

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

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**Federal Complaint 2006:512**

Northwest Colorado BOCES

**Decision**

**INTRODUCTION**

This Complaint was dated 11/13/2006, and was received in the office of the Federal Complaints Officer of the Colorado Department of Education (CDE) on 11/16/06. The Complaint, filed by the parent on behalf of her child, was against the Strawberry Park Elementary School [School]. The response of the Northwest Colorado BOCES (BOCES) was sent to CDE on 12/05/06. The Complainant's reply to the BOCES response was sent to CDE on 12/12/06.

This Complaint was assigned to Ms. Mae Taylor-Ohlin, Ph.D., who is on contract with CDE to investigate the complaint. The scope of Dr. Taylor-Ohlin's investigation was: (1) to investigate the Complaint; (2) to make findings of fact and conclusions; and (3) prepare a decision and recommendations for consideration and approval by Laura L. Freppel, J.D., the Acting Federal Complaints Officer. Hereafter, Dr. Taylor-Ohlin is referred to as the Complaints Investigator and Ms. Freppel is referred to as the Acting Federal Complaints Officer.

During investigation of the Complaint, the Complaints Investigator spoke with the BOCES special education director on 01/08/07, with the school principal and special education teacher of the school on 01/12/07, and with the student's mother on 01/14/07. The Complaints Investigator also reviewed all pertinent records pertaining to the student's program. On 01/04/07, the Acting Federal Complaints Officer extended the decision date to 01/29/07 based on exceptional circumstances unique to this Complaint. On 01/19/07, the Complaints Investigator forwarded her findings of fact, conclusions and recommendation to the Acting Federal Complaints Officer for review and approval as appropriate.

**EXTENSION OF TIME DUE EXCEPTIONAL CIRCUMSTANCES**

The 60-day decision date for this Complaint was 01/15/07. On 01/04/07, the Complaints Investigator and the Acting Federal Complaints Officer discussed the probable need for an extension of time due to exceptional circumstances involving this case. The exceptional circumstances are as follows: (1) Between the dates of 12/22/06 and 01/02/07, the school and the BOCES were closed for the holiday break with the result that that school and BOCES personnel were unavailable for interviews; and (2) due to the blizzards that plagued the Metro Denver area, there was a postal delay in the Complaint Investigator's receipt of the case file

materials, which she did not receive until 01/04/07. The Acting Federal Complaints Officer has extended the decision due date for an additional fourteen (14) calendar day to 01/29/07.

### **COMPLAINANT'S ALLEGATIONS**

The Complainant alleges the following:

1. [Student's] positive behavior plan is a part of his IEP;
2. In mid-September 2006, the school principal unilaterally developed and then implemented a new behavior plan for [Student] without involving the IEP team, including the parent;
3. As of 11/13/06, a revised behavior plan developed by the IEP team has not yet been finalized; and
4. Because an appropriate behavior plan or strategy is not in place and effective, [Student] is not receiving a free appropriate public education.

These allegations are subject to the jurisdiction of the federal complaint process, as determined by the Acting Federal Complaints Officer.<sup>1</sup>

### **THE BOCES' RESPONSE**

#### **Allegation 1**

The BOCES attached a copy of the active IEP that includes a behavior plan, dated 04/07/06. Further clarification indicated that the parent contacted the BOCES with concerns on 09/21/06, and, from that date on, the BOCES has been working with the parent and other members of the IEP team to develop further refinements and revisions, in order to meet the parent's concerns about the student's program.

#### **Allegation 2**

The BOCES obtained a response from the school principal regarding the allegation that he unilaterally developed and implemented a revised behavior plan. The BOCES also included copies of meeting minutes, handwritten notes, a draft of a crisis plan, "Team Call" documentations, staff injury reports, and daily communication log notes. The BOCES contracted with an independent consultant in autism, whose function is to support the team in working with [Student] and other students on the Autism Spectrum Disorder by doing observations; meeting with staff and the parent; and completing a Functional Behavior Assessment on [Student] on 10/16/06. The consultant is involved in all IEP team decisions including the behavior support plan. Team members have been sent to training, such as the

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<sup>1</sup> The Complaint also asserted additional allegations that are not subject to the federal complaints process and were formally rejected by the Acting Federal Complaints Officer. See, Attachment 1 (11/22/07 letter from L. Freppel to R. Tschider).

Picture Exchange Communication System, as well as attending in-school trainings on autism and related issues. The original behavior plan was developed in the 04/07/06 IEP team meeting and attached as a part of the IEP. Although several meetings were held with the consultant, the special education teacher, the principal, the parent, and others, meeting notes or other documentation of the meetings were not always kept.

In regard to events occurring from the beginning of the current school year, it was reported that nearly all of the special education staff members working with [Student] left district employment by the beginning of school, and the school was struggling to obtain qualified personnel to work with [Student], get staff up to speed on training, and implement the elements of the [Student's] IEP, while simultaneously trying to provide a secure, safe, and productive educational environment for [Student]. Because of several incidents wherein the student hit, scratched, or bit a staff member, the principal developed a draft "Crisis Plan" [Crisis Plan] on approximately 09/11/06 and gave it to staff; however, the Crisis Plan was not developed in an IEP team meeting, nor was the parent was involved, except for brief discussions prior to the development of the draft.

### **Allegation 3**

The Complaint states that, as of 11/13/06, a revised behavior plan had not been developed and finalized by the IEP team. An initial behavior plan attached to the IEP had been duly developed by the appropriate team in April of 2006. The Crisis Plan was an attempt to get control of [Student's] escalating behavior, although it was admitted that the Crisis Plan was not properly developed by [Student's] IEP team. The BOCES office indicates that a six-level behavior support plan was introduced at an IEP meeting on 11/07/06, and was finalized by the IEP team, including the parent, on 12/20/06. The Complaints Investigator has received and examined a copy of the 12/20/06 behavior support plan.

### **Allegation 4**

The BOCES special education director indicates that they will continue to determine professional development needs of the staff and support staff in receiving training, as well as strategies to implement a successful education program for the student, and they will continue to contract with the independent consultant in autism, for benefit of both the student and staff skills. Both the BOCES special education director and the student's teacher indicate that the new behavior support plan is working very well, the student is able to concentrate on his school tasks, and he seems happy. If the student has any catching up to do, they feel that he is doing so well, that learning seems to be progressing very well at this time.

## FINDINGS OF FACT AND CONCLUSIONS

### **Allegation 1**

Under the Individuals with Disabilities Education Act (IDEA)<sup>2</sup> and its implementing regulations,<sup>3</sup> the public agency is required to develop an IEP for a student with disabilities that meets the requirements of the law and regulations. Services to be delivered to a student must be described and included in the IEP. If a behavioral intervention plan is deemed to be a part of the IEP, then the IEP team, including the parent, is responsible for the development and revision of the behavioral intervention plan unless the parent and the public agency have agreed to revise the IEP (and, specifically in this case, the behavioral intervention plan) without convening the IEP team.<sup>4</sup>

Based on the documentation reviewed and other information provided by the parties, the Complaints Investigator makes the following findings of fact:

A. A behavior support plan was developed and included in the student's most recent IEP team meeting, dated 04/07/2006. Having been agreed-upon by participating members, including the parent, it was in fact, designed to provide a free and appropriate public education for the student, and was in place at the beginning of the new school year, September, 2006. The parties agree that the behavior support plan was at all times relevant deemed to be a part of the IEP.

With respect to Allegation 1, the Complaints Investigator concludes that the school and BOCES were in compliance with the federal law in April 2006.

### **Allegation 2**

Based upon the documentation and other information provided by the parties, the Complaints Investigator makes the following findings of fact:

A. By the beginning of the school year 2006-2007, most of the special education and assistant personnel who had been serving the student resigned, leaving the school short-handed. Replacement personnel were hired who were not immediately familiar with or trained in implementing the behavior support plan for the student. The student began the school year with a different set of adults to relate to, resulting in unclear expectations, which would be a difficult adjustment for any student with autism.

B. The new staff didn't have sufficient opportunity to be fully trained in how to interact with the student and implement his IEP by the beginning of the year. With some assistance from former staff, they began by making a good faith effort to comply with the requirements of the IEP.

C. The student's reactions to the above personnel changes caused classroom disturbances and episodes of his becoming violent. On several occasions, this resulted in harm to one or more

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<sup>2</sup> 20 U.S.C. §1400 *et seq.*

<sup>3</sup> 34 C.F.R. § 300.1 *et seq.*

<sup>4</sup> 20 U.S.C. § 1414 (d) (3)

personnel attempting to help him become compliant and ready to learn. Two “incident reports” were submitted on 08/30/06 and 11/07/06 documenting staff member injuries.

D. The parent was invited to a meeting on 09/08/06, to discuss the student’s behavior plan, as it didn’t seem to be working well. Options were discussed with the parent, and positive incentives discussed, as well as consequences of negative behavior. A copy of the principal’s notes taken at this meeting was included with the documentation. The parent was informed that the staff would be provided special training (Crisis Prevention Institute or CPI training) for handling problem behaviors.

E. The school staff was provided CPI training on 09/09/06. Following this training, the Crisis Plan was developed by the principal, to cover incidents that represented a danger to the student or others. The Crisis Plan is purported to contain information generated in a discussion with the teacher and parent on 09/08/06. The Crisis Plan was not given to the parent.

F. A “Team Call” system was put into place to handle behavior which has escalated out of control or is dangerous to the student or others. Documentation of three “Team Call” incidents dated 09/18/06 (two incidents) and 09/29/06 was provided to the investigator. The documentation demonstrates that the student’s behavior was escalating and was potentially harmful to the student or others.

G. The Crisis Plan could not be fully implemented, due to the incidents on 09/18/06 and 09/29/06.

H. It is reported that some of the conflict resulting in concerns during the Fall of 2006 centered on personality disagreements, which has now resulted in a change of supervisory relationship to the special education program. The special education director of the BOCES is now reportedly in charge of the program. The Complaints Investigator makes no judgment regarding personnel issues; that is left to the district and BOCES administration.

With respect to Allegation 2, the Complaints Investigator concludes that the school did develop a modification of the behavior plan without properly convening the IEP team and without providing the Crisis Plan to the parent. This is a violation of the IEP modification requirements specified by 34 CFR §§ 324 (a) – (b). It is unclear whether the Crisis Plan was actually implemented, as the incidents necessitating a “Team Call” followed immediately after the Crisis Plan was written. Following the incidents, meetings were held with the parent, which ultimately resulted in the new behavior plan.

### **Allegation 3**

Based on information provided and conversations with the parties, the Complaints Investigator makes the following findings of fact:

A. Following a Functional Behavioral Analysis completed by the autism consultant, a new behavior plan was developed by the IEP team, including the parent. The new behavior plan had not been finalized at the time of the parent’s Complaint, but it was later finalized on 12/20/06.

With respect to Allegation 3, the Complaints Investigator determines that the BOCES and school are now in compliance with the federal requirements regarding modifications to an IEP; and that a behavior plan is in compliance.

#### **Allegation 4**

Based on information reviewed and conversations with parties, the Complaints Investigator determines the following findings of fact:

A. A behavior plan was part of the student's IEP in April of 2006; changes in the teachers and teaching assistants created a difficult behavioral situation with the student at the beginning of the school year. It took several months to train personnel, modify the behavior plan, and put the new practices in place. As consistency with the new plan was followed, the behavioral problems improved, and the student's educational performance and behavior improved.

B. The parent states: "[The student's] behavior is much more settled; he now looks forward to school, and earning his rewards. The new plan is effective."

C. The school states: "It is like night and day; [the student] is a happy kid. He's engaged in learning, and his behavior is increasingly under control. The plan finalized in December is effective."

D. Because the new behavior plan was developed during a duly-constituted IEP team meeting and is designed to enable the student to benefit from his IEP, it is determined that the student is receiving a free and appropriate public education (FAPE). At this time, no violation of FAPE is determined.

#### **CONCLUSION**

Upon receipt of this Complaint, the school realized its failure to keep adequate documentation as to discussions regarding parental concerns, and its failure to involve the parent in the development of a short-term Crisis Plan to deal with the escalating behaviors of the student. The school acknowledged its failure, and embarked on several corrective actions. A plan was set forth to obtain a new Functional Behavioral Analysis and behavioral plan. Also, new staff was trained in implementing the plan and in handling problem behaviors. Accordingly, the program is now functioning relatively smoothly.

While the school administrator's failure to develop the Crisis Plan with the parent constituted a violation of the requirement to involve the parent in modifications of the IEP, as cited above, it appears that that has been corrected in the instant case. However, the Complaints Investigator recommends that all personnel interacting with the student, and other such similar students, receive training in the legal requirements of the special education program, so that they are able to understand and adhere to the IDEA's requirements, and fulfill their responsibilities.

The above-cited violation having been duly corrected, and the program now functioning effectively to the parent's satisfaction, the Complaints Investigator finds that no sanctions are necessary, and determines that no further action is warranted.

This Decision shall become final as dated by the signatures of the Complaints Investigator and the Acting Federal Complaints Officer. A copy of the appeal procedure is attached.

Dated this 24<sup>th</sup> day of January, 2007.

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Laura L. Freppel, Esq.  
Acting Federal Complaints Officer

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Mae Taylor-Ohlin, Ph.D.  
Complaints Investigator