

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

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**Federal Complaint 2007:513**

Mountain BOCES

**Decision**

**INTRODUCTION**

This Complaint dated October 31, 2007, was filed by [COMPLAINANT] (hereafter, the “Complainant”) and was received in the office of the Federal Complaints Officer on November 6, 2007. The response of Mountain BOCES (hereafter, the “BOCES”) was timely received on December 3, 2007. The BOCES’ response attached portions of Student’s April 28, 2006, and February 23, 2007 Individualized Education Program (“IEP”) documents as well as calendars for the 2006-07 and 2007-08 school years and records of deliveries of speech-language services to Student during those periods. The BOCES’ response was transmitted to Complainant on December 6, 2007, inviting a reply to the information therein. No response was received from Complainant. Accordingly, the record in this matter was closed on December 20, 2007.

**ISSUE**

Whether the BOCES provided speech language therapy services to Student as specified in his IEP documents during the period October 31, 2006, through October 31, 2007.

**CONTENTIONS OF THE PARTIES**

The Complainant alleges that Student did not receive any direct speech language therapy services specified in his IEPs during the entire 2006-07 school year and the 2007-08 school year through the date of the Complaint. The Complainant claims that Student is owed 43 hours of direct compensatory services, being the amount Student was allegedly shorted.<sup>1</sup>

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<sup>1</sup> Complainant calculates her request for compensatory education based on a “one hour per week” formula. As set forth in Findings of Fact No. 3 and No. 5, Student was to receive three hours of direct services per month.

The BOCES concedes that Student did not receive all of the services specified in the IEPs dated April 28, 2006 and February 23, 2007. It states that diligent recruiting and retention efforts failed to secure the services of a qualified speech language pathologist on a consistent basis. Additionally, the BOCES maintains that absences on the part of Student and scheduling conflicts involving the speech pathologist contributed to the shortage of direct services. The BOCES calculates that Student was shorted 27.25 hours of direct services from the beginning of the 2006-07 school year through the date of the Complaint.

### **FINDINGS OF FACT**

1. Student is a [AGE] year-old attending high school in the Eagle County School District. None of the records provided by the parties describe Student's disability, but his special education eligibility is not disputed.
2. During the 2006-07 school year, student attended the [GRADE]. He currently attends the [GRADE].
3. On April 28, 2006, Student's IEP team convened and created a program of special education instruction and services for him. The portions of the IEP included in the record document Student's need for speech-language therapy services. Student was to receive three hours per month of direct services and one hour per month of indirect services (staff consultation) in the area of speech.
4. During the period between October 31, 2006 and February 23, 2007, delivery of speech language therapy services to Student was sporadic and consistently short of the hours specified in the IEP document. Analyzing the service records provided by the BOCES, the Complaints Officer finds that Student was shorted 4.75 hours of direct speech language therapy during this period.<sup>2</sup>
5. On February 23, 2007, Student's IEP team convened and created a new IEP document for him. The new IEP continued to specify the same quantity of speech language therapy services as the previous IEP.
6. During the period between February 26, 2007, through the filing of the Complaint on October 31, 2007, delivery of direct speech language therapy services continued to be sporadic and less than the amount specified in the IEP. Significantly, Student received no direct services during the first two months of his [GRADE] year. In total, Student was

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<sup>2</sup> The service delivery records were furnished to Complainant, but elicited no response. Accordingly, the Complaints Officer treated these records as accurate. However, some entries in these records did not establish that specified services were provided or that the failure to provide them was justified. In those cases, the discrepancy was resolved in favor of the Student.

shorted 11.75 hours of speech therapy following the implementation of the February 23, 2006 IEP through October 31, 2007.

7. There is no dispute among the parties pertaining to the appropriateness of the direct services specified in the IEP. The failure to provide such services necessarily caused an adverse impact on Student's educational progress from October 31, 2006, through October 31, 2007.

8. Since the filing of this Complaint, the District has taken steps to ensure that Student will receive direct services specified in the IEP and that requiring speech staff to attend IEP team meetings during times when they are scheduled to deliver services to students will no longer occur.

### **CONCLUSIONS OF LAW**

It is well established that a school district must provide special education services that comport with a student's IEP as one element of a free appropriate public education. *Board of Educ. Of the Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176 (1982). Here, Complainant contends that the District did not provide the direct services set forth in the April, 2006, and February, 2007 IEPs. The BOCES concedes that Student did not receive the proper quantity of services from October, 2006, through October, 2007. The reasons given by the District—that it had a very difficult time recruiting and retaining qualified speech language therapists and that therapists were attending IEP team meetings when they were committed to be providing services—do not excuse the failure to provide what was offered and accepted in the IEP. To its credit, the BOCES takes responsibility for the shortage of services. Additionally, the BOCES presented evidence as part of its response that the problems that led to the shortage of services to Student have been identified and solved.

There is no documentation of Student's progress toward his special education goals and objectives during the time period covered by the Complaint. Additionally, it is logical to conclude that direct services which both sides agree were appropriate for Student were also necessary to permit him to advance toward attainment of his goals and objectives. Thus, the failure to provide such services must have adversely affected Student's educational progress. In summary, the services provided to Student from October 31, 2006, to October 31, 2007, did not comport with the substance of the November, 2006 IEP.

### **REMEDY**

Complainant established that the District failed to provide direct services specified in Student's operative IEP. In order to compensate for the educational harm caused by the

failure to provide direct services to Student, the District shall provide to Student 16.5 hours of direct speech language services, in addition to any services he currently receives, that are designed to advance Student toward his currently implemented IEP goals and objectives. Lastly, the additional compensatory services shall be provided at a time and place convenient to Student and his family.

Student's compensatory education program shall be completed no later than May 31, 2008, and the BOCES shall provide documentary evidence of compliance with this decision to the Complaints Officer no later than June 30, 2008. Taking into account the BOCES' acknowledgement of the problems that led to the shortage of services to Student and the steps it demonstrated it had taken to prevent their recurrence, no further corrective action is warranted in this case.

### **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 4th day of January, 2008.

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Keith J. Kirchubel  
Federal Complaints Officer