

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2324.06
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: April 12, 2006
DATE OF REPORT: June 20, 2006
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: November 3, 2006

COMPLAINT ISSUES:

Whether the Monroe County Community School Corporation violated:

511 IAC 7-28-2(e)(1-4) by failing to complete an evaluation, convene a case conference committee to determine eligibility, develop an individualized education program (IEP), and implement the IEP by the date of the third birthday of a student who may be eligible for special education and related services.

511 IAC 7-25-4(a)(5) by failing to include a timeline for conducting the student's educational evaluation and convening the case conference committee.

511 IAC 7-25-4(k) by failing to ensure that a copy of the evaluation report is made available at the school the student attends no less than five instructional days prior to the scheduled case conference committee meeting.

511 IAC 7-21-2(a) by failing to ensure that the person designated as the student's teacher of record is appropriately licensed in the area of the student's disability.

511 IAC 7-27-5(c) by failing to provide the parent with a copy of the written report of the case conference committee meeting no later than 10 business days after the case conference meeting.

511 IAC 7-27-3(a)(4) by failing to ensure that one of the student's general education teachers is a participant in the student's case conference committee meeting.

511 IAC 7-27-4(c)(6) by failing to ensure the student's case conference committee considers the student's need for assistive technology devices and services.

511 IAC 7-27-6(a)(8) by failing to include a statement of the student's need for extended school year services in the student's IEP.

511 IAC 7-27-3(e)(2) by failing to ensure the participation in the case conference committee of an additional individual who can interpret the instructional implications of evaluation results.

511 IAC 7-27-6(a)(5) by failing to include in the student's IEP the anticipated length, frequency, and duration of occupational therapy services.

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

- (a) provide the required occupational therapy services¹;
- (b) provide the required speech therapy services;
- (c) convene bi-weekly team meetings;
- (d) provide progress reports; and
- (e) ensure completion of an inventory of intelligible signs.

511 IAC 7-27-5(a)(7) by failing to attach the parent's written opinion(s) to the case conference committee report.

511 IAC 7-25-7(b) by failing to conduct an additional evaluation within 60 instructional days of the date written parental consent was received by the school, specifically an additional assessment of the student's receptive language.

During the course of this complaint investigation, the following issues were identified:

511 IAC 7-21-4(a) by failing to utilize the case conference committee to determine the length and frequency of the instructional day for an early childhood student with a disability.

511 IAC 7-22-2(a)(2) by failing to provide written notice to the parent a reasonable time before the school refuses to initiate the evaluation recommendations made by the parent.

On May 10, 2006, the Associate Superintendent extended the deadline for this complaint investigation report to June 9, 2006. On June 9, 2006, the Associate Superintendent extended the deadline a second time to June 23, 2006.

FINDINGS OF FACT:

1. The Student, three years old, is a student identified as developmentally delayed, and has been determined eligible for special education and related services.
2. The Student's third birthday was January 2006. The Student's educational evaluation was completed on January 5, 2006. However, the evaluations for vision and auditory skills, part of the initial evaluation, were not completed until January 25, and 26, 2006, respectively. The Student's case conference committee (CCC) convened on January 11, 13, and 27, 2006, in order to develop an IEP. The Complainants received a copy of the IEP by mail on February 16, 2006, for their signatures. The Complainants returned the IEP with signatures on February 28, 2006, indicating that they were only in "agreement in part" and included a list of items of disagreement.
3. Though the IEP indicates that the Student is to receive speech services, hearing services, physical therapy, and occupational therapy beginning January 27, 2006, it also indicates that pursuant to the January 11, and 13, IEPs, the Student had been receiving special education services in the classroom since January 13, 2006. Vision services are to be provided as consultation during team meetings that are to take place once every two weeks (the first team meeting was January 20, 2006). The team meetings include the Student's parents, teachers, and any other school personnel who work with the Student.
4. The Student's Referral for Initial Educational Evaluation/Permission for Educational Evaluation form was signed by the Complainants on October 6, 2005. The form, in addition to the copy of the Notice of Procedural Safeguards provided to the Complainants, indicate the timeline for conducting the educational evaluation and convening the CCC.

¹ The issue was sufficiently investigated by virtue of the 511 IAC 7-27-6(a)(5) citation.

5. A meeting to receive a copy of the evaluation report and discuss the results was requested by the Complainants on December 2, 2005. The meeting was held on January 10, 2006 with the Early Childhood Coordinator one day before the initial CCC meeting convened on January 11, 2006. At the meeting on January 10, the Early Childhood Coordinator and the Complainants discussed the results of the Student's completed psychoeducational evaluation by the School Psychologist. However, the occupational therapy evaluation was received by the Complainants at the January 11, 2006, CCC meeting; the speech evaluation was received on January 12, the day before the CCC reconvened on January 13; and the vision and auditory skills evaluations were received at the January 27, 2006, CCC meeting.
6. The Student's Preschool Teacher of Record was issued a general elementary State of Indiana Teacher's License on October 25, 2001. The license was renewed under the rules and regulations of the Indiana Professional Standards Board, specifically Rules 46-47 which hold that a teacher with a general elementary license is allowed to teach special education preschool students.
7. The Student's initial Case Conference Report and IEP were completed at the CCC meeting on January 27, 2006. The Complainants received a copy via facsimile transmission and attached to an e-mail sent to the Complainants from the Early Childhood Coordinator on February 14, 2006, 12 business days after the CCC meeting.
8. The School acknowledges that none of the Student's general education teachers were in attendance at the CCC meeting convened on January 27, 2006.
9. The Complainants' notes submitted to the Early Childhood Coordinator after the CCC meetings on January 11, and 13, 2006, indicate a concern about the CCC not addressing the Student's assistive technology needs. Assistive technology was not discussed at the CCC on January 27, 2006. Assistive technology was on the agenda for the CCC convened on March 9, 2006. The CCC notes state, "Following discussion there is agreement at this time that a full evaluation is not necessary. However in preparation for [the Student's] transition into the next classroom the team will determine any accessibility needs [the Student] will have in the classroom and outside."
10. The case conference summaries from January 11, 13, and 27, and March 9, 2006, indicate that the CCC would discuss the Student's need for extended school year services (ESY) at the end of the 2005-2006 school year. Since the time this complaint was filed, the Student's CCC convened on May 5, 2006, and determined the Student would receive 15 hours of ESY over the summer.
11. The Student's occupational therapist (OT) attended the Student's first CCC meeting on January 11, 2006, to submit her OT evaluation of the Student and recommended IEP goals and objectives. The OT did not attend the subsequent CCC meetings held on January 13, and 27, and March 9, 2006. At the January 13, and 27, 2006, CCC meetings, the Complainants raised questions with regard to the type and amount of occupational therapy services the Student should receive. At both meetings, the School suggested discussing the Complainants' concerns at the next CCC meeting. At the March 9, CCC meeting, the Complainants requested that the Student's IEP contain all of the OT's suggested goals and objectives and specifically asked about the amount of direct occupational therapy services the Student had received. The School again decided to discuss these issues at a later CCC meeting.

The OT did come to the May 5, 2006, CCC meeting. At that meeting it was decided that the occupational therapy goals, objectives, and level of service would be revised and that the OT would provide more consultative support to the Student's teachers.

12. The Student's IEP dated January 27, 2006, indicates that the Student will receive occupational therapy services for "30-45 minutes" provided "prior to each team meeting." The IEP indicates that the services will be provided via direct support, integrated in the classroom, and on a consultation basis. Direct support services were provided by the Student's OT on February 22 (65 minutes); March 29 (50 minutes), and April 12, 2006 (60 minutes).

The following dates indicate occupational therapy services provided with a consultation or integrated approach (the logs do not necessarily decipher which dates were consultative or with an integrated approach): February 10 (for 30 minutes), and 22 (for 65 minutes), 2006; and March 7 (for 15 minutes), 23 (for 15 minutes), 24 (for 45 minutes), and 29 (for 50 minutes), 2006; and April 6 (for 30 minutes), and 12 (for 60 minutes), 2006.

13. The Student's IEP dated January 27, 2006, indicates that speech therapy will be provided the Student for one time per week for 60 minutes. The School acknowledges, and the case conference committee agreed on May 5, 2006, that the Student has missed at least five 60 minute speech therapy sessions. The case conference agreed to provide the Student compensatory speech services during the summer of 2006.
14. The Student's IEP dated January 27, 2006, also indicates that team meetings will be scheduled every two weeks to discuss the Student's progress. The team meeting scheduled for April 7, 2006, was cancelled by the School due to the unavailability of some school personnel to attend. Up until April 2006, regular team meetings had convened according to the IEP. The Student's CCC convened on April 21, 2006, and again on May 5, 2006 in place of having team meetings on those dates.
15. The Student's IEP indicates that progress reports are to be provided at least as often as are provided to parents of general education students. The last grading period ended on March 31, 2006. Report cards are distributed three to five days after the end of the grading period. The Complainants received the Student's progress reports 12 days after the end of the most recent grading period on April 12, 2006.
16. The Student's IEP states, "An inventory of intelligible signs used by [the Student] will be completed." Discussion notes from the CCC meeting on January 27, 2006, state, "[Parent] reported that she will create a list of those signs that are intelligible and put them in the communication notebook." There is nothing more to indicate what the inventory is to include, who else is involved, how the inventory will be utilized or by what date it is to be completed. By the time this complaint was filed no such inventory of signs had been completed by the Parent.
17. A written opinion was not provided by the Complainants at the CCC meetings convened on January 11, 13, and 27, 2006. The Complainants returned the IEP dated January 27 with signature on February 28, 2006, noting that it was only an "agreement in part." The Complainants attached a nine-page addendum listing areas of disagreement to this signed IEP. The Complainants acknowledge that this addendum became the agenda for the March 9, 2006, CCC meeting.
18. The Student's IEP dated January 27, 2006, states, "[The Speech Therapist] will complete an evaluation of [the Student's] receptive language." The Complainants allege that a specific request for an additional evaluation was made by the Complainants at the case conference with regard to the Student's receptive language needs. The School maintains that this was not an additional evaluation subject to 511 IAC 7-25-7, but an informal assessment conducted over time by the Speech Therapist. However, there is no documentation indicating whether and to what extent any assessment has been completed.

19. Neither the Student's CCC meeting on January 11, 2006, nor the subsequent CCC meetings convened on January 13, and 27, and March 9, 2006, indicate the length and frequency of the Student's instructional day.

20. The Complainants allege that the School did not provide prior written notice with respect to the Complainants' evaluation recommendations, and specifically that:

- The School did not provide prior written notice when it refused to change the Student's primary area of eligibility from developmental delay to other health impairment at the CCC meeting on March 9, 2006.

Discussion notes from the CCC meeting on March 9, 2006, state, "[The Student's] parents asked if identifying [the Student] as a child with other health impairment would be more appropriate. [The School Psychologist] stated that OHI does not give the information about [the Student's] strengths and needs. The developmental delay category as his primary disability indicates there are a number of areas in which he is exhibiting delays. The goals and objectives are addressing those areas."

- The School did not provide prior written notice at the CCC meetings on January 27, and March 9, 2006, when it refused to agree with the Complainant's request for two hours of weekly speech therapy, per the recommendation of the Student's First Steps Speech Therapist and in light of the School's recommended speech therapy goals and objectives.

Discussion notes from the CCC meeting on January 27, 2006, state, "Special education services were discussed and are documented within this report." Discussion notes from the CCC meeting on March 9, 2006, state, "[The Student's] parents requested an additional hour of support from the speech language pathologist given the number of goals and [the Student's] significant needs.....[The Preschool TOR] explained that all the teachers are working to support his language and communication development throughout the day. Through the consultation with the teachers and team meetings he is receiving more support through the inclusion model."

- The School did not provide prior written notice at the January 13, and 27, 2006, CCC meetings when it refused the Complainant's request for one hour weekly of occupational therapy per the Student's First Steps OT.

Discussion notes from all four CCC meetings do not indicate the School's reason or basis for not agreeing to the Complainant's recommendation regarding the amount of occupational therapy to be provided the Student.

21. The Student's case conference committee convened on May 5, 2006, (and agreed to re-convene in September 2006) and addressed the following issues:

- (a) Compensatory services for speech therapy (also mentioned in Finding of Fact #13): the case conference agreed to provide five 60 minute sessions during the summer months of 2006;
- (b) OT goals, objectives, and level of service: the case conference discussed the appropriateness of the Student's current level of OT service and revised short-term objectives. The OT will provide more consultative support to the Student's teachers to support the Student's occupational therapy goals;
- (c) Assistive technology evaluation: the School agreed to conduct a comprehensive assistive technology evaluation with the 60 instructional day timeline retroactively

- beginning April 21, 2006, and the completion date to be at some time during the fall of the 2006-2007 school year (the CCC notes do not provide a specific date);
- (d) ESY: the case conference agreed that the Student will receive a total of 15 hours of communication with sign language skills throughout the nine-week summer period;
 - (e) Team meetings: the case conference agreed to conduct team meetings on May 12, and 19, and June 2, 2006; and
 - (f) Length and frequency of the Student's instructional day: the case conference agreed to the length and frequency of the Student's early childhood instructional day, specifically that the School will provide tuition reimbursement to the Complainants at the level of 2.5 hours per instructional day (12.5 hours per five-day school week).

CONCLUSIONS:

1. Finding of Fact #2 indicates that the Student's vision and auditory skills evaluations were not completed by the Student's third birthday as part of the initial evaluation. Finding of Fact #2 also indicates that the Student's CCC initially convened before the Student's third birthday, but subsequent CCC meetings had to convene afterwards in order to establish a "partial agreement"² to begin implementing the Student's special education and related services. Findings of Fact #2 and #3 indicate that part of the Student's IEP related to early childhood special education was implemented before the Student's third birthday, but that many of the Student's related services were not implemented until on or about January 27, 2006. Therefore, a violation of 511 IAC 7-28-2(e)(1-4) is found.
2. Finding of Fact #4 indicates that the School did not fail to inform the Complainants of the timeline for conducting the initial educational evaluation. Therefore, a violation of 511 IAC 7-25-4(a)(5) is not found.
3. Finding of Fact #5 indicates that the Student's occupational therapy, speech, vision, and auditory skills evaluation results were not made available to the Complainants at least five instructional days prior to the scheduled CCC meeting on January 11, 2006. Therefore, a violation of 511 IAC 7-25-4(k) is found.
4. Finding of Fact #6 indicates that the person designated as the Student's teacher of record is appropriately licensed under Rules 46-47 of the Indiana Department of Education, Division of Professional Standards. Therefore, a violation of 511 IAC 7-21-2(a) is not found.
5. Finding of Fact #7 indicates that the School failed to provide the Complainants with a copy of the CCC Report within 10 business days after the January 27, 2006, CCC meeting, but did provide it within 12. Therefore, a violation of 511 IAC 7-27-5(c) is found, but no corrective action is required.
6. Finding of Fact #8 indicates that the School failed to ensure that one of the Student's general education teachers was a participant in the CCC meeting that convened on January 27, 2006. Therefore, a violation of 511 IAC 7-27-3(a)(4) is found.
7. Finding of Fact #9 indicates that the Student's assistive technology needs were not discussed at the CCC meetings convened on January 11, 13, and 27, 2006, but were addressed at the March 9, 2006, CCC meeting. Therefore, a violation of 511 IAC 7-27-4(c)(6) is found.

² See 20 U.S.C. 1414(a)(1)(D)(ii)(II) and Proposed Regulation §300.300 (b)(3), which, until the regulations become finalized, may be interpreted to indicate that the school will not be obligated to provide any services to a student if the parents of that student do not give full consent for the provision of initial services in an individualized education program.

8. Finding of Fact #10 indicates that the Student's IEP dated January 27, 2006, and the subsequent revision on March 9, 2006, does not state whether and to what extent the Student will be provided with ESY services. At the time this complaint was filed ESY services had not been addressed by the Student's CCC. Therefore, a violation of 511 IAC 7-27-6(a)(8) is found. However, Finding of Fact #21 indicates that ESY was addressed and the Student will receive at least 15 hours, therefore the School will have to submit documentation indicating that ESY has been provided.
9. Finding of Fact #11 indicates that the Complainant's request to incorporate the OT's suggested goals and objectives into the Student's IEP could not be addressed because the OT was not a participant of the CCC meetings held on January 13, and 27, and March 9, 2006. Therefore, a violation of 511 IAC 7-27-3(e)(2) is found.
10. Finding of Fact #12 indicates that the Student's IEP dated January 27, 2006, requires occupational therapy services to be provided the Student for 30 to 45 minutes before each bi-weekly team meeting. The IEP does not contain any evaluative criteria for determining whether the Student will receive therapy for 30 minutes, 45 minutes or something in between or whether it will be provided as direct support, consultation, or an integrated approach. The type and amount of services is stated in such a manner that neither the Complainant nor the School can clearly identify how many minutes and with what method of occupational therapy the Student will receive for each session. Stating the amount of services as a range is permissible only when necessary to meet the unique needs of a student. When a range is used, the IEP must also specify the criteria for determining the amount of services that will actually be provided the student. Therefore, a violation of 511 IAC 7-27-6(a)(5) is found.
11. Findings of Fact #12 through #16 address whether and to what extent the following were implemented:
 - (a) Finding of Fact #13 indicates that the Student has missed at least five speech therapy sessions, and that compensatory speech services will be provided during the summer months of 2006;
 - (b) Finding of Fact #14 indicates that one biweekly team meeting scheduled for April 7, 2006, was cancelled;
 - (c) Finding of Fact #15 indicates that the Complainants received the Student's progress reports 12 days past the date marking the end of last grading period; and
 - (d) Finding of Fact #16 indicates that the School did not have the responsibility to conduct an inventory of intelligible signs and that such an inventory has not been completed.Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to the provision of occupational therapy services, the provision of speech therapy services, a de minimus violation with regard to the cancellation of a required bi-weekly team meeting, and not providing the Complainant's a copy of the Student's progress report at the same time as general education students.
12. Finding of Fact #17 indicates that the School did not fail to attach the Complainants' written opinion to the CCC Report dated January 27, 2006, or as the agenda for the CCC meeting on March 9, 2006. Therefore, a violation of 511 IAC 7-25-5(a)(7) is not found.
13. Finding of Fact #18 indicates that the School agreed to evaluate the Student's receptive language but has not. Therefore, a violation of 511 IAC 7-25-7(b) is found.
14. Finding of Fact #19 indicates that the Student's CCC has not specifically addressed or determined the length and frequency of the Student's instructional day. Therefore, a violation of 511 IAC 7-21-4(a) is found. However, Finding of Fact #21 indicates that the CCC meeting on May 5, 2006, addressed and agreed to the length and frequency of the Student's early childhood instructional day.
15. Finding of Fact #20 indicates that, although the School provided prior written notice as to some matters based on the Complainants' evaluation recommendations, the written CCC Reports of all four CCC

meetings do not contain prior written notice indicating the School's reason or basis for not agreeing to the Complainants' proposals. The failure to consider the Complainants' proposal for occupational therapy services, goals, and objectives has the same effect as refusal and requires a statement of reasons for the determination. Therefore, a violation of 511 IAC 7-22-2(a)(2) 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:

The Monroe County Community School Corporation shall:

1. Conduct an in-service training involving all relevant special education personnel and related service providers who work with early childhood students with disabilities. The in-service shall address the School's compliance with the requirements of 511 IAC 7-28-2(e)(1-4) with the goal of providing a smooth and effective transition. The School shall submit a copy of the attendance sheet, the agenda, and any notes or handouts to the Division no later than September 1, 2006.
2. Submit a written memorandum to all special education personnel addressing the School's compliance with the following requirements:
 - 511 IAC 7-25-4(k);
 - 511 IAC 7-27-3(a)(3);
 - 511 IAC 7-27-3(e)(2); and
 - 511 IAC 7-27-6(a)(5).

A copy of the memorandum and a list of all personnel who receive it shall be submitted to the Division no later than September 1, 2006.

3. Based on Finding of Fact #21, submit the following documentation to the Division no later than September 29, 2006:
 - Documentation indicating the provision of five 60 minute sessions of compensatory speech therapy;
 - A copy of the assistive technology evaluation;
 - Documentation indicating the provision of ESY services;
 - A copy of the Case Conference Report and revised IEP from the case conference committee meeting convened in September 2006; and
 - A copy of the assessment of the Student's receptive language.