

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: CP-155-2007
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: December 7, 2006
DATE OF REPORT: February 16, 2007
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: April 10, 2007

COMPLAINT ISSUES:

Whether MSD Southwest Allen County and the Smith-Green West Allen Special Education Cooperative violated:

511 IAC 7-27-4(c) by failing to utilize the case conference committee to review, revise, or develop the student's individualized education program (IEP), specifically by developing reading and speech goals and strategies without the input of the parent.

511 IAC 7-25-5(e) by failing to take into consideration the results of a private autism evaluation paid for by the parent.

During the course of the investigation the following additional issue was included:

511 IAC 7-23-1(p) by failing to obtain written and dated parental consent before disclosing personally identifiable information about the student.

An extension of time was granted until February 16, 2007, on January 4, 2007, to allow the investigator sufficient time to review the information related to the issues involved.

FINDINGS OF FACT:

1. The Student, 14 years old, is identified as a student with a moderate mental disability, and has been determined eligible for special education and related services.
2. The Student's case conference committee developed an IEP for the 2005-2006 school year on April 26, 2005. The Complainant did not agree with the reading and speech strategies related to the goals, but otherwise signed an agreement to have the School implement the IEP. The case conference committee convened again on August 16, and 18, 2005, to further develop the Student's IEP. The Complainant wrote a dissenting opinion after the meeting on August 16, 2005. The dissenting opinion included several proposed corrections to the case conference notes. It also states that the School has failed to implement the Lindamood-Bell reading program used in the elementary grades and that the IEP does not reflect the utilization of the specific strategies and methods used in that reading program. The School proposed utilizing an approach called Project Read which the School maintains is more appropriate for the Student's age and ability level. The case conference agreed on August 25, 2005, to reconvene in a few weeks to further address the Complainant's concerns while school personnel working with the Student could assess present levels of educational performance in the areas of

speech and reading. The Student was starting the 2005-2006 school year in a new middle school within the district.

3. In a letter to the Director of Special Education dated September 10, 2005, the Complainant states that the IEP addendum dated August 25, 2005, did not include several aspects of the Student's complete IEP dated April 26, 2005. The case conference committee convened again on December 1, 2005, and April 12, May 11, 18, and 22, 2006, to review and revise the Student's IEP. Each of these subsequent IEP addendums indicate unresolved disagreements between school personnel and the Complainant about reading, specifically whether to use strategies from programs like Lindamood-Bell or Orton-Gillingham, or Project Read with an emphasis on applied reading skills; and disagreements about whether and to what extent the Student should be in a more functional curriculum set to his level. Both the School and the Complainant acknowledge consistently meeting outside of the case conference to discuss reading strategies. The Complainant alleges that her IEP proposals submitted at the case conference committee meetings are appropriate with regard to helping the Student progress toward achieving his academic goals. The Complainant also alleges that each of the subsequent addendums is a different version of the IEP dated April 26, 2005, and is the School's attempt to unilaterally make changes to the IEP without her input.
4. The subsequent Case Conference Reports/IEP addendums to the IEP dated April 26, 2005 show discussion, development, and review. However, in general, there is very little in the case conference notes that indicates whether and to what extent certain things are agreed to, and, if so, when they will be accomplished and by whom. The notes characterize various discussion points as recommendations or as requirements that are not clear. For example, the Student's IEP indicates, with respect to reading, that the Student will receive "individualized instruction with specific strategies for success." Letters from the Complainant to the Director of Special Education and other case conference notes allude to discussion about specific one-on-one reading help in addition to disagreements about specific methodology. The IEP addendum dated May 18, 2006, states "Addition of 1:1 for reading for 45 minutes under special education pull out. This was completed during this school year." The IEP does not reflect this or describe who is to provide the one-on-one instruction and whether it is daily, weekly, or monthly.
5. In a letter sent to the Division dated November 30, 2005, the Complainant alleges that the School refuses to change the Student's eligibility to autism based on the medical documentation the Complainant has submitted to the School from private evaluations paid for by the Complainant. Documentation from doctors working with the Student shows that their medical diagnosis of autism does not indicate that the Student should be labeled autistic for educational reasons. One report states that the measures taken to diagnose the Student "should not replace any testing that would normally be done for educational placement purposes." The Complainant acknowledges that on November 3, 2005, the School presented a request to do an additional evaluation of the Student in the area of autism. Case conference committee notes from December 1, 2005, and April 12, and May 11, 18, and 22, 2006 indicate discussions about the Complainant's concerns about the Student's medical diagnosis of autism including explanations of the evaluation procedures pursuant to Article 7. However, the Complainant refused to provide the School with written consent to conduct the evaluation until May 11, 2006.
6. The case conference convened on August 15, 2006, to conduct the annual case review and to revise the IEP to reflect the 2006-2007 school year. The Complainant alleges that the School's proposed IEP did not include services for autism because the private evaluation was not considered. The case conference convened on September 18, and November 13, 2006, to discuss the evaluation results. The Complainant did not agree with the School's assessment. Case conference notes indicate discussions about developing an IEP that meets the Student's educational needs regardless of

eligibility category and the Complainant's concerns that the Student's services do not meet his needs. The School offered to arrange for a facilitated IEP meeting to further discuss the matter at the case conference committee meeting held on November 13, 2006.

7. In an e-mail to the Director of Special Education dated December 7, 2006, the Complainant alleges that the August 15, 2006 IEP was unilaterally developed by the School outside of the case conference. The Complainant states, "I was under the presumption that we were still trying to fix the 2005-2006 IEP [dated April 26, 2005] that had been totally rewritten outside of the IEP meeting." Notes from the case conference committee held on November 13, 2006 indicate a discussion about the Complainant's allegation that information is consistently being removed from the IEP by school personnel outside of the case conference committee. Based on these notes, and on statements made by the Complainant in a telephone interview with the Complaint Investigator, the Complainant believes that the Student's IEP is handed over from school year to school year with only changes to things like dates and grades. The School brings a proposal, or draft IEP to the case conference committee meetings for the purpose of discussing changes. School personnel explained to the Complainant that only relevant information from a previous IEP goes into a new IEP (for example, IEP goals that still have not been mastered) each year.
8. The Complainant also alleges that the School unilaterally changed the Student's IEP addendum dated May 22, 2006 outside of the case conference committee by adding "Prozac" as one of the Student's special health concerns. Case conference notes dated May 22, 2006 indicate that the Complainant brought up the fact that "[The Student] is recently on Prozac to help the movement disorder (10 mg)." Consequently, Prozac was listed as one of the Student's medications under health concerns. The Complainant did not want Prozac listed on the IEP. Only school personnel with a "legitimate educational interest" have access to the Student's IEP. The Complainant does not allege that this information was disclosed to anyone other than authorized school personnel.

CONCLUSIONS:

1. Findings of Fact #2 through #4 and #7 address whether the School failed to utilize the case conference committee to review, revise, and develop the Student's IEP. Findings of Fact #2 and #3 indicate that there are fundamental disagreements between the School and the Complainant about a free appropriate public education for the Student, particularly with respect to reading strategies and whether the Student should have a more functional curriculum. Finding of Fact #3 also indicates that the Complainant and school personnel meet outside of the case conference committee to discuss strategies. The Student's IEP meets the requirements with 511 IAC 7-27-6 with regard to having the required IEP components in place, including goals and objectives. Once those requirements have been met a parent does not have the right to compel school personnel working with a student to provide specific strategies or a methodology. Finding of Fact #7 indicates that the Complainant does not understand the School's practice with respect to reviewing, revising, and developing IEPs. A student's IEP can be discussed outside case conference committee meetings, and draft plans can be presented during the meetings. Also, IEPs are developed for a specified duration before the case conference committee must develop a new IEP. However, Finding of Fact #4 indicates that, although the subsequent IEP addendums address many of the Complainant's questions and concerns, the notes characterize many things as recommendations or as ambiguous requirements. It is difficult to determine what is agreed upon. Ambiguous IEPs must be construed against the school responsible for their development and implementation and must have sufficient clarity with respect to what is to be provided, when, by whom, and with what resources. Therefore, a violation of 511 IAC 7-27-4(c) is found, not because the School developed IEPs outside of the case conference committee, but because of the practice developing subsequent IEP addendums that do not provide sufficient clarity with respect to what is required.

2. Findings of Fact #5 and #6 indicate that the School did not fail to consider the Complainant's private autism evaluation. The Student's case conference committee considered the information provided by the Complainant. Resolving disputes over eligibility is beyond the scope of a complaint investigation. Therefore, a violation of 511 IAC 7-25-5(e) is not found.
3. Finding of Fact #8 indicates that the School did not disclose personally identifiable information about the Student to anyone other than authorized school personnel without first obtaining the requisite written consent from the Complainant. Therefore, a violation of 511 IAC 7-23-1(p) is not found.

DISCUSSION:

A complaint investigation addresses allegations a public agency has failed to comply with the requirements of federal and state law with regard to special education. Such allegations are procedural in nature. A complaint investigation cannot resolve disagreements between the parent and the public agency over what constitutes a free appropriate public education (FAPE) for the student. Such issues must be resolved through the due process procedures at 511 IAC 7-30-1 (mediation) or 511 IAC 7-30-3 (due process hearing).

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 Southwest Allen County and the Smith-Green West Allen Special Education Cooperative shall:

Send a written memorandum to all relevant special education personnel regarding compliance with 511 IAC 7-27-4(c). The memorandum shall explain the importance of having case conference committee notes and IEP addendums developed such that there is no ambiguity about what is required in order to implement a student's IEP. A student's IEP must state the exact services to be provided the student, by whom, when, and with what resources. A copy of the memorandum and a list of all personnel who receive it shall be submitted to the Division no later than **March 23, 2007**.