

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2288.06
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: October 31, 2005
DATE OF REPORT: November 30, 2005
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: March 3, 2006

COMPLAINT ISSUES:

Whether Marion County Schools and the Grant County 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 provide physical therapy, occupational therapy, and adaptive physical education.

FINDINGS OF FACT:

1. The Student, 12 years old, is identified as a student with a severe mental disability and has been determined eligible for special education and related services.
2. The Student's IEP dated April 27, 2005 indicates that the Student is to receive physical therapy (PT) one time per week for 15 minutes.
3. The School acknowledges that the Student has not received PT services during the 2005-2006 school year. This is due to the School's physical therapist resigning at the beginning of the 2005-2006 school year. At present, the School has not contracted a new physical therapist to fill the position.
4. An undated letter to parents from the Director of Special Services serves as an update on the situation regarding PT services. In the letter, the School acknowledges the absence of a physical therapist and offers to assist parents in locating alternative PT services while waiting for the position to be filled. However, the Complainant states that she has not received this letter and has not been offered assistance in locating alternative services. The School has not documented that this letter was ever mailed to parents or whether and to what extent alternative PT services have been offered to other similarly situated students.
5. The Student's IEP dated April 27, 2005 indicates that the Student is to receive occupational therapy (OT) one time per month on a consultation basis. The Student's occupational therapist met with the Student on September 7, October 19, and November 7, 2005 to provide services.
6. The Student's IEP dated April 27, 2005 also indicates that the Student is to receive physical education (PE) "with accommodations and support." It further states that the PE teacher and the Student's Life Skills Teacher/Teacher of Service (TOS) will collaborate to determine appropriate activities for the Student. The IEP does not describe any activities or state what accommodations will be provided. The IEP does contain a goal involving recreation and leisure skills. The Student received adaptive PE during the 2004-2005 school year, but the current IEP does not indicate whether or not the Student is to receive adaptive PE ("yes" and "no" are left unchecked).

7. The School no longer has an adaptive PE teacher on staff. The Student has PE at the regularly scheduled PE times, but is pulled out in order to receive adaptive PE accommodations from the TOS and teacher aide. The TOS acknowledges that though she has not received prior training in adaptive PE, she does have an emergency permit allowing her to teach the class. The Special Services Coordinator for the School, who is trained in adaptive PE, regularly provides the TOS with consultation and technical assistance, but cannot provide documentation indicating whether and to what extent this has occurred. There is also no documentation available to determine what kinds of accommodations have been provided with regard to PE.

CONCLUSION:

Findings of Fact #2 through #4 and #6 and #7 indicate that the School failed to implement the Student's IEP as written, specifically with respect to:

- (a) failing to provide the required PT services; and
- (b) failing to provide adaptive PE accommodations.

With respect to adaptive PE, the IEP does not have sufficient clarity so that both the parent and school personnel working with the Student know what services a student is to receive, from whom, and whatever other resources will be employed. The School is responsible for the development and implementation of the IEP and has failed to provide documentation concerning training, technical assistance, consultation, and the provision of adaptive PE accommodations. Finding of Fact #5 indicates that the School did not fail to provide the required OT services. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to PT and adaptive PE services.

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:

Marion Community Schools and the Grant County Special Education Cooperative shall:

1. Develop a plan to provide alternative PT services to all similarly situated students until the vacant physical therapist position is filled. The plan shall at least specify who will provide the alternative PT services and with what resources in addition to a method for documenting the provision of such services. A copy of the plan shall be submitted to the Division no later than January 31, 2006, unless a new physical therapist has been hired by then in which the School shall then submit documentation indicating that the position has indeed been filled. If the position is not filled by January 31, then the School shall submit documentation updating the School's efforts to fill the position and whether and to what extent alternative PT services have been provided on a monthly basis beginning January 31, 2006, and the last day of each subsequent month until the position is filled (again documentation must be sent to indicate the position is filled).
2. Send a letter to the Complainant and the parents of all similarly situated students receiving PT services that includes, but is not limited to, a statement regarding the status of the hiring process for filling the vacant PT position, and an offer to provide alternative PT services at school. A copy of the letter and a list of all who receive it shall be submitted to the Division no later than January 13, 2006.
3. Convene the Student's case conference committee (CCC) and the CCCs of all similarly situated students in order to determine compensatory PT services once a new physical therapist has been hired. The School shall submit documentation to the Division indicating that all the CCCs have been

convened and compensatory PT services determined no later than June 2, 2006, or as soon as possible once a physical therapist is in place.

4. Convene the Student's case conference committee to determine the amount of compensatory PT services that will be provided the Student such that the Student will be able to advance towards achieving her IEP goals. In addition, the case conference committee must also determine and clarify whether and to what extent the Student will be receiving adaptive PE and describe with sufficient detail the types of adaptive PE accommodations that will be provided from whom and with what resources. The case conference shall also determine the type of regular, ongoing technical assistance and consultation that will be provided the Student's Life Skills Teacher (TOS) with respect to adaptive PE accommodations and activities. A copy of the case conference report and IEP shall be submitted to the Division no later than January 31, 2006.
5. The Student's Life Skills Teacher (TOS), aide, and other relevant school personnel shall participate in an inservice training on the provision of adaptive PE. A copy of the agenda, attendance sheet, and any notes, hand-outs or materials shall be submitted to the Division no later than January 31, 2006.