

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	CP-296-2008
COMPLAINT INVESTIGATOR:	Brian Simkins
DATE OF COMPLAINT:	November 13, 2007
DATE OF REPORT:	December 13, 2007
REQUEST FOR RECONSIDERATION:	Yes – January 10, 2008/Revised
DATE OF CLOSURE:	May 22, 2008

COMPLAINT ISSUES:

Whether the Southeastern School Corporation and the Logansport Area Joint Special Services Cooperative violated:

511 IAC 7-25-7(b) by failing to conduct an additional evaluation and convene the case conference committee meeting within 60 instructional days from the date the school received written parental consent in accordance with 511 IAC 7-25-4(b).

511 IAC 7-25-5(e) by failing to take into consideration the results of a private evaluation paid for by the parent.¹

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

FINDINGS OF FACT:

1. The Student, eight years old, is identified as having a communication disorder, and has been determined eligible for special education and related services.
2. The School received written consent to conduct an additional evaluation from the Complainant (parent/mother) on September 27, 2004, to determine whether the Student may be eligible under autism spectrum disorder. The 60 instructional day timeline elapsed on January 7, 2005. At the outset of the evaluation process, the Complainant was informed that in order to do a complete autism evaluation the School would need written consent to conduct an occupational therapy and a physical therapy evaluation to look at fine and gross motor skills. Although the consent form the Complainant signed on September 27, 2004, indicates that occupational and physical therapy evaluations would also be conducted, there is no indication that separate consents for each of these evaluations would have to be signed by the Complainant.
3. The Student's psychoeducational evaluation was completed on November 17, 2004. However, the occupational therapy and physical therapy evaluations were not completed. The referrals for both evaluations were provided to the Complainant, but the School did not receive signed consent. After January 7, 2005, the School made several attempts to contact the Complainant in order to schedule a case conference committee meeting to no avail. On February 5, 2005, the Assistant Director of Special Education sent a letter to the Complainant informing her that the total evaluation was incomplete since the Complainant had not returned

¹ The issue, 511 IAC 7-25-5(a) was changed to 511 IAC 7-25-5(e) to better reflect the facts herein.

permission to conduct the occupational and physical therapy evaluations, but that a case conference committee could still be convened to discuss the completed parts of the evaluation, advise the Complainant of what additional information was needed, and then reconvene the case conference committee to determine eligibility. The Complainant told the School that the requisite consent forms had already been submitted and that she was not willing to attend a case conference committee meeting until the evaluations were complete and the School was ready to identify the Student as having autism.

4. Upon further investigation, the School discovered that the occupational evaluation had been completed on November 12, 2004, by the Occupational Therapist. During a telephone conversation between the Assistant Director of Special Education and the Complainant on September 2, 2005, it came to light that the Complainant had hand-delivered written consent for the occupational therapy evaluation to the Student's teacher who hand-delivered it directly to the Occupational Therapist. However, there is no record of any physical therapy consent received by the School or an evaluation ever being conducted. The School maintains that the Complainant did not want to sign consent for a physical therapy evaluation, and the Complainant states that she signed several. The Student's father signed a consent form to conduct a physical therapy evaluation on March 15, 2005. However, the School cannot document whether a physical therapy evaluation was conducted, and there is no record of such an evaluation being completed.
5. Also during the telephone conversation on September 2, 2005, the Complainant stated that she was going to pay for an outside evaluation to be completed. The Assistant Director of Special Education told the Complainant that as soon as the private evaluation was completed the case conference committee could convene to consider the results. On November 7, 2005, the Complainant informed the Assistant Director of Special Education that the evaluation was completed. A case conference committee meeting was scheduled for November 21, 2005. On November 10, 2005, the Complainant cancelled the case conference committee meeting. There is no documentation indicating that further efforts were made by the School to schedule a case conference committee meeting during the 2005-2006 school year. Case conference committee meetings convened on September 1, 2006, and September 7, 2007, to conduct annual case reviews and discuss the Student's speech goals and services. There was no discussion about autism.
6. On September 24, 2007, the Complainant informed the Assistant Director of Special Education that the Student was scheduled for a private evaluation. The Assistant Director of Special Education offered to have the School pay for the outside evaluation. The Complainant declined the offer. On October 16, 2007, the Complainant returned to the School written consent to conduct occupational and physical therapy evaluations, and consent to conduct an additional psychoeducational evaluation. The Complainant also submitted the School's Autism Criteria Sheet dated August 29, 2005, and physician statements dated September 16, and December 12, 2005, all signed by the Student's physician. However, this information was considered by the School to be too outdated. The occupational and physical therapy evaluations were conducted on October 23, 2007, and an additional psychoeducational evaluation was completed on October 28, 2007. At present, the parties are attempting to schedule a case conference committee meeting.
7. The Student's former speech therapist resigned at the end of the 2004-2005 school year. The School acknowledges that the Student went without speech services at the start of the 2005-2006 school year until November 21, 2005, when a new speech therapist was hired. The Complainant alleges that compensatory speech services were promised, but the School states that no compensatory speech services were offered. The School also did not offer to convene the Student's case conference to determine compensatory services. Compensatory services

were not discussed at the case conference committee meetings held on September 1, 2006, and September 7, 2007.

CONCLUSIONS:

1. Findings of Fact #3 and #4 indicate that the School failed to conduct an additional educational evaluation and convene the case conference committee within 60 instructional days from the date the School received written consent to conduct the evaluation(s). Although the alleged violation occurred more than a year prior to the date the Division received this complaint, due to the kinds of procedural deficiencies involved with this issue, it has taken three years to have this additional evaluation completed as indicated in Finding of Fact #6. Therefore, a violation of 511 IAC 7-25-7(b) is found.
2. Findings of Fact #5 and #6 indicate that the School has failed to consider the Complainant's private evaluation. Once the School realized that the requested additional evaluation in the area of autism was beset by procedural deficiencies, and the Complainant made it known that she was pursuing an outside evaluation at her expense after nearly a year had elapsed since signing consent, an offer to convene the case conference committee to consider the results was made. There is no documentation to indicate that an effort was made to reschedule the case conference committee meeting after the Complainant cancelled the meeting scheduled for November 21, 2005. As a result, by the time the Complainant submitted the Autism Criteria Sheet and physician statements from 2005 to the School in October of 2007, the information was too outdated. Therefore, a violation of 511 IAC 7-25-5(e) is found.
3. Finding of Fact #7 indicates that the School failed to provide speech services to the Student from the first day of the 2005-2006 school year until November 21, 2005. In addition, the School did not offer to convene the case conference committee to determine whether and to what extent compensatory services should be provided the Student. Therefore, a violation of 511 IAC 7-27-7(a) is found.

DISCUSSION:

The Complainant thinks that the Student should be eligible for special education and related services, including a one-on-one assistant, as a student with autism without benefit of a case conference committee to make such a determination. Special education and related services are based on the identified needs of the student, not by identification alone. Resolving disputes over eligibility and what constitutes a free appropriate public education for the student is beyond the scope of a complaint investigation.

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:

Southeastern Schools and the Logansport Area Joint Special Services Cooperative shall:

Convene the case conference committee to discuss the results of the Student's recent additional evaluations, and to consider any information provided by the Complainant with respect to a possible change in eligibility to autism. The case conference shall determine compensatory speech services that are consistent with what is currently provided to the Student. If the case conference committee changes the Student's eligibility and agrees the Student needs more special education and related services based on individual needs, then extended school year services shall be discussed and compensatory services to make up for lost time shall be determined. A copy of the case conference

report and revised IEP shall be submitted to the Division no later than **January 25, 2008**.

Submit a copy of the recently completed autism spectrum disorder evaluation, including the new physical and occupational therapy evaluations to the Division no later than **January 25, 2008**.