

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	CP-269-2008
COMPLAINT INVESTIGATOR:	Brian Simkins
DATE OF COMPLAINT:	September 27, 2007
DATE OF REPORT:	October 25, 2007
REQUEST FOR RECONSIDERATION:	No
DATE OF CLOSURE:	December 27, 2007

COMPLAINT ISSUES:

Whether the Brown County Schools and the Bartholomew Special Services 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) develop a functional behavioral assessment (FBA);
- (b) ensure that a paraprofessional was assigned to the student on September 25, 2007;
- (c) make available the use of a computer with speech text;
- (d) teach typing skills; and
- (e) provide an extra set of books with bold print.

FINDINGS OF FACT:

1. The Student, 11 years old, is identified as other health impaired, and has been determined eligible for special education and related services.
2. The Student's IEP dated May 15, 2007, states that a FBA would be completed at the "beginning of the school year." All parties understand that this means the beginning of the 2007-2008 school year, the initiation date of the IEP being August 15, 2007. The case conference committee did not set a specific agreed upon date to complete the FBA. Based on a due process hearing settlement agreement dated May 15, 2007, and reflected in the IEP, the FBA was to have the input and assistance of an outside behavioral consultant. The local Director of Special Education began searching for an outside consultant on or about September 1, 2007. The first prospect declined to assist on September 5, 2007. Two other outside behavior specialists also declined soon thereafter. The Special Education Director made contact with another outside consultant and invited her to the case conference committee meeting on October 4, 2007. The outside consultant agreed to assess the Student's behavior and consult with the School and help develop a FBA beginning the week of October 15, 2007.
3. The IEP dated May 15, 2007, indicates that a one-on-one paraprofessional will be assigned to the Student for the entire school day. On September 25, 2007, the paraprofessional was not immediately available to work with the Student when the Student arrived. Just minutes before arriving, another student had a severe seizure requiring transportation by ambulance. The Principal was not in the building. The acting principal, a first grade teacher, was called upon to deal with the medical emergency. In the meantime, the Student's paraprofessional was directed to cover for the first grade teacher serving as acting principal. The Teacher of Record escorted the Student down to her classroom to begin math instruction. Shortly thereafter, the Paraprofessional arrived to work with the Student and escort him to the resource room. The

Complainant does not dispute these facts.

4. Pursuant to the settlement agreement, and the IEP dated May 15, 2007, the School will make available speech-to-text language programs at all times. Since the beginning of the 2007-2008 school year, and also per the settlement agreement and IEP dated May 15, 2007, the Student has a personal laptop computer to use at home and at school. The laptop was loaded with Read/Write Gold and Dragon Dictate Naturally Speaking v.9 software before the Student received it. The IEP does not specify whether more needs to be done with the speech-to-text language programs other than make them available to the Student. There is no further documentation indicating whether and to what extent the Student has been utilizing the programs.
5. The IEP dated May 15, 2007, addresses typing skills in the goals and short-term objectives. The goal states that the Student “[w]ithin 180 school days, will become fluent at utilizing the home key typing framework with assistance from the Type to Learn program.” On or about September 13, 2007, the Type to Learn program was installed on the Student’s laptop computer, and before that had access to the program at school. However, there is no documentation indicating whether and to what extent this IEP goal has been addressed. The Student attends school on a shortened schedule, and the School acknowledges that it has not been able to work typing skills into the Student’s amended schedule.
6. The IEP dated May 15, 2007, identifies the provision of an extra set of books as an accommodation. It does not address bold print. The School cannot provide documentation indicating whether an extra set of textbooks to be sent home have been provided for the Student.

CONCLUSIONS:

Findings of Fact #2 through #6 address whether and to what extent the Student’s IEP was implemented as written. Specifically:

- (a) Finding of Fact #2 indicates that the settlement agreement and the case conference report/IEP dated May 15, 2007, does not specify exactly when a FBA, with the assistance of an outside behavioral consultant, would be completed. During the course of this investigation, it was determined that an outside consultant had accepted to assist the School and begin developing a FBA the week of October 15, 2007. Although the School made efforts to obtain the assistance of an outside consultant early in the school year, according to 511 IAC 7-27-7(c)(4), services identified in an agreed-upon IEP shall be completed no later than the initiation date stated in the Student’s IEP, unless otherwise specified. In this case, the IEP initiation date was August 15, 2007, and the IEP is ambiguous as to when the FBA shall be completed. Therefore, a violation of 511 IAC 7-27-7(a) is found.
- (b) Finding of Fact #3 indicates that, although the Student’s assigned one-on-one paraprofessional was not able to be with the Student for a short period during the morning of September 25, 2007, it was due to exceptional circumstances involving a medical emergency. Therefore, a technical violation of 511 IAC 7-27-7(a) is found. However, because the Teacher of Record escorted the Student to her classroom to supervise the Student and begin math instruction, no corrective action will be required.
- (c) Finding of Fact #4 indicates that the speech-to-text language programs were available at all times for the Student. Therefore, a violation of 511 IAC 7-27-(a) is not found.
- (d) Finding of Fact #5 indicates that, although the School has the whole school year to address the Student’s typing goal, the School cannot document whether and to what extent typing skills have been addressed. Therefore, a violation of 511 IAC 7-27-7(a) is found.
- (e) Finding of Fact #6 indicates that the School cannot document whether and to what extent an extra set of textbooks to use at home have been provided to the Student. Therefore, a

violation of 511 IAC 7-27-7(a) 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:

Brown County Schools and the Bartholomew Special Services Cooperative shall:

Convene the case conference committee to develop a behavioral intervention plan based on the information gathered through the functional behavioral assessment. A copy of the case conference report and revised IEP, including the functional behavioral assessment and behavioral intervention plan, shall be submitted to the Division no later than **November 30, 2007**.

Send a written memorandum to all relevant school administrators and special education personnel who participate in case conference committee meetings addressing compliance with 511 IAC 7-27-7(a) with respect to ensuring that case conference reports and IEPs are specific with respect to describing special education and related services for students with disabilities. A copy of the memorandum and a list of all personnel who receive it shall be submitted to the Division no later than **November 30, 2007**.

Submit documentation (for example, a log/notes, check sheets, student work) indicating that the School has begun to address the Student's IEP goal regarding typing skills. The documentation shall be submitted no later than **November 30, 2007**.

Submit documentation, including an assurance statement signed by the Director of Special Education, indicating that the Student has received an extra set of textbooks to use at home. The documentation shall be submitted no later than **November 30, 2007**.