Indiana Department of Education Division of Exceptional Learners

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	CP-193-2007
COMPLAINT INVESTIGATOR:	Sharon Knoth
DATE OF COMPLAINT:	March 16, 2007
DATE OF REPORT:	April 20, 2007
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	October 12, 2007

COMPLAINT ISSUES:

Whether the Indiana School for the Blind and Visually Impaired (ISBVI) violated:

511 IAC 7-27-6(a)(7)(B) regarding whether the Student's individualized education program (IEP) specified how the Student's parents would be regularly informed of the Student's progress.

511 7-25-6(a) by failing to conduct a reevaluation for a student receiving special education and related services every thirty-six (36) calendar months.[1]

511 IAC 7-25-3(i) by failing to include or to conduct a comprehensive evaluation in all areas related to the Student's disability, specifically when determinations are made regarding the appropriate special education services and placement for the Student.[2]

511 IAC 7-26-2(d) by failing to ensure that professional and paraprofessional staff serving students with autism spectrum disorder have received specialized inservice training in this area.[3]

511 IAC 7-27-4(c)(3) by failing to consider strategies to address the Student's behavior that impedes his learning or that of others when developing the Student's individualized education program (IEP).[4]

Whether the LEA[5] and the Indiana School for the Blind and Visually Impaired (ISBVI) violated:

511 IAC 7-27-10 by failing to document the reasons and options for moving the Student into a homebound placement.

[1] Upon investigation, this issue was added.
[2] Upon investigation, the issue was changed to better reflect the allegations.
[3] Upon investigation, this issue was added.
[4] Upon investigation, this issue was added.
[5] Due to an issue being added during the course of the investigation that directly involved the LEA, the LEA was added as a party to the investigation after the initial complaint notification was distributed.

FINDINGS OF FACT:

1. The Student is a seven-year-old student identified with a visual impairment and autism spectrum disorder (ASD), and has been determined eligible for special education and related services. In addition, the Student has Rieger's syndrome, which results in multiple anomalies of the eyes, mouth, and skeletal structure. The Student has attended ISBVI for the past four school years.

2. The Student's annual case review was held on December 11, 2006. The Student's December 11, 2006 IEP contained six annual goals, including goals relating to the Student's dressing skills, self-regulation skills (behavioral), language skills, writing skills, number-sense, and reading.

3. The Student's mother alleged that she has not been kept informed of the Student's progress for the 2006/2007 school year. Pursuant to the ISBVI Parent Handbook and according to the Principal, parents are informed of a student's progress by quarterly report cards sent home on the following dates: October 20, 2006, January 16, 2007, March 16, 2007, and June 8, 2007. Nowhere on the December 11, 2006 IEP or case conference committee (CCC) summary is there a space to denote how the Student's progress on goals will be measured or how the Student's parent will be regularly informed. The Principal of ISBVI acknowledged that it was not the practice of the ISBVI to discuss this with parents as the quarterly report cards are how parents are kept informed. The 2nd Quarter 2006/2007 Progress Report provided by the ISBVI contained five out of the Student's six annual goals (the Student's behavioral annual goal was not included). The progress report relating to the Student's goals did not inform the Student's parent of progress toward the annual goals or the extent to which that progress is sufficient to enable the Student to achieve the goals by the end of the twelve-month period.

4. The ISBVI form titled "Re-Evaluation/Additional Assessment Consideration" which is undated and unsigned, indicated that the Student's last evaluation date was September 24, 2004. There are boxes on the form where individuals completing the form might check that assessments need to be conducted in Behavioral/Emotional and Functional Behavior, but these boxes were not checked. The December 11, 2006 CCC summary provided narrative data from the occupational therapist stating: "[The Student's] mood and frustration level affect his ability to complete most fine motor tasks. . .His frustration tolerance is low." Under the subsection titled Social and Emotional Behavior there is a statement that reads: "[The Student] is having temper tantrums at least once [sic] to three times a day to the degree he is dangerous to himself and others." It is unclear as to which service provider reported this to the CCC.

5. The Student's ISTAR Detail Report dated May 25, 2006 rates the Student as "Developing" or "Not Evident" for 11 of the 12 indicators (with an overall rating of 33% for Social-Emotional Skills).

6. On October 15, 2006 a private neuropsychological evaluation was completed. The neuropsychological evaluation recommended: a) a revision to his present academic programming; b) an intensive behavioral modification program implemented by both the home and the school; and c) an effort to facilitate social skills.

7. The mother alleged that the staff at the ISBVI had not received training to prepare them to work with students who have ASD. The Principal of the ISBVI acknowledged that her school had not provided any of the staff working with the Student with inservice training on how to work with students with ASD.

8. According to the array of time-out logs, narrative reports, and unusual incident reports for the 2006/2007 school year, the ISBVI portrayed a series of behaviors ranging from tantrums, falling asleep,

screaming, giddiness, defiance, non-compliance, throwing objects, and aggressions. The reports are inconsistent in reporting how much time the Student was placed into time out or removed from the educational program.

9. According to the Student's mother, she asked the Student's current teacher and Principal of the ISBVI if the School would conduct an FBA and develop a structured BIP to address the outbursts being demonstrated in the 2006/2007 school year. The School provided a Behavioral Intervention Planning Form for the Student dated March 18, 2004. The "planning form" included provisions for the development of a functional behavioral assessment (FBA) and behavioral intervention plan (BIP). The page titled "Results and Interpretation of FBA/Current Data: Manifestation Determination" denoted that the CCC determined that the Student's behavior interferes with learning, thus requiring a BIP to be developed. The Student's BIP dated March 18, 2004 addressed the following behaviors (listed as goals): Goal #1: "[The Student] will be able to parallel play without pushing and shoving;" and Goal #2: "[The Student] will not exhibit high-pitched screaming." An "Assurance and Approval" page of the "planning form" did not include any agreement designation or any signatures, even though there are spaces for the inclusion of this information.

10. Neither the January 12, 2006 nor the December 11, 2006 CCC reports or IEPs document that the FBA and BIP from March 18, 2004 were discussed or reviewed. The December 11, 2006 IEP contained one behavioral goal: "[The Student] will demonstrate improved self-regulation skills as evidenced by meeting the following objectives." Two of the short-term instructional objectives that followed the goal were new with one additional short-term objective carried forward from the January 2006 IEP (that pertained to working on tasting 3 out of 4 foods at lunch). The two new short-term objectives spoke to working on sensory/dietary activities to modulate his level of arousal and utilizing structured means for waiting turns and taking turns. The Principal stated that the BIP had worked until the 2005/2006 school year where it was determined that a BIP was no longer necessary as the Student's behaviors had improved. The Principal acknowledged that the March 18, 2004 BIP was resurrected for the 2006/2007 school year. There is no documentation that this was discussed by the Student's CCC.

11. The Student's behavior and placement (more restrictive) was discussed at the December 11, 2006 CCC meeting. The complainant (who represented the LEA at the December 11, 2006 meeting) stated that the behavior information shared at the CCC meeting was "vague with no specific data" shared with the participants. The Principal stated that the ISBVI is limited in the types of consequences and rewards that can be implemented, and that she viewed the December 11, 2006 CCC as an opportunity to discuss and expand on those events. The Principal acknowledged that no new FBA data had been collected by the School to share at that meeting. The ISBVI form titled "Adaptations and Modifications for Teaching and Learning" dated December 11, 2006 has a section subtitled "Behavioral Supports." The first two boxes under that section are to indicate whether an FBA is in progress and whether a BIP is in effect; neither box is checked. The December 11, 2006 IEP states: "[The Student] desperately needs a program in which he can learn how to control his behavior…It is obvious to the staff that the medication is not helping [the Student] as there has been no or little changes in his behaviors."

12. On February 9, 2007, a CCC meeting was convened to discuss the Student's placement. An LEA representative was present at the CCC meeting. A placement decision of homebound services was decided for the Student. The December 11, 2006 IEP from the ISBVI was amended and read that homebound instruction would be provided by the LEA until March 1, 2007. A note page dated February 9, 2007 (author unknown) stated that the homebound would be provided for several weeks "in order to have people come into the home to work on behavior." There is no indication that new goals were developed for the Student's homebound services.

13. The principal for the ISBVI stated that the LEA representative chaired the conference of February 9, 2007. The LEA representative stated that the principal for the ISBVI chaired the conference of February 9, 2007. The LEA representative stated that she knew the ISBVI was no longer willing to serve the student and was going to dismiss him. Although she acknowledged there was no documentation to support a more restrictive placement, she had to offer some services to the student since she was representing the LEA. Her decision to place the student on homebound was to be for a brief amount of time, during which the LEA could update assessment information on the student and then convene a case conference committee to determine an appropriate educational placement based on current information.

14. At conclusion of the February 9, 2007 meeting, the Student was dismissed from the ISBVI and placed back at the LEA where he was to initially receive homebound instruction. It was then determined the student would receive three hours per day of instruction in a self-contained classroom located within the LEA. A later CCC meeting was convened on March 27, 2007 during which the Student was moved to full-time at the local school. The LEA representative stated that the student is progressing well in the current educational placement.

CONCLUSIONS:

1. Finding of Fact 2 indicates that the Student's IEP contains six annual goals. Finding of Fact #3 indicates that although the ISBVI informs parents of students' progress via quarterly report cards, there is no indication of this at each student's CCC meeting. In addition, Finding of Fact #3 indicates that the 2nd Quarter Progress Reports were incomplete, in that the report only included five out of the Student's six goals. 511 IAC 7-27-6(a)(7)(B) requires that parent be regularly informed of the student's progress toward the annual goals in a manner that provides the parents with information as to whether the student's "progress is sufficient to enable the student to achieve the goals by the end of the twelve (12) month period." This issue is somewhat complex since all of the students at the ISBVI have an IEP so the clause "at least as often as parents are informed of their nondisabled students' progress" is difficult to apply. Nonetheless, the fact that the IEP form used by the ISBVI doesn't even have a space to allow for this discussion to occur sets up a CCC process that militates against parents asking for more frequent reporting. Therefore, a violation of 511 IAC 7-27-6(a)(7)(B) is found.

2. Finding of Fact #4 indicates that the Student's last evaluation date for the Student was September 24, 2004. There is no evidence that the Student has been reevaluated by the ISBVI since the September 24, 2004 date, even though there is evidence in Findings of Fact #4, #6, and #12 that additional data may be needed to make decisions regarding the Student (see 511 IAC 7-25-6(d)(2)). Therefore, a violation of 511 IAC 7-25-6(a) is found.

3. Findings of Fact #4 and #6 indicate that the most recent educational evaluation data the ISBVI had for this student was dated September 24, 2004 and the most recent neuropsychological evaluation (private evaluation not paid for by the school) was dated October 15, 2006. Finding of Fact #5 provides that the most recent educational assessment data was the Student's ISTAR Report dated May 25, 2006. Finding of Fact #11 indicates that the December 11, 2006 CCC meeting was convened to discuss moving the Student into a more restrictive placement. Finding of Fact #13 indicates that the CCC determined that the Student should be placed on homebound services, without updated comprehensive academic or behavioral data. Therefore, a violation of 511 IAC 7-25-3(i) is found.

4. Finding of Fact #7 indicates that the ISBVI failed to provide training to the professional and paraprofessional staff working with the Student. Therefore, a violation of 7-26-2(d) is found.

5. Findings of Fact #8, #9, #10, and #11 indicate a student in need of a revised and possibly restructured BIP. Finding of Fact #8 indicates that the Student exhibited problem behaviors during the 2006/2007 school year. Finding of Fact #9 indicates that the mother inquired into the School conducting an FBA and developing a BIP. Finding of Fact #9 indicates that the Student' last BIP was dated March 18, 2004. Finding of Fact #11 indicates that the CCC meeting discussed some of the Student's behavioral issues, but there is no evidence that considerations were made with respect to strategies to address the Student's behavior. Therefore, a violation of 511 IAC 7-27-4(c)(3) is found.

6. Findings of Fact #12 and #13 demonstrate that the Student was placed on homebound. Because of this determination to move the Student into homebound services, a discussion of the current goals and objectives should have been conducted and documented with regard to what his educational services would look like. There is no evidence of the type, frequency, and duration of the special education and related services the Student was to receive on homebound. In addition, Finding of Fact #12 indicates that the CCC meeting notes (which consisted of one page) failed to include: 1) the reason the Student is not attending school; 2) other options tried or considered; and 3) the reasons the other options were rejected. Therefore, a violation of 511 IAC 7-27-10 is found.

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

CORRECTIVE ACTION:

1. The ISBVI shall develop written procedures for addressing behavioral issues for the students who attend the school. These procedures shall provide guidance for the teachers and service providers on when updated or additional assessment data may be warranted. The procedures shall be filed with the Division of Exceptional Learners no later than May 1, 2007. Once the procedures are approved and on file with the Division of Exceptional Learners, the ISBVI shall train all staff on these procedures and provide written documentation to the Division of Exceptional Learners that lists an agenda, date and signatures of attendees. The documentation of this staff training shall be filed with the Division of Exceptional Learners no later than September 1, 2007.

2. The ISBVI shall send a written memorandum to all relevant school administrators and special education personnel regarding compliance with 511 IAC 7-25-6(a). A copy of the memorandum and a list of all who receive it shall be submitted to the Division no later than May 1, 2007.

3. The ISBVI shall complete specialized inservice training regarding ASD for all staff working with students with ASD. Student-specific training pertaining to how ASD manifests itself in each particular student is also required to be provided to all professional and paraprofessional staff working with each student with autism or ASD. The School shall submit a copy of the inservice agendas, handouts, or other material provided to the inservice participants, names and titles of the presenter(s), and a list of all who receive it shall be submitted to the Division no later than May 1, 2007

4. The ISBVI shall revise the case conference summary and individualized education program form used to ensure adequate documentation of 511 IAC 7-27-6(a)(7)(B). The ISBVI shall revise the format used for Quarterly Progress reports to ensure that all goals in each student's IEP are reported on in the manner agreed upon by the student's case conference committee. These revised forms and reports shall be filed with the Division of Exceptional Learners no later than June 1, 2007. Once the forms and reports are approved and on file with the Division of Exceptional Learners, the ISBVI shall provide proof that all staff have been informed of the requirement to use the updated forms and reports. That documentation shall be filed with the Division of Exceptional Learners no later than September 1, 2007.

5. The LEA shall provide the Division of Exceptional Learners with written procedures for ensuring case conference committee meetings that determine homebound instruction review the type, length, frequency and duration of the special education and related services the student is to receive. In addition, these procedures need to include how 511 IAC 7-27-10(a)(1) through (3) will be included in the CCC report. These procedures shall be submitted to the Division of Exceptional Learners no later than May 1, 2007. Once the procedures are approved and on file with the Division of Exceptional Learners, the LEA shall train all case conference committee coordinators on these procedures and provide written documentation to the Division of Exceptional Learners that lists an agenda, date and signatures of attendees. The documentation of this training shall be filed with the Division of Exceptional Learners no later than September 1, 2007.