

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

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**Federal Complaint 2007:510**

San Juan Board of Cooperative Services

**Decision**

**INTRODUCTION**

This Complaint, dated May 14, 2007, was filed by Student's parents (hereafter, the "Complainants") and was received in the office of the Federal Complaints Officer on May 21, 2007. Complainants later provided copies of relevant correspondence, a report of an independent educational evaluation of Student, and Individualized Education Program ("IEP") documents. The response of San Juan Board of Cooperative Services (hereafter, the BOCS) was received from its counsel on June 22, 2007. The response attached Student's April 20, 2007 IEP, subsequent correspondence, records of previous IEP meetings in 2006 and Progress Reports for Student during the 2006-2007 school year. On July 5 and July 6, 2007, Complainants forwarded copies of e-mail correspondence directed to the BOCS. The record in this matter was closed on July 6, 2007.

**ISSUE**

Whether the IEP document generated following the IEP team meeting of April 20, 2007, appropriately recorded the consideration of information presented and the opinions of the team members.<sup>1</sup>

**CONTENTIONS OF THE PARTIES**

The Complainants allege that the issue of Extended School Year ("ESY") services was raised at the IEP team meeting on April 20, 2007, but that team support for ESY services

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<sup>1</sup> This issue was defined in a letter to respondent dated June 1, 2007. The Complaint included allegations that Extended School Year services were necessary to provide a Free Appropriate Public Education ("FAPE") to Student and that the BOCS inappropriately denied these services. In a letter dated June 1, 2007, the Federal Complaints Officer advised Complainants that these claims would not be investigated as issues of FAPE may be resolved by a request for due process.

was not recorded in the IEP and was unilaterally overruled by the BOCS Special Education director in a letter written on May 7, 2007.

The BOCS contends that the issue of ESY was discussed at the April 20, 2007 meeting and that the determination that Student did not require such services reflected the views of the IEP team members.

### **FINDINGS OF FACT**

1. Student is a [AGE] male living with his parents within the boundaries of the Durango School District 9-R, a member district of the BOCS. Student is eligible for special education services in the category of [DISABILITY].
2. During all times relevant to this Complaint, Student was enrolled in the [GRADE] at [SCHOOL].
3. On December 5, 2006, Student's IEP convened to review his special education program. The extent to which Student required ESY services was discussed at that meeting. Pursuant to the written policy of the BOCS, ESY services are designed to keep regression to a minimum over school breaks and are provided to students "only to maintain essential skill retention."
4. The IEP document developed on December 5, 2006, indicated that Student's "[e]ssential skills are maintained across breaks. Regression data on fluency will be collected over Christmas break and Spring break and presented at the April transition meeting." Student's eligibility for ESY services was documented as "to be determined" by April 30, 2006.<sup>2</sup>
5. The record includes a "Parental Statement 4/20/07" setting forth Complainants' aims for Student's IEP meeting. The two-page statement addresses the alleged need for ESY services in multiple areas and was presented for discussion at the April 20, 2007 IEP meeting. Although Complainants requested that the statement be included as part of Student's IEP, it was not part of the documentation furnished by counsel for the BOCS.
6. The issue of the appropriateness of ESY services for Student was discussed at the April 20, 2007 IEP meeting as confirmed by Complainants, their advocate, Student's special education teacher, Ms. Sandy Seibert, and BOCS Director of Special Education, Mr. Randy Boyer.

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<sup>2</sup> In the judgment of the Federal Complaints Officer, this date contains a typographical error and should read "April 30, 2007." The same applies to "page 7 of 9" of the IEP document developed at the April 20, 2007 meeting.

7. The record suggests that Student performs well academically. The April 20, 2007 IEP document identifies a relative weakness in the area of reading fluency as a result of Student's dyslexia.

8. The extent of Student's regression over the Christmas and Spring breaks of the 2006-2007 school year was discussed during the April IEP team meeting in the context of AIMSWEB reading fluency assessments. Those assessments showed that Student did regress over school breaks, but subsequently recouped these skills upon returning to class. Complainants requested that ESY services be written into the IEP.

9. In e-mail correspondence dated April 25, 2007, Ms. Seibert opined that Student suffered regression in reading fluency over school breaks and noted that "research does connect fluency with comprehension." She expressed a concern over a potential drop in comprehension for Student (also included in a November 6, 2006 e-mail) and questioned whether the IEP team could accurately assess his ability to recoup skills after the summer break. She wrote, "[t]o adequately judge whether or not [Student] does require summer services we need a measure of comprehension from the end of a school year to the beginning of the next year."

10. The only reference to ESY services in the IEP document written on April 20, 2007, is as follows: "Essential skills are maintained across breaks. Measure skills in August at the high school to compare to fall scores. Will investigate options and reconvene to determine services, if needed." Student's mother, also an IEP team member, confirmed that "ESY and the Comprehension Goal were the two areas left to complete our discussion as the team and finalize [Student's] IEP."

11. There is no evidence in the record that Student's IEP team was reconvened at any time between April 20 and May 7, 2007.

12. On April 24, 2007, Mr. Boyer sent a written notice to Student's parents that stated, "ESY services are not warranted based on essential skills criteria and regression/recoupment data."

13. In response to an e-mail inquiry from Complainants' advocate on April 27, 2007, Mr. Boyer elaborated on the rationale behind the written notice in a subsequent letter to Complainants dated May 7, 2007.<sup>3</sup> The letter accurately stated that the IEP team had "considered the option of providing ESY programming." The letter further stated that ESY was rejected as an option because Student's academic progress "showed no evidence of regression or recoupment issues in any IEP goal area and no reason to predict that significant regression would occur during the summer of 2007." There is no indication that this latter finding reflects the judgment of Student's IEP team.

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<sup>3</sup> The first and last pages of the letter bear this date, although other pages indicate "May 8, 2007."

14. In a letter dated May 10, 2007, Complainants reiterated their request for ESY services and indicated that they would seek such services on their own if the BOCS refused to provide them.

### **CONCLUSIONS OF LAW**

An IEP is developed by an IEP team. 20 U.S.C. §1414(d)(3). An IEP team is comprised of educators, administrators, parents and others who are involved in the education of the student. 20 U.S.C. §1414(d)(1)(B). Meaningful participation of parents is essential to the success of the IEP process and special education as a whole. 34 C.F.R. §300.501(b). In enacting the Individuals with Disabilities Education Act, Congress stated its specific intent to strengthen the role and responsibility of parents to ensure such meaningful participation. 20 U.S.C. §1400(c)(5)(B). In Colorado, IEP teams should reach decisions through group discussions and consensus. If consensus cannot be reached on an issue, then the majority and minority opinions of the team members shall be recorded as part of the IEP document. ECEA Rule 4.02(6)(c). An IEP document must also include a statement of the concerns of the student's parents for enhancing the education of their child. ECEA Rule 4.02(4)(b).

Here, there is ample evidence that the IEP team meeting of April 20, 2007, included a discussion of the appropriateness of ESY services over the summer. What is missing, however, is any documentation of the parents' views or difference of opinion among the team members regarding this issue. Complainants' written statement was not appended to the IEP and the information pertaining to Student's regression in the area of reading fluency and comprehension, though an area of educational need specifically addressed in the December, 2006 IEP, was omitted. While this Decision makes no finding regarding whether Student required ESY services to receive FAPE, the BOCS did fail to properly document consideration of this issue. Additionally, the IEP document left the issue of ESY open for further investigation after which the IEP team was to reconvene. The record shows that the issue was unresolved in the minds of Student's mother and Ms. Seibert, if not other team members. However, four days later, without any further meeting of or input from the IEP team, Mr. Boyer issued a written statement on behalf of the BOCS finding that ESY services were not warranted. It is therefore clear from the record that the decision that ESY services were not warranted did not reflect the judgment of the IEP team.

### **REMEDY**

Complainants established that the BOCS failed to document the debate regarding ESY services at the April 20, 2007 IEP meeting. Complainants also established that the BOCS implemented a change to the April 20, 2007 IEP without the involvement of the IEP team. The BOCS is therefore directed to reconvene Student's IEP team as soon as is

practicable to permit an open discussion and full consideration of Student's need for ESY services. Unless Complainants request to delay convening the IEP team, the meeting shall occur no later than August 8, 2007. Additionally, the BOCS shall create an addendum to the April 20, 2007, IEP document recording therein the views expressed by Student's parents, including but not limited to their written statement of 4/20/07, as well as the majority and minority opinions expressed by team members on the issue of ESY.

The BOCS shall submit to the Federal Complaints Officer valid documentation of its compliance with the terms of this Decision no later than August 31, 2007. The Complaints Officer reserves the right to request additional information if the documentation submitted by the BOCS is not sufficient to show that ordered corrective action has been completed.

### **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 20th day of July, 2007.

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Keith J. Kirchubel  
Federal Complaints Officer