Indiana Department of Education Center for Exceptional Learners

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: **CP-328-2008**
COMPLAINT INVESTIGATOR: **Brian Simkins**
DATE OF COMPLAINT: **February 7, 2008**
DATE OF REPORT: **March 7, 2008**
REQUEST FOR RECONSIDERATION: **Yes- Revised/April 11, 2008**
DATE OF CLOSURE: **June 24, 2008**

COMPLAINT ISSUES:

Whether the MSD Pike Township violated:

511 IAC 7-30-3(x) by failing to implement the independent hearing officer's orders in hearing #HR-200-2007, specifically by failing to:
(a) provide the required bus transportation;
(b) identify a target behavior related to bus transportation;
(c) conduct a functional behavior assessment;
(d) develop a behavioral intervention plan;
(e) identify an appropriately credentialed person to implement cognitive behavior therapy/counseling;
(f) obtain the student's input on effective strategies and calming techniques;
(g) address the "skill streaming program;"
(h) address summer instruction in science and social studies; and
(i) address compensatory counseling services.

511 IAC 7-27-2(a) by failing to schedule a case conference committee meeting at a mutually agreed upon date, time, and place.

511 IAC 7-27-4(c)(2) by failing to utilize the case conference committee to review and revise the student's individualized education program (IEP) taking into account the results and instructional implications of the most recent educational evaluation of the student.

FINDINGS OF FACT:

1. The Student, 12 years old, is identified as a student with autism spectrum disorder, an emotional disability, and a learning disability, and has been determined eligible for special education and related services.

2. On January 3, 2008, an independent hearing officer issued a written decision in a due process hearing involving the Student. The hearing orders must have been implemented no later than 30 days after the School's receipt of the hearing decision which all parties agree was February 4, 2008. Order #1 states, "Respondent [the "School"] shall provide the Student with individualized, round trip transportation that has identical arrival and departure times to those of her non-disabled peers." It is undisputed that at the case conference committee meetings held on January 28, and February 1, 2008, transportation complying with the hearing order was offered with a beginning date of February 4, 2008. The Complainant specifically alleges that the School made the arrangements too late and did not take into consideration a requested phase-in transportation plan to take into account the fact, established by the Independent Hearing Officer that change in routine is very upsetting to the Student. However,

the hearing decision does not order that such a transition plan be developed.

3. However, Hearing Order #3 states, "Respondent shall initially identify three target behaviors that significantly interfere with the Student's educational functioning for purposes of conducting a functional behavior assessment ("FBA"). The parents shall have input into the identification of the target behaviors. One of the target behaviors shall be transportation." The IEP dated February 1, 2008 contains an annual goal addressing the Student's ability to ride the bus independently. There is a detailed plan involving steps the Student can take to work toward riding the regular school bus with her peers. Because the Student had been riding an individualized bus without peers, there was no data collected with respect to information about the Student's ability to ride the regular bus. The Student's IEP includes curb-to-curb special transportation as a related services, beginning on February 4, 2008. The case conference notes indicate that the team agreed that the Student's inability to ride the neighborhood bus will be one of three behaviors that will be the focus in the Student's FBA. Although the case conference notes indicate that the case conference committee agreed to collect data towards the FBA transportation component once the Student begins riding the regular bus with her peers, the IEP does not address what data will be collected regarding the Student's behavior with respect to her current transportation in order to prepare the Student to ride and properly transition to the neighborhood bus. The Complainant believes that there is more data that could be collected now with respect to the Student's sensory needs.

4. At issue in hearing #HR-200-2007 was whether the School was capable of conducting an FBA in accordance with the definition in Article 7. After the case conference committee meetings on January 28, and February 1, 2008, the Complainant maintains that the School still did not conduct an appropriate FBA. To collect data for the required revised FBA the School utilized: (1) Information from a primary student interview; (2) teacher surveys completed by general education teachers; (3) Teacher survey completed by the Student's one-to-one aide; (4) a family interview; (5) several behavior function checklists; and (6) a behavior function checklist for different target behaviors completed by the one-to-one aide. All of the above surveys, checklists, and interviews were completed on January 30, and 31, 2008, between the January 28, and February 1, 2008 case conference committee meetings. The School also relied on observation data from August 8, 2007, to January 20, 2008 (32 observations). This data included the date and time (class or activity) of the observation, the behavior being observed, the antecedent, the consequence, and the response to intervention.

5. Hearing Order #3 goes on to state, "Following from the data collection on target behaviors, a Behavior Intervention Plan ("BIP") shall be developed with input from the parents." The Complainant alleges that the BIP developed by the School is inappropriate, specifically because it fails to provide meaningful rewards at a frequency the Student would find reinforcing. The Positive Behavior support Plan dated February 1, 2008, contains reinforcement strategies and describes a few positive reinforcements ~~that motivate the Student~~; however, there is no documentation that indicates that the parents and the Student had input into the BIP, specifically regarding the reinforcement strategies.

6. Hearing Order #4 states, "…the IEP shall provide for the cognitive-behavioral therapy/counseling component." Hearing Order #9 requires that the cognitive-behavioral counseling be provided by "a social worker or psychologist." The IEP indicates that cognitive behavior therapy will begin February 4, 2008, 30 minutes one time a week. The case conference notes state that the service would be provided by a licensed clinical social worker or a school psychologist. However, there is no documentation indicating whether somebody has been identified to begin providing this service.

7. For the purposes of identifying appropriate and necessary sensory activities and

accommodations to be utilized during the Student's day, Hearing Order #5 states: "The Student shall be involved for input on effective strategies and calming techniques." The BIP indicates that calming strategies will be used and implemented by the Student's occupational therapist starting February 4, 2008, but there is no indication of which, if any, strategies were developed with the Student's input. The School cites the Primary Student Interview conducted as part of the FBA, but the interview questions do not directly ask the Student about effective reinforcement strategies and calming techniques.

8. Hearing Order #4 requires that the Student's IEP provide for social skills training. The IEP indicates that a "skill streaming program" was discussed to address social skills deficits. The Complainant alleges that the School could not provide enough information about the program, therefore making it difficult to determine whether it is appropriate. The School maintains that the subject was discussed during the development of the Social Behavior Goals. That goal page mentions the use of skill streaming in relation to behavior-related short-term objectives. A behavior specialist was in attendance at the case conference to address behavior goals and objectives. The case conference notes indicate that the social skills training is co-facilitated by a school psychologist and a special education teacher. The Department Chair for Special Education sent further information about the program to the Complainant via e-mail on February 8, 2008.

9. Hearing Order #8 states, "For the periods of educational deprivation during the 2006-2007 and 2007-2008 school years in the subjects of Science and Social Studies, Respondent shall provide the Student instruction in these areas during the summer of 2008." The Complainant alleges that the IEP fails to provide details on the instruction that was missed, and how the instruction will be provided. The case conference notes make reference to compensatory services being provided in a small group setting while reviewing concepts from fifth and sixth grade science and social studies from July 1, to July 30, 2008, three times a week for one and one half hours each session.

10. Hearing Order #9 states, "For the period of educational deprivation during the 2006-2007 and 2007-2008 school years regarding the lack of counseling services, Respondent shall provide compensatory services during the summer of 2008." The Complainant alleges that the School failed to identify counseling goals or any other detailed information about the nature of the compensatory services. The case conference notes indicate that compensatory counseling services will be provided in a small group setting or individually from July 1, to July 30, 2008, two times a week for 30 minutes a session.

11. The hearing orders were to be implemented no later than 30 calendar days from the date the written hearing decision is received by the School. The School received the decision on January 4, 2008. All parties acknowledge that the 30 calendar day timeline elapsed on February 4, 2008. The Complainant alleges that because the School waited until the last possible moment to convene a case conference committee meeting, the IEP was hurried and therefore incomplete and inappropriate. The Director of Special Education first contacted the Complainant via e-mail on January 16, 2008, to schedule a case conference committee meeting on February 1, 2008. The Complainant agreed to meet, but expressed concern about not having enough time to address all the issues. The written case conference notice was sent to the Complainant via e-mail on January 24, 2008, with January 30, 2008 as the agreed upon date to convene. The case conference convened on January 30, 2008, and re-convened on February 1, 2008.

12. The Complainant alleges that the results of a re-evaluation, which were reviewed at a meeting between the School and the Complainant on September 9, 2007, were not addressed at the case conference committee meeting on February 1, 2008. Also not addressed, according to

the Complainant were the results of a recent independent educational evaluation (IEE). The case conference notes state, "[The Director of Special Education] offered to review recent evaluations. [the Complainant] stated that she did not feel it was necessary to review either [the School's] evaluations or the independent evaluation performed by [the outside evaluator.]" The case conference report indicates that one of the purposes of the case conference committee meeting was to discuss recent evaluation results.

CONCLUSIONS:

1. Findings of Fact #2 through #10 address whether the School failed to implement the hearing orders from due process hearing #HR-200-2008, specifically:
   (a) Finding of Fact #2 indicates that the required transportation was offered to the Complainant in compliance with Hearing Order #1 which does not require a transition plan;
   (b) Finding of Fact #3 indicates that the case conference committee identified bus transportation as a target behavior. The IEP indicates that the Student needs transportation as a related service. Although the case conference committee identified bus transportation as a target behavior, there was no indication that an FBA would be conducted with the Student's current transportation issues. In order for the Student to transition appropriately to the neighborhood bus, data needs to collected and analyzed with respect to the Student's present transportation issues. ~~and agreed to collect data in order to address the transportation component of the FBA once the Student begins consistently riding the regular bus~~;
   (c) Finding of Fact #4 indicates that the School collected data in order to conduct a FBA. However, most of the data was collected the day before the case conference committee meeting and consisted of interviews and surveys;
   (d) Finding of Fact #5 indicates the a BIP was developed; however, it failed to incorporate a the necessary information with respect to Conclusion 1(b) and there is no indication that the parent and Student had input into the BIPs reinforcement strategies ;
   (e) Finding of Fact #6 indicates that the IEP does not clearly identify who will be implementing the cognitive behavior therapy:
   (f) Finding of Fact #7 indicates that there is no documentation showing whether and to what extent the Student's input was obtained to develop effective strategies and calming techniques;
   (g) Finding of Fact #8 indicates that the case conference committee did address the skill streaming program;
   (h) Finding of Fact #9 indicates that summer instruction for science and social studies is identified in the case conference notes; however the language in the IEP only indicates that the Student would be receiving missed educational services for two schools years during the month of July for three times a week for one and one half hours each session. The IEP lacks sufficient clarity so that both the parent and the school know *what* services in both science and social studies the Student is to receive in the month of July;
   (i) Finding of Fact #10 indicates that the provision of summer compensatory counseling services is identified in the case conference notes.

Therefore, a violation of 511 IAC 7-30-3(x) is found with respect to: (1) not collecting data with respect to the Student's *current* bus transportation issues [Conclusion 1b]; ~~(1)~~ (2) not collecting enough FBA data that varies in length and scope in enough time to analyze [Conclusion 1c]; (3) not developing an appropriate BIP [Conclusion 1d]; ~~(2)~~ (4) not clearly identifying in the case conference report the individual responsible for providing the required cognitive behavior therapy [Conclusion 1e]; ~~and (3)~~ (5) not being able to document whether the Student's input has been obtained to develop effective sensory accommodation strategies and calming techniques [Conclusion 1f]; and (6) failing to develop a sufficiently clear IEP for the missed services in both

science and social student during the 2006-2007 and 2007-2008 school years.

2. Finding of Fact #11 indicates that, although the Complainant would have liked to have convened earlier, the case conference committee meeting was scheduled at a mutually agreed upon date, time, and place. Therefore, a violation of 511 IAC 7-27-2(a) is not found.

3. Finding of Fact #12 indicates that the School did not fail to utilize the case conference committee to take into account the results and instructional implications of the most recent educational evaluation of the Student. Therefore, a violation of 7-27-4(c)(2) 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 MSD Pike Township shall:

Submit documentation to the Division indicating the individual identified to implement the cognitive behavior therapy identified in the Student's IEP, that individual's credentials, and that the Complainant has been informed of this information no later than **May 9, 2008.** ~~**April 11, 2008**~~**.**

Conduct an FBA in accordance with 511 IAC 7-17-38 that addresses the Student's identified target behaviors, including the Student's current bus transportation issues. In addition to the FBA, the Student shall be involved in giving input into effective strategies and calming techniques.

Upon the completion of the new FBA, a CCC meeting shall convene **no later than April 30, 2008** to:

- analyze the results the new FBA;
- determine effective strategies and calming techniques with input from the parents and the Student;
- review and revise the Student's BIP in accordance with 511 IAC 7-17-8, and specifically include content addressing the Student's current transportation issues and effective strategies with input from the Student and parents; and
- revise the Student's IEP to provide sufficient clarity with respect to the Student's compensatory services in science and social studies.

A copy of the Student's IEP (including the Student's FBA and BIP) shall be submitted to the Division **no later than May 9, 2008.**

~~Conduct an FBA in accordance with 511 IAC 7-17-38 that takes into account the Student's input on the development of effective sensory strategies and calming techniques, and that is based on data from recent observations and behavioral data. A copy of the FBA shall be submitted to the Division no later than~~ ~~**April 11, 2008.**~~

~~Convene the case conference committee to review the new FBA and to review and revise the BIP if necessary. A copy of the case conference report and IEP shall be submitted to the Division no later than~~ ~~**April 11, 2008.**~~