

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: CP-177-2007
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: February 9, 2007
DATE OF REPORT: March 9, 2007
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: April 20, 2007

COMPLAINT ISSUES:

Whether the Taylor Community School Corporation and the Kokomo Area Special Education Cooperative violated:

511 IAC 7-27-4(c)(1) by failing to utilize the case conference committee to develop, review, or revise the student's individualized education program (IEP), specifically by failing to take into consideration the concerns of the parent with respect to the development of the behavioral intervention plan (BIP).

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

- (a) provide direct adult support;
- (b) implement the "Handwriting Without Tears" program;
- (c) report progress on speech therapy and behavior;
- (d) implement the student's sensory diet;
- (e) train staff working with the student on joint compression;
- (f) allow the student to try a weighted vest and carry a weighted shoebox;
- (g) provide a quiet area; and
- (h) provide rewards and incentives.

FINDINGS OF FACT:

1. The Student, 6 years old, is identified as other health impaired (OHI) and as a student with a communication disorder, and has been determined eligible for special education and related services.
2. The case conference committee convened on November 15, 2006, to revise the Student's behavioral intervention plan (BIP). Case conference notes indicate that the Complainant will sign the IEP after the proposed BIP is finalized by the Behavior Consultant based on the input from the case conference committee. A copy of the final BIP was sent to the Complainant. The Complainant then made changes to the BIP thinking that the BIP was still in draft form. Correspondence between the Complainant and the School indicates confusion as to whether the BIP was done and whether it was being implemented.
3. On several occasions the Complainant requested to have a copy of the final BIP. The Complainant made a request on November 30, 2006, and January 10, and 25, 2007. On January 12, 2007, the Student's Teacher of Record (TOR) responds to the Complainant stating, "The behavior plan is in place, but you are right, we have not had a meeting to look at it as a case conference committee." A case conference committee meeting has been scheduled for March 15, 2007.

4. The case conference notes in the Student's IEP dated November 15, 2006, indicate that the Student is to receive direct adult support in all general education settings. The Complainant and the School have different definitions of direct adult support. The Complainant thinks direct adult support means helping and supervising the Student on a one-on-one basis. The School maintains that it refers to help from various assigned school personnel. For example, a special education assistant escorts the Student from the bus to his classroom. The BIP states that the Student requires direct adult support in all general education settings. The Student's IEP does not describe or explain what is meant by direct adult support.
5. The Student's IEP dated September 15, 2006, and the subsequent revisions indicate that "Handwriting without Tears" will be used as the Student's handwriting model across all sectors of the school environment. Both the Complainant and the School acknowledge that the program is being used in the Student's occupational therapy sessions but there is disagreement about whether and to what extent all written work that the Student is asked to complete in class or in his resource room is done using this program.
6. The Student's IEP indicates that progress reports will be sent to the Complainant at the same nine-week report card intervals as all other students. Progress is reported on each IEP goal page. The reports indicate whether the Student has made no progress, is progressing, mastered an objective, or that an objective has not yet been covered.
7. On October 22, 2006, the Complainant requested additional data to support the Student's progress reports from the first nine-week grading period. Similar requests were made on January 17, 19, 25, and February 1, 2007, for more information about how the Student is progressing from the second nine-week reports in addition to a speech therapy report and a BIP progress report. The IEP does not identify a requirement that such additional information be provided. Attached to the Complainant's e-mail dated January 19, 2007, is a narrative progress report from the Speech Therapist. The IEP does not require a speech therapy progress report. However, it does require that a progress report on the Student's BIP be provided. The first progress report date on the BIP is December 22, 2006. The School has failed to document whether this progress report has been provided, otherwise all other required progress reports have been provided.
8. The Student's IEP was reviewed and revised on November 2, 2006. The IEP does not identify a "sensory diet" as an accommodation or adaptation. However, the Student's BIP states that school personnel working with the Student will use sensory diet suggestions as a behavioral intervention. Also, included in the case conference notes is a statement that "[The Occupational Therapist] presented information about a sensory diet...for [the Student]." The notes also state "The sensory diet will be part of [the Student's] school day." There is no further information about a sensory diet or how it will be implemented. The School has provided a Sensory Diet Plan for the Student dated November 2, 2006. It shows in detail all of the recommended sensory activities that can be implemented each part of the Student's scheduled school day. In a letter of explanation, the School explains the usual daily sensory activities and strategies used with the Student.
9. The case conference notes dated November 2, 2006, indicate a request made by the Advocate to conduct training on joint compression. On December 7, 2006, the Student's Occupational Therapist conducted an inservice training about utilizing joint compression for the Student to the Teacher of Record, General Education Teacher, Resource Aide, and the Behavior Consultant.
10. The case conference notes dated November 2, 2006, state "The use of a weighted vest/backpack was discussed as [the Student] moves from place to place." The sensory diet plan indicates that one strategy is to provide sensory input through daily routines such as wearing a heavy backpack when

walking to school. Case conference notes dated November 15, 2006 indicate further discussion about the use of a weighted vest and a weighted shoebox. The Student's IEP does not identify the use of a weighted vest or shoebox as an accommodation or adaptation.

11. The Student's IEP dated September 15, 2006, and reviewed and revised on November 2, and 15, 2006, does not identify a quiet area as an accommodation or adaptation. The case conference notes state "In a 30 minute seatwork session, [the Student] may need to ask for and receive one break." The School explains that the Student has a place reserved for him in the general education classroom and the resource room.
12. The Student's IEP indicates that social skills are to be reinforced as an adaptation and the Student's BIP states that the Student is to have the opportunity to work towards rewards for compliance with adult directions with such things as stickers and smiley faces. The School explains that the Student's kindergarten classroom and resource room have classroom management plans in place that have built in rewards and incentives for exhibiting good behavior. There is no other documentation indicating whether and to what extent rewards and incentives have been provided to specifically help the Student progress toward the relevant IEP goal.

CONCLUSIONS:

1. Findings of Fact #2 and #3 indicate that the Student's BIP was not developed, reviewed, or revised unilaterally by the School outside of the case conference committee process. However, the School failed to convene the case conference committee within a reasonable amount of time once it knew that the Complainant was not clear as to whether the BIP was finalized and being implemented. Therefore, a violation of 511 IAC 7-27-4(c) is found (see also 511 IAC 7-27-4(a)(8)). Finding of Fact #3 indicates that a case conference committee meeting is scheduled for March 15, 2007.
2. Findings of Fact #4 through #12 address whether the Student's IEP is implemented as written. Specifically:
 - (a) Finding of Fact #4 indicates that the case conference notes dated November 15, 2006 and the BIP require that the Student have direct adult support. The IEP is not clear about what compliance with this requirement involves;
 - (b) Finding of Fact #5 indicates that the "Handwriting without Tears" program/model is being utilized in the Student's occupational therapy sessions, but it is not clear whether and to what extent it is being used across all sectors of the Student's educational environment;
 - (c) Finding of Fact #7 indicates that the School cannot document whether the Student's BIP progress report was provided by December 22, 2006;
 - (d) Finding of Fact #8 indicates that the Student's BIP requires sensory diet strategies for the Student. Although the School has a detailed sensory diet plan for school personnel to consult as a guide, there is no further documentation indicating whether and to what extent this is being implemented;
 - (e) Finding of Fact #9 indicates that the School provided training to school personnel working with the Student on joint compression on December 7, 2006;
 - (f) Finding of Fact #10 indicates that neither the IEP dated September 15, 2006, nor the subsequent revisions include a weighted vest or shoebox as an identified accommodation or adaptation though the case conference notes suggest that they may benefit the Student;
 - (g) Finding of Fact #11 indicates that neither the IEP dated September 15, 2006, nor the subsequent revisions include the provision of a quiet area as an identified accommodation or adaptation; and

(h) Finding of Fact #12 indicates that the BIP requires that the Student have opportunities to work for rewards and incentives, but the School cannot document whether and to what extent this has been implemented to specifically help the Student progress toward his behavioral goal. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to the School's failure to show it has implemented direct adult support, implemented the "Handwriting without Tears" program in class, implemented various sensory diet strategies, provided a BIP progress report, and provided the Student with opportunities to work towards rewards and incentives. Although the case conference notes in the subsequent IEP revisions address many of the Complainant's concerns, the notes characterize many things as recommendations or as ambiguous requirements. It is difficult to determine what is agreed upon and required. Ambiguous IEPs must be construed against the school responsible for their development and implementation. IEPs must have sufficient clarity with respect to what is to be provided, when, by whom, and with what resources so that both the school and the parent know what is to be provided.

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 Taylor Community School Corporation and the Kokomo Area Special Education Cooperative shall:

Convene the Student's case conference committee as scheduled on March 15, 2007, and determine how direct adult support, the "Handwriting without Tears" program, and rewards and incentives for behavior will be implemented. The case conference committee shall also determine how to document whether and to what extent these requirements are being implemented. A copy of the case conference report and revised IEP shall be submitted to the Division no later than **April 13, 2007**.

Submit documentation indicating that the Complainant has received the BIP progress report to the Division no later than **April 13, 2007**.