet received a copy. The District responds that, at the Complainant's request, District staff sent the current IEP information home in the student's backpack on 04/24/03 instead of mailing it to the Complainant.

§ 300.562(a) provides in pertinent part that school district must allow parents to inspect and review any education records relating to their children that are collected, maintained, or used by

the district under Part B of the Individuals with Disabilities Educational Act (IDEA). The school district must comply with the request without unnecessary delay and before any meeting regarding an IEP, and in no case more than 45 days after the request has been made.

The Federal Complaints Officer finds that, as of 04/21/03, the student's then current IEP included the 04/03/02 IEP developed by the Moffat County School District RE:1, the paperwork related to the 08/22/02 direct placement staffing, and the paperwork related 10/08/02 IEP review meeting. The Federal Complaints Officer finds that on 04/24/03, District personnel sent the 08/22/03 and 10/08/02 meeting paperwork home with the student, copies of which the Complainant subsequently attached to her Complaint.

Whether the District provided the parent with the 04/03/02 IEP is disputed. 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 carefully examined the information submitted by the parties and finds that such information does not provide a definite answer as to whether, on 04/24/03, the District included the 04/03/02 IEP with the other special education records that it sent home with the student. Accordingly, the Federal Complaints Officer finds that there is insufficient evidence to find that the District failed to give the Complainant a copy of the 04/03/02 IEP.<sup>2</sup> For that reason, the Federal Complaints Officer concludes that the District did not violate §300.562(a).

**Allegation 3. The student has a vision problem and the District's vision specialist changed the size of the print on the student's curriculum without the parent's knowledge and consent. At the time of the Complaint, the parent did not have a magnification device at home to assist the student with the smaller print.**

In support of this allegation, the Complainant submitted copies of homework assignment materials dated 04/07/03 and 04/20/03 which are in a font print that is smaller than 18 font print. The Complainant states there was no magnification device in the home that would assist the student in doing homework that was smaller than 18 font print. The 08/22/02 IEP paperwork documents that the student has a "[s]evere vision deficit."

In its response to this allegation, the District submitted a statement prepared by the District's vision specialist. In his statement, the vision specialist says that on 01/09/03 he conducted a functional vision evaluation with the student and the student expressed a preference for a 16-point typeface, whereas the then-current IEP specified an 18-point typeface. According to the vision specialist, on 05/07/03 he made a home visit to discuss the use of magnification to enlarge

---

<sup>2</sup> The Complainant attached a complete copy of the 04/03/02 IEP to her Complaint, which indicates that the parent did have in her possession that IEP. While this fact does not necessarily lead to the conclusion that she obtained the 04/03/02 IEP from the District as a result of her 04/21/03 request, it does indicate that the Complainant had access to the 04/03/02 IEP and the information contained in it.

printed materials. At the end of the home visit, the vision specialist left a bar magnifier with the Complainant. The statement also contains a note, prepared by the District's special education director, to the effect that, following an informal discussion with the vision specialist, the student's special education, teacher "continued to use 18 point font, as well as tried other types of print to see how [Student] responded...."

§ 300.344 provides that the child's IEP team includes the parent. § 300.346 provides that the IEP team is responsible for developing, reviewing and revising the child's IEP, including making decisions about the appropriate reading and writing media for a child with a vision impairment. § 300.350(a)(1) requires each school district to provide special education and related services to a child with disabilities in accordance the child's IEP.

The Federal Complaints Officer finds as follows:

- a) The student has a severe vision impairment; the student's literacy modality plan, which is a part of the 04/03/02 IEP, specified that the selected primary literacy mode for the student was 18 point font print;
- b) The District's vision specialist did not unilaterally change the font size for the student's curriculum;
- c) On two documented occasions, 04/07/03 and 04/20/03, the student's special education teacher unilaterally assigned homework to the student that was smaller than 18 point font print, but she did not tell the parent that the font print size would be changed for experimental purposes;
- d) On 04/07/03 and 04/20/03, no magnification devices were available to assist the student in reading her homework assigned on those dates;
- e) The District's vision specialist did not meet with the parent to discuss the use of magnification devices until 05/07/03; and
- f) On 05/07/03, the District's vision specialist, for the first time, provided the parent with a magnification device to assist the student with reading assigned homework with print smaller than 18 point font print.

The Federal Complaints Officer concludes that, with respect to this allegation, the District violated §§300.344, 300.346 and 300.350(a)(1).

**Allegation 4. The District has been providing group S/L services to the student rather than the individual S/L services.**

The Complainant claims that the student has been receiving group rather than individual speech language services. The District responds that speech language services have been provided to the student in accordance with her IEP and that those services have been one-to-one services.

As is set forth above, §300.350 (a) (1) requires each school district to provide special education and related services to a child with disabilities in accordance the child's IEP.

The Federal Complaints Officer finds as follows: the 04/03/02 IEP together with the document entitled "Review of Special Education Placement/Service, which is dated 08/22/02, are the controlling documents with regard to the characteristics of S/L services that the student was to receive. Per those documents, the student was to receive 60 minutes of S/L services weekly. Neither document specifies whether the S/L services were to be delivered individually or in a group. However, both parties appear to agree that the S/L services were to be provided on an individual basis. The parties are not agreed that this occurred.

As was indicated above, the Federal Complaints process, as it is currently constructed, is not well-suited for resolving factual disputes. The Federal Complaints Officer has carefully examined the information submitted by the parties. That documentation does not provide a definitive answer regarding whether the student received individual S/L services. The Federal Complaints Officer therefore finds that there is insufficient evidence to conclude that the District violated § 300.350 (a) (1).

**Allegation 5. District personnel have not modified the student's homework assignments.**

The Complainant alleges that the student's homework has not been modified. The Complainant has submitted 3 examples of homework that she claims is not appropriate for the student given her disabilities. The Complainant also alleges that the District considers homework to be the parent's responsibility.

The information submitted by the District states that the student's teacher assigned homework that was geared towards the basic skills specified by the student's IEP goals rather than homework based on the general education content. "All homework that was required in the general education Classes was done with the special education staff orally or using pictures symbols." Occasionally, math homework was sent home so that the student could work on more challenging skills. According to the information submitted by the District, the teacher did not necessarily modify every homework assignment for her students. The teacher does expect that family members will assist their children with homework.

Generally, the term "modification" applies to modification to the regular education curriculum. The Federal Complaints Officer has carefully examined the 04/03/02 IEP as well as the paperwork from the 08/22/02 and 10/08/02 IEP meetings. The Federal Complaints Officer finds that none of those documents specify curricular content modifications or accommodations for homework assignments. The Federal Complaints Officer also finds that, with respect to the student's general education materials, the District has submitted sufficient information to show that the school personnel did modify the student's assigned homework relating to the general education program but did not modify homework related to the student's IEP goals and objectives. The Federal Complaints Officer concludes that, with respect to this allegation, the District has not violated §300.350(a)(1).

The Federal Complaints Officer finds that the student's teacher did expect the Complainant to help her daughter with homework; however the teacher did not expect the Complainant to do the student's homework for the student. The Federal Complaints Officer concludes that the District's expectation that parents will assist their children with their homework assignments does not violate the IDEA or its implementing regulations.

**Allegation 6. District personnel have not followed the student’s IEP goals.**

By way of a phone conversation with the Complainant on 05/15/03, the Complainant clarified that, with regard to this allegation, her concern was that the content and instruction of the Life Skills class was inadequate to allow her daughter to achieve the functional life skills goals and objectives contained in the 04/03/02 IEP.

The District submitted information documenting the student’s progress on the goals and objectives contained in the 04/03/02 IEP. The District’s documentation also shows that school personnel have worked with the student on her IEP goals and objectives. The District’s documentation shows that the student has regressed in at least one area (visual motor skills<sup>3</sup>) and that the student’s absences from school, estimated at more than 40% of the available school days, have hindered the student’s overall progress.

§ 300.350 (a)(2) requires each District to make good faith efforts to assist the child in achieving his/her goals and objectives. The regulation does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives. See, § 300.350(b).

The Federal Complaints Officer has carefully examined the District’s information documenting progress on the student’s 04/03/02 IEP goals. The Federal Complaints Officer finds that the District has submitted sufficient information to show that District personnel have made good faith efforts to assist the student in achieving her 04/03/02 IEP goals. The Federal Complaints Officer concludes that, with regard to this allegation, the District has not violated §§ 300.350 (a)(2).

**Allegation 7. The student’s Health Care Plan states that the District cannot guarantee 100% safety while the student is at school.**

In the letter transmitting the Complaint to the District, the Federal Complaints Officer stated that the Federal Complaints Process does not have jurisdiction over a claim that the student’s Health Care Plan impermissibly contained the statement “[d]ue to the severity of [Student’s] condition, we cannot guarantee 100% safety while at school.” As set forth in that letter, there is nothing in the IDEA or its implementing regulations that prohibits a school district from including such a statement on a student’s health care plan. For that reason, the Federal Complaints Officer did not require the District to respond to that allegation.

**8. Additional Concerns Arising in the Course of the Investigation.**

Although not alleged by the Complainant, the Federal Complaints Officer has found it necessary, in conformity with the oversight and compliance function of the Federal Complaints process, to

---

<sup>3</sup> See, 05/15/03 IEP.

address whether the student received the S/L and occupational therapy (O/T) services specified by the 08/22/02 direct transfer IEP documents which modified the 04/03/02 IEP. By way of explanation, during her review of the S/L and O/T provider logs, it became apparent to the Federal Complaints Officer that the student received few S/L and O/T services over the course of the 2002-03 school year.

According to the 08/22/02 direct placement documents, the student was to receive 60 minutes per week of S/L services and 30 minutes per week of O/T services. The District states that those services were to be direct services.<sup>4</sup>

The information initially submitted by the District indicated that (1) between 08/27/02 and 05/20/03, the student received a total of 3 hours of direct S/L services, not including 2 hours provided in connection with a SWAAC evaluation, and (2) between 08/22/02 and 04/25/03, the student received a total of 2 hours of direct O/T services, not including time spent in connection with a SWAAC evaluation.

At the Federal Complaint Officer's request for more information regarding the S/L and O/T services provided to the student, the District's attorney submitted the following additional information:

With regard S/L services, the District states that "[i]t is my understanding that she was scheduled and did receive thirty minutes of speech language services twice each week she was present during August, September and October 2002."<sup>5</sup> According to the District's records, the student did not receive S/L services in November and December 2002 because the S/L pathologist position was vacant. The District also states that "[t]o compensate for the six hours of services missed during the first semester, additional compensatory speech language services were provided in April, May and June of 2003."<sup>6</sup> The District did not provide a complete schedule of the make-up services but the S/L provider log indicates that make-up services occurred on 04/25/03 in connection with a SWAAC evaluation and on 05/15/03 in connection with the S/L provider's time spent attending the 05/15/03 IEP review meeting.

With regard to the O/T services, the District states that student missed eleven weeks of services when she was absent and she also missed services one week because there was no school on her scheduled day for services.

#### **A. Absences Due to the Student's Medical Conditions**

A major reason for the lack of service delivery was the student's absences. The documentation submitted by the District shows that the student was absent for more than 40% of the available school days.<sup>7</sup> During a phone conversation on 07/09/03, the

---

<sup>4</sup> 07/10/03 telephone conversation with the District's attorney.

<sup>5</sup> 07/03/03 letter from the District's attorney.

<sup>6</sup> Id.

<sup>7</sup> See, 05/15/03 statement of the District's special education director.



Complainant stated that the student's absences were due to her medical conditions and medical appointments. During that same phone conversation, the parent agreed that it was accurate that the student was absent for approximately 18 weeks over the course of the 2002-03 school year. The parent stated that she requested homebound services for her daughter during spring 2003, that the District denied her request for homebound services due to budgetary reasons, and that she reluctantly agreed to a half-day schedule for the student for the remainder of the school year.

Generally, a school district is not responsible providing related services when the service provider is available but the student is absent from school. However, when a student with a disability is excessively absent from school for medical reasons associated with her disability such that the student's expected progress toward her IEP goals is clearly hindered, the District is obligated to reconvene the IEP team to review the student's placement. See, § 300.343 (c).

The Federal Complaints Officer finds as follows:

- 1) During the 2002-03 school year, the student was entitled 29.5 hours per week of special education instruction, 60 minutes per week of direct S/L services, 30 minutes per week of direct O/T services and 30 minutes per month of vision services.
- 2) The student was absent for more than 40% of the available school days during the 2002-03 school year;
- 3) Such absences were excessive;
- 4) The student's absences were due to her medical conditions;
- 5) The reason for the student's absences (her medical conditions) were known to school personnel;
- 6) Sometime during spring 2003, the student's schedule was changed to a half-day schedule -- a significant change in placement that was made without convening the student's IEP team;
- 7) Between 02/01/03 and 05/05/03,<sup>8</sup> the student missed 5.5 hours of S/L services due to absences;
- 8) Between 02/01/03 and 04/25/03,<sup>9</sup> the student missed 3 .5 hours of O/T services due to absences;
- 9) Between 02/01/03 and 05/05/03, the student missed an undeterminable number of hours of special education instruction due to her absences;

---

<sup>8</sup> The date when the Federal Complaints Officer received the Complaint

<sup>9</sup> No information for O/T services provided after 04/25/03 was submitted by the District.

- 10) The student received some vision services between 01/09/03 and 05/07/03, but the exact amount of those services is unknown;
- 11) The student made trivial or no progress toward her IEP goals and objectives during the 2002-03 school year;
- 12) Because of the student's excessive absences between 08/22/02 and 01/17/03, the District should have reconvened the student's IEP team not later than 01/31/03 to consider her placement;
- 13) The District failed to reconvene the student's IEP team despite the student's excessive absences.

The Federal Complaints Officer concludes that the District violated § 300.343 (c) when it failed to reconvene the student's IEP team to review the student's placement.

### **B. Services Not Provided**

Another concern is that the student's service provider logs show that S/L and O/T services were not provided to the student because (1) for six weeks during fall 2002, the S/L provider position was vacant,<sup>10</sup> and (2) scheduled S/L and O/T services fell on days when school was not in session due to the occurrence of a one-day holidays or other non-student contact days such as in-service days, teacher planning days, parent teacher conferences or snow days.

The District's calendar for the 2002-03 school year<sup>11</sup> shows that, for the 2002-03 school year (excepting Thanksgiving break, winter break and spring breaks), there were six non-student contact days scheduled on Mondays, four half-day/non-student contact days were scheduled on Wednesdays; two half-day/non-student contact days were scheduled on Thursdays, and four non-student contact days scheduled on Fridays.

In response to the Federal Complaint Officer's specific inquiries, the District provided written information that it is the District's policy that make-up services are only provided when the missed services are the fault of the District (i.e., the provider is absent or unavailable.), and make-up services are not provided when the District is not in session due to vacation, non-student contact days and snow days.

§ 300.350 (a)(1) requires a school district to provide special education and related services in accordance with a child's IEP.

The Federal Complaints Officer makes the following findings:

---

<sup>10</sup> With regard to the six weeks that the S/L service provider position was vacant, the District recognized its obligation to provide make-up services totaling six hours long before this Complaint was filed.

<sup>11</sup> The Federal Complaints Officer obtained the District's 2002-03 calendar from the District's website.

1. During the 2002-03 school year the student's IEP specified that the student was to receive 60 minutes per week of direct S/L services and 30 minutes per week of direct O/T services.
2. The student missed 6 hours of S/L services during the fall 2002 semester when the S/L pathologist position was vacant.
3. When the student's S/L and O/T services fell on non-student contact day (6 days involving S/L sessions and 3 days involving O/T sessions), it was the District's policy not to make-up those missed services and, for that reason, the District did not make up those services;
4. The missed O/T services occurred on 10/11/03, 02/14/03 and 2/21/03 for a total of 90 minutes;
5. The missed S/L services occurred on 01/20/03, 02/14/03, 02/17/03, 03/07/03, 03/10/03 and 03/21/03, for a total of 210 minutes;
6. The District's policies, which do not require make-up services when a child's scheduled services fall on days which are one-day holidays, snow days, or other non-contact student days (excepting break periods, such as Thanksgiving break, winter and spring break) are inconsistent with §300.350 (a)(1), adversely impact those students, such as the student in this case, whose services are regularly scheduled on days which the District designates as holidays and other non-student contact days.

The Federal Complaints Officer concludes that the District's policies which fail to provide for make-up services for services missed due to non-student contact days and one-day holidays violate § 300.350 (a)(1).

### **C. Indirect Services Provided Instead of Direct Services**

A final concern raised by the S/L service provider log is that, in two instances, it appears that indirect rather than direct services were provided for the student. Specifically, that log shows that scheduling/consultative services were provided on 01/07/03, 01/09/03 and 01/14/03<sup>12</sup> but no direct services were provided during the week of 01/06/03. The log also indicates that the service provider's attendance at the student's 05/15/03 IEP meeting (2.5 hours) was attributed as partial make-up time for 6 hours of direct services missed by the student during fall 2002 when the S/L provider position was vacant for a 6-week period of time. It is the District's position that indirect services are not appropriate for purposes of making up missed direct services and that the attribution of the IEP time as make-up time was a mistake.<sup>13</sup>

---

<sup>12</sup> With regard to the 01/14/03 date, it does appear that the S/L service provider was available on 01/17/03 to provide direct services but the student was absent on that date.

<sup>13</sup> Per the 07/10/03 telephone call with the District's attorney.

The Federal Complaints Officer finds that direct services and indirect/consultative services are not interchangeable. The Federal Complaints Officer finds that District did not provide the student with 60 minutes of direct S/L services during the week of 01/06/03. The Federal Complaints Officer finds that the District violated § 300.350 (a)(1).

## **9. New Claim Made by the Complainant**

During a telephone conversation on 07/09/03, the Complainant alleged that the District did not provide the student with the vision services that the student was entitled to receive under the 08/22/02 direct placement documents.

This allegation was not made in the Complaint that went to the District and to which the District was asked to respond. Therefore, the Federal Complaints Officer will not consider this new claim as a part of this Complaint. If the Complainant wishes to file a further complaint about the provision of vision services, in accordance with the regulatory 1-year statute of limitations, she is entitled to do so.

### **DENIAL OF FAPE**

§§ 300.300 and 300.321 require 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. This requirement applies to all public agencies (such as school districts) within each State. See, § 300.321(b)(i)(A).

It is well-established in the Tenth Circuit Court of Appeals 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 has concluded that the District has violated the IDEA in the following respects:

The District violated §§ 300.344, 300.346 and 300.350(a)(1) when, on two occasions, school personnel unilaterally changed the type face size, on an experimental basis, from that specified by the student’s literacy modality plan. The Federal Complaints Officer finds that this violation was limited in duration, was technical in nature and did not, in and of itself, deprive the student of a FAPE.

The District violated § 300.343 (c) when it failed to reconvene the student’s IEP team to review the student’s placement following excessive absences occurring between 08/22/02 and 01/17/03. The Federal Complaints Officer finds that this violation deprived the student of a FAPE.

The District violated § 300.351 (a)(1) when it failed to provide the student with all of the S/L and O/T services specified by the student’s IEP as set forth in Section No. 8, above. The Federal Complaints Officer finds that this violation was substantive and deprived the student of a FAPE.

## REMEDIES

1. 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, including, but not limited to, how the District's policies will be revised to ensure that children with disabilities will receive all of the services to which they are entitled, compensatory services for services missed due to one-day holidays and other non-student contact days. The Federal Complaints Officer orders the District to revise such policies no later than the beginning of the 2003-04 school year, and that copies of the revised policies be provided to the Federal Complaints Officer immediately upon their revision.

2. The Federal Complaints Officer orders that this student is entitled to compensatory services in the amount of 15 hours for missed direct S/L services, to be provided over the course of the 2003-04 school year.

The calculation of 15 hours includes 6 hours that the student missed during the fall 2002 due to the S/L pathologist vacancy. It is the Federal Complaints Officer's understanding that the District may have already provided some, if not all, of these compensatory services. If so, the already provided compensatory services shall be deducted from the total amount of 15 hours.

3. The Federal Complaints Officer orders that this student is entitled to compensatory services in the amount of 5 hours for missed direct O/T services, to be provided on or before 12/31/03.

4. The Federal Complaints Officer orders the District to reconvene the student's IEP team, including the parent, no later than 09/15/03, to determine the amount and nature of compensatory services that the student is entitled to for special education instruction and vision services, if any, missed between the dates of 02/01/03 and the end of the school year that are attributable to the student's excessive absences as set forth in Section No. 8.A, above. Such compensatory services shall be provided over the course of the 2003-04 school year.

## 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 today, July 15, 2003.

---

Laura L. Freppel  
Federal Complaints Officer