

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: CP-272-2008  
COMPLAINT INVESTIGATOR: Bobbie Ritz  
DATE OF COMPLAINT: October 02, 2007  
DATE OF REPORT: October 31, 2007  
REQUEST FOR RECONSIDERATION: Yes/Revised - November 30, 2007  
DATE OF CLOSURE: February 6, 2008

**COMPLAINT ISSUES:**

Whether the Bartholomew Consolidated School Corporation and the Bartholomew Special Services violated:

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

- a) assign an instructional assistant to the Student;
- b) provide appropriate seating as an accommodation;
- c) ignore behaviors related to the Student's disability;
- d) provide extra textbooks at home; and
- e) provide progress reports to the Student's parents informing them of the Student's progress toward annual goals.

**FINDINGS OF FACT:**

1. The Student, twelve years old, has been identified as having an other health impairment and a communication disorder and has been determined eligible for special education and related services.
2. During the course of the investigation, documentation was provided to determine the Student was withdrawn from the School on October 10, 2006, and has been home schooled since that date. This investigation thereby focused on the partial 2006-2007 school year and whether the IEP was implemented during the two months the Student attended school.
3. A CCC meeting convened on September 12, 2006, for the purpose of an annual review and to review psychological information. An IEP was developed that contained the following modifications and/or accommodations:
  - a. Classroom allowances for extra needs for movement: placement in classroom that will allow for that need and for the presence of tics, give extra time if handwriting is to be evaluated;
  - b. Seating should enhance learning and accommodate his extra movement;
  - c. Ignore his minor behaviors related to tics and generalize anxiety or stress;
  - d. Do not use recess as a positive/negative consequence – He needs to participate in recess regardless;
  - e. Verbal tics of cursing, ignore when possible, allow him to leave the area;
  - f. [A teacher] will check on laptop repair and ATTAIN website;
  - g. Always do 1 long study guide and ½ short answers and 4 vocabulary for reading;
  - h. No accommodations for English;
  - i. For projects do all, but wait until he is able to do oral presentations and not in front of a substitute;
  - j. Math do ½ of assignment (every other, etc.) but grade on what he does;
  - k. Logic and problem solving – do a minimum of ½;

- l. Extra books at home;
  - m. PE teacher needs to be aware that due to his condition he may not be able to participate in some activities;
  - n. 1 and ½ hours per night homework;
  - o. Student will be graded on the amount of homework he is actually able to do – if he is unable to do his full assignment the parents will write a note explaining this and send it to the teacher. Ex: if he is assigned 10 problems and is able to do 6 he will be graded on the 6 he did;
  - p. Wordly Wise – he will not do part E;
  - q. Social studies and science – modifications will be established between teacher and parents;
  - r. Teacher will be able during English for assistance if he needs it (11:45-12:05);
  - s. Due to the Student's tics, a system will be established for the Student to signal when his tics interfere with his ability to use a pencil. If this becomes an issue an adult can assist the Student by giving him extra time, time away from task, or scribe if needed.
4. The Complainant alleges that the School failed to assign an instructional assistant to the Student. The IEP dated September 12, 2006, as written, does not require the School to assign an instructional assistant to the Student.
  5. The Complainant alleges that the School failed to provide preferential seating as an accommodation. Specifically, the Complainant alleges that "[the Student's] desk was in the grouping of desks [sic] the closest to the door where distractions are high instead of located in a quieter [sic], less disturbing area of the room." ~~The IEP was not specific with respect to when and to what extent preferential seating should be utilized. Furthermore, the Complainant did not state specifically when or in which classes the School failed to provide appropriate seating as an accommodation.~~ The Student is placed in the gifted and talented program, self-contained classroom. The classroom seating chart indicated that the Student's desk was next to the "door to the workroom" from August 15, 2006 to September 10, 2006 and was moved away from the "door to the workroom," beginning September 11, 2006 to October 5, 2006. The School provided documentation from the CCC meeting notes dated October 10, 2006, that the Complainant questioned the seating in one class specifically. The Teacher stated the seating was rearranged for ISTEP+ testing purposes. The notes indicate that when the Teacher asked the Complainant if she would like the Student moved closer to the desk, the Complainant did not want that to occur.
  6. The Complainant alleges the School failed to implement the IEP as written by not ignoring behaviors related to the Student's disability. The IEP states, "[i]gnore his minor behaviors related to tics and generalize anxiety or stress." In addition, the IEP indicates "[v]erbal tics of cursing, ignore when possible, allow him to leave the area." The Complainant failed to respond to attempted contacts to clarify information regarding this complaint issue. The School failed to provide documentation regarding the Student's behaviors and this accommodation.
  7. The Complainant alleges that the School failed to implement the Student's IEP as written by not providing extra textbooks at home. Documentation indicates that a class set of books was just sent home the week of August 16, 2006. However, the Student only had one copy of the math textbook because the School did not have any extra math books. Discussion notes dated September 8, 2006 indicated that the Complainant agreed that she did not need a copy of the math textbook, indicating that "[the Student] could handle bringing home one book [sic]." The notes indicated that the School offered to obtain a copy of the math textbook from another school, but the Complainant indicated that "she already had the book from her son that was in middle school [sic]." ~~Although the School provided documentation of textbooks provided to the Student after he was withdrawn from School, there is no documentation with respect to whether the Student was provided "extra books at home" (per his IEP) prior to being withdrawn from School on October 10, 2006.~~

8. The Complainant alleges the School failed to implement the IEP as written by not providing progress reports to the Student's parents informing them of the Student's progress toward annual goals. The Student's IEP indicates that the Student's "[p]arents/guardians will receive information regarding the progress the student is making toward achievement of annual goals each grading period." The Director of Special Education stated the Student was withdrawn from the School on October 10, 2006, and progress reports for the first grading period had not yet been issued.

## CONCLUSIONS:

1. Findings of Fact #3 through #8 address the implementation of the Student's IEP.
  - a. Findings of Fact #3 and #4 address the instructional assistant for the Student. Finding of Fact #3 indicates that the Student's IEP does not require an instructional assistant to be assigned to the Student. Therefore, no violation of 511 IAC 7-27-7(a) is found.
  - b. Findings of Fact #3 and #5 address preferential seating as an accommodation. Finding of Fact #5 indicates that the School addressed the Complainant's concerns by moving the Student's desk on September 11, 2006. In addition, CCC notes dated October 10, 2006 indicate that the seating arrangement was discussed and an offer was made to change the location of the Student's desk, but the Complainant did not want that to occur. Finding of Fact #5 indicates that the IEP is not specific with respect to when and to what extent preferential seating should be utilized for the Student. Therefore, the IEP was ambiguous in that it resulted in misinterpretations and misunderstandings as to how and to what extent the Student's accommodations should be implemented. Where ambiguity exists in an IEP, the ambiguity will be construed against the school that is responsible for its development and implementation. Therefore, a violation of 511 IAC 7-27-7(a) is not found.
  - c. Finding of Fact #3 and #6 address the accommodations with respect to ignoring the Student's behaviors related to the Student's disability. Finding of Fact #6 indicates that the School has failed to provide documentation with respect to this accommodation. In addition, the Complainant was unable to be contacted to clarify the facts related to this issue. Due to the absence of documentation and specificity of facts related to this issue, a conclusion can not be made. Therefore, no violation of 511 IAC 7-27-7(a) is found.
  - d. Finding of Fact #3 and #7 address the accommodation of extra textbooks at home. Finding of Fact #3 indicates that the IEP states that the Student is to be provided "extra books at home." Finding of Fact #7 indicates that the Complainant was provided extra textbooks for home the week of August 16, 2007, with the exception of the math textbook. However, discussion notes dated September 8, 2006 indicate that the Complainant agreed that the School did not need to provide her with an additional math textbook. There is no documentation with respect to extra textbooks being provided from the September 12, 2006 IEP to the Student's withdrawal date of October 10, 2006. Therefore, a violation of 511 IAC 7-27-7(a) is not found.
  - e. Finding of Fact #8 indicates that the Student's IEP states that progress reports will be received each grading period. Finding of Fact #8 indicates that the Student withdrew from School before the end of the first grading period. Therefore, no violation of 511 IAC 7-27-7(a) is found.

**The Department of Education, Division of Exceptional Learners requires no the following corrective action based on the Findings of Fact and Conclusions listed above.**

## CORRECTIVE ACTION:

~~The Bartholomew Consolidated School Corporation and the Bartholomew Special Services shall:~~

- ~~1. Convene a meeting with the appropriate school personnel to develop a system (e.g., chart or log book) for documenting the implementation of the students' accommodations. The School shall provide a copy of the documentation system along with an explanation as to how it will be utilized, copy of the meeting minutes, and a list of the participants with signatures confirming attendance and identified by name and title **no later than December 14, 2007.**~~