

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION BRANCH**

**FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 06-07  
(February 10, 2006)**

On November 25, 2005, Parents filed a complaint with the Delaware Department of Education on behalf of their daughter (“Student”). The complaint alleges that Student’s rights under state and federal laws relating to children with disabilities have been violated by the school district in which she resides and by the school she attends. More specifically, Parents state that the School did not follow their daughter’s Behavior Support Plan and that several components of the IEP were not implemented.

Investigation of the complaint has been conducted as required by existing federal regulations at 34 C.F.R. § 300.660 to 300.662 and according to the Department of Education’s regulations and procedures, including Sections 15.12 to 15.14 of the Administrative Manual for Special Education Services (“AMSES”).

Specifically, the investigation included interviews with Parents; the Special Education Director of Student’s school district of residence; the Principal and Program Specialist for the School Student attends; several of Student’s teachers; and Student’s school Psychologist, School Nurse and Paraprofessional. The investigation also included reviewing Student’s IEPs and behavior support plan, IEP meeting minutes, progress reports, an occupational therapy report, Student’s home-school communication book, behavior data and graphs, telephone logs, nursing reports and student injury forms.

*(Note: Parents’ letter of complaint lists numbered issues, some of which, after clarification, were the same concerns. I have used Parents’ numbering system to organize my findings and conclusions.)*

**Background**

1. Student is 5 years old and is eligible for special education and related services.
2. Student is a resident of District A. Student’s education is administered by an approved inter-district special program (“Special Program”) for children with disabilities operated by District B. Student was receiving her education at a school (“School”) within the Special Program in District B.
3. Student entered School and the Special Program on September 13, 2004. Parents withdrew student from School on November 4, 2005, and she has not returned to School or District A since that time.

***ISSUE #1***

## **Findings of Fact**

1. Parents' letter of complaint states that an incident occurred on "November 4, 2005 with regards to two adults restraining [our daughter] into a chair (one was a big male and the other was a female aid) while the nurse was cutting her fingernails. We personally eye-witnessed this while we were in the [School], attending another one of her exhausting IEP's."
2. Parents state during interview that while exiting School from this IEP meeting, they heard Student screaming and crying as they were walking towards the exit. Father ran toward the noise and found his daughter in the nurse's office. When he walked into the office, he saw a female lying across his daughter's lap, a male sitting next to his daughter, with his arms around her and one hand holding her left hand, and the nurse holding the left hand and cutting Student's nails.
3. A "Staff/Student Incident/Injury Report" form from November 4, 2005, and accompanying written text, was signed by Nurse, Adaptive Physical Education Teacher (the male mentioned in Finding #2), and Paraprofessional (the female mentioned in Finding #2). This Report states that Student was removed from physical education class due to scratching herself and that brief hand immobilization was implemented as per the Behavior Support Plan ("BSP").
4. Staff noticed blood on Student's hands and brought her to Nurse. While cleaning wounds, Nurse noticed Student's "nails were long." Nurse decided to cut Student's nails. The Incident Report states that the male staff "held [Student's] arm and upper arm in such a position as the nurse could access the finger nails. [Student] was not resisting this assistance." The female staff was "crouched on the floor next to [Student] hugging and comforting her as she was still crying. [Student] was not resisting this contact."
5. All three staff provided similar information when interviewed concerning the incident on that day.
6. All three staff stated that while Student was crying while her nails were clipped, she was not screaming or resisting. All three staff stated during interviews that if Student had been resisting, they would have stopped as it would not have been safe to cut her nails.
7. Male staff stated Student's level of distress did not require restraint. Two classroom staff stated that they had requested, through Student's home-school communication book, for Student's fingernails to be cut as this would help with preventing bleeding if Student scratched herself. They state they did not receive any information back that this had been done, and felt that her nails were still long enough that if she scratched herself, she would bleed.

## **Conclusion**

District staff and Parent report contrasting descriptions of the nail cutting incident. Staff interviews indicate that staff was aware of the Behavior Support Plan and report implementing the immobilization of hands which led to identifying a wound which staff believed was caused by long nails. Given that a registered nurse was cutting the nails it appears that school was taking appropriate precautions for safety. While there is no IDEA violation with respect to Issue #1, it may be good policy for District B to describe for all parents through written policy the

procedures it uses when cutting nails.

## ***Issues #2, 3 and 4***

### **Findings of Fact**

1. Parents' letter of complaint includes concerns about particular services that School did not implement for Student. Parents are specifically concerned about the implementation of a Picture Exchange Communication System ("PECS") in Parents' home (Issue #2), physical therapy services in the home (Issue #3) and a brushing program as part of occupational therapy services (Issue #4).
2. Various documents, and staff and Parent interviews, indicate that each of these services was discussed by the IEP team or between Parents and School or District staff.
3. The IEP team did not agree to include any of these services in Student's IEP.
4. School explained that a home-based PECS system was not appropriate until Student was reliably and consistently using the system at school.
5. Student's IEP includes several physical therapy goals, but there is no indication that the team intended physical therapy services to be delivered in the home or that delivery in the home is necessary to provide Student an appropriate education.
6. Student's occupational therapy evaluation did not recommend a brushing program and Student's IEP program does not include such a service.

### **Conclusion**

Student's IEPs have not included a home PECS system, home physical therapy services or a brushing program. Nor is there any indication that such services are necessary to provide Student an appropriate education. Accordingly, I find no violation of special education law or regulations about these services.

## ***Issue #5***

### **Findings of Fact**

1. Issue #5 of Parents' letter of complaint states that School failed to "hire adequately trained teachers **before** the start of the school with regards to our daughter's main communication, as per her IEP."
2. School states that the teacher who worked with Student in September 2005 was a new employee. This teacher was not formally trained in the PECS system when hired; however, the school had established training for new staff in PECS by early October.
3. School assigned a paraprofessional who had been trained in PECS to Student's classroom. There was also a speech-language pathologist in the room several times a week to address questions from teacher or correct errors in PECS use if necessary.

### **Conclusion**

Special education regulations define “qualified personnel” as people who “have met SEA-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.” (34 C.F.R. §300.23).<sup>1</sup> There is no State recognized or required certification specific to the PECS system. In this case, School appropriately hired a certified special education teacher and planned for specific training regarding the PECS system early in the school year and ensured that other staff responsible for providing classroom-based services were sufficiently trained in PECS. Therefore, I find no violation of the IDEA with respect to Issue #5.

## ***Issues #6, 15 and 18***

### **Findings of Fact**

1. Several of the issues in Parents’ letter of complaint run to issues of general school management and operations. These concerns were investigated to determine whether they were in any way associated with a possible violation of special education laws or rules.
2. For example, Parent states that School was negligent because Student was left unattended in the bathroom (Issue #6). Student’s IEP does not have a requirement for one-on-one supervision or for staff to be in “line of sight” of student at all times. There was no indication that Student needs such supervision, particularly since the bathroom is in the classroom and staff members remain in close proximity to Student while she is in the bathroom.
3. Parents are also concerned that the School did not agree to place Parents’ verbal behavior therapy consultant into Student’s classroom (Issue #15).
4. Parents’ letter of complaint states that School failed to properly document IEP meeting minutes (Issue 18). Detailed minutes were found for the September, October and November IEP meetings.

### **Conclusion**

Our investigation has confirmed that several of the issues raised by Parents, even if true, do not present violations of special education regulations. There is no special education requirement that children with disabilities be directly attended in the bathroom (Issue #6). Similarly, District and School are under no special education obligation to hire staff or consultants requested by families (Issue 15). Special education law permits, *but does not require*, minutes to be taken of IEP meetings, either by a stenographer or by “disclosed recording device.” (14 *Del.C.* §3131).<sup>2</sup>

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<sup>1</sup> Most of the provisions of the *Individuals with Disabilities Education Improvement Act of 2004* became effective on July 1, 2005 and new federal implementing regulations have been proposed. Those statutory and proposed regulatory changes do not significantly change the provisions pertinent to this investigation. Accordingly, for ease of reference, citations in this Report continue to be to state and federal regulations promulgated as part of the 1997 reauthorization of the IDEA.

<sup>2</sup> I explained to Parents during my investigation that they have the right to audiotape IEP meetings at their expense and suggested that they inform School of this request before a meeting in the event that School also wants to tape the meeting. In any event, since special education laws and regulations do not require the agencies to take minutes of, or record, IEP meetings.

Thus, Parents' Issues #6, 15 and 18, even if true, do not present a violation of special education requirements. Rather, our investigation confirmed that these Issues run to the Districts' and School's general management strategies and practices. Since our authority to investigate parents' concerns is limited to possible violations of special education law or regulations, we make no findings with respect to these issues.

## *Issue #7*

### **Findings of Fact**

1. Parents' letter of complaint states that School failed to "implement our daughter's IEP regarding the PEC card system." (Issue #7). Two incidents were mentioned where the communication book was not immediately available to the student (during classroom time, as observed by a consultant working with Parents and while out of the building on a swimming trip).
2. Objective 2.1 in Student's May 24, 2005 IEP provides that "throughout the school day, [Student] will request items using a picture exchange communications system, verbalizations and/or gestures."
3. The IEP also provides that three methods of communication may be used with Student (PECS, verbalization and/or gestures).
4. School states that Student does have her own communication book. School does not dispute that at times a communication book may not be next to a Student, and it may be across the room.
5. Minutes from October 18, 2005 IEP meeting reference the swimming incident. School stated in response to Student not having her communication book while at swimming that "the [paraprofessionals] go & can read signs about what [Student's] needs are." Parents state that Student does now know "signs."

### **Conclusion**

Special education regulations define a "free appropriate public education" to include special education and related services that are "provided in conformity with" a student's IEP. (34 C.F.R. §300.13). Regulations also require that each teacher and service provider be informed of "the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." (34 C.F.R. §300.342(b)(3)(ii)).

As contemplated by her IEP, School did create a PECS book for Student with a variety of pictures. There is no requirement in Student's IEP that Student's PECS book be available to Student at all times. While this may be best practice, there are also times that students are being taught to access their communication book even if it is not immediately available. Therefore, I find no violation of special education requirements with respect to the communication book in the classroom.

The IEP is not clear whether there is a preferred method of communication when Student is in the community. Although three modes communication are referenced, it is unclear from the IEP whether Student could sufficiently communicate through sign. Parent believes Student cannot.

In this case, the communication book was not at the swimming site, and if communication in “sign” is not adequate, then this has the effect of removing the student’s “voice.”

Even assuming that the IEP required School to assure that Student’s PECS book was used for community outings, a single failure to provide the book does not amount to a failure to provide services “in conformity with” the IEP. In other words, the single failure to assure that Student had her PECS book at the swimming site does not rise to a denial of FAPE. Accordingly, I find no violation with respect Issue #7.

At the same time, and particularly given Parents’ concern about communication, I recommend and encourage the agencies to convene a meeting to discuss Parents’ concerns and to revise the IEP as appropriate to address the communication systems that will be used when Student is outside of the classroom.

## *Issues #8 and 17*

### **Findings of Fact**

1. Parents state they did not receive the IEP meeting minutes for the November 4, 2005 IEP meeting. (Issue #8).
2. No changes to the IEP were made as a result of this IEP meeting. IEP meeting minutes show that Parents left this IEP meeting prior to meeting completion.
3. School states that typically Parents leave IEP meetings with copies of the minutes.
4. During the course of this complaint investigation, School was made aware that Parent wanted a copy of the IEP minutes and sent Parents a copy of IEP minutes in January 2006.
5. Parents also state that School failed to “provide nursing reports when requested...” (Issue #17).
6. School agrees that this was an error on its part as Parents did request these notes on November 4, 2005.
7. Until School received a copy of this Complaint in early January 2006, it had forgotten this request. Staff state that when they saw this complaint, they sent copies of nursing reports immediately to Parents.

### **Conclusion**

While Parents are entitled to access their child’s education records, including any IEP meeting minutes that are actually taken, there is no requirement that such records *automatically* be provided to families. Rather, educational agencies are required to comply with a parental request for access to records “without unnecessary delay and before any meeting regarding an IEP, or any [due process] hearing...and in no case more than 45 days after the request has been made.” (34 C.F.R. §300.562(a)).

The School and Districts complied with this requirement with respect to the minutes of the November 4, 2005 IEP meeting. When School understood through this complaint process that Parent wanted a copy of minutes, they were sent. Additionally, there were no changes made to

the IEP. Therefore, I find no violation of the IDEA with respect to Issue #8.

Parents were not provided a copy of the requested nurse reports as required by Regulation §300.562(a). School did, however, promptly send copies of the reports at no cost to Parent after receiving a copy of the Complaint. While the failure to permit Parents access to the nursing reports at their first request is a regulatory violation, it has already been remedied, i.e., School supplied the reports once reminded of Parents' request. I conclude that the failure to send the requested reports to Parents was an oversight, not an indication of systemic failures or violations of regulations regarding parental access to records. Accordingly, no corrective action plan is required to address Issue #17.

## *Issues #9, 10 and 16*

### **Findings of Fact**

1. Issue #9 in Parents' letter of complaint largely restates concerns about the incident in the nurse's office on November 4, 2005 (see Issue #1 above). Additionally, Issue #9 states that Parents do not understand how School could "stand by and count how many times she scratched herself ... is also negligent in that they did not come up with any resolutions for this behavior ..."
2. Parent references a behavior chart, which Parent states showed that "they allowed her to scratch herself **at least 40 times.**" All relevant data charts reviewed showed no more than 10 scratches in any day.
3. Letter of Complaint Issue #10 restates that School did not implement Student's behavior support plan ("BSP").
4. The BSP states that "scratching" is one of the defined targets that falls under the behavior of "Temper Tantrums." Scratching was addressed through the "brief hand immobilization" procedure referenced in Issue #1.
5. Parents' letter of complaint also states that they were not fully informed of what occurred in an incident in front of school on October 25, 2005 (Issue #16). Parents stated during an interview that they received conflicting stories from a bus aide about what occurred in front of the school, based on something that a staff person said when placing Student on the bus. Parent states that bus aide said that teacher who put Student on bus said that Student had scratched herself during the day.
6. Staff stated that Student scratched herself while waiting for the bus at the end of the day. Staff brought Student to the nurse's office, and then put Student on bus. Parents and School state that teacher of Student called Parent to explain what occurred.
7. School staff interviewed were unaware of any conflicting reports prior to this Complaint. The Nurse's report filed indicates time and sequence of events, which are consistent with staff reports.

### **Conclusion**

My findings and conclusions about some of Parents' concerns about the incident in the nurse's office on November 4, 2005 are contained in Issue #1 above. To the extent that Parents are also complaining that School, District A and District B did not properly investigate that incident, or

the one occurring around bus loading time on October 25, 2005 (Issue 16), their concerns simply do not state an IDEA violation. Student's IEP, particularly her BSP, identified and addressed scratching as a behavioral concern. It is not surprising that Student would sometimes scratch herself, or need nursing care for her self-injurious behavior. It is not a violation of federal law that staff members had different understandings about precisely when and where Student scratched herself on November 4, 2005.

Issue #9 and 10 also bring up Parents' concern that staff did nothing while Student scratched herself. Staff interviews indicate that staff was aware of the Behavior Support Plan and report implementing the immobilization when behavior occurred. In other words, staff implemented Student's IEP as written. In addition, records and data indicate that Student did not scratch herself as often as Parent believes.

I find no violation with respect to Issues #9, 10 and 16.

## *Issues #11 and 12*

### **Findings of Fact**

1. Parents letter of complaint also states that School did not follow through on contacting Kennedy Krieger Institute about recommendations it made about verbal behavior therapy ("VBT"). Additionally, Parents state that School agreed to have staff trained on VBT and that one staff member would include a member of Student's IEP team.
2. Issue #12 in Parents' letter for complaint states that after VBT was discussed at two previous IEP meetings, that at the November 4, 2005 meeting, District said that VBT was a "specialized program." The complaint letter also states that School did not follow through on Parents' requests to do research on VBT and have a consultant work with their daughter's classroom staff.
3. Minutes from the September 16, 2005 IEP meeting state at the end that "Individuals as designated by DAP administrator will attend a Verbal Behavior workshop ... on October 21-22" and that "Administrator will identify a consultant to come to [School] to demonstrate verbal behavior program w/ [Student] dependent on consultant's availability." Parent also signed a statement that said "there are no modifications to the IEP at this time."
4. Minutes of the November 4, 2005 IEP meeting state that:
  - a. "Selected staff went to a workshop in October in New York. Selected staff will attend another workshop at the end of November ... current classroom staff [of Student] did not attend but that at least one team member is scheduled in November ... although the current classroom staff did not attend in October, participants to the workshop presented information re: workshop to the team members at a meeting."
  - b. "[School] also arranged for a Verbal Behavior consultant to present 7 hours of training with [School] staff ... she is scheduled to return on a forthcoming day ..."
  - c. The Director of the Special Program also shared that he had "reviewed literature and did not find evidence to support VBT..."



## **Conclusion**

Special education regulations provide that the results of an independent educational evaluation “[m]ust be considered by” Student’s IEP team. (34 C.F.R. §300.502(c)). While the IEP team must *consider* recommendations brought by parents or through independent educational evaluations, it is not obligated to adopt or implement any of these recommendations if the team members believe they have designed an appropriate IEP.

As reflected in meeting minutes, Student’s IEP team did consider the Kennedy Krieger evaluation and concluded that it needed more information about VBT before making a decision about whether VBT was necessary to provide Student a free appropriate public education. School planned a number of activities to acquire the information it needed and memorialized those activities in meeting minutes. School followed through on each of those activities in a reasonable and timely manner. The team’s careful approach to VBT is particularly understandable in light of Director’s concern that peer-reviewed literature was not available to support the use of VBT.

Therefore, I find no violation with respect to Issues #11 and #12.

## ***Issue #13***

### **Findings of Fact**

1. Parents also state that Student “did not make progress at all and in fact goals were manipulated and changed from what was given to us on November 4, 2005.” During an interview, Parents explained that at the November 4, 2005 IEP meeting, they were handed the Progress Report for Student. It had a progress update for a behavior goal that stated that current data shows that the behavior occurred .88 per day. They questioned during this meeting how something could occur .88 per day. Two weeks later, they received a Progress Report that showed the data to say 1 or fewer per day. Parents stated they had a copy of the report with the .88 per day on it. They were asked to fax a copy to DOE. At the time of this report, it was not received.
2. The Progress Report from November 7, 2005 states that Student behavior occurs “1 or fewer tantrums per day.” It also shows that Student made progress on 95% of her goals and objectives.
3. The Progress report from June 1, 2005 shows that Student was at the same level as the PLoP (Present Level of Performance). An IEP had just occurred on May 24, 2005. Student’s April 2005 Progress Report shows 91% progress on goals and objectives. Her January 2005 IEP Progress Report shows 83% progress on goals and objectives.

## **Conclusion**

Special education regulations require that a student’s IEP include goals and objectives “related to [m]eeting the child’s needs that result from the child’s disability to enable the child to be

involved in and progress in the general curriculum.” 34 C.F.R. §300.347(a)(2)(i)). IEP teams are required to review and revise the IEP “as appropriate to address...any lack of expected progress toward the annual goals....” 34 C.F.R. §300.343(c)(2)(i)).

Student did make progress on IEP goals and objectives as shown through progress reports for the previous school year. School was appropriately addressing areas where team members felt Student was not making progress as detailed in the progress report narrative.

Goals were not manipulated or changed from what was previously shown to Parent. Goals remained the same. If the School did change the data reported on the November 7, 2005 progress report from “.88 per day” to “<1 per day,” then this is simply restating the same data in a more comprehensible fashion. When the number of temper tantrums was averaged, apparently the rate was .88 or less than 1 per day. The meaning is the same. I find no violation of special education requirements regarding Issue #13.

## ***Issue #14***

### **Findings of Fact**

1. Issue #14 in Parents’ complaint letter states that School did not “invite [Student’s] full IEP team on October 18, 2005 and November 4, 2005.” Parents stated during an interview that while they agreed that Student’s occupational and physical therapists should not be at the September meeting, they did not agree to this for the October and November meeting.
2. Parents were properly noticed for both meetings, and meeting participants were included on these notices. Parents signed and returned both meeting notices.
3. All IDEA required participants were at the October 18, 2005 and November 4, 2005 IEP meetings.

### **Conclusion**

Parents were properly noticed for both meetings and were aware by that notice who was invited. Parents did not request additional staff to attend the meeting when they signed that they would be attending. The members required by the IDEA were in attendance. Therefore, I find no violation to the IDEA in respect to Issue #14.

## ***Additional Complaint***

### **Findings of Fact**

1. Parents’ final concern is about the “ethical practice of allowing a decision maker to be involved in more than one child’s IEP per family.”
2. Parents have other children with disabilities served by District A.
3. The same administrator from District A has been involved in special education planning for all of Parents’ children.

## **Conclusion**

Special education law and regulations do not prohibit a school district from having a single person act as their district's representative in IEP meetings in which the family has multiple children who have IEPs. Therefore, I find no violation with respect to this Additional Complaint.

Having found no denial of services or systemic regulatory violation, no corrective action plan is appropriate or required.

By: \_\_\_\_\_  
Brian Touchette  
Education Associate, ECEC Branch  
Assigned Investigator

## INDEX OF NAMES

*In Re: xxxxxxxxxxxxxx and Appoquinimink School District (DE AC-06-07)*

Student	xxxxxxxxxxx
Parents	Xxxxxxxxxxxxxxxxxxxxxxx
Special Program	Xxxxxxxxxxxxxxxxxxxxxxx
District A	<i>Appoquinimink School District</i>
District B	<i>Christina School District</i>
School	Xxxxxxxxxxxx
Special Education Director of District A	<i>MaryAnn Mieczkowski</i>
Principal	Xxxxxxxxx
Adapted Physical Education Teacher	Xxxxxxxxxxxx
Teacher A	Xxxxxxxxx
Program Specialist	Xxxxxxxxxxxx
Teacher B	Xxxxxxxxxxxxxxx
Psychologist	Xxxxxxxxxxxx
School Nurse	Xxxxxxxxxxxxxxxxxxx
Paraprofessional	xxxxxxxxx