Indiana Department of Education **Center for Exceptional Learners**

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	CP-337-2008
COMPLAINT INVESTIGATOR:	Brian Simkins
DATE OF COMPLAINT:	February 25, 2008
DATE OF REPORT:	April 9, 2008
REQUEST FOR RECONSIDERATION:	Yes
DATE OF REVISED REPORT:	May 9, 2008 (Revisions to original report are denoted by bold and strikeouts.)
DATE OF CLOSURE:	July 25, 2008

COMPLAINT ISSUES:

Whether the Knox Community School Corporation and the Joint Educational Services in Special Education violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to:
(a) provide the required extended school year (ESY) services; and
(b) instruct the student in the general education classroom.

511 IAC 7-27-4(a)(5) by failing to convene the case conference committee meeting within 10 instructional days of the enrollment date of a student who has been receiving special education in another district within the state.

On March 4, 2008, the Office of Special Education received a letter from the Complainant indicating additional issues. In a letter dated March 5, 2008, the Complaint Investigator notified all parties of the following additional issues:

511 IAC 7-27-2(c) by failing to notify the parent of the case conference committee meeting held on February 25, 2008.

511 IAC 7-27-4(c)(1) by failing to utilize the case conference committee to develop, review, and revise the student's IEP, taking into consideration the concerns of the parent.

511 IAC 7-27-7(a) by failing to implement the student's IEP as written, specifically by failing to provide report cards and by failing to provide progress reports assessing the student's progress toward IEP goals and short-term objectives, occupational therapy, and speech therapy.

511 IAC 7-27-6(a)(2) by failing to have measurable annual goals in the student's IEP dated February 25, 2008.

On March 26, 2008, the Assistant Superintendent granted an extension of time until April 9, 2008, in order for the Complaint Investigator to have sufficient time to investigate the additional issues.

FINDINGS OF FACT:

1. The Student, six years old, is identified as a student with a moderate mental disability, and has been determined eligible for special education and related services.

2. The Student's IEP dated March 5, 2007, indicates that the Student shall receive 40 minutes of speech therapy a week for four weeks during the summer of 2007 as ESY services. The summer of 2007 was the summer between pre-kindergarten and kindergarten. During the 2006-2007 school year the Student attended pre-kindergarten and received special education and related services at a local Head Start program located in the North Judson-San Pierre School Corporation, the Student's legal settlement at the time. The IEP projected the Student's start in kindergarten in August 2007 at the elementary school in the Knox Community School Corporation, which is within the same special education planning district. The ESY services were to be provided by a speech-language pathologist employed by the special education planning district. It is acknowledged by the Complainant, the School, and the special education planning district that the required ESY services were not provided during the summer of 2007.

3. In August of 2007, the Student enrolled in a full-day kindergarten program at the elementary school in the Knox Community School Corporation. The IEP dated March 5, 2007 required that the Student receive special education and related services six hours (360 minutes, 8:00 to 2:40) a day in a cross-categorical classroom. The IEP further required that the Student attend 25% of the school day in the general education environment. According to the School, prior to February 21, 2008, the Student was receiving services in the general education setting for approximately 55 minutes a day, mostly art, music, and physical education. The Student should have been receiving 90 minutes a day in the general education setting according to the IEP. Up until that time the Complainant was not aware of the amount of time, if any, the Student participated in the general education environment, and expected the Student to increasingly spend more time in the general education setting.

4. In November of 2007, the Student's legal settlement changed when the Complainant moved into the Knox Community School Corporation. On February 21, 2008, the Complainant met with the Principal and expressed concerns related to the implementation of the IEP dated March 5, 2007. At that meeting, according to the Complainant, the Principal showed the Complainant a copy of a case conference notice indicating that the Student's case conference committee was convening on February 25, 2008. The Complainant states that up until that time she had no knowledge of a scheduled case conference committee meeting. ~~, and that a copy of the notice was not hand-delivered or mailed. There is no documentation indicating that the case conference committee meeting notice was provided to the Complainant. The notice indicates that the School made telephone contact with the Complainant on February 19, 2008, but the Complainant does not recall receiving a telephone call and there is no documentation indicating that a call was made.~~ **The case conference notice presented by the Principal contained "DATE OF WRITTEN NOTIFICATION: 02/20/2008" and "Telephone contact: 02/19/2008" typed on the notice. The parent attended the February 25, 2008 case conference committee meeting.**

5. The Student's case conference committee convened on February 25, 2008, and the Complainant was in attendance. The Complainant specifically alleges that the School had already developed a revised IEP before the start of the meeting, and therefore was not willing to consider her concerns with respect to the Student's participation in the general education setting. The case conference notes indicate that the case conference committee addressed the Complainant's concerns about the amount of time the Student was spending in the general education classroom. The "General Education Program Participation" section of the IEP dated February 25, 2008, indicates that the Student, beginning February 26, will begin attending the general education kindergarten class 46% of the school day, specifically for 165 minutes a day in the afternoon for specials (art, music, physical education), math, vocabulary, and handwriting. During the course of this investigation the case conference committee convened on March 14, 2008, to further discuss the Student's special education and related services, including participation in the general education class.

6. The Complainant specifically alleges that the IEP dated February 25, 2008, does not include

measurable annual goals and short-term objectives. The IEP dated February 25, 2008, contains five annual goals in the areas of reading, functional math, sensory skills, fine motor skills, and language arts. The short-term objectives addressing reading, math, and language arts are statements that precisely indicate what the Student is to know and be able to do. For example, "[The Student] will identify a penny, nickel, dime, and a quarter 4 out of 5 tries." The Teacher of Record is responsible for addressing the goal and will evaluate based on a teacher designed test and teacher observation. The seven short-term objectives addressing sensory skills and fine motor skills, although not written as precisely as the academic goals, are also measurable. For example, "[The Student] will complete daily strengthening activities." The IEP indicates that the Teacher of Record and the Student's therapist will evaluate and collect data.

7. The School cannot document whether report cards have been submitted to the Complainant at the regularly scheduled times. The School also cannot document whether progress towards achievement of the annual goals and short-term objectives has been reported at the required nine week periods throughout the 2007-2008 school year.

CONCLUSIONS:

1. Findings of Fact #2 and #3 address whether the School failed to implement the Student's IEP as written, specifically:
   (a) Finding of Fact #2 indicates that the required summer ESY services stated in the IEP dated March 5, 2007, were not provided; and
   (b) Finding of Fact #3 indicates that the Student did not participate in the general education kindergarten class for 25% of the school day for the 2007-2008 school year up until February 26, 2008, when the IEP was revised and took affect. Finding of Fact #3 also indicates that the IEP dated March 5, 2007 was also vague with respect to the extent to which the Student would participate in the general education class, or if phased in, what criteria would justify phasing the Student into the general education setting.

Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to the required ESY services not being provided, and with respect to the Student's participation in the general education environment.

NOTE: With respect to Conclusion 1a, because the Student's legal settlement during the summer of 2007 was in the North Judson-San Pierre School Corporation, Knox Community School Corporation cannot be held responsible; therefore, according to Finding of Fact #2), the responsibility for the provision of ESY services lies with the Joint Educational Services in Special Education (JESSE).

2. Finding of Fact #4 indicates that the Student began the 2007-2008 school year at the elementary school in Knox Community School Corporation, although still residing in the North Judson-San Pierre district until November 2007. The School should have convened a move-in case conference committee meeting at the time the Student's legal settlement changed. However, the Student was placed at the elementary school within the same special education planning district in accordance with the IEP developed by the case conference committee on March 5, 2007. Therefore, a technical violation of 511 IAC 7-27-4(a)(5) is found, but no corrective action will be required.

3. Finding of Fact #4 indicates that the School ~~cannot document whether written notification of the case conference committee meeting scheduled for February 25, 2008, was provided to the Complainant.~~ **documented written notice, telephone contacts and in-person notification of the case conference meeting and that the parent attended the case conference meeting.** Therefore, a violation of 511 IAC 7-27-2(c) is **not** found.

4. Finding of Fact #5 indicates that the School did not fail to utilize the case conference committee to revise the IEP by taking into account the Complainant's concerns with respect to the Student's participation in the general education setting. School personnel can develop a proposed IEP in

advance of the case conference committee meeting as long as it is amendable to discussion and subject to revision. In this case, the case conference notes reflect the Complainant's concerns and the relevant sections of the IEP indicate a revision. Therefore, a violation of 511 IAC 7-27-4(c)(1) is not found.

5. Finding of Fact #7 indicates that the School cannot document whether report cards and IEP progress reports have been submitted to the Complainant as required. Therefore, a violation of 511 IAC 7-27-7(a) is found.

6. Finding of Fact #6 indicates that the Student's IEP dated February 25, 2008, contains annual goals and short-term objectives that are measurable. Therefore, a violation of 511 IAC 7-27-6(a)(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 Knox Community School Corporation[1] and the Joint Educational Services in Special Education shall:

Convene the case conference committee to determine: (1) compensatory ESY services, including who will provide them, when, where, and with what resources; and (2) review, if necessary, the Student's placement (Finding of Fact #5 indicates that this issue was addressed at a case conference committee meeting held on March 14, 2008). At least one representative from JESSE shall be in attendance. A copy of the case conference report and IEP shall be submitted to the Office of Special Education no later than **May 16, 2008.**

~~Send a written memorandum to all school and special education personnel who are involved in scheduling case conference committee meetings about compliance with 511 IAC 7-27-2(c). A copy of the memorandum and a list of all personnel who receive it shall be submitted to the Office of Special Education no later than **May 16, 2008.**~~

Send a copy of the Student's report cards and progress reports on all annual goals and short-term objectives for the 2007-2008 school year to the Complainant no later than **May 16, 2008.** A copy of the report cards, progress reports, and documentation indicating that they have been provided to the Complainant shall be submitted to the Office of Special Education no later than **May 16, 2008.**

[1] See the note immediately following Conclusion #1 above.