

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: 2272.06  
COMPLAINT INVESTIGATOR: Alexandra Curlin  
DATE OF COMPLAINT: September 9, 2005  
DATE OF REPORT: October 19, 2005  
REQUEST FOR RECONSIDERATION: n/a  
DATE OF CLOSURE: November 28, 2005

**COMPLAINT ISSUES:**

Whether the Bremen Public Schools and the North Central Indiana Special Education Cooperative violated:

511 IAC 7-21-4(a) by offering a 2 morning or 3 morning/week childhood program within community schools and not the 12 1/2 hours per week specified in 511 IAC 7-21-4;

511 IAC 7-21-2(a) and (c) by failing to appropriately train professionals and paraprofessionals working within the preschool; and

511 IAC 7-19-1 by failing to make an offer of services to a child being home-schooled. <sup>1</sup>

**FINDINGS OF FACT:**

1. The Student, four years old, has a mental disability and a communication disorder and has been determined eligible for special education and related services.
2. The Student previously attended pre-school in another school corporation. There, the Student was enrolled in a 12 and ½ hour per week pre-school program. On August 17, 2005, prior to enrollment in the new School Corporation, a Case Conference Committee ("CCC") meeting was convened to discuss the transition to the new pre-school ("the program").
3. At the August 17<sup>th</sup> conference, the CCC decided that the least restrictive environment for the Student would be a placement in an early childhood program that is primarily designed for students without disabilities. The CCC made no determination regarding whether a full or part time program would be appropriate for the Student, though the Complainant did request a full time program. The CCC did decide that the Student should receive 120 minutes per month of Occupational Therapy ("OT") and 80 minutes per month of physical therapy ("PT"). The IEP lists the Speech and Language Pathologist ("SLP") as a teacher of service but does not indicate how much speech the Student is to receive. The TOR acknowledged that the Student was to receive the same amount of speech she had received in her previous placement - 160 minutes per month.
4. The CCC also discussed placement options for the Student. The School Corporation is small and works with three local community preschool programs to provide services to the twelve (12) pre-schoolers currently receiving special education and related services from the School Corporation. The first program is three (3) days per week from 9 am until 11:30 am. This is a total of 7 and ½ hours per

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<sup>1</sup> The issue has been changed from 511 IAC 27-7 to 511 IAC 7-19-1 to more accurately reflect the issues in the complaint.

week. The second program is two days per week and also less than 12 and ½ hours per week. The third program is a pre-school that also has a daycare program. This program allows up to 5 days per week and with the daycare program, could have reached the 12 and ½ hour per week expectation of the Complainant. However, this program was full and the Student could not utilize this option.

5. After discussing the options, the Complainant and school agreed that the Student would be placed in a three (3) day per week program from 9 am until 11:30 am- a total of 7.5 hours per week. Even though the Complainant wanted a 12 and ½ hour per week program, the CCC agreed that this would be a temporary placement and that the committee would meet again in forty (40) days to “finalize services and programming.”
6. The Student began the pre-school program on August 22. She attended this program on August 22, 24, and 26. On August 29, the Complainant contacted the Director of Special Education (“the Director”) and informed the Director of problems that the Complainant had noticed. The Complainant indicated that the Student’s diaper had not been changed, which had caused a diaper rash and that the Student was exhibiting behavior that concerned the Complainant (crying when they pulled into the School parking lot, pulling and trying to eat her hair, and acting very “frustrated”).
7. On August 30, the Complainant and the Director met and the Complainant indicated that she wanted to withdraw the Student from the program. The Director and Complainant discussed ways to help the Student and the Director indicated she would “address” the diaper changing issue “immediately.” At the conclusion of the meeting, the Complainant agreed to give the placement more time.
8. Later that evening, the Complainant attended an Open House at the program. The Student began exhibiting the behaviors that concerned the Complainant and the Complainant felt the program staff did not welcome her or the Student. After the Open House, the Complainant decided that the program did not suit the Student’s needs and that the Student would no longer attend the program. The Complainant decided instead to home-school the Student until the CCC could find an “appropriate” placement. The Complainant requested that speech, OT, and PT continue to be provided to the Student by the School Corporation.
9. On August 31, the Director advised the Complainant by e-mail that she should allow the Student more time to adjust to the program. The Director also indicated that she believed that the School Corporation had recommended an appropriate placement. The Director indicated that it would not be possible to receive related services if the program that was being offered was rejected.
10. There is no documentation that suggests that the Student received speech or other related services upon withdrawal from the program. Logs from the Occupational Therapist (“the OT”) indicate that the Student was served on August 26 only (when she was enrolled in the pre-school program).
11. On September 2, the CCC reconvened to discuss several other placement options should the Student be enrolled in the public school; however, no option met the 12 and ½ hours per week requested by the Complainant.
12. Another CCC meeting was scheduled for September 27, 2005 to discuss placement and services for the Student should she be enrolled in the public school. The Complainant decided to cancel that meeting because the Student’s family was moving to a different city.
13. The pre-school program attended by the Student has been a community partner with the School Corporation for twelve years. The School Corporation places some children with disabilities in the

School and the students are integrated into the various classes at the School. Yearly the program signs an agreement with the School Corporation. This agreement was signed by the Program Director on June 30, 2005 and by the Director on July 7, 2005.

14. The agreement includes descriptions of instructional areas, outdoor recreation areas, the type and number of staff members, descriptions of the program, assurances to follow Article 7, and descriptions of an IEP, inclusion, and least restrictive environment.
15. Documentation sent by the School indicates that specific training is offered by the School Corporation on site and is "on-going." The SLP and TOR, as well as the related services staff collaborate with the program staff "regularly as a part of their consultation to staff and support for students."
16. The Program Director, who was also one of the Student's Teachers of Service, is a licensed Early Childhood teacher and also holds a Master's degree in Education and has nine (9) years of experience in early childhood education. The Paraprofessional that worked with the Student has worked with students with disabilities for four (4) years. The Student's Teacher of Record ("TOR") is licensed to work with children in kindergarten through 12<sup>th</sup> grade in learning disabilities and mild disabilities. In addition to this licensure, the TOR has been trained to work with pre-school students through on-site training with the Director, other Directors of Early Childhood Programs used by the School Corporation and personal study of literary and video resources available through the School Corporation. The TOR also student-taught in a kindergarten classroom.
17. On August 22, the Student's TOR provided training to the Student's paraprofessional and Teacher of Service ("TOS") regarding background information on the Student and to orient them with the Student's needs. The TOR also provided the paraprofessional and TOS with strategies to use when working with the Student. While there, the TOR spent one hour with the Student and the paraprofessional teaching the paraprofessional how to implement the strategies with the Student. On August 25, the TOR taught the TOS and paraprofessional different ways to engage the Student. She also taught them how to use a stressball with the Student and gave them printed information on auditory neuropathy. These consultations were documented by the Student's TOR and put in the Student's file. On August 26, the Director observed the OT providing information and suggestions to the Student's lead teacher and paraprofessional on techniques to use with the Student. This observation was recorded by the Director and put in the Student's file.

## **CONCLUSIONS:**

1. Finding of Fact #3 indicates that the CCC made no determination regarding the length and frequency of the instructional day for the Student. Findings of Fact #4 and #11 indicate that the School did not have a 12 and ½ hour option for pre-school. Therefore, a violation of 511 IAC 7-21-4 is found.
2. Finding of Fact #15 indicates that the Student's TOS is appropriately licensed, as is the Student's TOR. Finding of Fact #16 indicates that the Student's TOR is also appropriately trained to work with early childhood students. Finding of Fact #17 indicates that the public agency provided training to the Student's paraprofessional and TOS regarding the Student and that the training was documented by the public agency. Therefore, no violation of 511 IAC 7-21-2 (a) or (c) exists
3. Finding of Fact #8 indicates that the Complainant decided to home school the Student. Upon doing so, the Student became a private school student and was eligible for the protection of 511 IAC 7-19-1. 511 IAC 7-19-1(f) requires that the CCC make decisions with respect to the special education and related services to be provided to students enrolled in private schools or facilities. Findings of Fact #11 and

#12 indicate that the School made offers of services and placement to the Student as a student enrolled in public school. Therefore, a violation of 511 IAC 7-19-1 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:**

1. Send a memorandum to all Case Conference Coordinators and Teachers of Record of early childhood students regarding compliance with 511 IAC 7-21-4. The memorandum and documentation of who received it shall be sent to the Division by November 17, 2005. Write an assurance statement to the Division assuring that all early childhood children will have access to a program that is 12 and ½ hours if that is what the Case Conference Committee determines the child needs. This assurance shall be sent to the Division no later than November 17, 2005. If the Student has not moved, the School shall convene the case conference to determine whether compensatory services are appropriate pursuant to the violation of 511 IAC 7-21-4. Documentation of the CCC meeting or of the School's attempt to convene the case conference shall be sent to the Division no later than November 17, 2005.
2. Write an assurance statement to the Division assuring that heretofore, when parents of children eligible for special education decide to enroll their children in private school (including home school), the CCC should make a decision with respect to the special education and related services that will be provided to the student. This assurance shall be sent to the Division no later than November 17, 2005.