

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: CP-210-2007
COMPLAINT INVESTIGATOR: Kylee Bassett
DATE OF COMPLAINT: April 30, 2007
DATE OF REPORT: May 25, 2007
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: August 17, 2007

COMPLAINT ISSUES:

Whether the Gary Community School Corporation violated:

511 IAC 7-25-4(b) by failing to conduct an initial educational evaluation and conduct a case conference committee (CCC) meeting within sixty (60) instructional days of the date of the parent's written consent.

511 IAC 7-24-1 by failing to appoint an educational surrogate parent (ESP) for the Student.¹

FINDINGS OF FACT:

1. The Student, 15 years old, is eligible for special education and related services as a student with an other health impairment.
2. The complaint was filed by an agency that provided home-based therapy and family visitation services to the Student. The Complainant indicated that the Student is a ward of the state and lives with a foster parent. In an interview with the Student's case manager from the Department of Child Services, there is no court order expressly reserving to the Student's biological parent the authority to make decisions regarding the Student's education or upbringing.
3. On October 11, 2006, the Department of Child Services' Supervisor and Director signed the permission for evaluation form to initiate an educational evaluation for the Student. The Complainant alleged that the permission form was hand delivered to the School the same day. In a memorandum dated October 11, 2006, the Assistant Principal indicated that the Student was "in the process of being evaluated in order to further accommodate her academic, physical and emotional needs." The School acknowledged that an ESP had not been appointed for the Student.
4. On May 2, 2007, the Student's foster parent signed the permission for evaluation form to initiate an educational evaluation for the Student. The Student's educational evaluation was dated May 9, 2007.² The evaluation report indicated that the Student was referred due to this complaint.
5. In the Notice of Conference/Case Review Meeting dated May 4, 2007, the School did not list an ESP as a person invited to attend the CCC meeting. The Student's initial CCC meeting was held on May 9, 2007. The IEP indicated that the foster parent attended the CCC meeting and signed in attendance next to the box "parent." In addition, the foster parent signed the IEP in agreement. The School

¹ During the course of investigation, an additional issue was added to better reflect the facts.

² The Student was tested on May 3, 2007.

acknowledged that the Student's foster parent did not receive training to serve as an ESP.

CONCLUSIONS:

1. The School had knowledge that the Student was a ward of the state as shown by Finding of Fact #2. Findings of Fact #3 indicates that the School acknowledged that an ESP was not assigned to the Student. 511 IAC 7-24-1(b) states that the public agency shall protect the rights of a student by assigning an ESP when the Student is a ward of the state. Findings of Fact #4 and #5 indicate that the foster parent was considered the "parent" for the Student, even though the foster parent had not received the training required by 511 IAC 7-24-2(c). Finding of Fact #5 indicates that the School failed to properly assign, as required per 511 IAC 7-24-1(b), an ESP. Therefore, a violation of 511 IAC 7-24-1 is found.
2. Finding of Fact #3 indicates that representatives from the Department of Child Services gave permission on October 11, 2006 to have the Student evaluated for special education and related services. Finding of Fact #3 indicates that the Assistant Principal, in a memorandum dated October 11, 2006, stated that the Student was "in the process of being evaluated." Findings of Fact #4 and #5 indicates that the Student's foster parent, who is not the Student's educational surrogate parent, signed a second permission form for the Student's initial educational evaluation. Finding of Fact #4 indicates that the Student's initial educational evaluation was completed and a CCC meeting was convened by May 9, 2007. According to 511 IAC 7-25-4(b), in order for the School to conduct an initial educational evaluation, the School must obtain informed parental consent. The Department of Child Services does not have standing as a "parent" to consent to an educational evaluation of the Student, pursuant to 511 IAC 7-17-57. The ESP, not the Department of Child Services, fulfills the educational decision-making role for the Student. However, the School failed to assign an ESP to the Student as required per 511 IAC 7-24-1(b). Because the Student did not have an ESP, the Student went for 7 months before she was evaluated for special education and related services. The Department of Child Services' and foster parent's lack of knowledge of the public agency's internal procedures for assigning an ESP may not be used to delay the process. Therefore, in conjunction with Conclusion of Law #1, a violation of 511 IAC 7-25-4(b) is found.

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:

Appoint an ESP for the Student pursuant to 511 IAC 7-24-2. In the event the foster parent is appointed, the School must provide training as required by 511 IAC 7-24-2(c).

Convene a CCC meeting (with the Student's ESP) no later than **June 19, 2007** than to determine what, if any, compensatory services are necessary for the Student due to the School's failure complete the requested initial educational evaluation and convene a CCC meeting within 60 instructional days. Because the School failed to ensure that the Student was appointed an ESP to make educational decision, the CCC shall determine compensatory services for the Student beginning 60 instructional days after October 11, 2006. In addition, the CCC should review and revise, if necessary, the IEP, as there was no trained ESP at the May 9, 2007 CCC meeting to represent the interests of the Student. The school shall submit a copy of the Student's CCC report and IEP no later than **June 29, 2007**.

Submit to the Division no later than **June 29, 2007**, documentation indicating the Student's designated ESP, in addition to documentation showing training received.

Send a written memorandum to all relevant school administrator and special education personnel regarding compliance with 511 IAC 7-24-1. In addition, address the method of assigning a foster parent as an ESP pursuant to 511 IAC 7-24-2(c). A copy of the memorandum and a list of all participants who receive it shall be submitted to the Division no later than **June 29, 2007**.