

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2100.04
COMPLAINT INVESTIGATOR: Jennifer Campbell
DATE OF COMPLAINT: March 5, 2004
DATE OF REPORT: March 31, 2004
REQUEST FOR RECONSIDERATION: yes/no changes April 28, 2004
DATE OF CLOSURE: May 17, 2004

COMPLAINT ISSUES:

Whether the Indiana School for the Deaf violated:

511 IAC 7-18-2(a) by failing to provide the student a free appropriate public education (FAPE), specifically, failing to provide the student with instruction in accordance with grade-level standards, absent a case conference committee decision to the contrary.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, by:

- a. failing to provide agreed upon remediation;
- b. failing to provide classroom instruction for at least one week when the student changed classrooms; and
- c. failing to provide continued instruction in the student's current classroom.

FINDINGS OF FACT:

1. The Student is nine years old, in the third grade, and is eligible for special education and related services as a student with a hearing impairment.
2. The Complainant (the parent) alleges that the School failed to provide the Student a FAPE by teaching the Student approximately two-thirds of the second grade, language arts, State Academic Standards during Grade 2. The Complainant cannot specify which second grade standards were not taught to the Student. The Second Grade Teacher reported in the Progress Report/Summary of the Student's second grade year the following: "[Student] completed all of the second grade standards. [Student] understands all of the standards and can apply them appropriately." The Second Grade teacher stated that the second grade standards were taught; however, the Student did not complete the second grade student edition textbook. The Student failed the third grade ISTEP+ taken on September 15, 2003. The third grade ISTEP+ test assesses students' mastery of the kindergarten, 1st, and 2nd grade standards. The School acknowledges that although the standards were taught and progress was made, the Student had not achieved relative mastery of the standards with regard to the essential skills in English and language arts.
3. The School is accredited by the Indiana State Board of Education, the North Central Association of Colleges and Schools (NCA), and the Conference of Educational Administrators Serving the Deaf (CEASD). The school follows the Academic Standards of the Indiana Department of Education. Students are assessed through the State of Indiana's ISTEP+. The major focus of the Elementary program is to promote American Sign Language and English literacy skills. The curriculum follows the

Indiana Department of Education Academic Standards in the following subjects: language arts; mathematics; social studies; science; visual arts; physical education and health.

4. Pursuant to the Student's IEP for the second grade year, dated August 15, 2002, the Student was "placed full time in the general education curriculum with modifications for reading and English, (Monday-Friday, 8:00 a.m. to 3:10 p.m.)." The IEP also required the School to provide to the Student special education and related services in speech, language arts, and vocabulary. The annual goal in the area of language and reading skills was the following: "[Student] will improve her language skills and reading skills to third grade level." The Student is presently working on the third grade curriculum and Academic State Standards. The IEP does not state that the Student will not be taught the Standards. There was no agreement or decision made to not teach the standards to the Student.
5. Because of the concern with regard to the Academic State Standards not being completed during the second grade year, the School assessed the student's Grade 2 skills using the Harcourt Trophy series of Placement and Diagnostic Assessment test (a curriculum assessment testing students in how they are doing in meeting particular standards and consisting of items directly aligned to the Academic State Standards) on October 11, 2003, and the Indiana Standards Tool for Alternate Reporting (ISTAR) assessment test aligned to the Academic State Standards, on November 18, 2003, in order to determine if the Student's language arts skills were at grade level. The test results showed the Student had met the criteria for 2nd grade language arts skills and was appropriately placed in the third grade. Additionally, the results showed that a 3.1 reading level placement was appropriate for the Student at the CCC on November 19, 2003. The Complainant agreed to this and signed the IEP.
6. At the November 19, 2003, CCC meeting, the School offered tutoring as an additional support to the Student any time she needed it and the CCC agreed to provide thirty minutes of tutoring once a week during recess. However, no start date was established at this meeting. Due to a shortage of staff, the School had to hire a tutor, which delayed the start of the tutoring. At the CCC meeting on December 16, 2004, the CCC agreed to provide compensatory services of thirty minutes of tutoring twice a week for four weeks because of the delay. The Student was provided the compensatory services during the month of January 2004. Also, at the request of the Complainant, the School provided the Student with Extended School Year (ESY) services over the winter break of 2003. The Student is still receiving tutoring twice a week, thirty minutes each session. The School continues to provide compensatory services by tutoring the Student twice weekly. The purpose of the tutoring is to work on 2nd grade standards, primarily with regard to English/language arts.
7. The Complainant unilaterally removed the Student from the School due to a conflict with the Student's teacher from January 27, 2004 to February 6, 2004. As a result of the conflict, the February 4, 2004, CCC, agreed to move the Student to another classroom. The Student was provided with the missed work and given the opportunity to complete all missed assignments. A CCC meeting was held on February 25, 2004, to discuss the new placement and ESY services. The tutoring schedule was modified to provide tutoring one time a week during recess and one time after school to focus primarily on language arts and math.
8. At the February 4, 2004, CCC meeting, the School agreed to provide a teaching assistant in order to increase the opportunities for instruction in the current class to the Student, to help the six other students in the class, and to assist the Teacher with instructional activities.
9. The Complainant has failed to specify what instruction the School is failing to continuously provide to the Student in the Student's current classroom.

CONCLUSION

1. Findings of Facts #1 to #5 show that the School has provided the Student with a free appropriate public education. According to 511 IAC 7-27-8, the public agency, teacher, or other person may not be held accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives. Therefore, no violation of 511 IAC 7-18-2(a) is found.
2. Findings of Facts #6 to #9 show that the School did not fail to implement the IEP, specifically:
 - a. The School is providing the agreed upon remediation;
 - b. The School provided the Student with instruction during the Student's absence by sending work and materials home during the absence;
 - c. The School continues to provide special education and related services to the Student in the Student's current classroom setting. Therefore, no violation of 511 IAC 7-27-7(a) is found.

The Department of Education, Division of Exceptional Learners requires no corrective action based on the Findings of Fact and Conclusions listed above.