

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

Federal Complaint 2006:503

Pikes Peak BOCES

Decision

INTRODUCTION

This Complaint was dated 04/21/06 and was received in the office of the Federal Complaints Officer on 05/02/06. The response of the Pikes Peak BOCES (BOCES) was hand-delivered to the Federal Complaints Officer on 05/24/06. The Complainants' reply to the BOCES' response was received by the Federal Complaints Officer on 06/06/06.

The Federal Complaints Officer spoke by telephone with [Student's] mother on 05/05/06. The Federal Complaints Officer spoke with the BOCES' special education director in person on 06/14/06 and by telephone on 06/15/06.

The Federal Complaints Officer closed the record on 06/15/06.

COMPLAINANTS' ALLEGATIONS

The Complainants have made the following allegations:¹

- 1) The BOCES failed to provide the Complainants with appropriate notification of the eligibility determination meetings scheduled for 02/03/06 and 03/03/06, including information about the purpose of the meeting and who the meeting participants would be. The information provided by the Complainants indicates that they had did not know what the purpose was for the 02/03/06 meeting, which meeting was rescheduled to 03/03/06.
- 2) The BOCES failed to determine eligibility for [Student] within 45 school days. The information provided by the Complainants indicates that, at the 03/03/06 meeting, they agreed with the multidisciplinary team to postpone the eligibility determination to 05/16/06 but then changed their minds after further consideration and investigation of their rights.
- 3) The BOCES' failure to timely determine eligibility for [Student] has denied her a free appropriate public education. The information provided by the Complainants explains

¹ Two additional allegations were set forth in the Complaint but were rejected at the outset by the Federal Complaints Officer. The rejected allegations are addressed later in this Decision.

their understanding of what occurred at the 05/09/06 eligibility determination meeting. It is their understanding that the multidisciplinary team determined that [Student] was not eligible for special education at that time but that she did qualify under Section 504 of the Rehabilitation Act. The Complainants also state that it was their understanding that the multidisciplinary team did not determine [Student] to be *ineligible* for special education because interventions would be conducted during the Fall of 2006, and [Student's] eligibility for special education would be revisited if [Student] continues to struggle.

THE BOCES' RESPONSE

The BOCES responds as follows:

Allegation 1

The BOCES states that its typical practice is to combine the meeting to determine eligibility with the initial IEP development meeting in those cases in the event that the multidisciplinary team determines that the child is eligible for special education. The Notice of Meeting form used by the BOCES substantiates that practice.

The BOCES states that written notice of the 02/03/06 and 03/03/06 meetings was not provided to the Complainants. However, "...the District did its very best to keep the parents informed via telephone conversations." The BOCES' has provided no details about what information was discussed during those telephone conversations.

Allegation 2

The BOCES states that the multidisciplinary team, including the Complainants, met on 03/03/06, which was within the 45 school day time frame. "[The] team determined that further assessments were needed prior to identification. This was determined because of the progress [Student] was making and the possibility of continued progress with interventions. If the team had not made this determination to gain further progress, we would have made a decision on eligibility based on the existing information."

Allegation 3

The BOCES states that, on 05/09/06, the multidisciplinary team, including the Complainants, met and determined that [Student] was not eligible for special education. "The team determined that [Student] was eligible for a 504 and the 504 was written and is in place."

FINDINGS OF FACT AND CONCLUSIONS

I. Allegation 1

Under the IDEA² and its implementing regulations³, a public agency is required to timely notify parents when the child's IEP team is being convened (1) to develop an initial IEP for a child who has been determined to be eligible for special education, and (2) to review and revise an existing IEP. The required notification must include information indicating the purpose, time and location of the meeting, and who will be in attendance. *See*, §300.345(a). The public agency may combine the eligibility determination meeting with the IEP development meeting. If so, the notification requirements for IEP team meetings must be met. *See*, Question 19 of Appendix A, at p.12478, Federal Register: March 12, 1999 (Volume 64, Number 48).

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

- A. During the relevant time period, it was the BOCES' practice to convene combined eligibility determination/IEP development meetings.
- B. The 02/03/06 meeting was rescheduled to 03/03/06
- C. The 02/03/06 meeting -- rescheduled to 03/03/06 -- was an eligibility determination meeting, which would have also been a meeting to develop the initial IEP if the multidisciplinary team determined [Student] to be eligible for special education.
- D. With regard to the meeting initially scheduled for 02/03/06 meeting and rescheduled to 03/03/06, the BOCES did not provide the required meeting notification to the Complainants. As a consequence, the Complainants did not have an adequate understanding of what the purpose of the 03/03/06 meeting was or who would be in attendance.

With respect to Allegation No. 1, the Federal Complaints Officer therefore concludes that the BOCES violated §300.345(a).

II. Allegation 2

Under the IDEA, the initial evaluation must be completed within sixty (60) days of receiving parental consent for the evaluation or within the State's timeframe. *See*, §1414 (a)(1)(C)(i)(I). Colorado's timeframe requires the initial evaluation to be completed and the initial IEP to be developed within forty-five (45) school days from the

² 20 U.S.C. §1400 *et seq.* Hereafter, the IDEA will be referred to by section number only – e.g., § 1414(d).

³ 34 CFR Section 300.1 *et seq.* Hereafter, the IDEA 1997 regulations will be referred to by section number only, e.g., §300.345.

date that parental consent was obtained. *See*, Rule 4.01(4)(a) of the Rules for the Administration of Exceptional Children’s Educational Act (ECEA).⁴ However, the parents of a child with a disability and the public agency may mutually agree to extend or waive any of the timelines prescribed by the IDEA or the ECEA.

Based on the documentation and other information submitted by the parties, the Federal Complaints Officer makes the following findings of fact:

- A. The BOCES obtained written parental consent for [Student]’s initial evaluation on 12/07/05.
- B. 03/03/06 was the 41st school day following the date when the BOCES obtained parental consent for the initial evaluation.
- C. At the 03/03/06 meeting, the multidisciplinary team discussed the need for additional testing and follow-up, including the Complainants’ request for follow-up assessment by the speech/language therapist based on their concerns with [Student]’s increased stuttering;
- D. The team, including the Complainants, agreed to extend the timeline for completing the initial evaluation to 05/16/06.
- E. On 04/03/06, following further consideration and investigation of their rights, the Complainants attempted to withdraw their agreement to extend the eligibility determination meeting to 05/16/06, and requested that special education eligibility for [Student] be determined no later than 04/14/06.
- F. After a series of email communications between the BOCES’ special education director and the Complainants, the BOCES offered a moved-up meeting date of 05/02/06. The Complainants were unable to attend a meeting on 05/02/06. The parties agreed to a meeting date of 05/09/06.
- G. On or about 04/28/06, the BOCES provided the Complainants with a compliant meeting notice for the 05/09/06 meeting.
- H. At the 05/09/06 meeting date, the multidisciplinary team determined that [Student] was not eligible for special education services. [Student] was determined to qualify for services under Section 504 and was placed on a Section 504 plan which included response to intervention (RtI) and progress monitoring services.

Based on the mutual agreement of the parties to extend the eligibility determination date to 05/16/06, the Federal Complaints Officer concludes that the BOCES did not violate §1414 (a)(1)(C)(i)(I) or ECEA Rule 4.01(4)(a).

⁴ 1 CCR 301-8. Hereafter, the ECEA Rules will be referred to by rule number only – e.g., ECEA Rule 4.01(4)(a).

Allegation 3

The parties agree that on 05/09/06, the multidisciplinary team, including the Complainants, met and determined that [Student] was ineligible for special education. The Federal Complaints Officer finds such to be the case. The Federal Complaints Officer therefore concludes that the BOCES has not deprived [Student] of a free appropriate public education (FAPE) because, having been determined ineligible for special education, she has no right to a FAPE.

Complainants assert that "...on May 9, 2006, [Student], in fact, was not deemed eligible – *however* she was also *not* deemed *ineligible*. What the team decided at the May 9th meeting, was that we would put in place a 504 for [Student], and that she would be further evaluated during the next school year, in the Fall of 2006...It was also the team's decision that if [Student] showed signs of struggle during the next school year, that eligibility would be revisited."

If the Complainants disagree with the multidisciplinary team's determination of ineligibility, the Complainants may request mediation and/or a due process hearing on that matter. If the Complainants disagree with the results of the BOCES' initial evaluation, they have the right to request an independent educational evaluation (IEE). The BOCES may agree to the IEE, in which case the BOCES is required to pay for the IEE. Alternatively, the BOCES may stand on its initial evaluation and request a due process hearing to defend its initial evaluation.

The Federal Complaints Officer notes that the [Student]'s Section 504 Plan establishes services built around an RtI model. It appears that the Complainants do not fully understand what the RtI model involves and how revisiting special education eligibility for [Student] fits within the RtI model. The Federal Complaints Officer suggests that BOCES and District personnel schedule another meeting with the Complainants to explain in detail the RtI model and answer any questions the Complainants may have around the RtI model and special education eligibility.

REJECTED ALLEGATIONS

By letter dated 05/08/06, the Federal Complaints Officer rejected two of the allegations made by the Complainants and explained why those allegations were rejected. The 05/08/06 letter is incorporated herein by reference and included as an attachment to this decision.

REMEDY

Within thirty (30) days of the date of the BOCES' certified receipt of this Decision, the BOCES' special education director shall submit to the Federal Complaints Officer a written statement that the BOCES recognizes and accepts as valid the violation found by the Federal Complaints Officer. This statement shall be accompanied by a corrective action plan developed to effectively address the violation found so as to prevent its recurrence not only as to this student but as to all students with disabilities for whom the BOCES is responsible. The Federal Complaints Officer reserves the right to request revision of the corrective action plan if she finds it to be insufficient. The BOCES' written statement shall further assure that any corrective

action to be taken by the BOCES will be completed as soon as practicable, but not later than 10/16/06. Upon timely completion of its corrective actions, the BOCES shall notify the Federal Complaints Officer in writing describing the corrective actions taken and completed, and the dates of their completion. This written notification shall be provided to the Federal Complaints Officer no later than 11/01/06.

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 this 19th day of June 2006.

Laura L. Freppel, Esq.
Federal Complaints Officer