

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1649.00
COMPLAINT INVESTIGATOR: John Hill
DATE OF COMPLAINT: November 2, 2000
DATE OF REPORT: November 30, 2000
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: January 19, 2001

COMPLAINT ISSUES:

Whether the Taylor Community School Corporation and the Kokomo Area Special Education Cooperative violated:

- 511 IAC 7-13-5(i) with regard to the school's requirement that the parent obtain a physician's prescription for occupational therapy (OT) prior to completing an OT evaluation of the student or providing OT services during the 1999-2000 school year.
- 511 IAC 7-3-23 and 511 IAC 7-4-1(b) with regard to the school's alleged failure to provide a free appropriate public education at no cost to the parent, specifically, requiring the parent to obtain at the parent's expense a physician's prescription for OT services for the student and refusing to provide OT services in the absence of a physician's prescription.
- 511 IAC 7-10-3(g) with regard to the school's alleged failure to conduct a comprehensive individual evaluation of the student's needs prior to determining the student's eligibility for special education services and placing the student in special education when the student previously received special education services in another state.
- 511 IAC 7-12-1 with regard to the school's alleged failure to implement the student's individualized education program (IEP) as written, specifically:
 - a. failing to provide speech therapy services as stated.
 - b. failing to complete an OT re-evaluation as stated.
- 34 CFR 300.344(a)(2) with regard to the school's alleged failure to include a general education teacher in the Case Conference Committees (CCC) convened on August 20, 1999; October 21, 1999; and April 18, 2000.
- 34 CFR 300.347(a)(7) and 511 IAC 7-27-6(a)(7) with regard to the school's alleged failure to include in the student's IEPs, developed/ revised on August 20, 1999, April 18, 2000, and November 13, 2000, a statement of how the student's parents will be regularly informed, at least as often as parents are informed of their nondisabled student's progress of:
 - a. the student's progress toward the annual goals; and
 - b. the extent to which the student's progress is sufficient to enable the student to achieve the goals by the end of the year.

During the course of the investigation, the following additional issues were identified:

Whether the Taylor Community School Corporation and the Kokomo Area Special Education Cooperative violated:

- 511 IAC 7-12-1(k)(4) with regard to the school's alleged failure to develop an individualized educational program which includes the length and frequency of services to be provided, specifically the length and frequency of Speech Therapy services in the student's April 18, 2000 IEP; and
- 511 IAC 7-25-1 with regard to the school's alleged failure to assure that no student shall be denied a free appropriate public education as a result of a public agency's inability to obtain parental consent for an initial evaluation, re-evaluation, or special education services.

FINDINGS OF FACT:

1. The student is a thirteen-year-old, seventh-grade student who has been determined eligible for special education and related services due to a Mild Mental Disability and a Communication Disorder.
2. The CCC Report dated August 20, 1999, recommends an Occupational Therapy re-evaluation.
3. The school provided the parent with a blank Physician's Order for Occupational Therapy form, an Occupational Therapy Permission to Evaluate form with a referral date of August 24, 1999, and a Howard Community Hospital/Healthy Children brochure on low cost medical services, along with a note instructing the parent to have the forms completed and returned to the school.
4. The CCC report dated October 21, 1999 states, "The parents were given information on Healthy Children's Clinic in order to obtain doctor's orders for the need of an Occupational Therapy evaluation."
5. The parent did not get the Physician's Order for Occupational Therapy form completed because of lack of insurance and limited income.
6. The parent did not sign and return the Occupational Therapy Permission to Evaluate form because the school informed her that it would not accept the form without the physician's statement.
7. The school requires the parent to obtain a signed doctor's order before completing an Occupational Therapy evaluation. Since the physician's order and the permission to evaluate forms were not completed, the school did not conduct an Occupational Therapy evaluation.
8. The school obtained collateral information from New York, dated March 1, 1999 indicating that the request for an Occupational Therapy evaluation was appropriate.
9. The student's August 20, 1999, CCC Report/IEP indicates the student is to receive Speech Therapy two times per week for a total of 60 minutes per week. The complainant's letter indicates that the student was receiving Speech Therapy two times per week.
10. The student's April 18, 2000, Annual CCC Report/IEP did not indicate the length or frequency of Speech Therapy services.
11. The student's November 13, 2000, CCC Report/IEP indicates that the student is to receive Speech Therapy services four times per week for a total of 120 minutes per week. The school's Speech Therapy schedule indicates that the student is scheduled for two individual 30 minute sessions per week and two 30 minute group sessions per week.
12. The student's April 18, 2000, and November 13, 2000, CCC Reports/IEPs indicate a general

education teacher participated in the CCC meetings on those dates..

13. The student's August 20, 1999, and October 21, 1999, CCC Reports/IEPs indicate no general education teacher participated in the CCC meetings on those dates.
14. The student's August 20, 1999, April 18, 2000, and November 13, 2000, CC Reports/IEPs indicate on page 2, the *Annual Measurable Goal* and "Dates Photocopy of Page Sent to Parent (Same Dates as Dates Report Cards Are Sent)" by lines in which dates could be inserted. There is no clear indication that any other notification options are available. Further, although each page indicates when the goal will be reviewed, there is no stated correlation between this date and the frequency of parent notification, nor is there any place for the reporter to describe the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

CONCLUSIONS:

1. Findings of Fact #3, #4, #6 and #7 reflect that the school required that the parent obtain a physician's prescription for OT prior to completing an OT evaluation of the student or providing OT services during the 1999-2000 school year. Pursuant to 511 IAC 7-13-5(i) and (n), although a physician's prescription is required for the School to provide physical therapy services, a prescription is not required before occupational therapy services are provided. The CCC determines the type and intensity of occupational therapy services to be provided. Therefore, a violation of 511 IAC 7-13-5(i) is found.
2. Findings of Fact #3, #4, #5, #6 and #7 reflect that the school's policy fails to assure the provision of a free appropriate public education at no cost to the parent, specifically requiring the parent to obtain at the parent's expense a physician's prescription for OT services for the student and refusing to provide OT services in the absence of a physician's prescription. Therefore, violations of 511 IAC 7-4-1(b) and 511 IAC 7-3-23 are found.
3. Findings of Fact #7 and #8 reflect that the school failed to conduct an OT evaluation as part of a comprehensive individual evaluation of the student's needs prior to determining the student's eligibility for special education services and placing the student in special education when the student previously received special education services in another state. Therefore, a violation of 511 IAC 7-10-3(g) is found.
4. Findings of Fact #9 and #11 reflect that the school implemented the student's August 20, 1999 individualized education program (IEP) as written, specifically providing speech therapy services as stated. However, Findings of Fact #2 and #7 reflect that the school failed to implement the student's individualized education program (IEP) as written, specifically failed to complete an OT re-evaluation as stated. Therefore, a violation of 511 IAC 7-12-1 is found.
5. Finding of Fact #12 reflects that the school included a general education teacher in the Case Conference Committees (CCC) convened on April 18, 2000, and November 13, 2000. However, Finding of Fact #13 reflects that the school failed to include a general education teacher in the CCC convened on August 20, 1999, and October 21, 1999. Therefore, a violation of 34 CRF 300.344(a)(2) is found.
6. Finding of Fact #14 reflects that the school failed to include in the student's IEPs, dated August 20, 1999, April 18, 2000, and November 13, 2000, a statement of how the student's parents will be regularly informed, at least as often as parents are informed of their nondisabled student's progress of:
 - a. the student's progress toward the annual goals; and

- b. the extent to which the student's progress is sufficient to enable the student to achieve the goals by the end of the year.

Therefore, violations of 34 CRF 300.347(a)(7) and 511 IAC 7-27-6(a)(7)(B) are found.

7. Finding of Fact #10 reflects that the school failed to include the length and frequency of Speech Therapy services in the student's April 18, 2000 IEP. Therefore, a violation of 511 IAC 7-12-1(k)(4) is found.
8. Findings of Fact #6 and #7 reflect that the school failed to obtain parental consent for an OT evaluation because the parent could not meet other requirements imposed by the school. As a result the school failed to assure that no student be denied a free appropriate public education as a result of a public agency's inability to obtain parental consent for an evaluation or special education services. Therefore, a violation of 511 IAC 7-25-1 is found.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Taylor Community School Corporation and the Kokomo Area Special Education Cooperative shall:

1. Revise policies and procedures to ensure that a physician's prescription/order is not required before providing occupational therapy services to students. Send a memorandum to all appropriate staff along with a copy of the new policies and procedures advising the staff of the new process for initiating occupational therapy services. Submit a copy of the new policies and procedures and a copy of the memorandum sent to staff to the Division no later than December 31, 2000.
2. Conduct an OT evaluation by December 15, 2000.
3. Convene a CCC meeting to determine:
 - a. the projected dates of initiation as well as the anticipated length, frequency, location and duration of OT services if the evaluation indicates the need for OT services, as well as the need for compensatory OT services;
 - b. how the parents will be informed of the student's progress towards annual goals; and
 - c. how the parents will be informed of the extent to which the student's progress is sufficient to enable the student to achieve the goals by the end of the year.

Submit a copy of the CCC Summary Report and any revised IEP to the Division no later than January 15, 2001.

4. In-service all appropriate staff regarding the requirements as specified in:
 - 511 IAC 7-28-1(a) and (f);
 - 511 IAC 7-18-2(a)(1);
 - 511 IAC 7-25-1;
 - 511 IAC 7-25-4(b);
 - 511 IAC 7-27-7(a);
 - 511 IAC 7-27-3(a)(1)(B);
 - 511 IAC 7-26-6(a)(7)(B); and
 - 511 IAC 7-27-6(a)(5).

Submit documentation to the Division that the in-service has been completed no later than January 15, 2001. The documentation should include a list or agenda of all issues discussed, any handouts that were distributed and list of attendees by name and title.

