

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	CP-336-2008
COMPLAINT INVESTIGATOR:	Brenda Alyea
DATE OF COMPLAINT:	February 25, 2008
DATE OF REPORT:	March 25, 2008
REQUEST FOR RECONSIDERATION:	N/A
DATE OF CLOSURE:	May 29, 2008

COMPLAINT ISSUES:

Whether the Lakeland School Corporation and the Northeast Indiana Special Education Cooperative violated:

511 IAC 7-27-3(a) by failing to ensure that the required case conference committee (CCC) participants were in attendance at the February 7, 2008 CCC meeting.

511 IAC 7-27-5 by failing to prepare a written report of the CCC meeting.

511 IAC 7-26-2(d) by failing to provide specialized in-service training in the area of autism spectrum disorder to professional and paraprofessional staff serving the Student.

511 IAC 7-27-9(d) by failing to ensure the availability of a continuum of placement options and include the reasons for placement determination, including a description of any options considered and why those options were rejected pursuant to 511 IAC 7-27-5(a)(5).

511 IAC 7-27-7(a) by failing to implement the Student's individualized education program (IEP) as written, specifically with respect to the Student's arrival time at school and the bus transportation.

511 IAC 7-27-7(a) by failing to implement the Student's IEP as written, specifically by failing to conduct a functional behavioral assessment (FBA) and develop a behavioral intervention plan (BIP) when the IEP indicates that the Student's behavior impedes his or other's learning.

FINDINGS OF FACT:

1. The Student, eight years old, is identified as a student with Autism Spectrum Disorder and has been determined eligible for special education and related services.
2. A Case Conference Committee (CCC) meeting was held on February 7, 2008, by request of the Complainant (the Student's parent). The participant page of the Student's IEP was signed by three individuals, the Teacher of Record, the Principal (the Public Agency Representative), and the Complainant. The participant page did not include a General Educator. The placement category of the Student is listed as a Self-Contained classroom for three and one-half hours per day; future participation in General Education instruction or activities is "earned based on behavior." The IEP states that "the Student will not be able to participate in all educational programs and activities that are made available to non-disabled students. This will be earned based on behavior." Further the IEP indicates that the "Student will not participate in the general physical education program that is available to non-disabled students. This will be earned based on behavior."
3. The School submitted a copy of the Individualized Education Program from the CCC meeting held on February 7, 2008; there was no documentation submitted to indicate that the Complainant has received a copy of the written report. The School did not submit any notes on discussion at the CCC meeting.

4. The Teacher of Record (TOR), whom also serves as the Student's Teacher of Service (TOS) participated in an Autism Workshop on November 14, 2007. The School submitted a copy of the agenda, however there was no indication that the presentation was student specific. The School did not submit documentation that the paraprofessionals working in the Student's classroom had received specialized in-service training related to Autism. However, the School submitted documentation that the paraprofessionals participated in an in-service presentation on Autism, after the date the Complaint was filed, on March 6, 2008. A copy of a PowerPoint presentation on Autism was included.
5. The Complainant alleged that the School recommended that the Student only attend half-day and that no other alternatives were offered to support him a full day at school. At the February 7, 2008 CCC meeting, the IEP indicates that the issue of placement was discussed. It was indicated that the Student will not be educated in the school he would attend if not disabled, and indicated that "LD Resource services and behavior modification have been tried." In addition, it was stated that "ED Consultation was considered, but was not believed to provide enough structure." Under category of "the reasons for placement determination including reasons for rejecting other options," it was indicated that "ED Consultation Services would not provide enough structure" and a "separate school would be too restrictive."
6. The February 7, 2008 IEP indicates that the Student attends school between 11:00 am and 2:30 pm. The Complainant alleged that the bus arrives late and the Student is not picked up on time in order to accommodate for the Student's schedule. The School submitted a transportation log as part of requested documentation, however, it covers only the following days after the February 7, 2008 case conference, with the following notations:
 - March 3, 2008 – Parent transported
 - March 4, 2008 – Bus Pickup (10:40 am)
 - March 5, 2008 – Parent out of town, Student absent
 - March 6, 2008 – 10:45 Arrival (no indication bus/parent)
7. At a CCC meeting held March 12, 2008, the notes from the CCC indicate that "a former bus issue had been addressed as the bus was not picking up Student on time so that he was not getting to school on time. This has been addressed and fixed." The School submitted Case Conference Notes from a Case Conference Committee meeting held on March 12, 2008. The IEP indicated that 3 and ½ hours of compensatory services have been offered to accommodate for the late bus arrival.
8. The May 31, 2007 IEP indicates that the Student exhibits behaviors that impede learning by the Student and others and that an "FBA/BIP is indicated at this time." The Student's IEP contains a brief behavioral goal indicating the Student will follow adult directives. There is no documentation that a FBA was completed or BIP developed, presented and agreed upon by the case conference committee. The February 7, 2008 IEP also indicates that the Student exhibits behaviors that impede learning by the Student and others. Although the School submitted a FBA and BIP dated January 11, 2007, there is no documentation to indicate that the FBA or BIP has been reviewed and revised with respect to the May 31, 2007 and February 7, 2008 IEPs. The BIP describes two replacement behaviors and lists, as a specific replacement behavior, a behavior that according to another section of the FBA was to be extinguished. It does not describe how the environment will be altered, does not identify positive behavioral intervention strategies, and appears totally dependent on the Student, in fact, listing the student as one person responsible.
9. The School submitted documentation that referred to a point system for a BIP. However, the BIP submitted was written in January of 2007, some 15 months prior to the filing date of the complaint, has not been updated and does not include positive behavioral intervention strategies. The School submitted daily charts (untitled), beginning January 9, 2008 through February 21, 2008 (four charts were not dated) of behavior. However, there was no mention of positive rewards available, nor earned in regard to days when the Student's behavior was positive for the day as recorded by the Teacher of Record.

CONCLUSIONS:

1. Finding of Fact # 2 indicates that a General Education Teacher was not present at the CCC meeting on February 7, 2008. The Student's placement is in a self-contained Emotional Disability class for a 3 ½ hour period each day with an opportunity to "earn" his way back into the general education environment. According to 511 IAC 7-27-3(a), "... the public agency shall ensure that the case conference committee participants include. . .one of the student's general education teachers, if the student is or *may* be participating in the general education environment" [*emphasis added*]. The Student's IEP indicates that the Student can earn the privilege of participation in general education instruction and activities. Therefore, a violation of 511 IAC 7-27-3(a) is found.
2. Finding of Fact # 3 indicates that although a CCC was called by the Complainant and occurred, there were no notes from discussion and no documentation that the Complainant received a copy of the IEP or the accompanying notes. Therefore a violation of 511 IAC 7-27-5 is found.
3. Finding of Fact # 4 indicates that although the Student's Teacher of Record attended training on Autism, the training was general in nature and not specific to the Student. The School did not submit documentation that paraprofessionals involved in the specific classroom of the Student had received in-service training. Pursuant to 511 IAC 7-26-2(d), "professional and paraprofessional staff serving students with autism spectrum disorder shall receive specialized in-service training. Although the School provided a PowerPoint presentation on autism for the TOR/TOS on November 14, 2007 and the paraprofessionals on March 6, 2008 (after the complaint was filed), there is no documentation with respect to specialized training for this particular student. In addition, there is no documentation that the Student' bus drivers or school administrators were trained. Therefore a violation of 511 IAC 7-26-2(d) is found.
4. Finding of Fact # 5 fails to provide documentation that a full continuum of placement options or a combination of the placement options [see 511 IAC 7-27-9(f)] were discussed at the CCC meeting. The IEP only included a statement that "ED Consultation Services would not provide enough structure and a "separate school would be too restrictive." Further, pursuant to 511 IAC 7-27-9(a)(2), "[s]pecial classes, separate schooling, or other removal of students from the general education environment occurs only when it is documented that education in general education classes using supplementary aids and services cannot be satisfactorily achieved." Therefore, a violation of 511 IAC 7-27-9(d) is found.
5. Findings of Fact # 6 and # 7 indicate that the Student has been attending an abbreviated school day and that bus problems existed in getting the Student to school in a timely manner as delineated in the IEP. Therefore, a violation 511 IAC 7-27-7(a) is found. However, pursuant to Finding of Fact #7 indicates that a CCC meeting was held March 12, 2008 and three and one-half hours of compensatory services were offered to the Complainant with regard to late bus arrival times.
6. Findings of Fact # 8 and # 9 indicate that a FBA and subsequent BIP was completed in January, 2007. The BIP fails to meet the 511 IAC 7-18-8 standards. In each IEP since that date, documents include the statement that the Student's behaviors interfere with learning of self and others and that a BIP is to be done. The School did not submit any other BIP nor a reviewed and revised document other than the January, 2007 document, therefore a violation of 511 IAC 7-27-7(a) 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 School shall:

- 1) Send a memorandum to all staff acting in the capacity of Public Agency Representation that if the student is or may be participating in the general education environment, a General Education teacher must be

present at the Case Conference Committee meeting. A copy of the memorandum and the list of recipients must be sent to the Division no later than April 30, 2008.

- 2) Send a memorandum to all staff acting in the capacity of Public Agency Representation directing staff that copies of all Case Conference Committee meetings must be sent to the parents within 10 days after the meeting date. A copy of the memorandum and the list of recipients must be sent to the Division no later than April 30, 2008.
- 3) The School shall conduct a Functional Behavioral Assessment. A CCC shall convene to develop a BIP, with input from the Complainant, to include clear statements of all the stated elements as defined in 511 IAC 7-17-8, including positive behavioral intervention strategies, and school personnel responsible for implementing the plan. The BIP must delineate how the Student will be able to “earn based on behavior” the ability to be able participate in all educational programs and activities that are made available to non-disabled students, and be able to participate in the general physical education program that is available to non-disabled students. The School shall submit a copy of the CCC report and IEP (which includes the FBA/BIP) **no later than May 7, 2008.**
- 4) A CCC shall convene to determine the least restrictive environment for the Student. The IEP shall address the reasons for the placement determination, including a description of any options considered and why those options were rejected, with respect to 511 IAC 7-27-9(d) and (f). The School shall submit a copy of the CCC report and IEP **no later than May 7, 2008.**
- 5) Provide specialized in-service training specifically regarding Autism Spectrum Disorder, for all professional and paraprofessional staff working with the Student in accordance with 511 IAC 7-26-2(d). This shall include student-specific training on the newly formulated BIP and the Student’s IEP. The School shall submit a copy of the in-service agenda, handouts or other materials provided to the in-service participants, name(s) and title(s) of the presenter(s), and a list of participants with signatures confirming attendance **no later than May 15, 2007.**