

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	CP-195-2007
COMPLAINT INVESTIGATOR:	Demaris Stewart
DATE OF COMPLAINT:	March 20, 2007
DATE OF REPORT:	April 18, 2007
REQUEST FOR RECONSIDERATION:	N/A
DATE OF CLOSURE:	August 28, 2007

**COMPLAINT ISSUES:**

Whether the Fort Wayne Community Schools violated:

511 IAC 7-27-7(a) by failing to implement the Student's individualized education program (IEP), specifically by not:

- (a) implementing the modifications/supports checklist related to social interaction supports;
- (b) implementing the assignment modifications, specifically relating to the utilization of compensatory procedures by providing alternate assignment/strategy with demands of class conflict with student capabilities as stated in the IEP;<sup>1</sup>
- (c) implementing the self-management/follow through modification;
- (d) implementing the Circle of Friends strategy;
- (e) providing enlarged worksheets and handouts;
- (f) providing class notes;
- (g) providing a visual schedule;
- (h) teaching study skills;
- (i) implementing the behavior intervention plan (BIP) during the 2006-2007 school;<sup>2</sup> and
- (j) providing six hours of one-on-one assistance daily.

511 IAC 7-26-12(c) by failing to provide specialized training in the area of Other Health Impairment (OHI), specifically, CHARGE Syndrome, to professional and paraprofessional staff serving the Student.<sup>3</sup>

511 IAC 7-25-7 by failing to conduct the additional evaluation and convene the case conference committee (CCC) meeting within 60 instructional days of the date of written parental consent.

511 IAC 7-27-3(a) by conducting a CCC meeting on November 22, 2006 without the presence of a representative of the public agency.

511 IAC 7-22-1(d) by failing to provide the parent a copy of the procedural safeguards at the time of notification of the CCC meeting during the 2006/2007 school year.

511 IAC 7-27-2(c) by failing to provide adequate notice of the CCC meetings.

511 IAC 7-27-7(b) by failing to ensure that the Student's teacher of record (TOR) informed the Student's general education teachers of the specific responsibilities related to implementing the Student's IEP.<sup>4</sup>

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<sup>1</sup> Upon investigation, the issue was changed to better reflect the allegation.

<sup>2</sup> Upon investigation, the issue was changed to better reflect the allegation.

<sup>3</sup> This issue was taken out of 511 IAC 7-27-7(a), because inservice training by regulations pursuant to 511 IAC 7-26-12(c).

<sup>4</sup> Upon investigation, the issue was changed to better reflect the allegation.

## FINDINGS OF FACT:

1. The Student is 13 years old and is eligible for special education and related services as a student with other health impairment as a primary disability and visual impairment, communication disorder, and a hearing impairment as secondary disabilities. In addition, the Student is diagnosed with CHARGE<sup>5</sup> Syndrome.
2. The Student's IEP dated May 17, 2006 indicated on the Modifications/Supports Checklist various modifications/supports to assist the Student in social interaction. These modifications were denoted with a "√" next to the following phrases: "Peer advocacy," "Peer tutoring," "Structure activities to create opportunities of social interaction," "Focus on social process rather than activities/end product," "Cooperative learning groups," "Teach friendship skills/sharing/negotiation," "Teaching social communication skills," and "Other: Circle of Friends strategy." There was no further explanation regarding the specifics of these modifications in the IEP. The School stated that the Student met with the School's guidance counselor to learn about peers and develop a network of friends. However, the School failed to provide documentation regarding the implementation of these modifications.
3. The May 17, 2006 IEP indicated on the Modification/Supports Checklist with a "√" next to the phrase "Utilize compensatory procedures by providing alternate assignment/strategy with demands of class conflict with student capabilities." There was no further explanation regarding the specifics of this modification in the IEP. The School failed to provide documentation regarding the implementation of this modification.
4. The IEP dated May 17, 2006 indicated on the Modification/Supports Checklist with a "√" that the Student was to be provided with self-management/follow through modifications as evidenced the following modifications/accommodations: "Visual daily schedules," "Check often for understanding/review," "Request parent reinforcement," "Have student repeat directions," and "Review and practice in real situation." There was no further explanation regarding the specifics of the implementation of these modifications/accommodations. The School failed to provide documentation regarding the implementation of these modifications/accommodations.
5. The Complainant alleged that it was agreed at the May 23, 2006 CCC meeting to implement the "Circle of Friends" strategy, as recommended by the CHARGE specialist. There is no documentation of a May 23, 2006 CCC meeting. However, the May 17, 2006 IEP includes the Circle of Friends strategy as part of the social interaction support. (See Finding of Fact #2). The School stated that information has been made available to staff, and attempts have been made to structure social opportunities for the Student; however, the School failed to provide documentation.
6. The IEP dated May 17, 2006 indicated on the Modifications/Supports Checklist with a "√" that the Student is to be provided with "large print." There was no further explanation regarding the specifics of the implementation of this modification. The School stated that the Student is provided with enlarged print material, but the School failed to provide documentation regarding this modification.
7. The IEP dated May 17, 2006 indicated on the Modifications/Supports Checklist with a "√" that the Student is to be provided with notes. There was no further explanation regarding the specifics of the implementation of this modification. The School stated that teachers report that class notes are provided. However, the School failed to provide documentation regarding this modification.

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<sup>5</sup> The letters in CHARGE stand for: Coloboma of the eye, Heart defects, Artesia of the choanae, Retardation of growth development, Genital and/or urinary abnormalities, and Ear abnormalities and deafness.

8. The IEP dated May 17, 2006 indicated on the Modifications/Supports Checklist with a “√” that the Student is to be provided with a “visual daily schedule.” There was no further explanation regarding the specifics of the implementation of this modification. The School acknowledged that the Student does not have his own personnel visual schedule, but teachers put the daily plan on the board in each class. In addition, the School stated that the Student’s assistants have a checklist of activities to be completed and they work through the checklist with the Student. However, the School failed to document this modification.
9. The Complainant alleged that School failed to teach the Student study skills. On the May 17, 2006 IEP there is not a “√” on the Modifications/Supports Checklist next the modification “teach study skills,” and the IEP is silent to this effect.
10. The Complainant alleged that the Student started the 2006-2007 school year without a BIP. The May 17, 2006 IEP included a BIP, but the BIP was incomplete as evidenced by the phrase “to be determined” under each of the headings. The May 17, 2006 IEP indicated with a “√” that the student required additional support to follow the School’s discipline policy. In addition, the IEP indicated that the Student’s BIP would be developed and implemented by September 4, 2006. The CCC summaries dated October 23, November 1, and November 22, 2006 all indicated that the Student was to have a BIP. According to the CCC notes on October 23, 2006, it was stated that “the CCC will utilize information from [the Student’s Person Centered Plan] to begin developing the FBA/BIP.” The School failed to submit the Student’s BIP.
11. The Complainant alleged that the School has failed to provide the Student six hours of one-on-one assistance. According to the Student’s May 17, 2006 IEP and the CCC summaries dated October 23, November 1, and November 22, 2006, the Student was to receive “4 hours per day of 1:1 instructional assistant while in the general education setting.” The October 23, 2006 CCC notes stated that “everyone in attendance agrees that [the Student] would do better with one-on-one assistant for the 6 hours of classes.” In a letter from the special education assistant, attached to the October 23, 2006 CCC summary, the assistant recommended that the Student would benefit with 6 hours of one-on-one. The School stated that that the Student is provided with 4 hours of one-on-one assistance.
12. The Complainant alleged that School has not provided in-service training to staff regarding the Student’s disability. The IEP dated May 17, 2006 indicated under supports for personnel that staff was to be in-services beginning on August 21, 2006 through May 31, 2007. The IEP does not give a further explanation regarding the in-service training. The School stated that written materials were sent to teachers and administrators during the 1<sup>st</sup> nine weeks, and the School provided examples the information. In addition, the School stated that the Student’s TOR received training at a conference on November 30, 2006 in Indianapolis, and the School provided a brochure that described this training.
13. According to the CCC notes dated October 23, 2006, the Complainant requested the “tech evaluation for the use of Alpha Smart.” The School acknowledged that it failed to complete the additional evaluation and convene a CCC within the 60 instructional days.
14. The Complainant alleged that although the Assistant Principal’s signature is on the IEP he was not in attendance at the CCC dated November 22, 2006. The Student’s CCC summary dated November 22, 2006, documented the attendance of the public agency representative at the CCC meeting with a signature.
15. The Complainant alleged that the School failed to provide the parent a copy of the procedural safeguards at the time of notification of the CCC meetings during the 2006/2007 school year. According to the CCC summaries on October 23, and November 22, 2006, the Complainant signed

and circled the CCC summary, which stated “I/We have received and reviewed a copy of the Notice of Procedural Safeguards and understand the purpose, procedure, and content of the [IEP].” Although the Complainant did not circle “yes” to the above statement on November 1, 2006, she did not indicate by circling “no” and signed the CCC summary.

16. The Complainant alleged that the School failed to provide adequate notice of the CCC meetings. The Complainant’s signature was on the CCC summaries dated May 17, October 23, November 1, and November 22, 2006 indicating her attendance at the CCC meetings. The School did not provide notification letters nor documented how the parent was notified.
17. The Complainant alleged that the Student’s TOR has not informed teachers of service and a paraprofessional of their responsibilities of implementing the Student’s IEP. The School failed to document compliance of this allegation.

## **CONCLUSIONS:**

1. Findings of Fact #2 through #11 address whether the Student’s IEP was implemented as written.
  - a. Finding of Fact #2 indicates that the IEP dated May 17, 2006 provides that the Student is to have several social interaction support as denoted on the Modifications/Supports Checklist. Although Finding of Fact #2 indicates that the Student’s met with the School’s guidance counselor to learn about peers and develop a network of friends, the School failed to provide documentation regarding the implementation of these accommodations/modifications. In addition, the IEP was not clear as to how these accommodations/modifications were to be implemented.
  - b. Finding of Fact #3 indicates that the May 17, 2006 IEP provides that the Student was to “utilize compensatory procedures by providing alternate assignment/strategy with demands of class conflict with student capabilities.” Finding of Fact #3 indicates that the School failed to document the implementation of this modification.
  - c. Finding of Fact #4 indicates that the May 17, 2006 IEP stated that the Student was to be provided with self-management/follow through modifications. Finding of Fact #4 indicates that the School failed to document the implementation of these accommodations/modifications. In addition, the IEP was not clear as to how these accommodations/modifications were to be implemented.
  - d. Finding of Fact #5 indicates that there was no documentation relating to a May 23, 2006 CCC meeting, where the “Circle of Friends strategy” was recommended. However, Finding of Fact #2 indicates that the “Circle of Friends strategy” was denoted as one of the strategies used for the Student social interaction supports. Findings of Fact #2 and #5 indicate that the School failed to document the implementation of this strategy.
  - e. Finding of Fact #6 indicates that the Student was to be provided material in “large print.” Although Finding of Fact #6 indicates that teacher provided the material in large print, the School failed to provide documentation regarding the implementation of this accommodation.
  - f. Finding of Fact #7 indicates that the Student was to be provided with class notes. The School failed to provide documentation that documented the implementation of this accommodation.
  - g. Finding of Fact #8 indicates that the Student was to be provided with a “visual daily schedule.” Finding of Fact #8 indicates that the School did not provide the Student his own visual schedule, but teachers put the daily plan on the board in each class. The Student’s IEP was not specific in addressing how this accommodation was to be implemented, and failed to provide documentation.
  - h. Finding of Fact #9 indicates that the May 17, 2006 IEP was silent with respect to teaching study skills and it was not denoted on the Modifications/Supports Checklist.
  - i. Finding of Fact #10 indicates that the Student began the 2006-2007 school year without a BIP, even though the May 17, 2006 IEP and CCC summaries dated October 23,

November 1, and November 22, 2006 indicate that the Student was to have a BIP.

- j. Finding of Fact #11 indicates that the Student was to receive 4 hours of 1:1 assistance, while in the general education setting. Finding of Fact #12 indicates that the CCC summary notes dated October 23, 2006 stated that “everyone in attendance agrees that [the Student] would do better with one-on-one assistance for the 6 hours of classes.” In addition, the CCC summary of October 23, 2006 stated that the Student was to receive 4 hours of 1:1 assistance. The School provided no documentation regarding this service and there is a discrepancy between the CCC summary and the CCC notes on October 23, 2006.

The School provided minimal documentation to document how the above stated accommodations/modifications and services 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/modifications and services 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.

2. Finding of Fact #12 indicates that the School provided written material to staff and the TOR attended a conference regarding CHARGE syndrome. However, there is no documentation of a formal inservice for staff regarding the Student’s disability. Providing staff with professional literature does not constitute specialized inservice training. Not only does the staff need to be trained in the Student’s disability in general, but the School should provide student-specific training for the staff working with the Student. Therefore, a violation of 511 IAC 7-26-12(c) is found.
3. Finding of Fact #13 indicates that the School acknowledges its failure to conduct an additional evaluation and convene a CCC meeting within 60 instructional days. Therefore, a violation of 511 IAC 7-25-7 is found.
4. Finding of Fact #14 indicates that a public agency representative was present at the November 22, 2006 CCC meeting, as evidenced by his signature. Therefore, no violation of 511 IAC 7-27-3(a) is found.
5. Finding of Fact #15 indicates that the parent circled and signed in agreement that she received a copy of the notice of procedural safeguards, except for November 1, 2006. Finding of Fact #15 indicates that although the Complainant did not circle “yes” indicating that she received the notice of procedural safeguards, the Complainant did not circle “no” and signed the CCC summary. Therefore, no violation of 511 IAC 7-22-1(d).
6. Finding of Fact #16 indicates that the School did not provide documentation that the Complainant was provided notice of the CCC meeting for the 2006-2007 school year, but the Complainant was in attendance at all of the CCC meetings. Therefore, a technical violation of 511 IAC 7-27-2(c) is found.
7. Finding of Fact #17 indicates that the School cannot document that the TOR informed general education teachers of the specific responsibilities related to implementing the Student’s IEP. Therefore, a violation of 511 IAC 7-27-7(b) is found.

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

## **CORRECTIVE ACTION:**

The Fort Wayne Community Schools shall:

Convene a CCC meeting **no later than May 18, 2007**. The CCC shall:

- review and revise the Student's IEP with specific attention to clear statements of how the Student's accommodations/modifications and services will be implemented;
- 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;
- determine compensatory service, if any, for the Student due to the School's failure to complete the additional evaluation. If the CCC decides to provide compensatory services to the student, develop a schedule of how the compensatory services will be implemented (length, frequency, and duration).

The School shall submit a copy of the CCC report and agreed-upon IEP (signed by the Complainant) **no later than June 1, 2007**.

Convene a meeting with relevant school personnel to develop and implement a system of documenting the implementation of the instructional accommodations/modifications required in the Student's IEP. The School shall submit a copy of the documentation log or policy developed at the meeting **no later than June 1, 2007**.

Provide specialized inservice training of OHI, specifically regarding CHARGE 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, and other material 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 June 1, 2007**.

Send a written memorandum to all relevant school personnel regarding how to comply with the requirements of 511 IAC 7-27-7(b). A copy of the memorandum and a list of all personnel who receive it shall be submitted to the Division **no later than June 1, 2007**.