

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2312.06
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: February 17, 2006
DATE OF REPORT: March 17, 2006
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: May 31, 2006

COMPLAINT ISSUES:

Whether the MSD of Martinsville Schools violated:

511 IAC 7-27-11 by requiring, before homebound instruction for a student unable to attend school can begin, the parent to provide the school more information from a physician with an unlimited license to practice medicine than is required by Article 7.

511 IAC 7-27-7(a) by failing to implement Student A's individualized education program (IEP) as written, specifically by not providing the required occupational therapy and physical therapy as determined by the case conference committee of a student who is unable to attend school according to 511 IAC 7-27-11.

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

FINDINGS OF FACT:

1. Student A, seven years old, is a student identified as having multiple disabilities. Student B, seven years old, is a student identified as having multiple disabilities. Both Student A and Student B have been determined eligible for special education and related services.
2. The School has a form that it sends to a student's physician upon receipt of the initial physician's statement stating that a student will be absent from school due to a temporary chronic illness or injury for at least 20 consecutive instructional days or an aggregate of at least 20 instructional days over the period of the school year. Attached to the form is a medical "Release of Information" form signed by the parent. The form requires the physician to briefly state the student's diagnosis, prognosis, treatment plan, and date of return to school. It is used primarily by the School as a way to obtain supplementary information about a student's health especially when a student's physician is not specific as to why a student is unable to attend school and for how long.
3. Student A gets frequent infections related to his non-ambulatory status and inability to deal with secretions particularly during flu season. On October 13, 2004, the School received a letter dated August 12, 2004 from Student A's physician. The letter did not specify the number of days Student A might be absent due to his chronic illness, stating in relevant part "...I fully support the mother's decision to keep [Student A] out of school for concern of ongoing infection exposure at this point."

4. Despite leaving out the number of days Student A would be unable to attend school in the August 12, 2004 letter, the School provided Student A with homebound services as a result of that letter. On February 16, 2005, the School sent to Student A's physician a copy of the School's form which included an addition stating that "[Student A] has been receiving homebound education services because of your statement of medical necessity of 10/13/2004. The Case Conference will soon re-convene to discuss [Student A's] progress and discuss educational programming; a notice inviting your participation is enclosed. However, you may wish to participate by completing this form."
5. On January 6, 2006, the School received a letter dated January 6, 2006 from Student A's physician. The letter was specific as to the number of days Student A might be unable to attend school, stating that Student A's absence from school will be for an aggregate of at least 20 days over the remainder of the 2005-2006 school year.
6. Although the letter the School received from Student A's physician on January 6, 2006 was specific, the School again sent its form to the physician who signed and completed it on January 10, 2006. Student A's case conference committee was convened on January 11, 2006 to discuss Student A's special education and related services during flu season which Student A's physician tentatively stated ends on March 1. In a letter to the Director of Special Education dated January 12, 2006, Student A's parent, who signed the IEP in agreement, expressed concern with regard to the fact that Student A's IEP dated January 11, 2006 puts the definitive date of March 1, 2006, as the end of flu season in which case if Student A still needed homebound services beyond that date the IEP is not clear as to whether and to what extent services would continue. In a letter of response dated January 23, 2006, the Director of Special Education states that "If [Student A] needs homebound per doctor's orders beyond February we will send [Student A's physician] another request." At present, this issue has not been resolved.
7. The Complainant alleges that during the second half of the 2004-2005 school year Student A did not consistently receive the required amount of physical therapy (PT) and occupational therapy (OT). Student A's IEP dated September 30, 2004 indicates a change of placement to a 100% homebound setting. Homebound services began on October 1, 2004. Student A's IEP dated December 6, 2004 required an increase in PT and OT services to 60 minutes of both per week to begin on December 6, 2004. The Complainant alleges that on many occasions Student A would receive one 60 minute joint PT and OT therapy session rather than the total 120 minutes. The Complainant further alleges that there were many missed therapy sessions that were not made up.
8. The School submitted the OT and PT logs of Student A's homebound services dating back to February 3, 2005 (a little over one year of the date this complaint was filed). The School acknowledges that on May 13, 2005 Student A received one 60 minute joint OT/PT therapy session (rather than one 60 minute session of OT and one 60 minute session of PT). Otherwise, the OT and PT logs do not reflect whether joint therapy was provided. Student A did not receive OT services the weeks of February 18, March 7, March 21, April 4, and May 2, 2005, for a total of five hours of OT. The PT logs show that the Student did not receive PT the week of March 14, 2005 for a total of 60 minutes.
9. The logs also show that an extra OT session was provided during the week of March 14, 2005 on March 18, 2005 for 60 minutes. In addition, the logs show that 30 extra minutes of OT were provided to Student A on March 2, 2005; an extra 15 minutes on March 29, 2005; an extra hour on April 15, 2005 (this was also an extra session during the week of April 11, 2005); and an extra 30 minutes on April 26, 2005 for a total of two hours and 15 minutes.
10. After Student A's case conference committee convened on January 11, 2006, Student A's parent sent a letter dated January 12, 2006 (see Finding of Fact #6) to the Director of Special Education expressing concern with the unresolved issue of the amount of homebound services provided to Student A

(Student A had received special education and related services at school during the first half of the 2005-2006 school year). Student A's parent specifically requested three 90 minute sessions per week. In a letter of response dated January 23, 2006 the Director of Special Education informed Student A's parent that "At this time I will add a third session per week for the homebound teacher to see [Student A]. She has been advised to see [Student A] for a minimum of 45 minutes up to 60 minutes per session as his alertness allows."

11. Student B's IEP dated November 10, 2004 indicates that Student B will need extended school year (ESY) services and it states "to be determined." The Director of Special Education sent a letter dated May 20, 2005 to Student B's parent asking for permission to begin providing proposed ESY services and also offering to convene Student B's case conference committee to discuss the matter. Student B's parent did not respond. Nevertheless, the ESY services were provided to Student B, specifically OT and PT sessions. Student B received between 30 to 60 minutes of OT per therapy session on June 1, 16, 22, and 29, 2005; July 6, 14, 20, and 27, 2005, and August 3, 2005. Student B received between 30 to 60 minutes of PT per therapy session on June 9, 16, 23, and 30, 2005, and July 7, 14, 20, and 27, 2005, and August 2, 2005.

CONCLUSIONS:

1. Findings of Fact #2 through #4 indicate that the School did not require the parent to provide the School more information from a physician with an unlimited license to practice medicine than is required by 511 IAC 7-27-11. The physician statement dated October 13, 2004 was nonspecific as to how many days Student A would be unable to attend school. Therefore, the School had a responsibility to consult with Student A's physician in order to support the need for homebound services. However, Finding of Fact #6 also indicates that the Director of Special Education is requesting further information from Student A's physician in order to justify extending homebound services beyond flu season (March 1, 2006). The information the School obtained in January of 2006 should be enough to justify extending homebound services as long as the case conference committee agrees. Therefore, a violation of 511 IAC 7-27-11 is found, not with respect to the School's policy, but with respect to the School's procedures, specifically requesting Student A's physician to submit further information before the School will extend homebound services.
2. Findings of Fact #7 through #9 indicate that the School failed to implement Student A's IEP, specifically with respect to homebound OT and PT sessions. Finding of Fact #8 shows that Student A missed five hours of OT, but Finding of Fact #9 shows that two hours and 15 minutes of extra OT over the second half of the 2004-2005 school year were provided. Therefore, Student A still needs one hour and 45 minutes of OT plus an additional 30 minutes of OT due to the joint OT/PT session the School acknowledges on May 13, 2005. Finding of Fact #8 also indicates that Student A missed at least one hour of PT plus an additional 30 minutes from the joint session. Therefore, a violation of 511 IAC 7-27-7(a) is found for failing to provide special education and related services in accordance with Student A's IEP as determined by the case conference committee of a student who is unable to attend school.
3. Findings of Fact #10 and #11 indicate that the School failed to utilize the case conference committee to review and revise a student's IEP on two occasions. Finding of Fact #10 indicates that the Director of Special Education unilaterally added additional minutes of homebound services to Student A's IEP dated January 11, 2006. Finding of Fact #11 shows that proposed ESY services for Student B were provided without benefit of a case conference committee. The Director of Special Education provided insufficient notice for a case conference committee to be scheduled to Student B's parent. Therefore, a violation of 511 IAC 7-27-4(c) 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:

MSD of Martinsville Schools shall:

Convene Student A's case conference committee to determine whether and to what extent homebound services shall be provided beyond "flu season" (if that issue has not been resolved) and the extent that Student A will receive 3 hours and 15 minutes of compensatory OT and 1 hour and 30 minutes of compensatory PT. A copy of the Case Conference Report and revised IEP shall be submitted to the Division no later than April 28, 2006.

Submit an assurance letter stating that school personnel will no longer implement proposed ESY services to students unable to attend school under 511 IAC 7-27-11 without utilizing a student's case conference committee to discuss and determine what those ESY services are, who will be responsible for implementing them and with what resources will be employed. The letter shall be completed and signed by the Director of Special Education and submitted to the Division no later than April 28, 2006.