

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: CP-332-2008
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: February 20, 2008
DATE OF REPORT: March 30, 2008
REQUEST FOR RECONSIDERATION: Yes (Revisions to the original report are denoted by underscores and strikeouts.)
DATE OF CLOSURE: July 24, 2008

COMPLAINT ISSUES:

Whether the Monroe County Community School Corporation violated:

511 IAC 7-27-5(c) by failing to provide the parent with a copy of the written case conference report after the case conference committee meeting held on May 31, 2007.

511 IAC 7-27-3(a)(1)(B) and (C) by failing to ensure that the case conference committee participants include a representative of the public agency who is knowledgeable about the general education curriculum and about the availability of resources.

511 IAC 7-27-3(a)(4) by failing to ensure that the case conference committee participants include a general education teacher.

511 IAC 7-27-4(c) by failing to utilize the case conference committee meeting to review, revise, or develop the student's individualized education program (IEP), specifically by failing to consider the parent's concerns regarding:

- (a) the student's least restrictive environment and schedule;
- (b) transportation as a related service;
- (c) extended school year services (ESY); and
- (d) physical education or adapted physical education.

511 IAC 7-27-6(a)(1) by failing to address the student's present levels of educational performance.

511 IAC 7-27-6(a)(2) by failing to have measurable annual goals in the student's IEP.

511 IAC 7-21-3(b) by failing to ensure that ESY services are available as necessary and that ESY services are not limited to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

511 IAC 7-26-2(c)(7) by failing to ensure that the case conference committee determines the identification of autism spectrum disorder based in part on an evaluation of fine and gross motor skills.

511 IAC 7-26-2(d) by failing to provide professional and paraprofessional staff serving a student with autism spectrum disorder specialized in-service training during the 2006-2007 school year.

511 IAC 7-27-7(a) by failing to implement the student's IEP as written, specifically by failing to provide progress reports with respect to the student's occupational therapy and speech therapy services.

An extension of time was granted on April 18, 2008, until May 2, 2008 for the issuance of the reconsideration results.

FINDINGS OF FACT:

1. The Student, nine years old, is identified as a student with autism spectrum disorder, and has been determined eligible for special education and related services.
2. The case conference committee convened on May 24, and May 31, 2007. The School acknowledges that the written case conference report was mailed on June 28, 2007, 20 business days after the case conference committee meeting on May 31, 2007. The Complainant acknowledges receiving a copy of the written report.
3. The Complainant alleges that the Case Conference Chairperson was not knowledgeable about the general education curriculum and related resources. The Complainant had specific concerns about whether and to what extent the Student may receive special education and related services in the general education environment. Both parties acknowledge that during the 2006-2007 school year the Student, although placed full-time in a community-based setting for students with moderate to substantial needs, the Student would have opportunities to participate in regular education activities with his peers in the general education environment as appropriate. The Student had spent approximately one to two hours a day with his general education peers in a dual classroom and with those same peers in music, physical education (PE), and art. The IEP dated May 31, 2007 keeps the Student in the same placement. The Case Conference Chairperson was a licensed teacher in the position of Community Based Coordinator working with programs and classes throughout the school district. There is nothing in the case conference notes, case conference report, or IEP to indicate any topics or decisions were unaddressed due to a lack of knowledge on the part of the Case Conference Chairperson or a lack of resources.
4. The Complainant asserts that a general education teacher should have been a participant at the case conference committee meetings held on May 24, and 31, 2007 because of the Student's participation in the general education environment. The CCC summary dated May 24, 2007 indicated that the one of the Student's general education teachers attended the CCC meeting. However, a signature or initialization was provided next to each typed name of the CCC member, except for the general education teacher. The general education teacher that team teaches the general education classroom mentioned in Finding of Fact #3 above attended the case conference committee meeting on May 24, 2007, and submitted a report regarding the Student's participation in the general education class. The teacher did not attend the continuation of the case conference committee on May 31, 2007.
5. The Complainant alleges that the case conference committee on May 24, and 31, 2007 did not discuss the Student's placement in the least restrictive environment for the 2007-2008 school year, specifically with respect to how much time the Student would be in the self-contained special education classroom and how much time in the general education setting including art, PE, music, lunch, and recess. The Student's placement in the least restrictive environment is documented on the services page of the IEP dated May 31, 2007. It indicates that regular education full-time is not supportive, and full-time special education in a community-based classroom "with opportunities for regular education activities and peer interactions as is appropriate for [the Student]" was recommended. The case conference notes do not indicate any further discussion about the Student's specific schedule. The Student's IEP did not provide any specifics regarding the amount of time the Student would spend in the full time special education environment (community-based) or the "regular education activities."
6. The Student does not attend his home school and rides a special education bus to school. The IEP indicates that the Student receives transportation as a related service. The Complainant specifically alleges that no transportation plan was developed for the 2007-2008 school year at the case conference committee meetings held on May 24, and 31, 2007. Transportation Information Cards dated May 24, and July 25, 2007 indicate how transportation as a related

service will be implemented and includes information about the Student's health and behavior needs. However, although the IEP indicates that transportation will be provided as related service, this information and plan was not discussed at the case conference committee meetings.

7. The IEP indicates that the case conference committee determined that the Student will receive ESY services. The case conference notes indicate extensive discussion about ESY services. The determination of ESY services was one of the main purposes for re-convening the May 24, 2007 case conference committee meeting on May 31. However, the CCC notes dated May 24, 2007 under the heading of ESY indicated that "[t]ransportation is still in question." There is no documentation to indicate that the transportation issues were resolved. In addition, no transportation services were provided to the Student with respect to his ESY services in the summer of 2007.
8. The case conference notes dated May 31, 2007 indicate discussion of PE and adapted PE. The notes indicate that the Student will participate in both the general PE and adapted PE. The IEP, under the section describing "supplementary aids and services or other factors relevant to proposed services," lists adapted PE and refers the reader to the case conference notes. The notes indicate that the case conference committee decided not to develop writing a measurable annual goal and short-term objectives regarding PE. Otherwise, the notes briefly describe what was done last school year.
9. Page two of the IEP and the case conference notes indicate that the Student's present levels of educational performance (PLEP) were updated at the case conference committee meeting held on May 24, 2007. The Complainant specifically alleges that the IEP does not contain a complete description of the PLEPs, particularly with respect to gross motor skills, social skills, and communication skills. However, the Student's PLEP lack sufficient clarity. For example: Under the category "Reading: Strengths," the IEP indicates that the Student is "reading some simple books and has increased his sight word vocabulary, recognizes the letters of the alphabet, [and] copies letters and words." There is no further indication as to the specifics of the Student's sight word vocabulary or the reading level of the "simple books" he has read.
10. The Student's IEP contains annual goals in the following areas: Language Arts (4); Math (2); and Social/Emotional. There are 15 short-term objectives in the area of Language Arts; 10 for Math, and four for Social/Emotional. Each set of short-term objectives has a corresponding procedure for evaluation of progress. Although the IEP contains some goals and objectives that are measurable, the Student's IEP contains some annual goals that are ambiguous in nature and not measurable. For example, one of the Student's language arts annual goals indicates the following: "[The Student] will read simple books with 90% accuracy." Nothing in the IEP defines the term "simple book" or what it means to "read a simple book with 90% accuracy."
11. The Complainant alleges that the School proposed only 18 hours of summer ESY based solely on the Student's disability category and that the School would not consider the regular program at the case conference committee meeting on May 24, 2007. The case conference discussed ESY to address ways to help the Student transition from one school to another. According to the School, the summer program is primarily designed to provide remediation for students who are struggling with the statewide assessment. Summer ESY for students with more substantial disabilities is individualized to meet the needs of the student. The case conference notes reflect that there was some discussion about the difference between summer school and ESY services. The IEP indicates that the Student participates in an alternative, functional skills curriculum, and does not participate in the statewide standardized assessment, but is assessed through use of the State's alternative assessment called the Indiana Standards Tool for Alternative Reporting (ISTAR). Documentation from the summer of 2007 shows that there were 23 students with disabilities receiving summer ESY with as little as two hours for vocational support up to 60 hours for transition to the Community Transitions program.

12. The Complainant alleges that the School did not conduct a sufficiently comprehensive evaluation of the Student with respect to whether the Student has gross motor deficits. The Student was determined eligible for special education on May 24, 2004. The physical therapist completed an "evaluation of motor skills through play and observation" after referral from the Student's physician on March 4, 2004. The report addresses gross motor skills. A triennial re-evaluation was conducted on April 17, 2006, as a result of discussion from a case conference committee meeting during the 2005-2006 school year. Although gross motor skills were not addressed, the referral signed by the Complainant indicates that the case conference determined that the current disability area of autism was not being questioned and that additional information was needed about the Student's current level of functioning, communication, and social interaction.
13. The School utilizes an "Autism Training Checklist" that requires all personnel who work with a student to initial the relevant box on the checklist after: (1) viewing the autism power point presentation; (2) reviewing information from the school district's Autism Resource Manual; and (3) meeting with the student's teacher of record to review the IEP including the behavioral intervention plan and accommodations. The checklist for the 2006-2007 school year indicates that between October 2, and 6, 2006, the Student's teacher of record, both general education teachers, paraeducators, special area teachers, and the speech-language pathologist were trained in all three areas. However, the documentation indicates that the Student's occupational therapist was not trained.
14. The Complainant acknowledges receiving progress reports with respect to the Student's occupational therapy and speech therapy services. The Student's IEP does not contain specific IEP goals for speech and occupational therapy, but the occupational therapist and the speech therapist implement some of the relevant short-term objectives. The Student received 60 minutes a week of occupational therapy (OT) on a consultation basis. The progress report at the end of the 2006-2007 school year and the case conference notes from May 24, 2007 indicate that the OT addressed handwriting skills. The Complainant is primarily concerned that the provision of OT is too limited and should be implemented in other areas, especially PE.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the School acknowledges that it failed to provide the Complainant with a copy of the written case conference report. Therefore, a violation of 511 IAC 7-27-5(c) is found. Finding of Fact #2 also indicates that the Complainant received a copy of the written report 20 business days after the case conference committee meeting on May 31, 2007. Therefore, no further corrective action is required.
2. Finding of Fact #3 indicates that the School did not fail to ensure that the case conference committee participants included a representative of the school corporation who is knowledgeable about the general education and availability of resources in the Student's community-based classroom. The Case Conference Committee Chairperson served as the school corporation's Community Based Coordinator. Finding of Fact #3 also indicates that the Complainant was concerned about the extent to which the Student may participate in the general education environment for the 2007-2008 school year and was not satisfied with the answers, or lack thereof, provided to her about various aspects of the curriculum. There is nothing to show that the Case Conference Chairperson was not qualified to provide or supervise specially designed instruction, knowledgeable about the general education curriculum, or knowledgeable about the availability of resources. The case conference committee also did not make decisions based upon the perceived lack of resources rather than the needs of the Student. Therefore, a violation of 511 IAC 7-27-3(a)(B) and (C) is not found.
3. Finding of Fact #4 indicates that the School ~~did not~~ failed to have a general education teacher

participate in the case conference committee meeting held on May 24, 2007 and ~~but did fail to include a general education teacher~~ at the subsequent case conference committee meeting on May 31, 2007. Therefore, a violation of 511 IAC 7-27-3(a)(4) is found.

4. Findings of Fact #5 through #8 address whether the School failed to utilize the case conference committee to review, revise, or develop the Student's IEP, specifically:
 - (a) Finding of Fact #5 indicates that the case conference committee addressed the Student's least restrictive environment; however, the School failed to define the location, frequency, and length with respect to the Student's time in "full time special education" (community-based) or "regular education activities and peer interactions";
 - (b) Finding of Fact #6 indicates that, although the IEP indicates that transportation as a related service will be provided, there was no discussion of the Student's transportation situation. In addition, Finding of Fact #7 indicates that the Student was not provided transportation for ESY services during the summer of 2007, even though transportation is a related service for the Student;
 - (c) Findings of Fact #7 and #11 indicate that the case conference committee addressed ESY services for the Student; and
 - (d) Finding of Fact #8 indicates that the case conference committee addressed adapted PE, but that the IEP and case conference notes do not describe what is to be provided, by whom, and with what resources.

Therefore, a violation of 511 IAC 7-27-4(c) is found with respect to not discussing the Student's least restrictive environment and schedule, transportation situation, and with respect to not determining the Student's adapted PE. Ambiguous IEPs are construed against the public agency that is responsible for its development and implementation.

5. Finding of Fact #9 indicates that the Student's present levels of educational performance were addressed by the School. However, the Student's present levels of educational performance lack sufficient clarity. Therefore, a violation of 511 IAC 7-27-6(a)(1) is ~~not~~ found.
6. Finding of Fact #10 indicates that the Student's IEP dated May 31, 2007 contains measurable annual goals and short-term objectives. However, there are some of the Student's annual goals (as described in Finding of Fact #10) that are not measurable and ambiguous in nature. Therefore, a violation of 511 IAC 7-27-6(a)(2) is ~~not~~ found.
7. Finding of Fact #11 addresses whether the School failed to ensure that ESY services are available as necessary and not limited to particular categories of disability or unilaterally limit the type, duration, or amount of those services. Finding of Fact #11 shows that the ESY services for the Student were based on the fact that the Student does not participate in the statewide standardized assessment and therefore would not need remediation, and on the fact that the services were designed to help the Student transition to a new school. Documentation submitted by the School indicates that summer ESY services for students with disabilities are individualized to address a student's needs. Therefore, a violation of 511 IAC 7-21-3(b) is not found.
8. Finding of Fact #12 indicates that the School did not fail to base the determination of the Student's identification of autism spectrum disorder based in part on an evaluation of fine and gross motor skills. Therefore, a violation of 511 IAC 7-26-2(c)(7) is not found.
9. Finding of Fact #13 indicates that the Student's occupational therapist was the one staff person working with the Student during the 2006-2007 school year who did not receive general and specialized in-service training. Therefore, a violation of 511 IAC 7-26-2(d) is found.
10. Finding of Fact #14 indicates that the School did not fail to provide the required progress reports that indicate progress with respect to the Student's occupational therapy and speech therapy. Although the Student's IEP does not contain specific IEP goals for speech and occupational

therapy, the progress reports indicate different short-term objectives implemented by either the speech-language pathologist or the occupational therapist. The Complainant acknowledges receiving quarterly and end-of-the-year progress reports. Therefore, a violation of 511 IAC 7-27-7(a) 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 Monroe County Community School Corporation shall:

Convene the case conference committee, including the general education teacher(s), to discuss the following:

- Any transportation issues;
- Describe in the IEP with sufficient clarity the Student's adapted PE services;
- Define the location, frequency, and length with respect to the Student's time in full time special education and regular education activities;
- Review and revise the Student's present levels of educational performance to provide more specifics related to the Student's present levels; and
- Review and revise the Student's annual goals and objectives to ensure they are measurable, and provide clarity to ambiguous language so that both the parent and school personnel have an understanding as to what is to be implemented.

A copy of the case conference report and revised IEP shall be submitted to the Division no later than **May 23, 2008.**

~~Convene the case conference committee, including the general education teacher(s), to discuss, if necessary any transportation issues, and to describe in the IEP with sufficient clarity the Student's adapted PE services. A copy of the case conference report and revised IEP shall be submitted to the Division no later than **May 2, 2008.**~~

The School shall reimburse the parent for any days the parent had to provide transportation for the Student with respect to the Student's ESY services during the summer of 2007 (pursuant to 511 IAC 7-21-7(d)). The School shall submit documentation with respect to the reimbursement no later than **May 23, 2008.**

Submit documentation indicating that the Student's occupational therapist has received specialized in-service training with respect to autism spectrum disorder and the unique needs of the Student to the Division no later than **May 23, 2008.**