

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	CP-282-2008
COMPLAINT INVESTIGATOR:	Brian Simkins
DATE OF COMPLAINT:	October 18, 2007
DATE OF REPORT:	December 21, 2007
REQUEST FOR RECONSIDERATION:	N/A
DATE OF CLOSURE:	April 10, 2007

COMPLAINT ISSUES:

Whether the Danville Community School Corporation and the West Central Joint Services violated:

511 IAC 7-27-2(c) by failing to provide adequate notice of the case conference committee to the parent, specifically the case conference committee meeting held on October 2, 2007.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to provide special education and related services in the identified least restrictive environment.

511 IAC 7-21-5(b) by failing to include in the school's disaster plan provisions for warning and evacuating students whose disabilities require special warning or evacuation procedures.

511 IAC 7-21-5(a)(3) by failing to sufficiently accommodate a student's special equipment, specifically by failing to make the front doors accessible for the student's wheelchair.

An extension of time until December 21, 2007, was granted by the Associate Superintendent on November 13, 2007.

FINDINGS OF FACT:

1. The Student, six years old, is identified as other health impaired (OHI), and has been determined eligible for special education and related services.
2. The Student's case conference committee convened on October 2, 2007. The meeting was originally scheduled for September 13, 2007, but had to be rescheduled. On September 18, 2007, the local Director of Special Education (the "Director") and the Complainant (parent) discussed alternative meeting dates of September 24, and October 2, 2007. The Complainant acknowledges receiving a voice mail message on September 28, 2007, indicating that the case conference committee meeting was scheduled for October 2, 2007, at 2:30 p.m. The School's written notice of the case conference committee meeting is dated October 1, 2007, but there is no indication of whether the notice was provided to the Complainant before the meeting. The Complainant was in attendance at the case conference committee meeting on October 2, 2007.
3. The Complainant alleges that the Student has been receiving special education and related services in a special education classroom when the IEP indicates that the Student's least restrictive environment is in the general education classroom. The Student's IEP dated May 21, 2007, indicates that the least restrictive environment is in the regular classroom 40% to

79%. The Student attends school on a shortened school day and week due to his medical condition. The Student has a degenerative muscle disease that significantly impairs his physical abilities, inhibits daily life functions, and requires him to use a wheelchair. The IEP indicates that the Student's instruction in core academic areas may be in the general or special education classroom depending on the Student's health and level of fatigue. Although there is no documentation indicating whether and to what extent special education and related services were provided the Student in the regular classroom between 40% to 79% of the school day, the School acknowledges that, although all core academic instruction was initially provided in the general education classroom at the start of the 2007-2008 school year, rest breaks have been provided the Student in the special education classroom and some core academic instruction and skills were taught or re-taught due to the Student's absences from school. However, there is no further documentation indicating how the School determines whether and to what extent the Student shall receive special education somewhere other than the general education classroom. The IEP also does not indicate criteria for determining how a range of services may be provided to the Student.

4. The School does not have a disaster plan that includes an evacuation plan for students with disabilities. It does not contain instructions for evacuating students with mobility impairments, including students who are wheelchair users. The Student's IEP contains a Health Care Plan that addresses evacuations. It states, "[The Student] will follow the classroom plan for fire and storm drills." During a telephone conversation between the Director and the Complainant on August 15, 2007, the Complainant requested that an evacuation plan be put in writing. The Complainant did not think that the Health Care Plan was sufficient and wanted a separate evacuation plan that was more specific. A draft evacuation plan was developed and shared with the Complainant on August 23, 2007. The plan stated that the Student would be pushed in his wheelchair by an adult. If the temperature exceeded 75 degrees, the Student would be pushed to, at that time, the Special Services Office during the fire drill. If the temperature was less than 75 degrees, the Student would participate in the fire drill with his class. There are no further instructions. It was explained that the case conference committee would have to review the plan and agree to make it part of the IEP. The plan was discussed at the case conference committee meeting on October 2, 2007. There was some disagreement about specific types of assistance for the Student, particularly with respect to accommodations that could be implemented to ensure that the Student participates in all drills even in the event of more extreme temperatures. At present, there are still questions with respect to what extent the Student will participate in all drills, and there is no documentation indicating whether the Student has fully participated in all evacuation drills and whether relevant school personnel have been trained.
5. Due to the Student's medical condition, and in accordance with the IEP, adult assistance is to always be provided to the Student due to fatigue and to conserve the Student's energy. The Student is unable to move his wheelchair independently. The Student always enters and exits the school building through the side door that leads to the teacher parking lot. The door has an automatic door opener, and is wide enough for a wheel chair. It is used by school staff. This door is not a public door and is kept locked most of the day for safety purposes. It is the drop-off/pick-up location for all students riding special education buses, and is open when the Student arrives and leaves. Handicapped parking is available next to the door. The Student is able to exit this door when necessary during the school day, including exiting for drills. It can be opened from the inside, even if locked (door has a crash bar). However, if the Student wants or needs to enter through the front doors, school staff would have to meet him at the door to provide assistance as there are no automatic door openers.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the School provided adequate written notice of the case conference committee meeting scheduled for September 13, 2007. The case conference committee meeting had to be rescheduled. The School discussed alternative dates with the Complainant and left a voicemail message scheduling the case conference committee meeting for October 2, 2007. The Complainant did attend the case conference committee meeting on October 2, 2007. However, the School cannot document that it provided written notice of the case conference committee meeting to the Complainant. Therefore, a technical violation of 511 IAC 7-27-2(c) is found.
2. Finding of Fact #3 indicates that the Student's IEP allows for special education and related services to be provided the Student in the special education classroom depending on the Student's health and level of fatigue. However, it is stated in such a manner that neither the Complainant nor the School can clearly identify what the Student shall receive each day. There is no further documentation indicating how the School determines whether and to what extent to provide services to the Student in the special education classroom. Therefore, a violation of 511 IAC 7-27-7(a) is found. It is permissible to use a "range" to meet the unique needs of a student. When a range is used, the IEP must also specify the criteria for determining the type and amount of services that will actually be provided to the student.
3. Finding of Fact #4 indicates that the School does not have a disaster plan that includes an evacuation plan for students with disabilities. In addition, the Student's evacuation plan in his IEP does not instruct school personnel working with the Student about the specific types of assistance. Therefore, a violation of 511 IAC 7-21-5(b) is found.
4. Finding of Fact #5 indicates that, although the front doors do not have automatic door openers, the school building is accessible to the Student, including the side door the Student uses. That door is accessible and can be opened from the inside. Therefore, a violation of 511 IAC 7-21-5(a)(3) is not 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:

Convene the case conference committee to determine specific criteria that will inform school personnel working with the Student whether and to what extent to provide special education and related services outside of the general education classroom. The case conference committee shall also develop a specific individualized evacuation plan that, as much as possible, fully allows the Student to participate in all drills. A copy of the case conference report and revised IEP shall be submitted to the Division no later than **February 1, 2008**. If the case conference committee cannot reach agreement, then the issue shall be resolved through mediation or a due process hearing.

Convene a meeting involving the Director of Special Education, the Principal, and other school administrators or personnel to develop a disaster plan that includes an evacuation plan for students with disabilities. The plan shall describe how students will exit the building and how they will be assisted by teachers, aides, and other designated staff. The plan shall also instruct that particular IEPs that include specific types of assistance for a particular student(s) should be followed, especially for students with mobility impairments. A copy of the plan and a list of all personnel in attendance at the meeting shall be submitted to the Division no later than **February 1, 2008**.

Once the new disaster/evacuation plan is developed, train all school personnel about how to be prepared to implement the plan. The training shall emphasize the importance of being prepared to implement individualized student evacuation plans and know what to do and where to go in case of an

emergency or a drill. A copy of the attendance sheet and notes or materials from the training shall be submitted to the Division no later than **February 1, 2008**.