

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	CP-227-2007
COMPLAINT INVESTIGATOR:	Kylee Bassett
DATE OF COMPLAINT:	05/31/2007
DATE OF REPORT:	07/11/2007
REQUEST FOR RECONSIDERATION:	N/A
DATE OF CLOSURE:	04/07.2008

**COMPLAINT ISSUES:**

Whether the School Town of Munster and the West Lake Special Education Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the Student's individualized education program (IEP) as written, specifically by failing to:

- (a) provide services from August of 2006 to January 8, 2007;
- (b) provide speech therapy;
- (c) provide occupational therapy;
- (d) train staff in the implementation of the Student's health care plan;
- (e) provide assistive technology;<sup>1</sup> and
- (f) provide consultation services with a deaf and hard of hearing impairment consultant.<sup>2</sup>

511 IAC 7-31-2<sup>3</sup> regarding whether the school counted the Student for the December 1 child count, but failed to provide the Student special education and related services.

511 IAC 7-27-4(a)(3) by failing to convene the Student's case conference committee (CCC) meeting at the request of a parent.

511 IAC 7-25-7 by failing to complete an additional evaluation and convene a CCC meeting within sixty (60) instructional days of the date written parental consent is received by certified personnel.

511 IAC 7-27-4(c)(1) by failing to utilize the CCC to develop, review, or revise the Student's IEP, taking into consideration the concerns of the parent for enhancing the education of the Student.

511 IAC 7-27-11 by failing to provide special education and related services in accordance with the Student's IEP for a student who is unable to attend school due to a temporary or chronic illness.<sup>4</sup>

**FINDINGS OF FACT:**

1. The Student, 6 years old, is eligible for special education and related services as a Student with a primary disability of multiple disabilities and a secondary disability of communication disorder.
2. On May 8, 2006, a CCC meeting was convened for the purpose of an annual case conference

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<sup>1</sup> During the course of investigation, the assistive technology issue was not investigated because it exceeded the 1 year statute of limitations per 511 IAC 7-30-2(b). The Complainant alleged that the School failed to implement the Student's August 25, 2005 IEP.

<sup>2</sup> During the course of investigation, the consultation services with a deaf and hard of hearing impairment consultant was not investigated because it exceeded the 1 year statute of limitations per 511 IAC 7-30-2(b). The Complainant alleged that the School failed to implement the Student's August 25, 2005 IEP.

<sup>3</sup> The citation was changed to better reflect the facts.

<sup>4</sup> During the course of the investigation, an additional issue was added to better reflect the facts.

and an IEP was developed for the 2006-2007 school year with an initiation date of August 21, 2006, and end date of June 1, 2007. The Parent signed permission for placement at Eads Elementary in a general education kindergarten classroom with special education and related services provided during the instructional day.

3. The Student has many medical needs. In a letter dated September 22, 2006, the Student's cardiologist explained the Student's medical conditions. In addition, the Student's cardiologist recommended that in order to attend school one of the Student's parents should be present peripherally to assist when needed, and if this was not acceptable, the Student's cardiologist stated that the Student should receive home schooling.
4. CCC notes at the May 8, 2006 CCC meeting, indicated that the Student's current health care plan was reviewed and discussion occurred as to having the Complainant (the Student's mother) present at school to monitor the Student's health. The CCC notes indicated that the parents inquired as to what to do when the Student gets sick, and the notes indicated that the parents asked if the Student could discontinue school from October through March (no reason was mentioned in the CCC notes). The CCC notes indicated that a CCC meeting will reconvene at parent-teacher conference to discuss these concerns (a specific date was not given).
5. The Complainant alleged that the Student did not receive services from August 2006 to January 8, 2007. In an e-mail dated May 29, 2006, the Complainant inquired of the Special Education Supervisor as to the School's position regarding the recommendation that the Complainant attend school with the Student, the School's position for when the Student is absent for medical reasons, and a CCC meeting date for the summer. In an e-mail dated June 1, 2006, the Special Education Supervisor stated that the School's position is that the Complainant should not attend school with the Student and indicated that a CCC meeting will meet to discuss the issues in August of 2006. Due to the Student's medical concerns and per doctors' recommendations, the Student was kept home at the beginning of the 2006-2007 school year. The May 8, 2006 CCC notes and the e-mails from the Complainant indicate that the School was aware, and the parent had provided medical information to the School, stating that the Student might not be able to attend due to medical issues.
6. Between August 30, 2006, and December 18, 2006, several attempts were made by the School to schedule a CCC meeting. A CCC meeting was convened on December 18, 2006 and the purpose of the case conference was designated as a "move-in." The CCC notes indicated that the Student's doctor recommended that because the Student cannot be fully immunized until the summer of 2007, he should be home schooled through the end of the 2006-2007 school year. The Student was placed on homebound instruction with an initiation date of January 4, 2007 for 60 minutes weekly. Permission for placement was signed on December 22, 2006, and mailed to the School on January 4, 2006. Homebound services began for the Student on January 8, 2007.
7. According to the Student's August 26, 2005 IEP, the Student received early childhood special education services at Eads Early Childhood Education Center for the 2005-2006 school year. The Student's legal settlement has not changed, and the Student has continually attended this school corporation when the Student's May 8, 2006 IEP was developed.
8. The School acknowledged that the Student was counted for the December 1, 2006 child count. According to the Division's Integrated Electronic Management System, the Student was counted as a Student with Multiple Disabilities, which generated \$8,246 in State Additional Pupil Count (APC) funds. In addition, the Student was counted as a Student with a Communication Disorder, which generated \$531 in APC funds.
9. The Student's December 18, 2006 IEP indicates that the Student is to receive 120 minutes of speech therapy monthly, beginning on January 4, 2007. Because of the difficulty in securing a

speech and language pathologist to provide homebound services, the School acknowledged that speech therapy did not begin until February 28, 2007. The School indicated that compensatory services will be provided to the Student from the enrollment date of November 2, 2006. No documentation was provided indicating that compensatory services were decided or provided to the Student.

10. The Student's December 18, 2006 IEP indicated that the Student is to receive 60 minutes per month of occupational therapy, beginning on January 4, 2007. Because of the difficulty in securing an occupational therapist to provide homebound services, the School acknowledged that occupational therapy did not begin until February 22, 2007. The School indicated that compensatory services will be provided to the Student from the enrollment date of November 2, 2006. No documentation was provided indicating that compensatory services had been decided or provided to the Student.
11. The Student's May 8, 2006 IEP indicated under personnel development needs that the "School nurse will train staff in [the] implementation of the [Student's] health care plan." In a letter dated June 14, 2007, the School acknowledged that the School's staff was not trained in the implementation of the Student's health care plan because the Student did not attend School from November 2, 2006 to June 1, 2007 (the last day of Schools).
12. In a letter dated January 16, 2007, the Complainant requested evaluations in speech, occupational therapy, physical therapy, and learning disorder and asked to convene a CCC meeting during the week of February 19, 2007. The Complainant signed permission for the educational evaluations on February 1, 2007. The 60 instructional day due date was May 5, 2007.
13. A CCC meeting was convened on March 9, 2007. The CCC notes indicated that the purpose of the CCC meeting was to re-consider homebound placement and speech services. The speech evaluation was completed on March 1, 2007. The CCC notes indicated that the CCC considered the School's speech evaluation, the Student's private speech evaluation, and the Complainant's letter requesting an amendment to the School's speech evaluation. The student's homebound services were increased to 2 hours weekly and the Student's speech services were increased to 1 hour weekly.
14. Due to scheduling constraints, the School convened two case conferences, March 9, 2007 and April 30, 2007, after the Complainant requested a mid-February CCC meeting. The April 30, 2007 CCC meeting was convened to discuss the Student's evaluations and conduct an annual case review. The occupational therapy evaluation was completed on April 16, 2007. The Student's physical therapy evaluation was completed on April 24, 2007. The Student's psychological report was completed on April 2, 2007. The CCC notes dated April 30, 2007 indicated that several issues were addressed, including the Student's educational assessments, appropriateness of the Student's eligibility category, Student's related services, speech services, and ESY services. The Complainant signed in agreement with IEP on May 1, 2007.
15. The April 30, 2007 IEP indicated that the Student would receive extended school year services. The IEP stated that the Student would receive speech services 1 hour/week for 8 weeks, academic and social skills 1 hour/week for 8 weeks, and occupational therapy for 30 minutes for the summer period (as well as consultation with the homebound teacher, therapist, and parent).

## **CONCLUSIONS:**

- 1a. Findings of Fact #2 through #8 address the issue of the School's failure to implement the Student's IEP from August 2006 to January 8, 2007. Finding of Fact #2 indicates that an annual case review was held and an IEP was developed on May 8, 2006 for the 2006-2007 school year.

Because of the Student's medical conditions and doctors' recommendations, Finding of Fact #5 indicates that the Student did not attend school at the beginning of the 2006-2007 school year. The School acknowledges that it failed to provide services to the Student pursuant to his May 8, 2006 IEP, and Finding of Fact #6 indicates that services did not begin for the Student until January 8, 2007 for the 2006-2007 school year. Finding of Fact #7 indicates that the Student was enrolled in the school corporation prior to August 21, 2006, the May 8, 2006 IEP initiation date. Therefore, the School's policy regarding "move-in" students is irrelevant to this Student. Thus, the Student's May 8, 2006 IEP should have been implemented at the initiation date of August 21, 2006. Therefore, a violation of 511 IAC 7-27-7(a) is found.

- 1b. Finding of Fact #9 indicates that the Student was to receive 120 minutes per month of speech therapy, beginning on January 4, 2007. The School acknowledged that speech therapy did not begin until February 28, 2007. Therefore, a violation of 511 IAC 7-27-7(a) is found.
- 1c. Finding of Fact #10 indicates that the Student was to receive 60 minutes per month of occupational therapy, beginning on January 4, 2007. The School acknowledged that occupational therapy was not initiated until February 22, 2007. Therefore, a violation of 511 IAC 7-27-7(a) is found.
- 1d. Finding of Fact #11 indicates that the May 8, 2006 IEP required staff training with respect to the Student's health care plan. Finding of Fact #11 indicates that the School acknowledges that it failed to train school staff with respect to the Student's health care plan. Therefore, a violation is found with respect to 511 IAC 7-27-7(a).
2. Finding of Fact #8 indicates that the Student generated a total of \$8,777 in APC funds for the December 1, 2006 child count. Finding of Fact #8 indicates that the School acknowledges it counted the Student for the December 1, 2006 child count. According to 511 IAC 7-31-2, a student must be receiving a free appropriate public education on December 1<sup>st</sup> in order to be counted for purposes of APC funding. Conclusion #1a indicates that the Student did not receive services from August 21, 2006 to January 8, 2006. Therefore, a violation of 511 IAC 7-31-2 is found.
3. Finding of Fact #12 indicates that the Complainant requested a CCC meeting during the week of February 19, 2007. Finding of Fact #13 indicates that CCC meetings were convened on March 9, 2007 and April 30, 2007. Because a CCC meeting were convened and in a reasonable time, no violation of 511 IAC 7-27-4(a)(3) is found.
4. Finding of Fact #12 indicates that the Complainant signed permission for educational evaluations on February 1, 2007. Findings of Fact #13 and #14 indicate that the Student's evaluations were completed and CCC meetings were convened within the 60 instructional day due date of May 5, 2007. Therefore, no violation of 511 IAC 7-25-7 is found.
5. Finding of Fact #13 and #14 indicate that the CCC notes at the March 9, 2007 and April 30, 2007 addressed several of the Complainant's concerns. In addition, the Student's homebound services and speech services were increased at the March 9, 2007 CCC meeting. Therefore, no violation 511 IAC 7-27-4(c)(1) is found.
6. Because the Student was kept home due to doctors' recommendations, it would have been difficult to implement the Student's May 8, 2006 IEP. However, Finding of Fact #5 indicates that the School was aware of the Student's medical issues, and is responsible for providing special education and related services to the Student. Pursuant to 511 IAC 7-27-11, the School is required to provide special education and related services in accordance with the Student's IEP for a student who is unable to attend school due to a temporary or chronic illness. Therefore, a violation of 511 IAC 7-27-11 is found.

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

**CORRECTIVE ACTION:**

The School Town of Munster and the West Lake Special Education Cooperative shall:

1. Convene a CCC meeting **no later than August 31, 2007** to determine the compensatory services required for the Student. The compensatory services shall address the School's failure to:
  - a. Implement the Student's May 8, 2006 IEP, beginning on August 21, 2006 through January 8, 2007 (including speech and related services);
  - b. Provide speech therapy in accordance to the Student's December 18, 2006 IEP, beginning on January 4, 2007 through February 28, 2007; and
  - c. Provide occupational therapy in accordance to the Student' December 18, 2006 IEP, beginning on January 4, 2007 through February 22, 2007.

In addition, the CCC, with input from the Student's parents, should address the specific health needs of the Student, and determine what training should be provided to the staff working with the Student. The School shall submit a copy of the Student's IEP and CCC report (which includes a description of the compensatory services) **no later than September 14, 2007**.

2. Send a written memorandum to all relevant school administrators and special education personnel regarding the responsibilities of a school to provide special education and related services to students unable to attend school pursuant to 511 IAC 7-27-11. A copy of the memorandum and a list of all who receive it shall be submitted to the Division **no later than September 14, 2007**.

With respect to the violation of 511 IAC 7-31-2, the Division will notify the Office of Financial Management, Analysis, and Reporting to reduce the School Town of Munster's total December 1, 2006 Multiple Disabilities count by 1 from 5 to 4 and the Communication Disorder count by 1 from 377 to 376. This action will result in a reduction of APC funds to the district in the amount of \$8,777.00.