

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2227.05
COMPLAINT INVESTIGATOR: Alexandra Curlin
DATE OF COMPLAINT: September 9, 2005
DATE OF REPORT: September 27, 2005
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: October 17, 2005

COMPLAINT ISSUES:

Whether the Virtual Special Education Cooperative, Burriss Laboratory School violated:

511 IAC 7-27-3(a)(3) by failing to ensure that the case conference committee participants include one (1) of the student's general education teachers.

511 IAC 7-27-4(a) by failing to utilize the case conference committee to review or revise the student's individualized education program (IEP).

511 IAC 7-27-6(a) by failing to include the following required components in the student's individualized education program (IEP):

- (1) A statement of the student's present levels of educational performance;
- (2) A statement of measurable annual goals, including benchmarks/short term objectives, that describe what the student can be expected to accomplish within a twelve (12) month period;
- (3) A statement of the special education and related services and supplementary aids to be provided to the student;
- (5) The projected dates for the initiation of services and program modifications and the anticipated length, frequency, location and duration of services and modifications; and
- (8) A statement of the student's need for extended school year services.

511 IAC 7-28-3 by failing to follow the procedures required when transitioning a student to adult life.

511 IAC 7-27-6(a)(7)(B) by failing to inform the parents of the student's progress toward annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the twelve (12) month period.

511 IAC 7-27-5(c) by failing to provide the parent(s) with a copy of the written report of each case conference committee meeting.

511 IAC 7-23-1(p) by disclosing personally identifiable information about the student to the parents of another student and vice versa via the mail on January 28, 2004.

511 IAC 7-27-7(b) by failing to ensure that the student's teacher of record (TOR):

- (1) Monitors the implementation of the student's IEP;
- (2) Provides technical assistance and consultation to the student's general education teacher(s) and other school personnel working with the student; and
- (3) Is responsible for all other activities identified in 511 IAC 7-17-72.

511 IAC 7-25-6(b) by failing to obtain informed parental consent prior to conducting a reevaluation of the student completed on October 8, 2001.

511 IAC 7-23-2(b) by failing to amend the education record as requested regarding removal of the October 8, 2001, reevaluation report.

FINDINGS OF FACT:

1. The student (Student) is a high school age student eligible for special education and related services as a student with a hearing impairment. The Student participates in public school general education.
2. Regarding a meeting held at school on September 9, 2004, the parents believe it was a case conference, while the school believes the meeting was an informal meeting, not a case conference. Documentation submitted includes notes that were recorded on a form titled "Notes of Discussion at Case Conference" for September 9, although the notes do not appear to be attached to, or make reference to, any particular case conference report/IEP, nor do they indicate who participated in the meeting. Emails dated August 25, 30, and 31, 2004, submitted by both parties indicate that only the school principal and one teacher were intended to participate with the parents in this meeting. There is reference to the parents requesting that no general education teacher participate. No documentation was submitted by the school to verify actual participants and their roles.
3. The special education director acknowledges that the five (5) IEP components alleged to be missing from the current IEP are not present due to the school's misunderstanding of how to compose an IEP for a student receiving only consultation special education services. Neither the case conference report/IEP of January 28, 2004, nor the case conference report/IEP of February 14, 2005, contain documentation of these components.
4. The case conference report/IEP of January 28, 2004, does not contain any documentation of a transition plan. The case conference report/IEP of February 14, 2005, does contain a transition plan. A transition plan dated March 24, 2003, was submitted without an IEP. Neither IEP indicates that representatives from outside agencies were invited to attend the case conference. Neither transition plan indicates that information about adult services were given to the parents or Student.
5. No documentation was submitted by the school to verify that progress reports addressed IEP goals. Progress reports submitted by the parent do not address goals, nor are they dated so that it is clear to which IEP they are connected.
6. While the original letter of complaint alleged that notes from the meeting of September 9, 2004, were not given to the parent, subsequent documentation submitted by the parent includes notes from that meeting, reportedly received by the parents on February 24, 2005. No documentation was submitted by the school to verify that meeting notes are provided to the parents in a timely fashion.
7. The special education director acknowledges that a clerical error did occur in disclosing personally identifiable information about this Student to another family.
8. Documentation submitted indicates that two (2) teachers' names, one based at the Student's school and one based in location several hours distance from the Student, are recorded interchangeably as being TOR and teacher of service (TOS) throughout all paperwork, making it difficult to determine exactly who is to be held accountable as TOR. Documentation submitted by the school includes references to TOR activities in general since 1997, a narrative attesting to the believed fulfillment of some responsibilities to this particular

Student without specific documentation, and emails about an extensive effort to arrange a case conference and gather academic progress reports, but does not verify that all TOR requirements are being fulfilled.

9. For the evaluation conducted on October 8, 2001, in attempting to comply with the parents' request to destroy all records of assessments completed on that date, the special education director contends that possibly the school destroyed the written permission they believe they had obtained from the parents to conduct the evaluation. Therefore, no documentation was submitted to verify parental consent for that evaluation. However, documentation submitted by the school of a "triennial reevaluation planning guide" dated February 28, 2002, includes the parent's signature as agreeing that no further assessment is needed.
10. In response to the complainant's indication that upon review of the Student's education record on February 18, 2004, the evaluation report of October 8, 2001, was still in the Student's file, the special education director acknowledges that possibly not all copies of the evaluation report were destroyed.

CONCLUSIONS:

1. Finding of Fact #2 indicates that no documentation was submitted to verify the attendees and their roles at the meeting of September 9, 2004. While not every school meeting that parents participate in to discuss their child's education must be a formal case conference, when either the parent specifically requests a case conference or it appears to the parents that the activities occurring at the meeting are like a case conference, whether or not actual changes are made to the IEP, then all required parties must participate. Documentation submitted does indicate discussion of who was anticipated to participate in the meeting. However, a school shall not acquiesce to a parental request that any required party not attend a meeting that is in fact a case conference. A school must clearly distinguish the purpose of all meetings. Therefore, a violation of 511 IAC 7-27-3(a)(3) is found.
2. Finding of Fact #2 indicates that notes from the September 9, 2004, meeting are recorded on a form titled "Notes of Discussion at Case conference"; however, the notes do not appear to be attached to, or make reference to, any particular case conference report/IEP, and do not address any specific change(s) to the IEP. Therefore, no violation of 511 IAC 7-27-4(a) is found.
3. Finding of Fact #3 indicates that the five (5) IEP components are not present in either of the Student's IEPs. Therefore, a violation of 511 IAC 7-27-6(a) is found.
4. Finding of Fact #4 indicates that a transition plan is not consistently part of an IEP, and information about adult services has not been given to the parents. At the Student's current grade level, no representatives from outside agencies are required to be invited. A violation of 511 IAC 7-28-3 is found.
5. Finding of Fact #3 and #5 indicate that neither IEP contains goals and that while there is documentation that general academic progress was reported to the parents, in some cases via email, since there are no goals, there is no progress reported about the goals. Therefore, a violation of 511 IAC 7-27-6(a)(7)(B) is found.
6. Finding of Fact # 6 indicates that the parents received notes for the September 9, 2004, case conference more than five months after the meeting. Therefore, a violation of 511 IAC 7-27-5(c) is found.
7. Finding of Fact #7 indicates that personally identifiable information about the Student was disclosed to another family. However, the issue occurred more than one (1) year prior to the filing of the complaint and does not evidence a continuing or systemic violation, thus no conclusion will be made or corrective action required.

8. Finding of Fact #8 indicates that not all TOR responsibilities are being fulfilled as required, therefore a violation of 511 IAC 7-27-7(b) is found.
9. Finding of Fact #9 indicates that no documentation was submitted to verify parental consent to the evaluation of October 8, 2001, and the evaluation planning guide of February 28, 2002, does include parental consent. Therefore, the issue occurred more than one (1) year prior to the filing of the complaint and does not evidence a continuing or systemic violation, thus no conclusion will be made or corrective action required.
10. Finding of Fact #10 indicates that a copy of the evaluation report may still be maintained at the cooperative central office. Therefore, a violation of 511 IAC 7-23-2(b) is found.

The Department of Education, Division of Exceptional Learners requires corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

Virtual Special Education Cooperative, Burriss Laboratory School shall:

1. Convene a case conference, with all required participants, to revise the Student's IEP to clearly indicate the required components of an IEP, including a transition plan. The school must ensure that the IEP is an "agreed-upon IEP" with consent from the parents, and that the parents receive a copy within the required timelines. A copy of the CCC Report / IEP, including verification of the date it is given to the parents, shall be sent to the Division no later than May 13, 2005.
2. Inform the parents of progress on the IEP goals. A copy of the reports for the remainder of this school year shall be sent to the Division no later than June 10, 2005.
3. Ensure that the teacher of record maintains a brief written log of some type of completion of the activities that indicate fulfillment of the requirements in 511 IAC 7-27-7(b) and 7-17-72. A copy of the log shall be sent to the Division no later than June 10, 2005.
4. Provide an assurance statement, about the steps taken to amend the Student's entire educational record consistent with 511 IAC 7-23-2(b), to the Division no later than April 29, 2005.
5. Retrain all special education and administrative staff about special education requirements in 511 IAC 7-27-3(a)(3) and 7-27-4(a) regarding case conference procedures and IEP requirements. Documentation of who attended, date(s) of training, and which topics were presented shall be sent to the Division no later than September 30, 2005.