

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2169.05
COMPLAINT INVESTIGATOR:	Joe Bear
DATE OF COMPLAINT:	August 31, 2004
DATE OF REPORT:	October 7, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	November 10, 2004

COMPLAINT ISSUES:

Whether the South Dearborn Community Schools and the Ripley-Ohio-Dearborn Special Education Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to provide study guides during the 2003-2004 school year;

511 IAC 7-27-7(a) by failing to implement the student's IEP as written, specifically by failing to check assignments;

511 IAC 7-27-7(a) by failing to implement the student's IEP as written, specifically by failing to provide specially designed instruction, as defined in 511 IAC 7-17-66, that ensures the student's access to the general curriculum, specifically 8th grade English;

511 IAC 7-27-6(a)(2) by failing to include in the student's IEP a statement of measurable annual goals that describes what the student can be expected to accomplish within a twelve-month period, including benchmarks or short-term objectives, specifically related to reading comprehension;

511 IAC 7-27-9 by determining the placement in which the student will receive services on the basis of an IEP that was not fully developed prior to the determination;

511 IAC 7-27-4(c) by failing to take into consideration the results of the most recent educational evaluation and other assessments of the student when developing, reviewing, or revising the student's IEP;

511 IAC 7-27-5 by seeking and obtaining written consent from a parent prior to the completion of the development of the student's IEP; and

511 IAC 7-27-4(c) by failing to take into consideration strategies, including positive behavioral interventions and supports, to address the student's behavior (that impedes his or her learning or that of others) when developing, reviewing, or revising the student's IEP.

FINDINGS OF FACT:

1. The Student has been identified as having a learning disability and determined eligible for special education and related services.

2. The Student's Case Conference Committee (CCC) Report/Individualized Education Program (IEP) that was in effect during the first seven weeks of the third trimester of the 2003-2004 school year (February 23, 2004, through April 16, 2004) says that science study guides will be provided to the Student as an accommodation. The accommodation is to be provided for each class and for tests. The accommodation was changed to science pre-tests as of April 28, 2004.
3. The School submitted three handwritten pages of science facts and 11 pages of activity sheets and quizzes that came with no answers (fill-in-the-blank, question-and-answer format, matching terms with descriptions, and a crossword puzzle that uses clues related to energy and chemical reactions). The handwritten pages and other pages submitted by the School correlate with the material being taught in the science class at that time of the school year. The School provided no documentation to indicate when or if the material was given to the Student.
4. The Student's IEPs dated April 15, 2003, October 2, 2003, and January 14, 2004, all say that the Student is to receive 12 minutes per day (60 minutes per week) of "advisory" time with the special education teacher. Advisory time is used for checking on assignments and homework that needs to be completed, and for ensuring that students have the materials to complete the work. These IEPs also included an organizational skills goal with a short-term objective requiring daily tracking of assignment completion (evaluated through observation and work samples). Although the IEP dated April 28, 2004, does not include any advisory time, it includes 20 minutes of the special education teacher's consultation with general education teachers, and the IEP dated April 28, 2004, continues to include an objective requiring daily tracking of assignment completion.
5. The Teacher of Record (TOR) compiled advisory grades based on daily advisory sessions with the students. Weekly scores show how many times students had their homework agendas complete, with 4 points possible per day (3 points for a complete agenda, 2 points for an agenda that is mostly complete, 1 point for two or more missing assignments, plus an additional point for good behavior). The Student's letter grades for the advisory session for each trimester were A, A, and A+. The TOR used the weekly advisory scores and the Weekly Check-ups (one Check-up completed by the TOR, based on percentage of answers correct on assignments and tests in each subject area, and one Check-up completed by the Student's general education teachers to provide feedback on academic work in each subject area) to assess the Student's progress and completion of assignments. The TOR continued to use both types of Weekly Check-ups after April 28, 2004, but did not use the advisory point system when the Student was not in the advisory session.
6. The Student's IEP dated June 3, 2004, describes the Student's special education services as a language arts class in a special education classroom (Resource Room) for 64 minutes per day (five times per week, for a total of 320 minutes). The IEP identifies the special education teacher as the teacher implementing both the reading comprehension goal and the written language skills goal. The initiation date of this IEP was August 23, 2004. The Student spent a class period in the Resource Room for six instructional days: August 23 – 31, 2004, with one day (August 27) out for testing. The IEP developed on September 1 did not include time in the Resource Room.
7. The Complainants allege that the instruction provided to the Student in the Resource Room was not the individualized instruction they discussed at the June 3, 2004, CCC meeting, to allow for a focus on reading comprehension at grade-level Indiana Academic Standards. The first days of instruction in the language arts Resource Room included assessments of each student's individual learning needs by way of a spelling pre-test and two reading pre-tests, as well as writing prompts, letter writing, lessons on making words, and beginning an Accelerated Reading program with student-selected books. The School submitted a summary that identifies the Academic Standards

addressed by each activity or assignment. Some of the plans and activities used in the Resource Room were the same as those being used by general education teachers during the same time period. Some of the Academic Standards addressed were also the same, as evidenced by a summary provided by a general education teacher.

8. Prior to June 3, 2004, the Student's IEPs did not include annual goals specifically addressing reading and written language. The Student's IEP dated June 3, 2004, includes an annual goal to "improve reading comprehension by one year according to individualized testing." The short-term objectives under the reading goal address skills that contribute to reading comprehension (vocabulary development, outlining chapters, summarizing information, and using a table of contents), and criteria defining mastery (80%-90%) are specified for each objective.
9. The June 3, 2004, IEP states that the Student is to receive instruction in the language arts Resource Room for 19% of the school day, and that the CCC discussed benefits and disadvantages of a language arts special education placement.
10. Each of the Student's CCC Reports/IEPs in effect during the 2003-2004 school year includes data from the Student's initial educational evaluation conducted in January 2002, but does not repeat the series of strategies that the school psychologist recommended for discussion at the initial CCC meeting in 2002. Although the Complainants have not identified the assessments or suggestions that the CCC failed to consider, they acknowledge discussing strategies previously recommended by pediatricians and others. The Discussion Summary/Additional Comments section of the CCC Report/IEP for April 28, 2004, summarizes the strategies (color coding and labels) suggested by the Complainants, and the same section of the CCC Report/IEP for June 3, 2004, summarizes strategies the Complainants intended to use over the summer (books on tape, Saxon phonics) as well as suggestions presented by the Director of Special Education. The CCC Reports/IEPs, particularly the Reports dated April 28, 2004, and June 3, 2004, document the School's awareness that a physician diagnosed Attention Deficit Hyperactivity Disorder (ADHD). Additionally, the Student's initial CCC Report/IEP and others contain discussion that indicates consideration of various recommended strategies.
11. The January 14, 2004, IEP includes the same goal and objectives as contained in the previous IEP. Since there was no change in these areas, the TOR made the following note on a goals page (Page 8, not filled in): "Current advisory goal is still appropriate and will be included here." The Director of Special Education has confirmed that a note of this type is often used when there is no change in a goal. The page after this "plain" Page 8 is a copy of the organizational skills (advisory) goal page (also Page 8, but filled in) from the previous IEP, with the date (10-2-03) crossed out and the new date (1-14-04) entered above the crossed-out date. It cannot be determined whether the redated goal page was or was not included with the other pages when the IEP was presented to the Complainant for signature. The Complainant signed the IEP, which did not contain a change of services or a change of placement.
12. The Student's CCC Report/IEP dated April 15, 2003 includes the following strategies under the heading "Appropriate Positive Behavior Supports/Strategies": "classroom incentives, praise for a good job done." The Student's CCC Reports/IEPs dated October 2, 2003, and January 14, 2003, include the following strategies under the same heading: "Praise, classroom incentives, Squire Wires, advisory with teacher of record." A virtually identical list of strategies is included in the April 28, 2004, CCC Report/IEP along with the statement that the Student's "behavior is excellent." A functional behavioral assessment (FBA) had been initiated in April 2004. The Student's CCC Report/IEP dated June 3, 2004, notes some minor incidents of inappropriate behavior and continued the strategies of praise, classroom incentives, and Squire Wires. On September 1, 2004,

the School developed a new FBA and incorporated into the proposed CCC Report/IEP a behavior tracking chart for use in connection with a point system by which the Student could earn tangible rewards. Under the heading "Appropriate Positive Behavior Supports/Strategies," the CCC Report/IEP proposed September 1, 2004, added "tangible rewards" to the list of strategies.

CONCLUSIONS:

1. Findings of Fact #2 and #3 indicate that the School did not provide science study guides to the Student during the first seven weeks of the third trimester of the 2003-2004 school year. Therefore, a violation of 511 IAC 7-27-7(a) is found.
2. Findings of Fact #4 and #5 indicates that the Student's assignments were checked in accordance with the requirements of the IEPs during the 2003-2004 school year. Therefore, a violation of 511 IAC 7-27-7(a) is not found in connection with checking assignments during the 2003-2004 school year.
3. Findings of Fact #6 and #7 indicate that the School provided language arts instruction in the Resource Room that allowed the Student access to the general education curriculum. According to the approved course descriptions for English/language arts (Indiana Department of Education), instruction in the middle grades calls for "an integrated study of: (1) literature, (2) media, (3) reading process, (4) oral communication, (5) writing process, and (6) language which includes grammar, usage, mechanics, and spelling as tools of effective communication. . . . While the core language arts program is an integrated approach, it may be augmented through additional time blocks focused on any of the following components": reading, literature, writing and language, and oral communication. The above Findings of Fact indicate that an integrated approach was provided in the Resource Room. Therefore, a violation of 511 IAC 7-27-7(a) is not found.
4. Finding of Fact #8 indicates that the Student's IEP dated June 3, 2004, includes a statement of a measurable annual reading comprehension goal that describes what the Student can be expected to accomplish within a twelve month period, including benchmarks or short term objectives. Therefore, a violation of 511 IAC 7-27-6(a)(2) is not found.
5. Findings of Fact #6, #8, and #9 indicate that, as the Student's IEP dated June 3, 2004, linked reading and language arts goals to special education services, and linked the services to the placement, the School did not determine the Student's placement on the basis of an IEP that was not fully developed prior to the determination. Therefore, a violation of 511 IAC 7-27-9 is not found.
6. Finding of Fact #10 indicates that the School did not fail to take into consideration the results of the most recent educational evaluation and other assessments, including the physician's diagnosis and suggestions made by the Complainants on the basis of those assessment(s) and diagnosis. Comments and strategies in CCC Reports/IEPs correspond to recommendations previously made by professionals, and the Complainants were given an opportunity to discuss the recommendations again. Therefore, a violation of 511 IAC 7-27-4(c) is not found.
7. Finding of Fact #11 indicates that, whether or not the redated goal page was added to the set of IEP pages after the Complainant signed the IEP, the School did not seek written consent from a parent prior to the completion of the development of the IEP on January 14, 2004. Finding of Fact #11 further indicates that written parental consent was not required on January 14, 2004, as the IEP did not call for a change of placement. Therefore, a violation of 511 IAC 7-27-5 is not found.

8. Finding of Fact #12 indicates that the School has taken into consideration strategies, including positive behavioral interventions and supports, to address the Student's behavior when developing, reviewing, or revising the IEP. Therefore, a violation of 511 IAC 7-27-4(c) 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 South Dearborn Community Schools and the Ripley-Ohio-Dearborn Special Education Cooperative shall develop and implement forms for general education teachers to use in documenting the implementation of accommodations required by an IEP.

Documentation of compliance (consisting of the form for documenting the implementation of accommodations) shall be submitted to the Indiana Department of Education, Division of Exceptional Learners, by November 5, 2004.