

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: CP-141-2007
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: October 19, 2006
DATE OF REPORT: November 15, 2006
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: January 12, 2007

COMPLAINT ISSUES:

Whether the School City of East Chicago violated:

511 IAC 7-25-7(b) by failing to follow procedures for conducting an additional evaluation pursuant to 511 IAC 7-25-4(a) and (b), specifically by failing to obtain parental written consent to conduct an occupational therapy evaluation.¹

511 IAC 7-26-2(d) by failing to ensure that professional and paraprofessional staff serving a student with autism spectrum disorder have received specialized inservice training.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to provide six hours of instruction a day.

511 IAC 7-27-9(b) by failing to make available to a student with a disability the variety of educational and nonacademic and extracurricular activities that are made available to nondisabled students served by the school.

During the course of this complaint investigation the following additional issue was found:

20 U.S.C. §1412(a)(25) by conditioning the student's attendance on whether the student has been administered prescribed medication.

FINDINGS OF FACT:

1. The Student, 11 years old, is identified as a student with autism spectrum disorder, and has been determined eligible for special education and related services.
2. The Student's IEP dated May 2, 2006, does not address occupational therapy. The School conducted an additional occupational therapy assessment on August 30, 2006. The Complainant did not refer the Student, or agree to such an assessment at the case conference committee meeting held on May 2, 2006. The case conference did not discuss such an evaluation. The School did not submit a copy of the assessment to the Complainant. The case conference has not convened to discuss the results.
3. The Student attends a self-contained special education classroom. The classroom is supervised by

¹ Although the complaint investigation originally included the issue of 511 IAC 7-26-2(c)(7), it was determined during the course of the investigation that 511 IAC 7-25-7(b) better reflects the facts herein.

one certified teacher and four paraprofessionals. The School cannot document whether and to what extent specialized inservice training has been provided to school personnel working with the Student.

4. The Student's IEP dated May 2, 2006, indicates that the Student is to receive special education instruction for six hours per day for a full five-day school week. It also states in the notes that "[The Student] attends school daily until 11:00 a.m. [and] receives meds from home before the bus comes in the morning. [The Student] is to have meds at home in a.m. or he can not attend school."
5. Though the IEP indicates that the Student cannot attend school if he does not take his medication, the School and the Complainant agree that in practice, if the Student does not take his medication he is dismissed at 11:00 a.m. The School and the Complainant also agree that it is normal practice for the Student to be in school on a reduced schedule four out of five school days because he has not taken his medication or has exhibited aggressive behavior.
6. The Student frequently exhibits various levels of aggressive behavior and is resistant to taking the required medication at home and at school. The Student attends school five days per week, but only for six hours a day on Tuesdays, otherwise the Student is sent home at 11:00 a.m. The School acknowledges that there is a discrepancy in the Student's IEP and that the IEP is not sufficiently clear as to how many hours of instruction per day the Student is to receive.
7. The Student's IEP dated May 2, 2006, indicates that the Student will participate in all non-academic and extracurricular activities with his peers and with assistance. Part of the Student's functional curriculum involves community based activities. The Complainant alleges that the Student has not been allowed to participate, but cannot specify the particular community outing on which the Student was not allowed to go. The School acknowledges that there have been two community outings this school year in which the Student did not participate due to attending school for a reduced day.
8. The Student is also to participate in recreational activities related to his special education class, specifically bowling once per month. The School acknowledges that there have been two planned bowling outings. The first was scheduled for September 26, 2006, but was cancelled, and another for October 17, 2006, but the Student was sent home by the school nurse with an infected finger and did not participate.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the School failed to obtain parental written consent from the Complainant with regard to the additional occupational therapy evaluation. The case conference held on May 2, 2006, did not discuss the issue and the School did not otherwise follow the required procedures with respect to conducting the additional evaluation. Therefore, a violation of 511 IAC 7-25-7(b) is found.
2. Finding of Fact #3 indicates that the School cannot document whether and to what extent school personnel working with the Student have received specialized inservice training on the Student's unique needs and characteristics. Therefore, a violation of 511 IAC 7-26-2(d) is found.
3. Findings of Fact #4 through #6 indicate that the School failed to implement the Student's IEP with respect to the number of hours of instruction the Student is to receive per school day. What is stated in the IEP is not consistent with what is stated in the case conference notes. The School acknowledges that the IEP is not clear and that the Student only attends a six-hour day one day per school week.

Therefore, a violation of 511 IAC 7-27-7(a) is found.²

4. Findings of Fact #7 and #8 indicate that the School has failed to ensure that the Student is able to participate in his class's community-based field trips and recreational activities. Finding of Fact #6 shows that the School acknowledges that the Student did not participate in at least two community-based outings due to the Student's reduced schedule. Therefore, a violation of 511 IAC 7-27-9(b) is found.
5. Findings of Fact #4 and #5 indicate that the Student is not allowed to attend school if he has not received his medication at home. Therefore, a violation of 20 U.S.C. §1412(a)(25) 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:

The School City of East Chicago shall:

Convene the Student's case conference committee to: (a) discuss the results of the occupational therapy evaluation and determine whether the Student shall receive occupational therapy services; (b) determine with sufficient clarity in writing the number of hours of instruction the Student is to receive and whether it is necessary for the Student to have a reduced schedule; (c) determine whether the Student can attend school activities out in the community, and if so, then the IEP shall include a specific plan ensuring the safety of other students and supervision of the Student (this may require adjustments to the Student's behavioral intervention plan); and (d) determine the amount of compensatory services necessary to help the Student make up the instructional hours missed due to a reduced schedule and as a result of not attending community-based and recreational activities. The amount of compensatory services should be equivalent to the number of instructional hours missed (approximately 12 hours per school week going back to the very beginning of the 2006-2007 school year). A copy of the Case Conference Report and revised IEP shall be submitted to the Division no later than December 22, 2006.

Conduct an inservice training for all school personnel who work with the Student and other similarly situated students with autism spectrum disorder. The training shall be specialized to discuss the unique needs of the Student and generalized to discuss autism generally and how it manifests itself in other students. A copy of the agenda, notes, materials, and an attendance sheet shall be submitted to the Division no later than December 22, 2006.

Send a written memorandum to all relevant special education personnel about compliance with 511 IAC 7-25-7(b). The memorandum shall address ways to ensure compliance with the procedures and timelines described in 511 IAC 7-25-4, not just compliance with parental consent. A copy of the memorandum and a list of all personnel who receive it shall be submitted to the Division no later than December 22, 2006.

² In addition, pursuant to 511 IAC 7-21-3(c), the length of the Student's instructional day shall be the same as the instructional day for nondisabled students in the same school building, unless the case conference committee determines the length of the Student's instructional day should be different and documents the justification in the Case Conference Report.