

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

Federal Complaint 2006:504

St. Vrain Valley SD RE-1J

Decision

I. INTRODUCTION

This Complaint was dated May 5, 2006. The Federal Complaints Officer received a faxed copy of the Complaint on May 16, 2006, and the original by mail on May 17, 2006. In addition, the Federal Complaints Officer received a faxed addendum to the Complaint, from the complainant, on May 17, 2006. The school district's response to the Complaint was dated June 5, 2006, and received by the Federal Complaints Officer on June 7, 2006. The complainant's response to the school district's response to her Complaint was dated June 16, 2006, and was received by the Federal Complaints Officer on June 19, 2006. The Federal Complaints Officer then closed the record.

II. COMPLAINANT'S ALLEGATIONS

The complainant made four (4) allegations.

Allegation No. 1

As stated, in relevant part, by the complainant:

On December 7, 2005, [the attendance center] failed to follow the Behavior Support Plan in place for [my son]. The Behavior Support Plan called for [my son] to remove himself to a designated "safe spot" if he felt he was losing control. On December 7, 2005, [my son] was experiencing rapid bipolar cycling. He became agitated in class and attempted to leave the classroom to go to his "safe spot" so that he could calm down. However, his teacher blocked the door and refused to allow [my son] to leave the classroom and go to his "safe spot". This action resulted in [my son] hitting his teacher while attempting to flee to his "safe spot," for which he was suspended for two days. Complainant's Complaint letter at page 2. Quotation marks and capitalizations in original. Bracketed information added by the Federal Complaints Officer.

Allegation No. 2

As stated, in relevant part, by the complainant:

We [the complainant and her husband] objected to [a proposed amendment to their son's behavior support plan] that stated, "In the future, if [our son] hits an adult or child, the police may be contacted." At an IEP meeting on January 18, 2006, the IEP team agreed to change the wording to state, "In the event of an emergency, appropriate and necessary emergency services would be obtained." When I received a final copy of the amendments to [our son's] Behavior Support Plan, the wording had been unilaterally changed to read, "If the safety of [our son] or others becomes a question, including [our son] hitting another child or adult, the school administrator will use professional judgment and district policy and procedures to determine the best course of emergency response." This was not the wording the IEP team agreed upon at the IEP meeting. I exchanged several letters with the IEP team regarding this issue. The principal, [proper name], sent me a letter dated March 15, 2006 in which she states, "*Regardless of the wording settled on by this team, that is the process which would be used.*" At an IEP meeting on March 23, 2006, she stated that she refused to change her position on this issue and instructed me to file an appeal with the district if I was not satisfied with her response. [The principal's] refusal to abide by the decision of the IEP team in an IEP meeting is in violation of IDEA. Complainant's Complaint letter at page 2. Quotation marks, capitalizations, and italics, in original. Bracketed information added by the Federal Complaints Officer.

Allegation No. 3

As stated, in relevant part, by the complainant:

In the fifth paragraph of [proper name of a school district special education administrator] letter [to the complainant, dated April 14, 2006] she states, "The Crisis Intervention Plan is what is used with any and all students in SVVSD and is reflected in SVVSD Board Policy and the Students Discipline Codebook. This policy/procedure will be used *regardless of whether or not it is written in the BSP* because it pertains to the safety of the students in the school. Therefore, if you would like it removed from the BSP, we can agree to do so, but we cannot change the wording to be different than what was intended by the Board Policy." I believe this to be the most egregious IDEA violation, as IDEA clearly contemplates that special needs students with IEPs and Behavior Support Plans are to be disciplined differently than their typical non-disabled peers under certain circumstances, including when the student's Behavior Support Plan requires a specific response to a given situation. Complainant's Complaint letter at page 4. Quotation marks, capitalizations, and italics, in original. Bracketed information added by the Federal Complaints Officer.

Allegation No. 4

As stated, in relevant part, by the complainant:

On May 11, 2006, [my son's attendance center] failed to follow the Behavior Support Plan in place for [my son]. The Behavior Support Plan called for [my son] to remove himself to a designated "safe spot" if he felt he was losing control. On May 11, 2006, [my son] was in an escalated and agitated state while in the special education classroom with his paraprofessional and special education teacher. He attempted to leave the classroom to go to his "safe spot" so that he could calm down. However, the paraprofessional blocked the door and refused to allow [my son] to leave the classroom and go to his "safe spot." This action resulted in [my son] pushing the paraprofessional while attempting to flee to his "safe spot," for which he was placed on in-school suspension on that same day and required to sit in the school principal's office from 10:30 a.m. until 2:30 p.m. Complainant's addendum to her Complaint at pages 1 and 2. Quotation marks and capitalizations in original. Bracketed information added by the Federal Complaints Officer.

III. SCHOOL DISTRICT'S RESPONSE

Allegation No. 1

In response to allegation No. 1, the school district stated, in relevant part:

Refer to the copy of the original Behavior Support Plan for [complainant's son] dated 8/12/05 that was in place at the time of the Dec. 7th incident. In statement number 8, the plan indicates, "When [complainant's son] is upset allow him to take a break to a place defined and perceived by him as a safe place."

...

The teacher and para observed [complainant's son] being in an agitated state. While he was attempting to leave the room (theoretically to go to a safe place) another student was in his direct path. The teacher intervened on behalf of that student and was struck by [complainant's son]. School district's response at page 1. Quotation marks, capitalizations, and parentheses in original. Bracketed information added by the Federal Complaints Officer.

The school district also submitted signed statements by the referenced teacher and paraprofessional, dated May 23, 2006, and May 25, 2006, respectively. The teacher stated:

On the morning of December 7, 2005, [complainant's son] came in ready for the day to begin. He and I went over the schedule and then I told him what had to be completed for the day. He told me he didn't want to do it. I reminded him he

needed to try to do his 4th grade work. At that point he got agitated and wanted to leave the room.

I walked with him to the door because, [proper name of another student], a little 1st grader in a wheelchair was sitting in my doorway. [Complainant's son] was getting angry, so I stood in front of [the other student]. He hit me in the stomach and barged his way through the door moving [the other student] and myself. I moved [the other student] quickly to get her out of the way. Bracketed information added by the Federal Complaints Officer.

The paraprofessional stated:

On December 7, 2005 at about 8:42am, I brought [another student] into [complainant's son's classroom teacher's] class due to a substitute in [the other student's] class. [The other student] is in a wheel chair and has very limited, to no use of her muscles. Her wheel chair was next to the entrance to [complainant's son's classroom teacher's] class. I was in there to help [complainant's son] settle in for the morning. [Complainant's son] was asking [his classroom teacher] if he could have some time to draw and [complainant's son's classroom teacher] advised him that they are going to specials and maybe later. Then [complainant's son] got upset and started yelling and ran right toward [the other student] and the door. [Complainant's son's classroom teacher] went over and stood beside [the other student] and in front of the door way. Then [complainant's son] stood in front of [his classroom teacher] and she advise[d] him to calm down. He then raised his fist and punched [his classroom teacher] in the stomach. He then ran out of the classroom. Bracketed information added by the Federal Complaints Officer.

Allegation No. 2

In response to allegation No. 2, the school district stated, in relevant part: "At the end of the meeting of January 18, 2006, the wording was agreed upon by the team that included [the complainant]." School district's response at page 3. Bracketed information added by the Federal Complaints Officer.

See also page 4 of the school district's response stating, in relevant part:

All of [complainant's] letters submitted with her letter to [the Executive Director of Student Services] were reviewed and discussed with the special education team at [complainant's son's attendance center] and the principal. The findings indicated that [complainant's] contention that "... the IEP team came to a compromise that the item in question would read, 'In the event of an emergency, appropriate and necessary emergency services would be obtained.'", did not occur. Statements from the [complainant's son's attendance center] staff present at that meeting state that the only change agreed to was the change from the word

“police” to “best course of emergency response.” Quotation marks in original.
Bracketed information added by the Federal Complaints Officer.

Allegation No. 3

In response to allegation No. 3, the school district stated, in relevant part: “In response to [complainant’s] request for assistance in this matter, the offer to remove it completely from the BSP was made due to the fact it is already in Board Policy and would be followed in the event that a student or staff member’s safety was threatened.” School district’s response at page 4. Bracketed information added by the Federal Complaints Officer. “The District believes it has provided services to [complainant’s son] in accordance to the IEP drafted in August of 2005 and his BSP as well as the Crisis Plan. The IEP, BSP and Crisis Plan are all interwoven to provide services to/and support [complainant’s son].” School district’s response at page 4. Bracketed information added by the Federal Complaints Officer.

Allegation No. 4

In response to allegation No. 4, the school district stated, in relevant part: “[T]he BSP was followed.” School district’s response at page 4. “[Complainant’s son] acknowledged that he had indeed pushed [the paraprofessional] back against the door even though she was not blocking him.” School district’s response at page 5. Bracketed information added by the Federal Complaints Officer.

The school district also submitted signed statements of the referenced paraprofessional, and of a teacher witness. The paraprofessional stated, in an undated written statement:

On Thursday, May 11, 2006, [complainant’s son] and I had gone to the library to see if a book that he had been waiting for had been returned. [Proper name] informed us that the book had been lost by the student who had checked it out. [Complainant’s son] became upset and angry as we walked back to the resource room. [Complainant’s son] walked to the middle of the room and I stayed backed up against the door. [Complainant’s son] then turned around, walked toward me and placed his hands against my stomach and shoved me. I was not blocking the door in any way. I was backed up against the door.

When [proper name], [proper name], and I interviewed him after the incident, [complainant’s son] stated that the shove was intentional. Bracketed information added by the Federal Complaints Officer.

The teacher stated, in a typed statement dated May 25, 2006:

On the morning of May 11, 2006, I entered the Resource Room around 10:10 a.m. [Complainant’s son] was in the room with [proper name], special ed paraprofessional. [Complainant’s son] was agitated, and [the paraprofessional] was trying to help [complainant’s son] solve the problem. [Complainant’s son] was upset about a book that was missing from the library. I spoke with

[complainant's son] about the problem, and gave him possible solutions. While I spoke with [complainant's son] (we were standing by a work table), [the paraprofessional] was standing by the door listening. Her back was up against the door. When I finished problem solving with [complainant's son], I walked to my computer area. My back was to the door. Approx. 10 seconds later, [the paraprofessional] reported that [complainant's son] had exited the room, and shoved her in the stomach. I asked her to clarify what happened. [The paraprofessional] stated that as he walked past her, he put his hands on her stomach and shoved her into the door. She stated that she was not blocking the exit.

[Complainant's son] left the area and went to a safe place, the OT room. I found him, and talked with him about the incident. [Proper name] and [the paraprofessional] were present in the room also. I asked [complainant's son] to tell me what happened. He stated that he shoved [the paraprofessional]. I asked if she was blocking his way. He said she was not. Parentheses in original. Bracketed information added by the Federal Complaints Officer.

IV. COMPLAINANT'S RESPONSE TO THE SCHOOL DISTRICT'S RESPONSE

Allegation No. 1

The complainant's response, in relevant part, stated:

The district's version of the facts that constitute the First Alleged Violation of IDEA is not credible. It is based on documents that were created many months after the incident occurred, and after the district received a copy of my federal complaint. The district's own contemporaneously created document, the Record of Disciplinary Hearing dated December 7, 2005, does support my contention that [the teacher] blocked [my son's] access out of the classroom when he needed to go to his safe place, in violation of his Behavior Support Plan. Furthermore, [the teacher] admitted to me in the meeting on December 9, 2005 that she blocked [my son's] access out of the classroom and that she had done so on prior occasions. Therefore, the Federal Complaints Officer should reject the subsequently created and inherently inconsistent evidence the district has offered to the contrary. If the facts as stated in the Record of Disciplinary Hearing dated December 7, 2005 are accepted as true, the district should be found in violation of the cited section of IDEA. Complainant's response at page 1 and 2, footnote omitted. Bracketed information added by the Federal Complaints Officer.

The complainant also submitted an affidavit with her response. Item 8 on page 2 of that affidavit amplifies the complainant's belief that neither of the signed statements by the teacher and the paraprofessional "reflects the incident [of December 7] as [the teacher] described it in the meeting that was held on December 9, 2005, prior to [my son's] return to school or in the Record of Disciplinary Hearing dated December 7, 2005." Bracketed information added by the Federal

Complaints Officer. The complainant then recites several justifications she states the teacher gave her at the December 9th meeting explaining the teacher's actions on December 7th, none of which, according to the complainant, included the justification of protecting another student, as indicated in the teacher's signed statement submitted as a part of the school district's response to this Complaint. In item 9 of her affidavit, page 3, the complainant further argues that the structure of the entranceway to the classroom where the December 7th incident occurred is such to make the teacher and paraprofessional's version of events not credible.

Allegation No. 2

The complainant's response stated, in relevant part:

Had I agreed with their language [i.e., the IEP team's language], [the building principal] would have had no need to write me a letter [dated March 15, 2006] telling me that she was reserving the right to make her own decisions about [my son] "regardless" of what the IEP team had decided. ... If the facts as stated in my complaint are accepted as true, particularly the letters cited in footnote 2 [referencing letters from a licensed psychologist, and a physician certified in pediatrics and psychiatry, dated December 30, 2005, and April 3, 2006, respectively] and [the building principal's] letter of March 15th in particular, the district should be found in violation of the ... IDEA. Quotation marks in original. Bracketed information added by the Federal Complaints Officer.

Footnote 2, at page 3, of the complainant's Complaint letter dated May 5, 2006, states:

As stated in [proper name of licensed psychologist] and [proper name of physician certified in pediatrics and psychiatry], it would be very detrimental to [my son's] mental health if a crisis situation were not handled very carefully, given [my son's] age and fragile mental health. Therefore, the difference in the language that the IEP team agreed upon and the language that the district is now insisting upon inserting into [my son's] Behavior Support Plan is not at all a distinction without a difference. Bracketed information added by the Federal Complaints Officer.

The complainant's affidavit, at items 13 and 16, page 5 and 6, amplifies her position that she did not agree to the IEP language to which the school district states she did agree. In relevant part, the complainant states: "I never once agreed to the language [the Executive Director of Student Services] quotes and furthermore the quoted language was never presented to me until I received a copy of the revised Behavior Support Plan and Crisis Intervention plan several weeks after the January IEP meeting." Complainant's affidavit, item 13, at page 5. Bracketed information added by the Federal Complaints Officer.

Allegation No. 3

The complainant's response stated, in relevant part: "[T]he district does not deny that [a district special education administrator] wrote the letter of April 14, 2006 that seeks to treat all students

the same regardless of whether they have a disability and are protected by IDEA, and ‘*regardless of [what is] in the [student’s] BSP.*’” Complainant’s response at page 2. Quotation marks within the response, and bracketed information within the quotation marks within the response, and italics, in the original. Other bracketed information added by the Federal Complaints Officer.

Allegation No. 4

The complainant’s response stated, in relevant part:

Given the extent to which the district’s version of the facts merits belief elsewhere, it should not be believed with respect to this violation, either. (See particularly the internal inconsistencies pointed out in footnote 1.) The Federal Complaints Officer should be very skeptical that the same student who has been repeatedly not allowed to go to his safe spot by this school district would coincidentally have a paraprofessional stand with her back against the door (rather than being inside the classroom doing any other number of things other than blocking the same child’s access) when that student needed to leave the classroom. Given the rest of the district’s story, this is simply not credible. Complainant’s response at pages 2 and 3. Parentheses in original.

In the complainant’s affidavit, at item 19, page 7, she also states, as an explanation of what happened in the incident of May 11, 2006:

[Our son] told us that he was very upset and was having a very difficult time calming down. He told [the paraprofessional] that he wanted to leave and she told him that she could not leave and that he must stay in the resource room. He reported that he was trying to do his best to calm down but [the paraprofessional] would not leave him alone and when he tried to leave the resource room she was blocking the door and told him once again that he could not leave. [Our son] then stated that he did in fact push [the paraprofessional] in an attempt to remove her from his path and leave the classroom. Bracketed information added by the Federal Complaints Officer.

V. FINDINGS AND DISCUSSION

Allegation No. 1

The Federal Complaints Officer finds no violation by the school district.

In order for the Federal Complaints Officer to find that the school district had committed a violation, he would have to find that two members of the school district’s staff had fabricated the facts of the events in dispute of December 7, 2005. The Federal Complaints Officer declines to do so.

That the school district’s staff members’ statements were prepared after the complainant filed her Complaint, and that facts included in their statements were not included in the school district’s

Record of Disciplinary Hearing dated December 7, 2005, does not cause the Federal Complaints Officer to conclude that the later statements were fabricated. The Record of Disciplinary Hearing dated December 7, 2005 and the subsequent statements of the staff members are not necessarily inconsistent. Even to the extent they can be interpreted as inconsistent, since the complainant had not filed her Complaint when the Record of Disciplinary Hearing of December 7, 2005 was created, the school district was not on notice of the need to respond, in a December 7, 2005 record, to a specific allegation made in a Complaint filed in May of 2006. Absent such notice, and absent an evidentiary hearing where the statements of the staff members can be subjected to cross examination, the Federal Complaints Officer declines to find that the staff members lied.

That the complainant alleges that one of the school staff members who submitted a statement gave her a different version of the facts in a meeting held on December 9, 2005 likewise does not cause the Federal Complaints Officer to conclude that the later written statements were fabrications of the facts. The complainant offers the Federal Complaints Officer no further argument (with one exception) other than the alleged inconsistencies between the Record of Disciplinary Hearing of December 7, 2005 and the later staff members' written statements, as to why he should except the complainant's version of conversations that took place on December 9, 2005. The one exception is the complainant's argument that the structure of the entranceway to the classroom where the disputed incident of December 7, 2005 took place is inconsistent with the staff members' written statements constructing the facts of that incident. The school district was not provided with an opportunity to respond to either of these arguments by the complainant. However, the Federal Complaints Officer is finding, for the purpose of deciding this Complaint, that the school district disputes these arguments of the complainant.

The Federal Complaint Process under the IDEA provides for no hearing where witnesses can be cross-examined as to their credibility. In the absence of such a credibility determining process, the Federal Complaints Officer declines to find that two staff members of the school district have lied. The complainant is still entitled to a due process hearing in which this allegation can be adjudicated.

Allegation No. 2

The Federal Complaints Officer finds no violation by the school district.

The complainant alleges one version of what was agreed upon at an IEP meeting that took place on January 18, 2006. The school district alleges another version of what took place at an IEP meeting on January 18, 2006. The Federal Complaints Officer has no record of what took place at the IEP meeting of January 18, 2006, other than the competing versions of events recited by the complainant and the school district. In the absence of such a record, the Federal Complaints Officer declines to find a violation by the school district. The Federal Complaint Process under the IDEA provides for no hearing where witnesses can be cross-examined as to their credibility. The complainant is still entitled to a due process hearing in which this allegation can be adjudicated.

Allegation No. 3

The Federal Complaints Officer finds no violation by the school district.

The Federal Complaints Officer interprets the complainant's argument to be that the school district has a generic policy for addressing crisis intervention which conflicts with the IDEA's requirements for individualizing approaches to students covered by the IDEA. The Federal Complaints Officer disagrees.

The school district's Crisis Intervention Plan, as stated on complainant's son's Behavior Plan, dated January 18, 2006, states: "If the safety of [complainant's son] or others becomes a question, including [complainant's son] hitting another child or adult, the school administrator will use professional judgment and district policy and procedures to determine the best course of emergency response." There might be circumstances where it could be successfully argued that, as applied, such a plan infringed on a student's rights under the IDEA. The Federal Complaints Officer finds no such circumstances in this Complaint.

Whether this Crisis Intervention Plan is included in a student's behavior support plan, or removed as the school district offered to do for this student, there is nothing in the language of the plan that, per se, infringes a student's rights under the IDEA. The "professional judgment", "district policy and procedures", and "best course of emergency response" for which the plan provides, are broad enough to encompass more specific provisions made for individual students covered by the IDEA, without necessarily conflicting with those provisions. The Federal Complaints Officer finds no such conflict, on the facts of this Complaint, with the specific provisions made for the complainant's son.

A school district has a legal responsibility to insure the safety of students, staff, and others to whom it owes a duty of care, which includes protecting such persons from being assaulted by one another. The Federal Complaints Officer does not find, on the facts of this Complaint, that the school district has attempted to fulfill this responsibility in a way that conflicts with the complainant's son's rights under the IDEA. However, the complainant is also entitled to a due process hearing in which this allegation can be adjudicated.

Allegation No. 4

The Federal Complaints Officer finds no violation by the school district.

As with Allegation No. 1, the school district has submitted written statements of staff members addressing the disputed incident of May 11, 2006, during which the complainant alleges her son's Behavior Support Plan was not followed. The complainant does not dispute, as she did not dispute for Allegation No. 1, that, if the staff members' versions of events were accurate, there would have been no violation of her son's Behavior Support Plan. What the complainant disputes is the veracity of the staff members' statements.

In support of her view that the school district's staff members' statements should not be believed, the complainant cites what she believes are the inconsistencies in the school district's version of

the facts submitted in the school district's response, which in her view do not merit belief. In particular the complainant cites her footnote 1 which addresses Allegation No. 1. Complainant's footnote 1 alleges inconsistencies between the written statements of school staff members describing the incident of December 7, 2005, and the Record of Disciplinary Hearing dated December 7, 2005, which the Federal Complaints Officer has already discussed under his findings for Allegation No. 1 in this Complaint.

The complainant also cites a different version of the facts of the incident of May 11, 2006 which she indicates was provided to her, and her husband, by her son. This version of the facts is offered in support of the complainant's argument that the school district did not follow her son's Behavior Support Plan during the disputed incident of May 11, 2006.

Absent an evidentiary hearing, the Federal Complaints Officer declines to find that school district staff members have lied in their written statements, which is what the Federal Complaints Officer would have to find, if he found a violation as alleged by the complainant in Allegation No. 4. The complainant is entitled to a due process hearing to adjudicate this dispute.

VI. REMEDY

Although the Federal Complaints Officer has found no violations by the school district, he has nevertheless determined that the Remedy of recording any further IEP meetings for the complainant's son is appropriate. He makes this determination in order that a record be available in any further disputes between the complainant and the school district to assist a decision maker in resolving any credibility issues between the complainant and the school district. Therefore, the school district is ordered, at the school district's expense, to make a verbatim record of any future IEP meetings for this student, unless waived by the complainant and the school district. Any such verbatim record shall be made in such a way that IEP meeting participants, and their statements, can be adequately identified, and any such record shall also be made in such a way that a written transcription can be produced from the recording. See the Decision of the Administrative Law Judge in Case No. ED 2003-023, reviewing the Decision of the Federal Complaints Officer in Federal Complaint Decision 2003:514.

VII. 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 14, 2006.

Charles M. Masner, Esq.
Federal Complaints Officer