

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: CP-161-2007
COMPLAINT INVESTIGATOR: Kylee Bassett
DATE OF COMPLAINT: December 19, 2006
DATE OF REPORT: January 31, 2007
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: April 25, 2007

COMPLAINT ISSUES:

Whether the Shelby Eastern Schools and the Blue River Special Education Cooperative violated:

511 IAC 7-26-12(c) by failing to provide specialized training in the area of Other Health Impairment (OHI), specifically, Tourette's syndrome, to professional and paraprofessional staff serving the Student.

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

- a. provide necessary breaks;
- b. provide study guides and outlines for classes;
- c. provide a copy of class notes;
- d. provide written copies of board work;
- e. omit timed situations;
- f. ignore specific behaviors; and
- g. implement the Behavior Intervention Plan (BIP).

An extension of time until January 31, 2007 was granted on January 5, 2007. The extension was requested by the School because of the time restraints to gather the appropriate documentation due to the School's holiday break.

FINDINGS OF FACT:

1. The Student, 12 years old, is eligible for special education and related services as a Student with OHI. The Student has been diagnosed with Tourette's Syndrome.
2. On September 7, 2006, a case conference committee (CCC) meeting was convened and an IEP was developed. The Complainant (parent) did not attend the CCC meeting, but in a note at the bottom of the IEP it stated that the Complainant asked the team to go ahead without her on August 30, 2006. The Complainant consented to the IEP on September 18, 2006.
3. The Student's IEP dated September 7, 2006 indicated that the Student is "allowed breaks." This accommodation was denoted with an "X" in a box next to the phrase "allow breaks." There was no further explanation in the IEP that stated when and to what extent the Student will be allowed breaks. The Complainant alleged that the Student needed restroom privileges due to side effects of his medication. The Student's teachers through letters sent to the Division stated that they provided necessary breaks when the Student needed it. Further, some teachers stated that the Student was allowed to utilize the resource room when it became apparent he needed to refocus or needed help

completing assignments.

4. The Student's IEP dated September 7, 2006 indicated that the Student was to be provided study guides and outlines for instruction. This accommodation was denoted with an "X" next to the phrase "Study guides/outlines." There was no further explanation regarding the specifics of this accommodation. The School provided an array of workbook chapter reviews and workbook daily lecture and discussion notes, but nothing was included to explain how these were used and to what extent. The Student's teachers through letters sent to the Division addressed the study guides and outlines' allegation. All of the teachers provided information that the Student was provided the same resources (related to study guides and outlines) as the other students were given, including chapter outlines, chapter study guides, and class outlines.
5. The Student's IEP dated September 7, 2006 indicated that the Student was to be provided a copy of class notes for instruction. This accommodation was denoted with an "X" next to the phrase "Provide copy of class notes." There was no further explanation regarding the specifics of this accommodation. The Student's teachers through letters sent to the Division addressed the class notes' allegation. The teachers stated that they provided the Student with class notes, and a few of them claimed that they provided the class notes to the Teacher of Record as well.
6. The Student's IEP dated September 7, 2006 indicated that the Student was to be provided with written copies of board work. This accommodation was denoted with an "X" next to the phrase "Provide written copies of board work." There was no further explanation regarding the specifics of this accommodation in the IEP. The teachers provided statements regarding this allegation. A few teachers provided copies of the board work that they provided and others stated that board work was not assigned in their class.
7. The Student's IEP dated September 7, 2006 indicated that timed situations should be omitted. This accommodation was denoted with an "X" next to the phrase "Omit timed situations." There was no further explanation regarding the specifics of this accommodation in the IEP. Most of the teachers explained that timed situations were not applicable to their classrooms. The computer application teacher stated that students are given 3 minutes to complete each typing lesson, but the timing did not affect their grades. Further, she stated that the Student was always offered more time to complete the lesson if necessary. The language arts teacher explained that the Student was allowed extra time for make-up work, assignment, and tests. The Student also utilized the resource room to complete his work, according to the language arts teacher.
8. The Student's IEP dated September 7, 2006 indicated that specific behaviors are to be ignored. This accommodation was denoted with an "X" next to the phrase "Ignore specific behaviors." The September 7, 2006 IEP did not list what the specific behaviors were that needed to be ignored. In an unsigned IEP dated October 11, 2006, in which the Complainant did not attend the CCC meeting¹, it was stated that occasional noises, talking out, and tics were behaviors that were to be ignored. The teachers provided statements regarding this allegation. Most of the teachers claimed to have ignored the behaviors (e.g., noises, pestering other students, talking out) that were not severely disruptive. When the specified behaviors were exhibited by the Student, the teachers stated that they either called his name and the behavior would cease, told the Student that the behaviors were inappropriate and had to stop, or redirected him. A few teachers noted that the Student had difficulty in class due to his refusal to do work. One teacher reported that the Student was given a discipline form for throwing paper in class. Furthermore, the BIP does not address the "ignored behaviors."

¹ It was denoted on the IEP that the Complainant was called on the morning of October 11, 2006 and she stated that she was unable to attend. It was noted that the Complainant asked for the CCC meeting to continue and send her the paperwork.

9. In the Functional Behavioral Assessment (FBA) dated October 2, 2006 two behaviors were described in detail: 1) verbally threatens other students and 2) rude and disrespectful verbally to teachers/peers. Under the behavior definition in the FBA, a checklist of 19 behaviors that affect the Student were check-marked, which included the following: 1) easily distracted by external stimuli, 2) does not follow through on directions, 3) does not sustain attention-task/play, 4) does not listen to what is being said, 5) fidgets-squirms-excessive movements, 6) blurts answers to questions before done, 7) talks excessively, 8) interrupts/intrudes on others, 9) argues with adults, 10) defies or refuses adult rules/regulations, 11) deliberately does things-annoy others, 12) blames others for his mistakes, 13) not completing work, 14) difficulty staying focuses when working alone, 15) difficulty staying focused when working in groups, 16) more talkative than usual, 17) distractibility-attention to trivial, 18) lack of awareness / feelings of others, 19) repetitive facial (eye, head) movements. However, there was no documentation regarding how these behaviors affected the Student or how the Student and the School's staff should handle these behaviors. The BIP consisted of a checklist regarding the Student's behaviors for Monday through Friday. Each teacher is instructed to fill in each box to indicate whether the behavior was exhibited during the class. The teachers are instructed to return the BIP to the Teacher of Record Monday each week. The behaviors listed on the checklist included: complying with adult requests in an appropriate manner, completing assignments, using CD player only when he was working on assigned tasks, refraining from inappropriate comments. The Student's rewards and consequences were denoted at the bottom of each sheet. If the Student received a "yes" in each category for 4 out of 5 school days the Student was to receive one or more of the following: praise notes, eat lunch with peers, or trip to principal or counselor for reward. If the Student does not receive "yes" in each category for 4 out of 5 school days, he will receive 1 or more of the following: verbal reprimand, lunch detention, and will not be permitted to use CD player when working on assigned tasks. The School provided documentation of completed weekly BIPs from only one of the Student's teachers, but the Teacher of Record provided a summary (dated January 8, 2007) of the behavior plan sheet information from four teachers.
10. The Student's discipline report denoted eight behavioral incidents which included the following dates: August 25, 2006 / Disrespect, September 1, 2006 / Other, September 11, 2006 / Class Disrupt, September 22, 2006 / Class Disrupt, September 22, 2006 / Class Disrupt, September 22, 2006 / Disrespect, September 26, 2006 / Other, September 29, 2006 / Unprepare/Class, and September 29, 2006 / Unprepare/Class. The Student was suspended on August 25, 2006 for using inappropriate language after being asked to clean off the table in the cafeteria. The other behavioral incidents included consequences such as: lunch detention, after school detention, and other.
11. The School failed to provide any documentation regarding professional and paraprofessional staff inservice training for OHI. In a phone conversation on January 25, 2007, the Special Education Director acknowledged that the staff has not been trained.

CONCLUSIONS:

1. Finding of Fact # 11 indicates that the School failed to provide specialized inservice training in the area of OHI for its professional and paraprofessional staff serving the Student.
2. Findings of Fact #3 through #8 address whether the Student's IEP was implemented as written.
 - a. Finding of Fact #3 indicates that the IEP dated September 7, 2006 provides that the Student is "allowed breaks." Although Finding of Fact #3 indicates that the Student's teachers claimed that they provided the Student with breaks when needed, the School failed to provide documentation that documented the implementation of this accommodation.
 - b. Finding of Fact #4 indicates that the Student is to be provided with study guides and outlines. Teachers noted that the Student was provided the same resources as the other student were

given. Although Finding of Fact #4 demonstrates that the School provided an array of chapter review and workbook daily lecture and discussion notes, the IEP was not clear as to how this accommodation was to be implemented.

- c. Finding of Fact #5 indicates that the IEP stated that the Student is to be provided a copy of class notes. Although Finding of Fact #5 indicates that the teachers claimed that they provided class notes to the Student, the IEP was not specific in addressing when and to what extent this accommodation is to be implemented. Furthermore, the School provided only minimal documentation that documented the implementation of this accommodation.
- d. Finding of Fact #6 indicates that the IEP stated that the Student was to be provided with written copies of board work. Although Finding of Fact #6 indicates a few teachers provided copies of the board work that was provided, the IEP did not address to what extent this accommodation is to be implemented and by whom. The School provided only minimal documentation that documented the implementation of this accommodation.
- e. Finding of Fact #7 indicates that the IEP allowed for timed situation to be omitted. Some of the teachers denoted that this accommodation did not pertain to them because they did not utilize timed situations in their class. Finding of Fact #7 indicates that other teachers stated that timed situations were not graded and the Student was allowed extra time for make-up work, assignments, and tests. The School failed to provide documentation that documented the implementation of this accommodation.
- f. Finding of Fact #8 indicates that the September 7, 2006 IEP stated that the specific behaviors are to be ignored; however, the IEP failed to mention what specific behaviors were to be ignored. Finding of Fact #8 indicates that the October 11, 2006 IEP attempts to clarify the denotation of "ignore specific behaviors" as occasional noises, talking out, and tics. Teachers stated that they ignored the specified behaviors, unless the behaviors became disruptive, but the IEP failed to demonstrate how to handle these behaviors. The School failed to provide documentation that documented the implementation of this accommodation. Additionally, there was no further explanation in the Student's BIP regarding these behaviors.

The School provided minimal documentation to document how the above stated accommodations are to be implemented. In addition, the language in the IEP is ambiguous as to when, to what extent, and by whom the above stated accommodations are to be implemented, the language resulted in misinterpretations and misunderstandings. Where ambiguity exists in an IEP, the ambiguity will be construed against the School for its development and implementation. IEPs must have sufficient clarity so that both the parents and the school personnel understand what services a student is to receive. Therefore, a violation of 511 IAC 7-27-7(a) is found.

3. Findings of Fact #9 through #10 address whether the Student's BIP was implemented as written. Finding of Fact #9 shows that the FBA addressed two behavioral concerns. Finding of Fact #9 indicates that the Student's BIP included four behaviors that teachers marked whether or not the behavior was exhibited in class each week. Finding of Fact #10 shows the Student's discipline report and the School failed to provide any documentation regarding how each behavioral incident was handled with respect to his BIP. Pursuant to 511 IAC 7-17-8, a BIP is a plan that describes how the student's environment will be altered, identifies positive behavioral intervention strategies, and specifies which skill will be taught in an effort to change a specific pattern of behavior of the student. Additionally, the plan shall be linked to information gathered through the FBA. The BIP failed to address the necessary elements contained in 511 IAC 7-17-8. Therefore, a violation of 511 IAC 7-27-7(a) is found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Shelby Eastern School District and the Blue River Special Education Cooperative shall:

Provide specialized inservice training of OHI, specifically regarding Tourette's Syndrome, for all professional and paraprofessional staff working with the Student in accordance with 511 IAC 7-26-12(c). The School shall submit a copy of the inservice agenda, handouts or other materials provided to the inservice participants, name(s) and title(s) of the presenter(s), and a list of participants with signatures confirming attendance **no later than March 9, 2007**.

Convene a CCC meeting **no later than February 28, 2006**. The CCC shall review and revise the Student's IEP with specific attention to clear statements of how the Student's accommodations will be implemented. In addition, the CCC should review, revise, and develop a BIP, with input from the Complainant, to include all of the stated elements pursuant to 511 IAC 7-17-8. The School shall submit a copy of the CCC report and agreed-upon IEP (signed by the Complainant) **no later than March 9, 2007**.