

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: CP-189-2007
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: March 13, 2007
DATE OF REPORT: April 12, 2007
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: November 2, 2007

COMPLAINT ISSUES:

Whether the MSD Shakamak Schools and the Greene-Sullivan Special Education Cooperative violated:

- 511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to:
- (a) conduct an assistive technology evaluation;
 - (b) provide a sound field system;
 - (c) conduct an on-site training about cochlear implants;
 - (d) conduct a training in Total Communication; and
 - (e) provide 360 minutes of speech therapy per month.

During the course of this investigation the Complainant withdrew the issue 511 AC 7-27-4(a)(3).

*NOTE: Due to an administrative error, the originally assigned complaint investigation number, CP-188-2007, has been changed to CP-189-2007.

FINDINGS OF FACT:

1. The Student, 4 years old, is identified as a student with multiple disabilities, and has been determined eligible for special education and related services.
2. The Student's IEP dated September 26, 2008, and revised on November 10, 2006, indicates that an assistive technology evaluation was to be started in November 2006, and completed by January 2007. The Student started school on December 6, 2006. The IEP Action Plan indicates that this assessment is ongoing. The School's Assistive Technology Assessment documentation indicates that in November 2006 the Occupational Therapist (OT) and the Physical Therapist (PT) assessed the Student and recommended the provision of seating options. On December 10, 2006, the OT, PT and Hearing Impaired/Speech Language Pathologist (HI/SLP) contributed observation notes to the ongoing assessment. On December 18, 2006, the OT ordered switch toys to help establish cause and effect skills after working with the Student. On January 10, 2007, the HI/SLP conducted an Infant-Toddler Meaningful Auditory Integration Scale (ITMAIS) assessment to determine increased receptive language gain since the Student had last been assessed on May 12, 2006.
3. The Student's IEP indicates that a sound field system will be obtained by the HI/SLP teacher. Documentation indicates that a Phonic Ear Sound Field system was ordered by the School on January 19, 2007. On March 2, 2007, the School called to check the status of the sound field system equipment

order and was informed that the equipment was on back order and would be shipped on March 16, 2007. The School received the sound field system equipment on March 23, 2007. It was delivered to the School for installation over the spring break period. However, the speakers are still on back order.

4. The IEP revision dated November 10, 2006, indicates that all staff working with the Student will receive on-site training by a provider with expertise in cochlear implants to be scheduled within the first two weeks of school. On November 17, 2006, the Director of Special Education contacted a physician who is the medical director of audiology and speech language pathology at the Indiana University School of Medicine to discuss qualified consultants available to provide the cochlear implant training. Staff working with the Student received training about the cochlear implant equipment, including information about troubleshooting on January 11, 2007.
5. The IEP revision dated November 10, 2006, indicates that all staff and students will be trained in total communication (hand signing with vocalization) by the Hearing Impaired (HI) teacher. Adults are to receive training two times a week for 30 minutes and students as their attention span allows. The Complainant specifically alleges that staff members have not been trained. There is no documentation indicating whether and to what extent training to adults two times a week for 30 minutes has been provided.
6. The Student's IEP dated September 26, 2006, indicates that the Student is to receive 360 minutes of speech therapy per month with at least two visits per week. It also states that speech therapy will include 30 minutes per week with the HI/SLP teacher. The Complainant alleges that the Student has been receiving 20 minutes per week with the HI/SLP teacher and 30 minutes per week with the SLP. The speech therapy log indicates that, from December 13, 2006, to March 7, 2007, the Student has received a total of 365 minutes of therapy (January 3, 2007, was the first session after winter break which started on or about December 22, 2006). The Student received two visits, one by the HI/SLP teacher and one by the SLP, on Wednesday mornings. The Student received no therapy for three consecutive weeks in February 2007 due to snow.
7. According to the School, the 360 minutes of speech therapy per month include aspects of the overall "language service" which includes co-treatment with other related service personnel, ongoing Total Communication training in the classroom, other related trainings, communication with other agencies, conferencing, and one-on-one services with the Student. The IEP dated September 26, 2006, and the subsequent revision dated November 10, 2006, do not identify these as part of the 360 minutes of speech therapy.

CONCLUSIONS:

Findings of Fact #2 through #7 address whether the School failed to implement the Student's IEP:

- (a) Finding of Fact #2 indicates that the School has conducted an ongoing assessment of the Student's assistive technology needs. Although the IEP Action Plan indicates that the assessment would be ongoing, there is nothing more to indicate what that means;
- (b) Finding of Fact #3 indicates that the School has ordered a sound field system, but due to delays in having the required equipment shipped to the School, there has been an untimely delay in having the Student's classroom equipped with the required system. Both parties acknowledge that the classroom has been set up with everything but the speakers which are still on back order;
- (c) Finding of Fact #4 indicates that the School has conducted an on-site training about cochlear implants;
- (d) Finding of Fact #5 indicates that there is no documentation showing whether and to what extent the School has provided Total Communication training to adult staff two times a week for 30 minutes; and

(e) Findings of Fact #6 and #7 indicate that the School has failed to provide the Student with 360 minutes of speech therapy per month. Finding of Fact #7 shows that the IEP does not identify or explain that various trainings or other services should be included as part of the 360 minutes.

Therefore, a violation of 511 AC 7-27-7(a) is found with respect to failing to have the sound field system in place in a timely manner; failing to provide the required Total Communication training to adult staff; and failure to provide 360 minutes of speech therapy per month; and a technical violation regarding the assistive technology evaluation. The IEP is not clear about what an ongoing assistive technology evaluation involves, and is not clear about what services are to be included as part of the 360 minutes of speech/language services the Student is to receive. Where ambiguities exist in an IEP, the ambiguity will be construed against the public agency that is responsible for its development and implementation. IEPs and case conference reports must have sufficient clarity so that both the parent and school personnel know what services a student is to receive, from whom, and with what resources will be employed.

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 Shakamak Schools and the Greene-Sullivan Special Education Cooperative shall:

Convene the case conference committee to determine: (1) compensatory speech therapy services; (2) exactly how much direct speech therapy is to be provided; (3) the timeline for completion of an assistive technology evaluation (if necessary); and (4) how much Total Communication training needs to be provided to adult staff and how that will be provided. A copy of the Case Conference Report and revised IEP shall be submitted to the Division no later than May 18, 2007.

Train adult staff who work with the Student in Total Communication based on what the case conference committee decides is sufficient to make up what has not been provided (see above). A copy of the training, agenda, attendance sheet, notes, and other documentation shall be submitted to the Division no later than **May 18, 2007.**