

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: 2250.05  
COMPLAINT INVESTIGATOR: Brian Simkins  
DATE OF COMPLAINT: April 26, 2005  
DATE OF REPORT: May 26, 2005  
REQUEST FOR RECONSIDERATION: n/a  
DATE OF CLOSURE: November 15, 2005

**COMPLAINT ISSUES:**

Whether the Shelbyville Central Schools and the Blue River Special Education Cooperative violated:

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

- (a) provide the student preferential seating;
- (b) reduce the student's assignments; and
- (c) provide the student an opportunity to use an Alpha Smart device.

511 IAC 7-25-6 by failing to conduct a reevaluation of a student receiving special education and related services after 36 calendar months have elapsed.

**FINDINGS OF FACT:**

1. The Student has been identified as having autism, a learning disability, a communication disorder, and a hearing impairment, and has been determined eligible for special education and related services.
2. The Student's IEP dated February 2, 2005, indicates that the Student is to have preferential seating. The Complainant specifically alleges that the Student did not receive preferential seating in band class. The Student's IEP does not specifically explain how this accommodation is to be provided in band class. In band class, students do not sit at desks in rows. Rather, students are seated in rows built up on risers while the band teacher conducts class from a podium where all students can be at eye and voice level. Also, a student in band class is assigned a seat, depending on what instrument he or she plays, in a section with others who play the same instrument to, among other things, receive both technical and aural reinforcement by hearing the same part of music played by the others. The Student was seated in row three of five rows. The issue of preferential seating in band class came to the fore when the Student was being bullied by another student. The band teacher moved the Student to a different seating location on April 19, 2005, several weeks after the Complainant's request.
3. The Student's IEP dated February 2, 2005, indicates that the Student is to have the number of assignments reduced. The IEP does not describe to what extent the Student's assignments shall be reduced or whether there are certain circumstances when the assignments shall be reduced. No documentation exists to determine whether and to what extent the Student's assignments are being reduced. There is a dispute with regard to what the provision of this accommodation involves. The School maintains that the Student should be assigned the same amount of work as other students, but shall receive credit for partially completed work. The Complainant states that the Student should receive a reduced number of assignments as compared to the general education students.

4. The Student's IEP dated February 2, 2005, indicates that the Student shall use a word processor, specifically an Alpha Smart device, when an assignment involves more than three to five minutes of writing. The Student has a measurable goal of being able to use the word processor for written assignments/notes longer than five minutes independently by November 2005. The IEP, on the same goal page states, "O.T. [occupational therapy] 1x/week or consult as needed for keyboarding skills/use of word processor." The School has failed to provide documentation regarding whether and to what extent this accommodation involving assistive technology has been provided the Student on a consistent basis.
5. The Student's Multidisciplinary Report dated February 2000, indicates that the Student's three-year reevaluation date is February 2003. The Student's IEP dated January 8, 2003, states that the case conference committee has determined that the Student continues to be eligible for special education and no additional data is necessary with regard to the Student's reevaluation needs. The Complainant's signature on the IEP indicates consent and agreement with the case conference committee recommendations. However, the School provided the Complainant with a Parent Notice Of Completion Of Triennial Testing form dated February 14, 2003, stating that reevaluation testing has been completed. Attached to this form is a copy of the Student's Multidisciplinary Report from the Student's special education evaluation conducted in February 2000 with additional testing results from May 2001.

#### **CONCLUSIONS:**

1. Finding of Fact #2 indicates that, with regard to providing preferential seating in band class, the School moved the Student at the request of the Complainant due to alleged bullying. The preferential seating requirement in the Student's IEP is there to accommodate the Student's hearing impairment. The IEP does not address the unique seating arrangement in band class. Finding of Fact #3 indicates that the School cannot document whether and to what extent the Student's assignments have been reduced. In addition, documentation indicates that there is a disagreement over whether the Student shall do the same amount of work as other general education students but receive credit for partially completed assignments versus having the Student actually complete a reduced number of assignments compared to the general education students. Finally, Finding of Fact #4 indicates that the School cannot document whether and to what extent the Student has been able to utilize a word processor as stated in the IEP. Therefore, based on Findings of Fact #2 through #4, a violation of 511 IAC 7-27-7(a) is found.
2. Finding of Fact #5 indicates that the School did not fail to conduct a three-year (36 calendar months) reevaluation. However, the School has made matters confusing by sending the Complainant a notification letter stating that the Student's triennial evaluation has been completed. The School will have to adjust its notification form to rightly reflect that the Student's case conference committee determines that no additional data is needed for a reevaluation. Therefore, a violation of 511 IAC 7-25-6, specifically subsection (g)(1) is found.

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

#### **CORRECTIVE ACTION:**

Shelbyville Central Schools and the Blue River Special Education Cooperative shall:

1. Reconvene the Student's case conference committee (CCC) to review and revise the Student's accommodations with respect to preferential seating in band class, whether and to what extent

assignments shall be reduced, and the use of a word processor. The CCC shall ensure that the IEP reflects enough specificity to reasonably determine what is to be provided the Student. The School shall submit to the Division a copy of the Case Conference Report and IEP no later than September 2, 2005.

2. If the CCC agrees to continue providing the Student the opportunity to use a word processor as a result of the corrective action above, then the School shall submit to the Complainant and the Division a written progress report and supporting documentation indicating the extent to which the Student has utilized the word processor in school no later than September 30, 2005.
3. Revise the Parent Notice Of Completion Of Triennial Testing form to comply with the requirements of 511 IAC 7-25-6(g)(1) to accurately reflect situations when the CCC has determined that no additional data is needed to determine whether a student continues to be eligible for special education. A copy of the revised form and a list of all relevant personnel who receive a copy of it shall be submitted to the Division no later than September 2, 2005.