

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: 1973.02  
COMPLAINT INVESTIGATOR: Susan Reimlinger  
DATE OF COMPLAINT: October 28, 2002  
DATE OF REPORT: November 22, 2002  
REQUEST FOR RECONSIDERATION: no  
DATE OF CLOSURE: February 10, 2003

**COMPLAINT ISSUES:**

Whether the Monroe County Community School Corporation violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written.

511 IAC 7-17-36 and 511 IAC 7-18-2(a) by failing to provide a free appropriate public education to the student by not providing special education and related services on days when the school said the student could not attend school due to medical reasons.

511 IAC 7-28-1(m) by failing to have a licensed nurse at the school who can monitor the student's medically related needs.

511 IAC 7-17-72 and 511 IAC 7-21-2(a) by failing to assign an appropriately licensed or, where appropriate state licensure is not available, appropriately trained teacher of record to the student.

511 IAC 7-27-9(c) by failing to make physical education, specially designed if necessary, available to the student.

511 IAC 7-27-6(a)(5) by failing to document in the IEP the anticipated length, frequency, and location of services.

**FINDINGS OF FACT:**

1. The student (Student) is 3 years old, and is eligible for special education and related services as a student with a developmental disability and a communication disorder. The Student participates in a public school preschool program within an elementary school building.
2. The CCC met on June 3, 2002, to develop an IEP for transition into public school. There was a subsequent case conference and revision to the IEP on September 24, 2002, but there has not yet been agreement to that IEP.
3. The Complainant asserts that the Student's June 3, 2002, IEP is not being implemented by the teacher. There are home therapies and "normal health precautions" for medical devices the Student uses that the Complainant asserts are not occurring in the classroom. However, neither the therapies nor the health precautions are documented in the IEP. Documentation includes notes from a parent-teacher

daily communication book, beginning August 23, 2002, and other staff notes, beginning August 29, addressing work on the June 3, 2002, IEP goals.

4. On August 26, 2002, the Complainant informed the teacher that two nurses paid by the Complainant would be accompanying the Student to school on August 27, 2002, in order for the primary nurse to train a new nurse. The teacher preferred not to have both nurses in the classroom at the same time, due to overcrowding. Later on August 26 the Complainant left a voice mail message that the Student would be kept home on August 27.
5. On September 30, 2002, there was a meeting at school to discuss the Student's health issues, at which time the Complainant indicated that the Student has a highly contagious medical condition. This medical condition had been discussed before, but not the highly contagious nature of it. The June 3, 2002, IEP does not include any reference to the medical condition as part of the Health Plan. On September 30, immediately after the meeting, the Principal attempted to gain clarifying information from multiple medical sources about the likelihood of other persons becoming infected, but gained only conflicting information. Therefore, the Principal requested that the Student stay home on October 1, 2002, while more information could be gathered and planning for how to address the condition could occur. This request was according to corporation policy for all students with communicable diseases. After sufficient information was gathered and conflicts resolved, it was determined that the Student could return to school on October 2, 2002.
6. The June 3, 2002, IEP indicates in the supplementary aids and services section that a nurse will be provided by the Student's family. The health data section of the IEP indicates that a health plan is attached, but the health plan states only "[Student] will be accompanied to school by a nurse". However, one of the related services is listed as a "school nurse," without specification as to length, frequency, and location of the service. These three parts of the IEP indicate an unclear commitment by the school to provide the nurse.
7. On the date hired, August 14, 2002, the Teacher had only an out-of-state elementary license. By early September 2002 the Teacher had begun the process for procuring a reciprocal Indiana teaching license and was notified in writing on November 8, 2002, that a reciprocal elementary license and endorsement for kindergarten had been granted.
8. The June 3, 2002, IEP does not document any need for specially designed physical education. Specially designed physical education is not part of the preschool curriculum for all preschoolers.

## **CONCLUSIONS:**

1. Finding of Fact #3 indicates that the Complainant did not delineate any items in the IEP that are not being implemented. Documentation from staff shows that the June 3, 2002, IEP goals are being implemented, therefore no violation of 511 IAC 7-27-7(a) is found.
2. Finding of Fact #4 indicates that the Complainant chose to keep the Student home from school, so there was no unilateral temporary removal of the Student. Finding of Fact #5 indicates that there was previous knowledge of the medical condition but not knowledge of its highly contagious nature nor was there a plan in the IEP for addressing it. The corporation policy for communicable disease was followed. Therefore, no violation of either 511 IAC 7-17-36 or 511 IAC 7-18-2(a) is found. However, there will be corrective action regarding training of school staff about the Student's medical conditions.

3. Finding of Fact #6 indicates that the June 3, 2002, IEP contains the related service "school nurse," but does not specify length, frequency, and location of that service. Other parts of the IEP state that the nurse will be provided by the Complainant. Therefore, a violation of 511 IAC 7-27-6(a)(5) is found, but no violation of 511 IAC 7-28-1(m) is found.
4. Finding of Fact #7 indicates that the teacher does have the required licensure, therefore no violation of 511 IAC 7-17-72 or 511 IAC 7-21-2(a) is found.
5. Finding of Fact #8 indicates that the need for specially designed physical education is not documented in the IEP. Therefore, no violation of 511 IAC 7-27-9(c) is found.

**The Department of Education, Division of Exceptional Learners requires corrective action based on the Findings of Fact and Conclusions listed above.**

**CORRECTIVE ACTION:**

Monroe County Community School Corporation shall:

1. Convene a case conference to revise the Student's IEP to clearly indicate the school's commitment to related services and to specify length, frequency, and location for all related services. The IEP must also clearly describe such information about health issues that will enable staff to implement all necessary medical procedures. The school must ensure that the IEP is an "agreed-upon IEP" with consent from the parent/guardian. A copy of the CCC Report / IEP shall be sent to the Division no later than December 20, 2002.
2. Conduct in-service training regarding all of the Student's medical conditions. Documentation of the topics covered and who was trained must be sent to the Division no later than January 31, 2003.