

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	CP-290-2008
COMPLAINT INVESTIGATOR:	Bobbie Ritz
DATE OF COMPLAINT:	October 30, 2007
DATE OF REPORT:	November 28, 2007
REQUEST FOR RECONSIDERATION:	N/A
DATE OF CLOSURE:	February 7, 2008

**COMPLAINT ISSUES:**

Whether the Fort Wayne Community Schools violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to provide occupational therapy services.

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

**FINDINGS OF FACT:**

1. The Student, seven years old, is eligible for special education and related services as a Student with autism spectrum disorder (ASD).
2. The Student's IEP dated April 12, 2007, indicated the Student would receive occupational therapy (OT) one time per week for 25 minutes with a start date of August 27, 2007 and continuing the duration of the IEP ending May 29, 2008.
3. The Complainant alleges the Student has not received any OT services as of October 30, 2007, when she filed the complaint. The School acknowledges that twelve twenty-five (25) minute sessions for a total of six (6) hours of therapy have been missed as of November 5, 2007.
4. The School acknowledges an occupational therapist has not been hired for the 2007-2008 school year to provide services to the Student. The therapist assigned to the Student's School resigned a week before the 2007-2008 school year began. The School has not been able to immediately identify and hire a replacement due to a shortage of occupational therapists in the Fort Wayne area.
5. The Special Education Manager sent a letter of notification to parents dated October 4, 2007, that the occupational therapist had resigned and the School was involved in an active search for new therapists. The School indicated compensatory services would be provided for missed therapy sessions. An additional letter from the Special Education Manager dated November 5, 2007, was sent to parents indicating the School is continuing the search for new therapists and compensatory services will be provided for missed therapy sessions.
6. A CCC meeting convened on November 13, 2007, to discuss student progress and update the Student's IEP. Several modifications were made to the Student's IEP including an increase in OT services. OT-Direct services will be 60 minutes monthly and OT-Integrated services will be 60 minutes monthly with a start date for both of November 14, 2007. The Complainant attended the November 13, 2007 CCC meeting and signed the IEP on November 20, 2007, agreeing with the CCC recommendations including eligibility and services.

7. Although the CCC agreed to increase OT services for the Student, the School acknowledges a shortage of OT personnel, despite the district's efforts at recruitment and retention. OT services continue to be unavailable through the School for the Student.
8. The November 13, 2007 CCC meeting notes indicated compensatory OT services were discussed, and will in fact, be offered and provided. The meeting notes indicated the Special Education Manager "agreed that Fort Wayne Community Schools (FWCS) would be willing to consider the option of paying for a private OT secured by the parent who is willing and able to provide the Student's OT services as outlined in his IEP, if a written agreement is made in advance between the parties involved, and if the OT costs are within reasonable and customary rates."
9. The Complainant stated per a telephone interview on November 26, 2007, that she has not been able to identify an OT that will agree to the above conditions set forth by the School; however, she is continuing the search.
10. The Complainant requested a CCC meeting on September 22, 2007 and the CCC convened on October 4, 2007. At the October 4, 2007 CCC meeting, it was determined that a conference with the OT specialist and someone with expertise with the Student's disability would be scheduled. The Complainant alleged the October 4, 2007 CCC failed to address all of the Student's issues. The Complainant emailed and telephoned the School Principal weekly and was not satisfied with the amount of time the School was taking to schedule an additional CCC meeting.
11. The School alleges that it was not the intent of the staff of the School to delay or disregard the parent's request for a CCC meeting. The schedules of the needed participants did not permit the conference to be scheduled prior to November 13, 2007. The CCC reconvened on November 13, 2007, with the Complainant in attendance. The Complainant signed the IEP on November 20, 2007, agreeing with the CCC recommendations including eligibility and services.

#### **CONCLUSIONS:**

1. Findings of Fact #2, #3, #4, and #5 indicate the School failed to implement the Student's IEP with respect to the amount of occupational therapy provided to the Student. Therefore a violation of 511 IAC 7-27-7(a) is found.
2. Finding of Fact #10 indicates the Complainant requested a CCC meeting on September 22, 2007 and the meeting convened on October 4, 2007. Finding of Fact #11 indicates that the November 13, 2007 CCC meeting was a continuation of the October 4, 2007 meeting. Although Finding of Fact #10 indicates that the Complainant was concerned with the length of time to reconvene the CCC, the School within a reasonable time convened a CCC meeting upon the Complainant's request. Therefore, no violation of 511 IAC 7-27-4(a)(3) 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:**

The Fort Wayne Community Schools must:

1. Submit documentation to the Division monthly (no later than the last day of each month) indicating the attempts the School is making to resolve the issue of the inability to hire an occupational therapist. The beginning date of documentation due to the Division is no later than Monday, December 31, 2007.
2. Submit documentation to the Division indicating how the Student will currently be receiving occupational therapy services. This information is due to the Division no later than Friday, December, 21, 2007.

3. When the School hires an occupational therapist to provide services to the students, the School shall convene the case conference committee to determine the exact amount of compensatory services the Student is owed, and how that time will be made up. A copy of the Case Conference Report and revised IEP shall be submitted to the Division within two weeks of the meeting.