

**COMPLAINT INVESTIGATION SUMMARY**

**COMPLAINT NUMBER:** CP-263-2008  
**COMPLAINT INVESTIGATOR:** Nicole Confer  
**DATE OF COMPLAINT:** September 24, 2007  
**DATE OF REPORT:** October 23, 2007  
**REQUEST FOR RECONSIDERATION:** N/A  
**DATE OF CLOSURE:** January 15, 2008

**COMPLAINT ISSUES:**

Whether the MSD of Lawrence Township violated:

511 IAC 7-27-3(a) by failing to ensure the attendance of the requisite case conference committee (CCC) participants at the May 25, 2007 case conference meeting.

511 IAC 7-25-5(e) by failing to consider the results of an independent evaluation in any decisions made with respect to the provision of a free appropriate public education to the Student.

511 IAC 7-27-6(a) by failing to include a statement of the Student's present level of educational performance, including how the Student's disability affects the Student's involvement and progress in the general education curriculum.

**FINDINGS OF FACT:**

1. The Student, 14 years old, is identified as a student with Other Health Impairments and has been determined eligible for special education and related services. The Student is not yet receiving services because an agreement regarding the Individual Education Program (IEP) has not yet been reached.
2. An Independent Educational Evaluation was conducted for the Student, and was paid for by the Complainant, in January 2007. A request for an Initial Education Evaluation, to be conducted by the school, was signed by the Complainant on March 15, 2007. The School's evaluation was conducted and reported on April 26, 2007.
3. A case conference committee meeting was held on May 25, 2007. The Case Conference Report/IEP for the meeting lists the attendees, including the Teacher of Record, a General Education Teacher, the Student, a Public Agency Representative, the Parent/Guardian (the Complainant), a School Psychologist, and a Guidance Counselor. The Report/IEP does not contain signatures or initials of those members. The Complainant alleges that members of the CCC came and went throughout the duration of the meeting, including the Teacher of Record, the General Education Teacher, and a Resource Room teacher, whose name does not appear in the printed list. In the School's Letter of Response, the School states, "Because some members of case conferences can be excused before the end of the conference such as . . . the general education teacher after they have participated in the development of the IEP [the Complainant] possibly had confusion about the amount of time required for their continued attendance in the meeting."
4. A case conference committee meeting was held on August 16, 2007. The Case Conference Report/IEP for the meeting lists the attendees and includes the Teacher of Record. The Complainant alleges that said individual was not, in actuality, present at the CCC. Throughout

the remainder of the Case Conference Report/IEP any reference to a Teacher of Record refers to another individual, whom the Complainant confirms was in attendance at the CCC.

5. The Complainant alleges that the School failed to incorporate the Independent Educational Evaluation in the IEP Draft that was presented at both the May 25, 2007 case conference meeting and the August 16, 2007 case conference meeting. The Complainant's allegation is based upon the belief that because the IEP Draft did not include the specific recommendations made by the Independent Evaluating Team, the Independent Educational Evaluation was not adequately incorporated into the IEP Draft.
6. The IEP Draft includes a section entitled "Current Evaluation Data," which includes 21 specific categories of data. These categories include cognitive, academic achievement, adaptive behavior, and social/emotional behavior scales. The data for 13 of the 21 specific categories comes from the January 24, 2007 test conducted as part of the Independent Educational Evaluation. In addition, the School's Educational Evaluation includes reference to and reliance upon the findings of the Independent Educational Evaluation, including specification relating to the Student's Mood Regulation Disorder, which was a determination made by the Independent Evaluating Team.
7. The Complainant alleges that the School failed to incorporate the Student's current level of performance in the IEP draft. The Complaint's allegation is based upon the belief that the computerized form used by the school corporation does not adequately reflect the Student's Present Levels of Performance because it does not reflect actual scores from both the Independent Educational Evaluation and the School's Initial Educational Evaluation.
8. The IEP Draft includes a section entitled "Present Classroom Performance and Factors Related to Classroom Performance" including how the child's disability affects involvement and progress in the general curriculum. In this section, there are categories for academic skills, communication development, adaptive behavior/vocational, and social/emotional behavior, and in each of those categories, there are specified assessments, skill levels, and specification to whether that area is one of need.

## **CONCLUSION:**

Finding of Fact #3 demonstrates confusion on the part of the School regarding the required attendance of certain CCC members. Per 511 IAC 7-27-3(a) ". . . the public agency shall ensure that the case conference committee participants include . . . (3)[t]he student's current teacher of record . . ." and "(4)[o]ne of the student's general education teachers, if the student is or may be participating in the general education environment." Current Article 7 does not allow the excusal of required CCC participants (pursuant to 511 IAC 7-27-3(a)) from all or part of a CCC meeting. The Individuals with Disabilities in Education Improvement Act (IDEIA) was reauthorized and took effect on July 1, 2005. IDEIA permits members of the CCC to be excused from all or part of a CCC meeting if certain conditions are met. However, Article 7 imposes a *higher requirement* than what is required by IDEIA, and Schools are required to continue to implement the Article 7 requirement as it is currently written. Thus, a teacher of record and a general education teacher (if the student is or may be participating in the general education environment) must continue to participate in the CCC meeting. Therefore, a violation of 511 IAC 7-27-3(a) is found with respect to the CCC meetings convened on May 25, 2007.

Finding of Fact #6 demonstrates that the Independent Educational Evaluation was in fact incorporated into the IEP Draft, although the IEP Draft did not include specific recommendations made by the Independent Evaluating Team. As a matter of clarification, Article 7 does not require that specific recommendations made in an Independent Educational Evaluation be accepted and included verbatim in an IEP. Instead, 511 IAC 7-25-5(e) states in part, "If the parent obtains an independent evaluation at the parent's expense, the results of the evaluation: (1) shall be *considered* in any decisions made with

respect to the provision of a free appropriate public education to the student if the independent educational evaluation complies with agency criteria for an evaluation. . . ." Therefore, there is no violation of 511 IAC 7-25-5(e).

Finding of Fact #7 demonstrates that the IEP Draft did include present levels of performance. Therefore, there is no violation of 511 IAC 7-27-6(a).

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

The Metropolitan School District of Lawrence shall:

Convene the Case Conference Committee **no later than November 21, 2007**. The school shall ensure and document the attendance of mandatory case conference participants for the entirety of the case conference and shall submit the Case Conference Report to the Division **no later than December 1, 2007**.

Issue a written memorandum to all School personnel responsible for coordinating Case Conference Committee meetings and attendees. This memorandum shall address the required attendance of mandatory case conference participants per 511 IAC 7-27-3, which requires attendance by the Teacher of Record and the General Education Teacher for the entire duration of the case conference meeting. A copy of the memorandum and a list of recipients shall be submitted to the Division **no later than December 1, 2007**.