

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: CP-231-2008
COMPLAINT INVESTIGATOR: Bobbie Ritz
DATE OF COMPLAINT: June 13, 2007
DATE OF REPORT: July 19, 2007
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: August 21, 2007

COMPLAINT ISSUES:

Whether the Southwest Allen County Schools (SWAC) and the Smith-Green West Allen Special Education Cooperative violated:

511 IAC 7-23-2 by failing to respond to a parent's written request to amend the Student's educational records, specifically relating to a parent note dated March 14, 2007 and a parent letter dated January 17, 2007.

511 IAC 7-27-6(a)(8) by failing to include a statement of the Student's need for extended school year services in the Student's individualized education program (IEP).

511 IAC 7-27-4(c) by failing to utilize the case conference committee (CCC) to review, revise, or develop the Student's IEP.

An extension of time was granted on July 12, 2007, until July 20, 2007.

FINDINGS OF FACT:

1. The Student, 14 years old, is eligible for special education and related services as a Student with mild mental disability and communication disorder.
2. During the 2006-2007 school year, CCC meetings were convened on the following dates: August 15, October 13, and November 13, 2006; January 12, 15, 25, and March 14, 2007. The complainant has signed as present at each meeting.
3. In a letter dated January 17, 2007, the Student's mother (the Complainant) made a written request to amend the Student's educational records, specifically regarding information in the autism home evaluation as discussed at the January 12, 2007 CCC meeting. A CCC meeting was conducted on January 25, 2007. The CCC notes addressed the complainant's concerns of the January 17, 2007 letter. The CCC notes indicated that resolution was not achieved with respect to the complainant's request to amend the Student's educational records. All members of the CCC team, except the complainant, were in agreement that the autism spectrum disorder label was not appropriate. At the March 14, 2007, CCC meeting, the complainant took hand-written notes and alleged discrepancies in the CCC summary notes. The complainant then submitted the hand-written notes as the request to amend the Student's educational record. A letter dated March 29, 2007, from the special education director addressed to the student's parents explained to the parents the procedures for mediation and facilitated IEPs.

4. The complainant alleged the Student's 2006-2007 IEP was altered to remove the opportunity for the Student to receive services during an extended school year (ESY). The complainant claims the parents were not notified of this change on the IEP.
5. The School provided documentation of the 2006-2007 IEP dated May 18, 2006, with the box checked indicating the ESY is a consideration and services would be discussed by the end of the school year. In the case conference summary dated March 14, 2007, again, the box was checked for the ESY to be considered and discussed by the end of the school year. Electronic mail messages dated April 11, 23, 24, and May 3, 2007, document communication between the School and the complainant with the School expressing the need to schedule a CCC meeting or file for due process, mediation or a facilitated case conference.
6. The complainant addressed a letter to the SWAC Schools dated June 21, 2007 notifying the School and the special education department that since they had failed to address the ESY and had left the Student without services, the parents would be utilizing private pay services within the community. The parents' out-of-pocket expenditure would be expensed to SWAC Schools including charges for mileage and \$15.00 per hour for parent's time.
7. A letter dated June 22, 2007, addressed to the complainant from the director of special education, stated that due to the complainant not agreeing to participate in either mediation or the facilitated IEP process, a case conference was unable to be held at the end of the school year to discuss and develop the ESY services. The special education director advised the complainant that services were still available for the summer if the complainant would agree to a date for a case conference to develop the ESY services.
8. A CCC meeting was convened on July 16, 2007 to discuss ESY services for the Student. ESY services were determined and the parent signed in agreement on July 16, 2007.

CONCLUSIONS:

1. Per 511 IAC 7-23-2, a request to amend educational records shall be in writing, dated, and specify the information the parent or eligible student believes is inaccurate, misleading, or violates the student's privacy or other rights. Finding of Fact #3 indicates that a letter dated January 17, 2007, was submitted pursuant to 511 IAC 7-23-2. The hand-written notes dated March 14, 2007, lacked the specificity required to formally request to amend educational records. According to 511 IAC 7-23-2(b) and (c), the public agency has ten (10) business days after the request is received to either: 1) amend the information and notify the parent, in writing, that the change has been made; or 2) notify the parent of the refusal, in writing, and include a statement of the parent's right to a hearing to challenge the information in the student's educational record and the procedures for the hearing. Finding of Fact #3 indicates that a CCC meeting convened on January 25, 2007, to address the complainant's concerns in the letter dated January 17, 2007. Although a CCC meeting was convened within 10 business days, the School did not formally respond to the complainant's letter per 511 IAC 7-23-2(b) or (c). Therefore, a violation of 511 IAC 7-23-2 is found. However, although Finding of Fact #3 indicates that resolution was not achieved with respect to the complainant's request to amend the Student's educational records, it is also evident that the actual disagreement relates to the Student's identification. If there is disagreement between the complainant and the School with respect to the Student's identification, resolution must be sought through the due process procedures at 511 IAC 7-30-1 (mediation) or 511 IAC 7-30-3 (due process hearing).
2. Findings of Fact #4 through #8 address ESY. Finding of Fact #5 indicates that the Student's IEP dated

March 14, 2007 documents ESY being considered and a CCC was needed by the end of the school year to determine services. Finding of Fact #5 indicates several attempts were made by the School to schedule a CCC meeting near the end of the school year with no documented response from the complainant. Finding of Fact #6 indicates that the complainant utilized private pay services within the community and notified the School of being responsible for the cost. Finding of Fact #8 indicates the School made ESY services available to the Student. The School made several attempts to convene a CCC to determine ESY services with the only response from the complainant being the letter addressed to the SWAC Schools advising they had chosen an alternative program and would expect the School to be responsible for the cost. Therefore a violation of 511 IAC 7-27-6(a)(8) is not found. If there is a disagreement between the complainant and the School with respect to the appropriate ESY services, resolution must be sought through the due process procedures at 511 IAC 7-30-1 (mediation) or 511 IAC 7-30-3 (due process hearing).

3. Findings of Fact #2 and #3 address whether the School failed to utilize the case conference committee to review, revise, and develop the Student's IEP. Although the CCC was utilized several times throughout the school year, there are fundamental continuing disagreements between the School and the complainant in many areas including the Student's eligibility criteria and autism diagnosis. The Student's IEP meets the requirements of 511 IAC 7-27-6 with regard to having the required IEP components in place. Once those requirements have been met, disagreement between the complainant and the School must be resolved through the due process procedures at 511 IAC 7-30-1 (mediation) or 511 IAC 7-30-3 (due process hearing). Therefore, a violation of 511 IAC 7-27-4(c) is not 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:

Send a written memorandum to all relevant school administrators and special education personnel regarding procedures set forth in 511 IAC 7-23-2 for amending educational records. The memorandum shall explain the School's responsibility to respond within ten (10) business day pursuant to 511 IAC 7-23-2(b) or (c). A copy of the memorandum and a list of all personnel who receive it shall be submitted to the Division no later than **August 31, 2007.**