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

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**Federal Complaints 2006:513, 2006:514 and 2006:515**

Logan Valley Re-1 School District

# Consolidated Decision

## INTRODUCTION

These Complaints were dated 11/14/06, 11/27/06 and 11/29/06. The responses of the Logan Valley Re-1 School District (District) were received on 12/07/06, 12/14/06 and 1/11/07. The Complainant's responses to the District's responses were received on 12/19/06, 01/18/07, and 01/25/07. The record was closed on 02/06/07.

The Complainant is [parent], who has filed on behalf of her daughter [student], who is identified as child with a disability.

These Complaints were assigned to Ms. Brenda Van Gorder MEd, who is on contract with the Colorado Department of Education (CDE) to investigate the Complaints. The scope of Ms. Van Gorder's investigation was: (1) to investigate the Complaints; (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, Ms. Van Gorder is referred to as the Complaints Investigator and Ms. Freppel is referred to as the Acting Federal Complaints Officer.

During the investigation, the Complaints Investigator reviewed the extensive record, and talked with the district special education director. In a letter to both parties dated 12/18/06, the Acting Federal Complaints Officer consolidated these three complaints for the following reasons: the parties are identical; the filing of the Complaints was done in close proximity of time; many of the allegations are similar; and the need to facilitate an efficient and effective investigation.

## EXTENSION OF TIME DUE TO EXCEPTIONAL CIRCUMSTANCES

On 12/18/06, the Acting Federal Complaints Officer issued a letter to both parties extending the 60-day decision date due to exceptional circumstances involving these cases. The exceptional circumstances are as follows: (1) consolidation of the three complaints into one complaint; (2) the number and complexity of the allegations; (3) the volume of information received regarding these cases; and (4) the unavailability of District staff over the winter holidays. The Acting Federal Complaints Officer extended the decision due date to 02/15/07.

## COMPLAINANT'S ALLEGATIONS

The Complainant has made the following allegations, which have been consolidated from Complaints 2006:513, 2006:514 and 2006:515:[1]

1. The District failed to comply with the procedures for out-of-state transfer students set forth in rule 4.03(2)(b) of the Rules for the Administration of the Exceptional Children's Educational Act (ECEA).

2. The District failed to obtain the parent's consent to conduct an initial evaluation for [student].

3. The District has failed to implement [student]'s IEP by refusing to provide modifications and accommodations to all academic areas in the classroom and homework, which has denied [student] reasonable educational benefit from general education

4. The District is punishing [student] by sending her to Tiger Den "Lunch Detention". The District furthermore refused to stop sending [student] to "Lunch Detention" or exempt [student] from the lunch detention/homework intervention program, causing a violation to the federal discipline regulations.

5. The District has failed to provide prior written notice each time it proposes or refuses to initiate or change the identification, evaluation, or educational placement of [student].

6. The District failed to consider the use of positive behavioral interventions and supports for [student], due to her unique and/or exceptional needs.

7. The District failed to follow the regulations for IEP development, including: notice sufficient to include the parent in the team decisions regarding IEP development; failing to include all required IEP components in the IEP including annual measurable goals; and the school administrator left an IEP meeting prior to its end. The District also failed to notify parent in writing in advance of the IEP meeting and be invited to participate at a time that is mutually convenient for the parent and school team.

8. The District failed to provide FAPE including the failure to provide special education services as outlined on the IEP.

9. The District failed to include a Determination of Disability page in the IEP for a child with Perceptual Communication Disability.

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

[1] The complaints 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 (11/22/06 letter from L. Freppel to D. Cox) and Attachment 2 (12/14/06 letter from L. Freppel to D. Cox)

## THE DISTRICT'S RESPONSE

The District responds as follows:

**Allegation 1**

The District received incomplete records and information from [parent] in August of 2006 regarding her daughter [student] who would be entering school as a 4th grader. [Parent] told the district staff that she was waiting for the results of Occupational Therapy and Physical Therapy evaluations that had been completed. The school district agreed to accept and implement the IEP from Buckingham County Public School, Virginia. [Parent] signed the district transfer form giving permission for the district to implement the Virginia IEP, which included Speech Language Services only.

**Allegation 2**

The District did not conduct an initial evaluation on [student]. The IEP from Buckingham County Public Schools, Virginia was accepted on 9/15/06. The District did conduct a triennial review on 10/10/06, which included a review and consideration of assessments conducted in Virginia and other evaluations that the parent had obtained independently. Additional evaluation data which had been completed by the District were also included in the review. Parental consent for evaluation was obtained by the District on 9/18/06 to include physical and communicative areas.

**Allegation 3**

The District implanted [student]'s IEP from Virginia, which states 30 minutes per week of speech language services (data provided). No other services, accommodations or modifications were noted on the Virginia IEP. [Parent] requested additional accommodations and modifications be implemented on 9/5/07. Ms. Chrisman, Principal, responded to [parent]'s request in a letter stating that IEP teams make those decisions. Once the new IEP was developed on 10/10/06, the school team began to implement all aspects of the IEP, including the accommodations and modifications as written in the IEP, several of which were those requested by [parent].[2]

**Allegation 4**

Tiger DEN (Doing Everything Necessary) is a school-wide regular education intervention for homework support, not "lunch detention" as [parent] suggests. This program occurs during lunch and recess, is a district wide program and implemented in multiple schools. DEN was an after school program previously, but was changed in the 2006-07 school year to a lunch time program. This change was shared with students by their teachers, and sent home to parents in the school newsletter, the Cub Communicator in October. Lunch is eaten separate from doing homework. Staff was also instructed that, if students were attending Tiger DEN more than 2-3

[2] The District submitted data and work samples as evidence of the implementation of the IEP.

times per week consistently, then a referral to the Student Intervention Team (SIT) was to take place. Prior to the 10/10/06 IEP meeting, [student] had attended DEN 4 times. After much discussion, the IEP team on 10/10/06 developed an accommodation specifically for [student], allowing her to leave Tiger DEN once her work was completed. All team members except [parent] felt that DEN was appropriate for [student], and therefore she would not be exempt from the school wide program.

**Allegation 5**

Tiger DEN is a regular education program, so there is no change of placement that would require a Prior Written Notice, or notice of refusal by the Logan Valley RE-1 School District. Attending DEN is not a change in identification, evaluation or educational placement of [student], or the provision of FAPE for [student]. [Student] typically does not have trouble completing work in a timely fashion compared to other students. The IEP team on 10/10/06, after reviewing all new and existing testing, determined that [student] was no longer qualified for speech services, but she did qualify in the areas of Physical Disability (ADHD) as primary and Perceptual Communicative Disorder as secondary, to which [parent] agreed. In addition, [student] receives her special education services in the regular education setting where she is having academic and social success, which was also agreed to by [parent].

**Allegation 6**

The IEP team determined that [student]'s behavior does not impede her learning or the learning of others and therefore does not require individualized behavior supports or a behavior intervention plan. [Student]'s behavior has never been an issue since she as been attending Campbell School. [Student] responds well within the expectations of the general classroom management system. The District has a uniform Positive Behavior Support program for all students. Students earn points for various aspects of positive behavior, which results in a bonus recess every Friday. Students who earn 8-9 recesses for the quarter are recognized with a Tiger Cub Club certificate. [Student] received the Cub Club certificate during the 1st quarter, demonstrating that her behavior is within/above building expectations. The IEP team did agree to conduct a Functional Behavior Assessment (FBA) at [parent]'s request due to her concerns about [student]'s attention span and on-task behaviors during class.

**Allegation 7**

The District feels it has met the requirements of IDEA to provide FAPE and an appropriate IEP for [student]. The Virginia IEP was accepted and implanted as written up to the point of the new IEP being developed in a series of meetings on 10/10/06, 10/25/06 and 11/03/06. At the first meeting (i.e., 10/10/06) the team discussed existing and new evaluation data, proposed goals, proposed accommodations and modifications. The team finalized present levels of educational performance, and one goal. A copy of the draft IEP was given to [parent] at that meeting. At [parent]'s request the follow-up meeting was set for 10/25/06. The purpose of this meeting was to finalize remaining goals as they had been discussed in the 10/10/06 IEP meeting. With a few editing changes needed, a meeting was set for 11/03/06 to review the final IEP with [parent], as had been agreed to by the team members including [parent]. At the 11/03/06 meeting, [parent]

signed the IEP. It was sent to Dianne Cox, special education director to review. Ms. Cox discovered a couple of typographical errors, which were corrected, and inserted two missing dates that added clarification. The final IEP was sent to [parent] on 11/13/06. [Parent] signed and took possession of the final IEP on 11/22/06.

The District did not send out notice of meetings for the meetings on 10/25/06 or 11/03/06 as these were not separate IEP meetings from the 10/10/06 meeting for which [parent] received notice. Each of the subsequent meeting dates and times were mutually agreed upon by [parent] and district staff.

Ms. Cox was the facilitator of the IEP meeting held on 10/10/06. Mrs. Chrisman, principal, was in attendance at the meeting. She was briefly called out near the end of the meeting to deal with a school issue, but returned to the meeting within 10-15 minutes. This did not affect the outcome of the meeting, and was not a change in placement, evaluation or identification of [student], and did not require Prior Written Notice to be excused from the meeting for this short amount of time.

**Allegation 8**

FAPE is clearly being provided in an inclusive, regular education setting. [Student] is having academic and social success in this environment. During the 10/10/06 IEP meeting, the team discussed and executed a change of classification from speech language only services to Physical Disability (ADHD) as the primary and Perceptual Communicative Disorder as the secondary. FAPE was determined at that same meeting to be full inclusion in general education with services from the special education teacher for 5 hours integrated services in general classroom per week and .25 hours in-direct (consultation) per week. All services which are outlined in the 10/10/06 IEP are being provided.

**Allegation 9**

The District did not intentionally exclude the Determination of Disability page from [parent]'s documents. It was included in the district documentation, and it is unclear how that form was inadvertently left out of the copies provided to [parent]. It was not brought to the attention of the District until the formal complaint was filed. A copy of this page was sent by registered mail to [parent] on 12/11/06.

## FINDINGS OF FACT AND CONCLUSIONS

**Allegation 1**

The federal regulations implementing the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) are located at 34 CFR §§ 300.1 *et seq.*[3] While §300.323 (f) outlines specific steps that a public agency must take if a child transfers to a new state *during the school year,*

[3] Hereafter, the IDEA 2004 regulations are referred to by section number only, e.g., § 300.323.

there is no specific regulation regarding students who transfer during the summer months as the student in this case did. Consequently, reevaluation and eligibility determination must proceed as outlined in the applicable regulations.[4]

Based on information gathered and review of the documentation provided by both parties, the Complaints Investigator makes the following findings of fact:

- The District had contact from [parent] regarding her daughter, [student], on 08/31/06 at the school Open House. [Student] was identified by her mother as being a child with a disability who was served on an IEP in Virginia. The family had moved to Colorado during the summer months.

- The District received a copy of the Virginia district records including [student]'s IEP, and agreed to implement the Virginia IEP as it was written.

- [Parent] signed permission for [student] to begin services in the District utilizing the Virginia IEP (speech services) on or about 9/15/06. The consent form was signed but not dated, but the school staff had noted that it was returned to the school on 9/15/06.

- Speech Language services were the only services listed on the Virginia IEP, which the school district did implement until the new IEP was developed and signed.[5] Other services listed by [parent] as required needs (i.e., Physical Therapy, Occupational Therapy, Functional Behavior Plan) were not listed on the Virginia IEP.

- Both the District and the parent were in agreement that IEP services would be implemented according to the Virginia IEP. Subsequent to that agreement, the District and the parent further agreed that a reevaluation was necessary. The "consent for evaluation" form that was signed by [parent] indicates that the new eligibility determination date would be 09/28/06. The new 09/28/06 eligibility determination date was later changed to 10/10/06 by mutual agreement of both parties as evidenced in [parent]'s handwritten note and the associated school notice of meeting.

With respect to Allegation 1, the Complaints Investigator concludes that the school and District were in compliance with the federal law with respect to procedures for students who enter the new school year with an IEP from another state.

**Allegation 2**

§§ 300.301, 300.303, 300.304 and 300.305 establish the procedures for conducting initial evaluations, reevaluations and the review of existing evaluation data. Initial evaluations are conducted before the initial provision of special education services. Reevaluations are conducted when the public agency determines that a reevaluation is warranted, or if the parents request a

[4] See, §300.303 (Reevaluations) and §300.306 (Determination of eligibility).
[5] Data were provided by the District documenting that speech services were provided.

reevaluation. A review of existing data must occur during both the initial and reevaluation processes.

Based on information gathered and careful review of the documentation provided by both parties, the Complaints Investigator makes the following findings of fact:

- Consent for Evaluation was signed by [parent] on 9/18/06.

- Because the District adopted the Virginia IEP, the evaluation conducted by the District in the Fall of 2006 was not an initial evaluation; it was a reevaluation. As a part of the reevaluation, the District not only conducted its own evaluations but also considered previous evaluations conducted by the previous school district, and evaluations sought by the parent privately.

- The District considered the results of the 07/06 Virginia private OT and PT evaluations.

- Conducting a Functional Behavior Assessment (FBA) was not refused by the District at the 10/10/06 IEP meeting. It was noted in the final IEP dated 10/10/06 and sent to [parent] on 11/13/06, that a FBA would be conducted by the school staff and, in fact, was conducted by the school psychologist, Paul McConnell, with results being reported during the 12/14/06 IEP meeting.

- At the request of [parent], the District has completed the following additional assessments: Test of Auditory Perceptual Skills (TAPS) and Sensory Integration and Praxis Test (SIPT). The results of these assessments were reported during an IEP meeting on 12/14/06.

According to federal regulations, students who transfer from another state *during the school year*, and receive an evaluation by the new school, would be considered an initial evaluation. [Student] did not enter Logan Valley RE-1 School District during the school year.

With respect to Allegation 2, the Complaints Investigator concludes that the school and district were in compliance with the federal law with respect to procedures for conducting a review of existing evaluation data, reevaluation and determination of eligibility.

**Allegation 3**

Based on information gathered and careful review of the documentation provided by both parties, the Complaints Investigator makes the following findings of fact:

- On the first day of school, [parent] sent or brought a list, dated 09/05/06, of requested accommodations and modifications to the school.[6]

[6] The list of requested accommodations was submitted by both parties.

- Mrs. Chrisman, the school principal, sent a letter dated 09/07/06 to [parent] indicating that the IEP team, including the parent will consider [parent]'s requests as a team.

- The student's regular education teacher has consistently modified written work as demonstrated by the documentation submitted by both the parent and the District.[7]

- The 10/10/06 IEP, which was signed by [parent], states that "assignments may be modified in length/amount of writing at teacher discretion and by success rate (5 sentences on length and then a scribe)". The IEP does not state that *all* assignments will be modified or accommodated.

- The IEP dated 10/10/06, which was signed by [parent], incorporates her recommendations into the list of Special Education and Related Services Accommodations/Modifications section. Although not stated [parent]'s exact terms, the ideas are clearly represented.

- The student's regular education teacher began making reasonable accommodations for [student] regarding work length on writing assignments as early as the 2nd day of school, as evidenced by work samples.

With respect to Allegation 3, the Complaints Investigator concludes that the school and district were in compliance with the federal law with respect to implementing the IEP which was agreed to and signed by all parties including the parent, as it is written.

**Allegation 4**

Based on information gathered and careful review of the documentation provided by both parties, the Complaints Investigator makes the following findings of fact:

- Tiger DEN (Doing Everything Necessary) is a school wide regular education intervention as part of the school wide and district wide positive behavioral support program to improve responsibility. Tiger DEN is not "lunch detention"; rather, it is homework assistance for any child in the school who needs additional support to complete homework assignments.[8]

- Tiger DEN is not in-school suspension and, therefore, does not fall under the IDEA's student discipline procedures.[9]

- [Student]'s IEP dated 10/10/06, which is signed by the parent, provides an accommodation to the Tiger DEN. "[Student] may leave Tiger DEN once her work is completed."

[7] Multiple documents and work samples covering multiple dates over time were submitted by both parties.
[8] See, document entitled "School Wide Positive Behavior Plan" and the Campbell School newsletter.
[9] See, §300.530

- If a student is attending Tiger DEN more than 2-3 times per week consistently then a referral should be made to the Student Intervention Team (SIT).[10]

- As of 1/23/07, [student] has attended Tiger DEN 13 times (5 months of school which average 2.6 times per month).

- The Functional Behavior Assessment (FBA), which was conducted per parent request made at 10/10/06 IEP meeting, does not indicate a need for a behavior intervention plan.

- [Parent] and [student] signed the homework policy statement form provided in the Open House packet on 08/31/06. Although not dated, the note on top of the form indicates that the signed homework policy statement form was to be returned the first day of school.

- [Parent] has modified [student]'s homework assignments beyond what is agreed to in the 10/10/06 IEP, as evidenced in her notes to the teacher in the planner, other notes to the teacher and handwritten notes on [student]'s homework pages. When homework is not complete, [student] has attended Tiger DEN per school rules.

With respect to Allegation 4, the Complaints Investigator concludes that the school and District were in compliance with the federal laws with respect to discipline procedures. Tiger DEN is a school wide and district wide positive behavioral support for all students. [Student]'s IEP team determined that the Tiger DEN was appropriate for her, and would be implemented with the one IEP team approved accommodation. Although the parent may disagree with the methodologies chosen by the District, courts have consistently ruled that districts have the discretion to choose methodologies as long those methods result in benefit for the child.

**Allegation 5**

§300.503 requires that the public agency provide the parent with written notice a reasonable time before the public agency: (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

- As indicated in an earlier finding of fact, above, Tiger DEN is not a form of in-school suspension or other disciplinary removal. [Student] was not being removed from her special education services within the regular education classroom, nor was she removed from instruction in the regular education classroom.[11]

- With regard to Tiger DEN, the District did not propose or refuse to initiate or change the identification, evaluation, or educational placement of [student], or provision of FAPE.

[10] Per the documentation submitted by the District.
[11] See, §300.536, which defines a disciplinary change of placement.

With respect to Allegation 5, the Complaints Investigator concludes that the school and District were in compliance with the federal laws with respect to providing prior written notice to the parent.

**Allegation 6**

Based on information gathered and careful review of the documentation provided by both parties, the Complaints Investigator makes the following findings of fact:

- The IEP dated 10/10/06 states that staff will use "positive re-direction when [[student]] is not on task", "allow for frequent breaks between quiet activities", "pair visual and verbal cues, and "reward [student] for appropriate on-task and respectful classroom behaviors".

- [Student] is participating in school wide positive behavioral supports program, for which she has earned rewards (Paw Charms and Tiger Cub Club Certificate).

- [Student]'s behavior has not been problematic in class or school; therefore, the District has not developed an individualized behavior support system for her.

- A functional behavioral assessment (FBA) conducted by the school psychologist indicated that [student]'s behavior was well with in the normal expectations, with no problematic behavior which would require a behavior intervention plan.

- In the Campbell student positive behavior handbook, the statement -- "The student behavior/discipline plan is a support and individual behavior program for students with unique and/or exceptional needs"-- refers to unique and exceptional needs in the area of behavior. [Student] does not have behavioral needs that would require a behavior intervention plan (BIP).[12]

With respect to Allegation 6, the Complaints Investigator concludes that the school and District were in compliance with respect to providing positive behavioral supports as indicated on [student]'s IEP. The FBA conducted by the school psychologist and reviewed by the IEP team, including the parent, did not indicate a need for a behavior intervention plan beyond the school wide positive behavior plan.

**Allegation 7**

§§300.320, 300.321, 300.322 and 300.324 establish the requirements and procedures for IEP content, development, review, revision and also for IEP team membership. The public agency must ensure that all required content is included in the IEP; that all required team members are present or properly excused; and that each IEP meeting is scheduled at mutually agreed upon dates and time so that the parent can be an active participant.

[12] As documented in the FBA and other school documents showing [student]'s successes with social and behavioral skills.

Based on information gathered and careful review of the documentation provided by both parties, the Complaints Investigator makes the following findings of fact:

- [Parent] was in attendance and participated in the development of the IEP dated 10/10/06, as evidenced by her signature on the IEP document.

- The IEP team considered and included specific recommendations for accommodations and modifications presented by [parent] during the 10/10/06 IEP meeting.

- The District considered the parent's recommendations, and incorporated those suggestions into the goals, objectives, accommodations and modifications sections of the IEP over the course of three meetings held on 10/10/06, 10/25/06 and 11/03/06.

- The 10/10/06 IEP contains all required components as described in the federal regulations.

- An IEP meeting with all required participants took place on 10/10/06.

- A follow up meeting was held on 10/25/06. The 10/25/06 meeting was convened at the parent's request in order to address goals, objectives, modifications and accommodations that she wished to see added/changed on 10/25/06. The date and time for the 10/25/06 meeting was agreed to by the District and the parent at the end of the 10/10/06 IEP meeting. Given this agreement, no notice of IEP meeting was required. The 10/25/06 IEP meeting did not include the student's regular education teacher or school principal. Changes were discussed and notes were taken to incorporate those changes into the yet to be signed IEP. On 11/03/06, Christine Hauer (special education coordinator) met with [parent] to review the IEP document that reflected the 10/10/06 and 10/25/06 meeting discussions. The purpose of that meeting was not to make any changes to the IEP but, rather, to ensure that the IEP as written correctly reflected the team decisions made at the 10/10/06 and 10/25/06 IEP meetings. [Parent] signed the IEP document on 11/3/06, and a copy was given to [parent]. Ms. Cox (special education director) reviewed the 11/3/06 IEP with other team members to discuss the final IEP. This meeting occurred between 11/03/06 and 11/13/06; however, the exact date of this meeting is undetermined. Between 11/03/06 and 11/13/06, Ms. Cox made some edits to the already signed IEP document. Those edits involved correcting typographical errors and adding missing dates to the PLEP section. A copy of the edited IEP was sent to [parent] 11/13/06.[13]

- The copy of the IEP given to [parent] on 11/03/06 contains missing dates and typographical errors which were corrected and the final copy of the IEP was sent to [parent] on 11/13/06.

- The meeting held on 10/25/06 was not attended by the student's regular education teacher and school principal, both of whom were required IEP team members. The District and parent did not agree ahead of time to excuse these members, nor were they formally

[13] Per documents provided by both parties and telephone interview with Ms. Cox.

excused under the provisions provided for in the federal regulations.[14] This meeting does meet the definition of an IEP meeting,[15] because the IEP was not completed at the 10/10/06 meeting, and the purpose of the 10/25/06 meeting was to develop, review and revise the IEP document that was partially developed at the 10/10/06 IEP meeting.

- The 11/03/06 meeting was not an IEP meeting as defined in §300.501(b)(1). Because it was not an IEP meeting, the IDEA requirements regarding required IEP team members and notice of the meeting were not applicable.

- The discussion between school and district members which occurred between 11/03/06 and 11/13/06 during which the final draft of the IEP (which was developed during the 10/10/06, 10/25/06 and 11/03/06 meetings) does not meet the definition of a meeting and, therefore, did not require parent participation.[16]

With respect to Allegation 7, the Complaints Investigator concludes that the school and District were in compliance with respect to developing an IEP that included all content requirements, and with ensuring that the parent had an opportunity to be an active participant during the IEP development. The school district is not required to accept all proposed goals, accommodations and services that parents bring to the team, but it must consider those recommendations. The District must offer an IEP that it believes offers a free appropriate public education or FAPE. In this regard, the District met its obligation to offer FAPE because [student]'s IEP was developed properly and was reasonably calculated to confer some, and not trivial, education benefit upon [student].

The changes to the IEP made by Ms. Cox were to "clarify and to correct typographical errors." After painstakingly reviewing and comparing Draft #1, Draft #2, Draft #2 with notations from 11/3/06 meeting, and the Final IEP document, the Complaints Investigator finds that the changes made were intended to, and did, clarify dates related to the PLEP section and to correct typographical errors. Such changes were ministerial in nature. No changes were made to the substantive content of the IEP. The Complaints Investigator concludes that, with regard to the ministerial changes made by Ms. Cox, the District did not violate the IDEA.

The Complaints Investigator further concludes that the District's failure to ensure that all required IEP team participants were in attendance at the 10/25/06 IEP meeting did violate §300.321 (a). The Complaints Investigator further concludes that this violation was both procedural and technical in nature, and did not deny [student] a FAPE.

**Allegation 8**

Based on information gathered and careful review of the documentation provided by both parties, the Complaints Investigator makes the following findings of fact:

[14]See, §300.321 (e)
[15] See, §300.501(b) (1)
[16] See, §300.501 (b) (3)

- School data including report cards, teacher reports, and IEP progress data show that [student] is making progress in academic and social development.

- [Student] has missed 11 full days and 5 half days of school in the first 2 quarters of school.

- [Student] has been withdrawn from Campbell School as of 02/05/07 to be home schooled (per Dianne Cox)

- Prior findings of fact, above, further document the provision of FAPE.

With respect to Allegation 8, the Complaints Investigator concludes that the school and district were in compliance with federal laws with respect to providing a FAPE.

**Allegation 9**

Based on information gathered and careful review of the documentation provided by both parties, the Complaints Investigator makes the following findings of fact:

- The Determination of Disability document for Perceptual or Communicative Disability was discussed and agreed upon as the secondary disability at the 10/10/06 IEP meeting.

- The Determination of Disability document for Physical Disability (ADHD) was also discussed and agreed upon as the primary disability at the 10/10/06 IEP meeting.

- The District sent out a packet of all forms with the final IEP on 11/13/06, which was to include copies of both Determination of Disability documents. Only the Physical Disability form was included in the parent packet. The District's failure to provide the Determination of Disability documents was inadvertent.

- The District sent a copy of the Perceptual or Communicative Disability form on 12/11/06 by registered mail when it was notified in the formal complaint that the form was missing.

With respect to Allegation 9, the Complaints Investigator concludes that the school and District did not provide a copy of the Perceptual or Communicative Disability form available to the parent with the other IEP and eligibility documents, but that this omission was done inadvertently while copying the other eligibility determination IEP documents for the parent. The District provided a copy of the Perceptual or Communicative Disability document to the parent as soon as it became aware of the omission. The Complaints Investigator concludes that this inadvertent omission did not constitute a violation of the IDEA.

## REMEDY

Finding no violations of the IDEA regarding Allegation Nos. 1-6, and 8-9, no remedies are required. With respect to Allegation 7, the Complaints Investigator has concluded that the

District violated the IDEA when it failed to have all required IEP team members present at the 10/25/06 IEP meeting.

The Acting Federal Complaints Officer has carefully reviewed and hereby adopts the findings and conclusions of the Complaints Investigator. The Federal Complaints Officer therefore issues the following orders:

Unless appealed, within thirty (30) days of its receipt of this Decision:

1. The District shall acknowledge and accept each and every conclusion of violation set forth in this Decision;

2. The District shall review and revise, as necessary, its special education policies and procedures to ensure conformity with §300.321. No later than May 15, 2007, the District shall submit to the Acting Federal Complaints Officer copies of its policies and procedures showing conformity with §300.321.

3. The District shall ensure, through written guidance, professional development and/or other effective means deemed sufficient by the Acting Federal Complaints Officer, that all applicable District personnel have been informed of and are knowledgeable regarding the requirements of §300.321. No later than May 15, 2007, the District shall submit to the Acting Federal Complaints Officer sufficient evidence demonstrating that such written guidance, professional development and/or other methods have been provided to District personnel.

## CONCLUSION

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

Dated this 15th day of February, 2007.

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| Laura L. Freppel, Esq. | Brenda S. Van Gorder, MEd |
| Federal Complaints Officer | Complaints Investigator |