

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: CP-293-2008
COMPLAINT INVESTIGATOR: Kylee Bassett
DATE OF COMPLAINT: November 7, 2007¹
DATE OF REPORT: January 8, 2008
REQUEST FOR RECONSIDERATION: N/A
DATE OF CLOSURE: March 13, 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 not:

- a) providing a personal visual schedule between December 2006 and February 2007;
- b) providing visual supports including social stories between December 2006 and February 2007;
- c) identifying and teaching alternative behaviors to aggression as described in the Student's behavioral intervention plan (BIP); and
- d) implementing the Student's BIP during a behavioral incident on February 15, 2007.

511 IAC 7-30-2(g) by failing to achieve compliance with the requisite corrective action in the previous complaint (CP-144-2007), with respect to including in the Student's BIP how the Student's environment will be altered.²

511 IAC 7-29-9(b) by failing to ensure that copies of the special education and disciplinary records of the Student were transmitted for consideration by appropriate authorities as a result of the behavioral incident on February 15, 2007.³

511 IAC 7-26-2(d) by failing to provide specialized inservice training to professional and paraprofessional staff serving the Student with autism spectrum disorder, specifically by not training the following individuals:

- a) the High School's Special Education Teacher;
- b) the instructional assistants in the Living Skills Program;
- c) the Homebound Instructor A;
- d) the Homebound Instructor B;
- e) the security officer during the incident on February 15, 2007;
- f) the school nurse; and
- g) the Student's bus drivers.⁴

¹ The Complainants have an open complaint (#CP-144-2007). The final complaint investigation report for CP 144-2007 was dated January 12, 2007. A letter from the Complainants dated March 14, 2007 and received by the Division on March 17, 2007 indicated that the Complainant had concerns regarding the School's compliance with CP-144-2007's corrective action that had been ordered in the final report. The Division initiated some action with respect to allegations in the letter; however, a full investigation was not duly initiated. This complaint report is therefore addressing those concerns as well as others from the complaint letter dated November 2, 2007 and received by the Division on November 7, 2007.

² During the course of investigation this issue was changed to better reflect the facts. The issue falls under 511 IAC 7-30-2(g) instead of 511 IAC 7-27-7(a), as was cited previously.

³ This was an issue in CP-144-2007, but stemming from different incidents.

⁴ During the course of the investigation, subparts (a) through (g) were added to better reflect the facts.

511 IAC 7-27-5(a)(5) by failing to include in the written report of the case conference (CCC) meeting the reasons for the placement determination, including a description of any options considered and why those options were rejected as discussed at the CCC meeting per 511 IAC 7-27-6(a)(10).

511 IAC 7-27-4(c) by failing to utilize the case conference committee to develop, review, or revise the Student's IEP, specifically with respect to the reduction of homebound instructional hours from 7.5 to 6 hours without discussion.

Because additional issues were added, an extension of time was granted until December 21, 2007. A second extension was granted until January 8, 2008.

FINDINGS OF FACT:

1. The Student, seventeen years old, is identified as a Student with autism spectrum disorder and communication disorder and has been determined eligible for special education and related services.
2. The December 6, 2006 IEP indicates "visual schedule, discipline chart, social stories, See behavior plan for other strategies/needs" under the category "Specific Adaptation(s) and/or Modification(s) and/or Assistive Technology Needed." The IEP indicates under the category "Communication Skills" that "[the Student] is using his words [sic] more, but the visual schedules developed will help with his understanding of what is expected and prepare him of [sic] what his routine will be during the day." In a written summary regarding the Student's visual supports it was indicated that "the daily visual schedule initially was picture + words to help ease transitions between classrooms." However, after several revisions the visual schedule was revised to include written checklists for each class period. The Student would check off work as it was completed. All three teachers indicated that the visual schedule/checklist was placed on the Student's desk each class period and utilized. The School provided copies of the Student's checklists.
3. The Student's IEP indicates that visual cues, prompts, checklists, and social stories should be provided. The School provided samples of visual supports, including the following: copies of the Student's visual schedule, visual support to track behavior, and class period checklists. Interviews with three of the Student's teachers and the Student's speech therapist indicated that this information was placed in a 3-ring binder for the Student. All three of the teachers were consistent in describing that they utilized the visual supports, but it was difficult at times when the Student became frustrated or did not want to use the visual supports.
4. The Student's IEP indicated the following with respect to social stories: "[develop] social stories about the timeout area [and] other behavioral incidents that might occur," "develop social stories to address the discipline plan card, pouch of activities, and procedures for each classroom for timeout and daily routine." The School provided the following social stories developed for the Student: "[The Student's] Classroom Tracking Card," "Getting Ready to Go Home After School is Done," "[The Student's] Classroom Discipline Card," "When it is Too Noisy," "Self-Management Strategy," "Being Angry," "[The Student's] Reward Pouch," and three social stories with respect to his classroom routine in each of his teacher's classrooms.
5. The Student's IEP states "teach replacement skills for inappropriate/aggressive behavior." A written narrative indicated that a "communication ring" was created for the Student to use in teaching the Student to describe his emotions instead of becoming physically aggressive. Examples on the ring include: "I feel sick," "I feel sad," "I feel mad," "I feel tired," etc. The School provided copies of what was on the ring. Additionally, the School described in a written narrative that lessons from "Life Skills Activities for Secondary Student with Special Needs" were utilized to teach behaviors during 1st period. E-mail documentation on November 29, 2007, indicates that

per interview with the Student's teachers they indicated the following techniques: taught to request the weighted blanket, taught him to say "walk" so he could take a break, and taken to the restroom to let him run water in sink to calm him down. However, there is no documentation with respect to how, when or who taught the Student these skills.

6. A case conference was convened on December 6, 2006 and reconvened on December 19, 2006 to review the IEP and BIP. The Complainants signed the IEP on February 10, 2007, but indicated that they disagreed with recommendations.
7. The Student's BIP identifies the following behaviors to be reduced: aggression (hitting, kicking, slamming doors, running out of class, tearing up work, biting himself, hitting/slapping himself or others, etc.), noncompliance, and screaming/squealing. Several interventions are specified in the Student's BIP with the following categories: "Preventative/Proactive Interventions," "Interventions to Improve Adult-Student Relationships/Interactions," and "Consequences to Deal with the Occurrence of Specified Problem Behaviors." Interventions listed in the BIP when dealing with the occurrence of a specified problem behavior include: using timeout area, offer use of weighted blanket, make call to parent (if continues after call, parent will have opportunity to pick him up, suspension, and assistance from school staff if the aggression becomes too violent).
8. The Corrective Action in Complaint Investigation Report 144-2007 indicated that "[t]he behavior plan should describe how the student's environment will be altered." The Complaint 144-2007 was completed on January 12, 2007. The School indicates that the December 6, 2006 IEP addresses the Student's environment and the need for the classroom setting to be altered; however, there is no indication that this occurred in a CCC meeting after the Division's final order. The Complainants allege that the Student needs a "safe" place to go to calm down.
9. The February 15, 2007 behavioral incident is documented in an e-mail from the Student's Teacher of Record (TOR) and in the Student's February 20, 2007 IEP. On the day of the incident, there was a two hour weather delay. The IEP indicated the following:

School started at 10:00. He went to his locker, then came in and sat down. About 2 to 3 minutes later he started wandering around the room. At 10:05 he charged at a fellow student and hit him in the chest with both fists. He then sat down upon request. He remained in his seat until 10:08. He then ran into [Special Education Teacher B's] room yelling and upset. He ran to a chair & sat down roughly. He then struck the shelves [and] blinds with 2 hands. He then sat quietly until 10:19. He yelled & then grabbed his weighted blanket. [Special Education Teacher B] asked if [the Student] wanted to go back to class & he ignored him and began singing "What a wonderful world." He then became agitated, took his blanket & ran toward the door. [Special Education Teacher B] stood in front of the door so [the Student] turned and was yelling as he ran into the [TOR's] classroom and charged at her. He hit her 3 times on the arm. He looked disoriented and said "time out" as he ran into the hall. [The TOR] said "sit down" but he continued to wander. He then fell on the floor and covered himself up. He laid there for about 10 minutes. He went to lean over the banister and was told to get back. He got back and pulled [school personnel] back also. He was offered "time out" and said "no thank you." He went for a walk with [school personnel] and escorted [TOR] to her door. Called mom's cell at 10:55 & dad at 10:56.

10. The Complainants alleged that the School filed a police report regarding the February 15, 2007 behavioral incident and failed to provide copies of the Student's special education and disciplinary records with the police report. The School indicated that the high school has an officer on duty, and the officer was present at the scene but was not involved in dealing with the Student.

Furthermore, the School indicated that it did not report the incident to authorities. The Student was turned over to the Student's father when he arrived, and the School acknowledged that the officer was present in a meeting when the father arrived, but was only there to maintain order. The Complainants acknowledge that the Student was turned over to the father upon his arrival.

11. In an e-mail dated November 30, 2007, the High School's Special Education Teacher B indicated that he did not have an exact date for autism training, but it was between Thanksgiving and Christmas 2006. The teacher provided a PowerPoint presentation (with his handwritten notes) that was used during his training, with the School listed in the corner of each slide. The PowerPoint included two parts: an overview of autism and child-specific training.
12. On October 26, 2006, Child Specific Autism Training took place with 7 instructional assistants. The instructional assistants signed-in as being present. The School provided its "Procedural Guidelines for Child Specific Autism Training."
13. On March 19, 2007, the Student's Homebound Teacher A was provided Child Specific Autism Training. Homebound Teacher A signed as being in attendance. The Child Specific Autism Training Form indicated that the training included: an overview of Autism; reviewed the Student's present levels and gave her the current IEP and BIP; discussed the Student's behavioral needs in homebound; reviewed IEP goals and objectives; and received three ring binders (which included "Comm. Binder, Social Stories, and Visual Schedules with Reinforcements, etc.").
14. In a written narrative by the Homebound Teacher B, she explained that she has received autism training from the School during the 2006-2007 school year during a two-hour inservice. The Director of Special Education verified with the Specialists and Chair of the Autism Team's Calendar that the Homebound Teacher B was trained on March 3, 2006. On August 9, and 10, 2005, the Homebound Teacher B received autism training from the University of Wisconsin-Eau Claire, as documented by the teacher's attendance certificate.
15. The School indicated that the school nurse has not received autism training, but stated "[i]t has not been anticipated that she would be needed to provide services. . . ." The Student's IEP does not indicate that the school nurse was involved in providing any of the Student's services.
16. The School acknowledged that the School's security officer during the February 15, 2007 behavioral incident did not have autism training. The School indicated that the security officer was not directly involved with the Student. The School acknowledged that a security officer is regularly on duty at the School.
17. The School acknowledged that the Student's bus drivers were not trained. The Student's IEP indicates that the Student is provided Special Transportation. The School does not believe that bus drivers are considered paraprofessional per 511 IAC 7-17-56, in that they do not work under the supervision and direction of licensed teacher or related service personnel to assist in the areas related to personal, social, or instructional needs.
18. The Student's IEPs, under Least Restrictive Environment (LRE), justified options rejected and accepted, as well as other relevant factors that were discussed at each CCC meeting.
19. The Complainants alleged that the Student's homebound instructional hours were reduced from 7.5 to 6 without discussion at the CCC meeting. At the May 23, 2007 CCC meeting it was recommended that homebound instruction be reduced from 7.5 hours to 6 hours. The IEP indicated that the Student "will begin the school year on homebound for 6 hours a week the week of August 20, 2007." Notes on the IEP dated May 29, 2007, indicate that the "parents wanted to review the IEP before signing consent." Further notes indicate that the parents wouldn't sign consent because they wanted to review changes. The parents did not sign the IEP until October

15, 2007. The School provided documentation that the Student's homebound instructional hours were not changed until the parents signed agreeing with the IEP. The School's "Confirmation of Homebound Teaching Assignment" document dated September 17, 2007 indicated that 7.5 hours per week were to be provided, beginning August 27, 2007. The Schools' "Confirmation of Homebound Teaching Assignment" document dated October 24, 2007 indicated that 6 hours per week were to be provided, beginning on October 15, 2007.

CONCLUSIONS:

1. Findings of Fact #2 through #9 address failing to implement the Student's IEP as written.
 - a. Finding of Fact #2 indicates that a visual schedule was developed, but was revised to include written checklists for each class period. Finding of Fact #3 indicates that the IEP checklists are to be provided. Therefore, a violation of 511 IAC 7-27-7(a) is not found.
 - b. Findings of Fact #3 and #4 indicate that social stories in particular areas are to be developed and used with the Student. Finding of Fact #4 indicates that the School provided 10 different social stories designed specifically for the Student. Therefore, a violation of 511 IAC 7-27-7(a) is not found.
 - c. Finding of Fact #5 indicates that a communication ring was developed to use in teaching the Student to describe his emotions instead of becoming physically aggressive. Finding of Fact #5 indicates lessons were utilized to teach behaviors, but there is no documentation with respect to how it pertained to this individual Student. Therefore, a violation of 511 IAC 7-27-7(a) is found.
 - d. Finding of Fact #9 indicates that the Student's behavioral incident occurred shortly after he arrived at School. The documentation of the incident indicated that the Student utilized the weighted blanket, was offered time-out, and the Student's parents were called. All of the actions taken by school personnel were described in the Student's BIP. Therefore, a violation of 511 IAC 7-27-7(a) is not found.
2. Finding of Fact #8 indicates that the Student's BIP should describe how the Student's environment will be altered per the corrective action ordered in CP-144-2007. The School failed to document compliance with this order. Therefore, a violation of 511 IAC 7-30-2(g) is found.
3. Finding of Fact #10 indicates that the School did not report the behavioral incident to authorities. The School's security officer was at the scene to maintain order, but he did not interfere with the Student. 511 IAC 7-29-9(b) requires a public agency reporting a crime committed by a student with a disability to ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by appropriate authorities to whom it reports the crime to the extent permitted by the Family Educational Rights and Privacy Act (FERPA). Having the School's security officer present at the scene does not mean the School reported the incident to authorities. Therefore, no violation of 511 IAC 7-29-9(b) is found.
4. Findings of Facts #11 through #17 address in-service training to professional and paraprofessional staff serving the Student.
 - a. Finding of Fact #11 indicates that the High School's Special Education Teacher B provided documentation with respect to the content of his autism training. Although the teacher's e-mail indicates that he was unable to recall the actual date of training, the teacher provided training materials that included his hand-written notes. Therefore, a violation of 511 IAC 7-26-2(d) is not found.
 - b. Finding of Fact #12 indicates that 7 instructional assistants received child specific autism training on October 26, 2006. Therefore, a violation of 511 IAC 7-26-2(d) is not found.
 - c. Finding of Fact #13 indicates that the Homebound Instructor A received child specific autism training on March 19, 2007. Therefore a violation of 511 IAC 7-26-2(d) is not found.
 - d. Finding of Fact #14 indicates that the Homebound Instructor B received autism training on

August 9 and 10, 2005 and March 3, 2006. Therefore, a violation of 511 IAC 7-26-2(d) is not found.

- e. Finding of Fact #15 indicates that the school nurse has not received autism training. The Student's IEP does not indicate that the school's nurse provides services to the Student. Therefore, a violation of 511 IAC 7-26-2(d) is not found.
 - f. Finding of Fact #16 indicates that the School acknowledged that the security officer at the school was not trained in autism. Pursuant to Indiana Code 20-26-5-31, every individual appointed as a school corporation police officer is to complete training and education that will enable the school corporation police officer to appropriately deal with individuals with autism and Asperger's syndrome. Therefore, a violation of 511 IAC 7-26-2(d) is found.
 - g. Finding of Fact #17 indicates that the Student's bus drivers are not trained. 511 IAC 7-26-2(d) requires all professional and paraprofessional staff servicing students with autism spectrum disorder shall receive specialized inservice training in this area. Finding of Fact #17 indicates that the Student utilizes special transportation. Because bus transportation is a related service for this Student, the Student's bus drivers should be trained pursuant to 511 IAC 7-26-2(d). Therefore, a violation of 511 IAC 7-26-2(d) is found.
5. Finding of Fact #18 indicates that the School included in the IEP reasons for placement determinations, including reasons options were rejected and accepted. Therefore, a violation of 511 IAC 7-27-5(a)(5) is not found.
 6. Finding of Fact #19 indicates that the May 23, 2007 IEP provided for the reduction of homebound instructional hours from 7.5 to 6 hours. Notes on the IEP indicated that the parents reviewed the IEP on May 29, 2007 and June 6, 2007 before signing the IEP in agreement on October 15, 2007. The School's documentation of its "Confirmation of Homebound Teaching Assignment" forms for this Student indicates that the Student's instructional hours did not decrease until the parents signed for the change of placement. Therefore, a violation of 511 IAC 7-27-4(c)(1) 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:

The School shall convene a CCC meeting **no later January 31, 2008**. The following must be incorporated into the Student's IEP:

- A separate section in the Student's BIP must address how the Student will be taught alternative behaviors to aggression. The BIP should be clear in identifying what the alternative behaviors are for the Student, who is responsible for implementing the strategies, and when these alternatives behaviors will be taught and reinforced.
- A separate section in the Student's BIP must specifically address how the Student's environment will be altered (as required per 511 IAC 7-17-8) with input from the Student's parents, especially when the Student is having a "melt-down."
- A separate section in the Student's BIP must address the Student's "melt-downs" and describe strategies for school personnel to utilize and how to appropriately respond to the Student during such behavioral incidents. Involvement of an autism or behavioral specialist may be necessary to fully address this issue.

The School shall submit the Student's complete IEP to the Division **no later than February 16, 2008**.

The School shall provide specialized autism training to the Student's bus drivers and the School's

security officers. Documentation of the training, including the agenda, materials used, and a list of the participants in attendance shall be submitted to the Division **no later than February 29, 2008.**

DATE REPORT COMPLETED: January 8, 2008

