

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2117.04
COMPLAINT INVESTIGATOR: Sally Cook
DATE OF COMPLAINT: April 21, 2004
DATE OF REPORT: May 19, 2004
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: June 17, 2004

COMPLAINT ISSUES:

Whether the MSD of Perry Township and the RISE Special Services violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, failing to provide required reading tutoring services.

511 IAC 7-27-4(c) by failing to utilize the case conference committee (CCC) to develop strategies to address a student's behavior or a behavioral intervention plan (BIP).

FINDINGS OF FACT:

1. The Student is nine years old and is eligible for special education and related services as a student with an autism spectrum disorder and communication disorder.
2. On November 13, 2003, the Student's individualized education program (IEP) was revised by adding afterschool tutoring in reading for one hour on Mondays, beginning November 17, 2003. The IEP Addendum identified the Student's general education teacher as the service provider.
3. It is undisputed that afterschool tutoring in reading was provided through Monday, February 9, 2004, but not after that date. Efforts to recruit a replacement tutor were not successful.
4. As of the date the Complaint was filed (April 21, 2004), School had been in session on 8 Mondays since February 10, 2004. School was not in session on February 16, 2004 or March 29, 2004. From the date the Complaint was filed until the last instructional day of the 2003-2004 school year, there were 4 additional Mondays.
5. The Student's IEP for the 2004-2005 school year includes a specific methodology for reading instruction. As the CCC agreed upon specially-designed instruction in reading, the School offered 12 hours of compensatory services plus an additional 8 hours using the agreed methodology, in lieu of afterschool reading tutoring by a general education teacher. On May 13, 2004, the Parents accepted the offer of compensatory services by signing the Extended School Year (ESY) IEP Addendum.
6. The Student's IEP contained a behavior/social goal and a work completion goal, both of which were developed by the CCC in the spring of 2003. The goal statements, including objectives, describe outcomes and do not limit the means to achieve those outcomes. The existing IEP requires various accommodations, but does not prohibit the application of classroom rules. As early as the meeting held October 8, 2003, Student's Team (including all required members of the CCC) discussed the use of

classroom rules and consequences (e.g., blue cards). These discussions provided clarification, not revisions, of the IEP.

7. In 2004, a new functional behavioral assessment (FBA) was initiated. On February 23, 2004, the Student's CCC discussed the next phase of the FBA, consisting of a 3-week trial analysis of a preliminary hypothesis. The School's written plan for the trial analysis was presented to the CCC, with a copy given to the Parents during the CCC meeting. During the trial period (February 23, 2004 – March 12, 2004) the Student was to be given consequences commonly used with general education students of the same grade level, in addition to positive behavior supports.
8. When the Student reported receiving consequences (including loss of some recess time), it appeared to the Parents that the School had unilaterally implemented a new behavior plan. The Parents do not dispute that the CCC discussed the plan for the trial analysis, but the Parents deny that agreement was reached on a behavior plan. The School acknowledges that, during the CCC meeting and in subsequent correspondence, the trial analysis was called a "behavior plan." The Parents did not know that a trial analysis (or charted behavior data) is part of the FBA process, as a trial analysis had not been undertaken for the Student's previous FBA. Although the plan for the trial analysis was presented orally and in writing at the CCC meeting, the written plan did not include the starting date or duration. Since the completion of the 3-week trial analysis, the School has continued to use certain reinforcers and consequences utilized successfully during the trial period.
9. The CCC reconvened on the following dates: April 16, 2004; April 29, 2004; May 6, 2004; and May 13, 2004. As other issues were to be addressed, the CCC did not address the FBA until May 6, 2004. The CCC has not completed its deliberations and is scheduled to meet again to complete the Student's IEP including a behavior intervention plan.

CONCLUSION:

1. Findings of Fact #2, 3, and #4 indicate that the Student's IEP was not implemented as written, specifically with respect to afterschool tutoring in reading. Therefore, a violation of 511 IAC 7-27-7(a) occurred. However, Finding of Fact #5 indicates that appropriate corrective action has been agreed upon.
2. Findings of Fact #6, #7, #8, and #9 indicate that, despite some miscommunications, the School utilized and is continuing to utilize the case conference committee (CCC) to develop strategies to address the Student's behavior or a behavioral intervention plan (BIP). Therefore, no violation of 511 IAC 7-27-4(c) occurred.

The Department of Education, Division of Exceptional Learners requires no additional corrective action based on the Findings of Fact and Conclusions listed above.