

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2268.06
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: July 29, 2005
DATE OF REPORT: August 25, 2005
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: November 4, 2005

COMPLAINT ISSUES:

Whether Michigan City Area Schools violated:

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

- (a) provide the required amount of speech services;
- (b) implement the student's behavioral intervention plan (BIP); and
- (c) utilize a daily schedule.

FINDINGS OF FACT:

1. The Student, 11 years old, is identified as a student with autism spectrum disorder and has been determined eligible for special education and related services.
2. Though Michigan City Area Schools (MCAS) is the Student's school corporation of legal settlement, the Student has been placed in a partial hospitalization program at the Madison Center for Children in South Bend, Indiana, under an approved alternative placement contract since January 21, 2005. According to the Student's IEP dated January 5, 2005, the Student is to receive direct speech therapy one time a week for 30 minutes. The speech services are provided by South Bend Community School Corporation (SBCSC). Speech services began February 4, 2005.
3. MCAS had not received reports or notes from SBCS regarding the provision of speech services. The Assistant Director of Special Education of MCAS conducted an investigation beginning on July 19, 2005 to determine whether and to what extent speech services were provided the Student. A report from Madison Center indicates that the Student received speech therapy consistently until one week in June and two weeks in July were missed. Notes and logs from the speech therapist indicate that the required speech services were provided every Friday beginning on February 4, 2005 in accordance with the IEP. The three missed sessions were partially made up on July 8, and 22, 2005, (speech provided for an additional 30 minutes both regularly scheduled times). However, the logs also indicate that no speech services were provided on January 21, and 28, and July 29, 2005.
4. The Student's BIP and IEP goals as well as short-term objectives are related to social skills development at school rather than the partial hospitalization program. The Student's BIP contains many specific interventions designed to assist the Student in learning socially acceptable responses to frustration. After new base-line data was gathered by the clinical psychologist at the Madison Center in February 2005, other personnel at the Madison Center for Children working with the Student suggested expanded interventions to help relax and calm the Student.

5. The Complainant does not specifically allege a particular item in the Student's BIP that is not being implemented. Rather, there is an expressed concern that the BIP is not transferring to the environment at the Madison Center.
6. The Student's IEP dated January 5, 2005 calls for the use of a daily schedule, but does not state how this accommodation is to be implemented. The use of a printed daily schedule was not implemented on a daily basis for the first six months of the Student's placement at the Madison Center. The use of a printed daily schedule was re-established on or about June 6, 2005.
7. A schedule was posted above the Student's desk where the Student's attention was directed in reference to upcoming activities. Documentation indicates mixed success regarding the utilization of the daily schedule posted above the Student's desk along with verbal prompts from the Student's teachers. According to a report from the Acute Unit Therapist at the Madison Center dated June 28, 2005, the Student was increasingly balking at parts of the daily schedule that were learned and accepted by the Student, specifically by abruptly refusing to proceed to the next item on the schedule. The report states a commitment to refining the Student's daily schedule to make it more specific to the Student and to integrate it more actively into the Student's daily routines.
8. The Student's case conference committee (CCC) convened at MCAS on August 8, 2005 to develop a revised IEP based on all that was learned about the Student since January 2005. The Student's behavior specialist contracted by MCAS developed and used a new functional behavior assessment (FBA), the results of which were used to develop a new BIP that takes into account employment of various interventions and accommodations including the use of a daily schedule. The proposed IEP also involves a change of placement. At present, the CCC agrees with the Student's present levels of academic achievement, the FBA/BIP, the needs identified that require special education, and the goals and objectives. However, the Complainant disagrees with the proposed placement and an agreed upon IEP is still pending.

CONCLUSION:

Findings of Fact #2 through #7 indicate that the School failed to implement the Student's IEP as written, specifically:

- (a) Findings of Fact #2 and #3 indicate that there are at least six 30 minute speech therapy sessions that were missed between January 21, and July 29, 2005. Two of those were made up with 30 minute sessions attached to the July 8, and 22, 2005 sessions. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to the provision of required speech therapy;
- (b) Findings of Fact #4 and #5 indicate that the Student's BIP was not implemented as written on a consistent basis in the Student's new placement in a partial hospitalization program at the Madison Center for Children beginning January 21, 2005. It is difficult to determine to what extent the Student's BIP was followed exactly as written. Revisions to data keeping were made periodically and efforts were consistently made to refine interventions that are different from what is stated in the BIP. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to the implementation of the Student's BIP; and
- (c) Findings of Fact #6 and #7 indicate that the use of a printed version of the Student's daily schedule was inconsistently used until June 6, 2005. Through out that period the Student was verbally prompted to utilize the schedule posted above the Student's desk. The Student's IEP does not state how a daily schedule is to be utilized. Where an ambiguity exists in a Student's IEP the ambiguity will be construed against the public agency that is responsible for its development and implementation. IEPs and case conference reports are required to have sufficient clarity so that both the parent and school personnel know what services a student is to receive, from whom, and what resources will be employed in this endeavor. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to the utilization of a daily schedule.

Finding of Fact #8 indicates that the Student's CCC convened on August 8, 2005 to review and revise the IEP, including a BIP based on a new FBA.

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:

Michigan City Area Schools shall:

Re-convene the Student's CCC to determine whether and to what extent the Student shall receive compensatory speech therapy. A copy of the CCC Report and IEP shall be submitted to the Division no later than September 30, 2005.

Send a written memorandum to all relevant personnel who work with the Student about the requirements of 511 IAC 7-27-7(a) and how those requirements are complied with in terms of the Student's specific needs. A copy of the memorandum and a list of all who receive it shall be sent to the Division no later than September 30, 2005.