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

Federal Complaint 99:532

(Pikes Peak BOCS)

Decision

INTRODUCTION

This Complaint was dated October 28, 1999, and received by the Federal Complaints Officer on November 1, 1999. On November 3, 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 violations 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 4, 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. The Federal Complaints

Officer received proof of receipt of certified mailing, for this Complaint and the group Complaint, 99:532 and 99:537, respectively, dated December 15, 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 22, 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 14, 1999, the complainants filed an addendum to their Complaint. In correspondence dated December 16, 1999, the Federal Complaints Officer mailed this addendum to the school and provided an opportunity for the school to respond. The school responded in correspondence dated January 5, 2000, and received by the Federal Complaints Officer on January 10, 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 28, 1999, and received by the Federal Complaints Officer on November 1, 1999, the complainants' allege:

- At the May 18, 1999 IEP meeting, there was no representative from Lewis Palmer Middle School present;
- At the May 18, 1999 IEP meeting, there was no regular education teacher present;
- As of October 30, 1999, their son still had no behavior plan, as required by the May 18, 1999 IEP;
- There were no supportive schedules for staff, which outlined their son's classes;
- They were not appropriately informed of abrupt programming changes for their son, which occurred when the teacher who began the fall 1999 school year was removed from the classroom by the school. As a result of this disruption, the complainants removed their son from school for a week;
- A transition staffing scheduled for the third week of September, 1999 had to be cancelled because the teacher from their son's elementary school, from which he was transitioning, did not have a teacher at Lewis Palmer Middle School with whom she could communicate;
- A transition meeting held on September 28, 1999 was unsuccessful because the substitute teacher only had a 1997 IEP, and a behavior plan that was two (2) years old;
- Another transition meeting scheduled for October 13, 1999 was cancelled because the substitute teacher had a doctor's appointment. Lewis Palmer Middle School offered no other staff to cover this meeting;
- A third transition meeting was scheduled for October 19, 1999. The parents and the elementary school teacher attended. No one from Lewis Palmer Middle School attended and, therefore, a transition plan could not be finalized;
- Their son got no grades for the first six (6) weeks of the fall semester 1999;
- Their son was denied an education in the least restrictive environment;
- The building principal had discriminated against their son.

SCHOOL'S RESPONSE

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

- The school did not deny that there was no representative from Lewis Palmer Middle School, and no regular education teacher, at the May 18, 1999 IEP meeting. The school

stated: "Complainants did not object to the persons present. If Complainants would have requested the presence of other persons, the meeting would have been rescheduled. Complainants signed the IEP on May 18, 1999 waiving any objection to the representatives present at the staffing."

- The school did not deny that no behavior plan was completed. The school stated: "During the fall semester, LPSD was in the process of revising (complainants' son's) behavior plan. (Complainants' son) was voluntarily removed from school in September 1999. It was necessary to have (complainants' son) at school to complete the behavior plan."
- The school did not deny that there were no supportive schedules for staff, which outlined complainants' son's classes;
- To the complainants' allegation that they were not appropriately informed of programming changes for their son, the school stated: "Complainants' concerns regarding program changes to the SMN Program do not constitute violations of the IDEA. LPSD made personnel changes which it believed were necessary to improve the quality of the SMN program."
- The school did not deny any of complainants' allegations about transition planning. The school stated: "After (the teacher) was placed on administrative leave, LPSD and Complainants agreed to hold off on (complainants' son's) transition from GBES to Lewis-Palmer Middle School until a permanent replacement was hired. Everyone agreed that it was in (complainants' son's) best interest not to make the transition until a qualified special education teacher was in place at the middle school."
- To the complainants' allegation that their son did not receive grades during the first six (6) weeks of the fall 1999 semester, the school stated: "(Complainants' son's) IEP does not provide that he will receive interim grades."
- The school did not specifically respond to the complainants' allegation that their son did not receive an education in the least restrictive environment. The school did state: "(Complainants' son) had a regular education teacher during the 1998-1999 school year. (Complainants' son) had interaction with regular education peers at GBES and was in regular education classes at GBES."

FINDINGS

IEP's do not require signatures. A signature by a parent on an IEP is not a waiver of an "objection". Parents are not required to "object" to persons present, or not present, at an IEP meeting. It is the school's responsibility to see that necessary people are in attendance at IEP meetings. There was no regular education teacher present at the May 18, 1999 IEP meeting. This was a violation of IDEA. See CFR 34 300.344 (a) (2).

The complainants "voluntarily", according to the school, removed their son from school in September 1999. According to the complainants, the exact date was September 17, 1999, one month after school had started, and the removal was because their was no transition plan in place for their son, and no one had explained to them why the teacher was placed on administrative leave. The complainants' son, according to the complainants' "…was very agitated during this time, and exhibited exacerbations of disassociative behaviors at home after coming home from school during this fateful week. Not knowing what turmoil had befallen the program, we had nothing to attribute (complainants' son) bizarre and disruptive behavior to. We are more than parents for (complainants' son). We are both Pediatric nurses with over 23 years of experience dealing with DD populations, and (one of the complainants) is a nationally Certified Developmental Disabilities Nurse (one of six in the state). We are a critical component

for (complainants' son's) success in community settings, and find it incredible that no explanations were offered by (the Principal), when she knew huge staffing changes were coming. (Complainants' son) had a terrible time dealing with the changes, and we couldn't help him, because we didn't know what was happening at school." A behavior plan was not in place for complainants' son when school began on August 17, 1999. One month later, on September 17, 1999, the day complainants' say they removed their son from school because they didn't know what was going on at school, a behavior plan was still not in place. Had complainants' son's special education program been appropriately implemented during the period of time between August 17, 1999 and September 17, 1999, a behavior plan could have been in place. To the extent that this was not possible after September 17, 1999, because complainants' son was not at school, is a failure for which the school bears at least some of the blame, due to its inadequate communication with the complainants, which the complainants' give as their reason for removing their son from school. Also, there was not a new, permanent, teacher in the classroom until October 25, 1999. A substitute teacher, and a new teacher starting mid-semester, were not in as good a position to help develop a behavior plan as would have been the case if a competent teacher had been there the entire semester. The failure to have a behavior plan in place for the complainants' son during the fall semester 1999 was a violation of the complainants' son's IEP. This was a violation of IDEA. See generally CFR 34.300 – 300.350 regarding IEPs. See especially CFR 34.342 (a), (b) and 300.350 (a).

Not having a daily schedule of an outline of classes available for staff is inconsistent with an educational program designed to adequately implement the complainants' son's IEP. This was a violation of IDEA. See generally 34-300.340 – 300.350, regarding IEPs. See especially 34 CFR 300.342 (a), (b) and 300.350 (a).

The complainants' should have been better informed about program changes that affected their son. It is inconsistent with a regulatory scheme that requires that parent participation be actively sought to conclude otherwise. As stated in the discussion about the school's failure to develop a behavior plan, the complainants stated that their son "had a terrible time dealing with the changes, and we couldn't help him, because we didn't know what was happening at school." 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 changes immediately afterwards. The school does not argue that this did not occur, and instead argues that program changes, that evidently occurred twice during the fall semester, 1999, did not constitute a violation of IDEA because – "LPSD made personnel changes which it believed were necessary to improve the quality of the SMN program." The changes were explained to the complainants at a meeting on September 22, 1999. When personnel changes occur in a way that impacts the ability of required IEP services to be delivered, abruptly, during the first part of the semester of a school year, the parents are entitled, at a minimum, to be adequately notified that this has occurred, so that they can help their sons and daughters adjust accordingly. The school did not keep the complainants adequately informed about major programming changes affecting their son's IEP. This was a violation of IDEA. See generally 34 CFR 300.340 – 300.350, regarding IEPs.

The school does not deny the complainants' allegations that attempts at transition planning meetings, from elementary school to middle school, dated September 28, October 13, and October 19, 1999, were unsuccessful, for reasons which were no fault of the complainants. Even if the school is correct that the parents agreed that transition would not take place until a full time teacher was in place, which happened on October 25, 1999, it does not explain away

the harm from failure to do transition planning before that date, and that this failure was not the complainants' failure. This harm would seem to be especially true for a student such as complainants' son, since, as stated on complainants' son's May 18, 1999 IEP, under Statement of Educational Needs – "Be aware that he will not transition well and he will lose ground." The school's failure to complete transition planning for complainants' son was a violation of complainants' son's IEP. This was a violation of IDEA. See generally 34 CFR 300.340 – 300.350, regarding IEPs. See especially 34 CFR 300.342 (a), (b), and 34 CFR 300.350 (a).

The complainants' were entitled to be informed of their son's progress for the first six (6) weeks of the fall 1999 semester, which is the regular grading period at Lewis Palmer Middle School. This did not happen. Complainants' son was not graded for this time period. This was a violation of IDEA. See 34 CFR 300.347 (7).

Complainants' allege that their son did not receive an education in the least restrictive environment, beginning with the fall 1999 semester. As support for this allegation, they cite specifics: no aide, no behavior plan, no transition plan, no grades, inadequate inclusion hours. The Federal Complaints Officer has already dealt with the allegations of no behavior plan, no transition plan, and no grades. While the May 18, 1999 IEP does specify an aide, it also says that LPMS was to reevaluate this service, as well as the time and manner in which services were to take place, an inclusion issue, in August 1999. Given the failure to create a behavior plan, a transition plan, and to give grades, and the personnel turmoil, it seems reasonable to conclude that this reevaluation did not adequately take place. However, the Federal Complaints Officer does not believe he has adequate information to make judgments, beyond his judgments about the lack of a behavior plan, transition plan, and grades, about what services delivery system was, or is, best suited to meet complainants' son's special education needs in the least restrictive environment. Complainants' can either get more specifics into the IEP, so there is no misunderstanding about what is required, or, if they cannot agree with the school about what these specifics should be, they can request a due process hearing. The due process hearing is a more appropriate forum, in the view of the Federal Complaints Officer, 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 designed 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 and appropriate public education". If a "free and 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' son 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 allegations of discrimination against the building principal are not within the jurisdiction of the Federal Complaint process.

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' son in this case warrant relief. The complainants' son 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' son 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' son, if the school had believed that complainants' son 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' son. 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.

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Charles M. Masner, Esq.
Federal Complaints

Federal Complaint 99:532

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' son, 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' son. 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' son. 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 15.4 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.

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Charles M. Masner, Esq.
Federal Complaints Officer

Federal Complaint 99:532

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.

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Charles M. Masner, Esq.
Federal Complaints Officer