

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2279.06
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: September 26, 2005
DATE OF REPORT: October 26, 2005
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: December 16, 2005

COMPLAINT ISSUES:

Whether the North Montgomery Community School Corporation and the West Central Indiana Special Services Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by not providing the required direct special education instruction.

511 IAC 7-27-4(c) by failing to utilize the Student's case conference committee to discuss and agree to the role of a school case manager working with the Student.¹

511 IAC 7-27-9(c) by failing to make physical education available to the student.

FINDINGS OF FACT:

1. The Student, 12 years old, is identified as a student with an emotional disability and has been determined eligible for special education and related services.
2. The Student's IEP dated August 12, 2005, indicates that the Student is to begin the first six weeks of the 2005-2006 school year (7th grade) by receiving "direct special education instruction for 130 minutes per day until midterm." "Direct special education instruction" is not defined. The Student's IEP goals and objectives are all behavior related. Case conference notes indicate that the Student's behavior interferes with his academic progress. During the 2004-2005 school year, the Student was in a similar partial day arrangement wherein the focus was "... to get the Student caught up on the 6th grade curriculum."
3. The August 12, 2005 IEP also indicates that after the midterm of the first trimester, 65 minutes of general education will be added to the Student's schedule and that by the second trimester the Student will be transitioned into a full day of general education classes.
4. The Student was assigned to a special education classroom for two periods from 9:20 to 11:35 a.m. The Student's special education teacher supervised direct instruction of English/language arts, math and science to the Student with help from the Student's TOR. The School also contracted with a Wabash Valley Hospital School Case Manager (Case Manager) to work with the Student with respect to the Student's emotional and behavioral problems beginning the second week of the 2005-2006

¹ Although the complaint investigation originally included complaint issues involving alleged violations of 511 IAC 7-21-2(b) and (c), they were subsequently replaced by 511 IAC 7-27-4(c).

school year. The Student's IEP dated August 12, 2005 does not provide for the services of an outside school case manager.

5. The School acknowledges that it was the Case Manager assigned to the Student who was primarily responsible for providing direct special education instruction during both blocks of scheduled time under either the supervision of the special education teacher or the TOR. The Case Manager worked one-on-one with the Student from the second week of the trimester up until September 16, 2005. Written notes involving correspondence back-and-forth between the Case Manager and the Complainant indicate that, with regard to academics, the Case Manager did not provide instruction but provided study skills, social skills, and other behavioral supports.
6. The Student's teachers were instructed by the TOR to give assignments to the Case Manager. The Case Manager's notes indicate that the Case Manager made sure the Student consistently received the required assignments in English/language arts, math, and science, but there was little to no academic instruction provided during the time the Case Manager worked with the Student. The Case Manager's focus was on behavioral supports and modifications.
7. The Complainant discovered the Case Manager's role when a bill from Wabash Valley Outpatient Services was sent in error to the Complainant. The Complainant, in a faxed letter dated September 16, 2005, informed the School that the Case Manager was not allowed to work with the Student because the Case Manager is not qualified to provide academic instruction. The Principal hired an instructional aide that had previously worked with the Student to begin the week of September 19, 2005 in order to help the Student with academic work and prepare for transitioning into the general education environment.
8. The Student's case conference committee convened on September 27, 2005 to discuss the Student's special education services and the transition into the general education environment. Case conference notes from the IEP dated September 27, 2005 document a discussion about how and why the School decided to provide the Student with a school case manager from Wabash Valley Outpatient Services. The Case Conference Committee Chairperson explained that this should not have been done without a conference.
9. The Student's IEP dated August 12, 2005 indicates that the Student will not be involved in the general education setting. The Complainant specifically indicated concerns about the Student's participation in physical education at that time due to potentially stressful situations such as the locker room. The Student's case conference committee on August 12 decided not to include physical education as part of the Student's schedule for the first trimester due to the Student's partial day that is focused on academics and behavior. The Complainant signed the IEP in agreement. The Student's IEP dated September 27, 2005 indicates that the Student will participate in the School's wellness class for the second semester. As part of its physical education program, the School offers a wellness class available to all general education students and that will be available to the Student during the second and third trimesters when the Student is transitioned into the general education environment for a full day.

CONCLUSIONS:

1. Findings of Fact #2 through #7 indicate that the Student's IEP dated August 12, 2005 is ambiguous with regard to the special education services agreed to for the first six weeks of the 2005-2006 school year. The Student's IEP goals and objectives are behavior related, and it is behavioral problems that are interfering with academic progress. "Direct special education instruction" is not defined. IEPs and case conference reports have to have sufficient clarity so that both the parent and school personnel working

with the student know what services a student is to receive, from whom, and whatever other resources will be employed. The Case Manager contracted by the School primarily provided emotional and behavioral support to the Student. The Complainant expected there to be direct academic instruction. Where an ambiguity exists in an IEP, the ambiguity will be construed against the public agency responsible for its implementation. Therefore, a violation of 511 IAC 7-27-7(a) is found.

2. Finding of Fact #6 indicates that the Case Manager worked with the Student primarily on behavioral supports and modifications, not academics. The School contracted the services of a school case manager from Wabash Valley Outpatient Services to work with the Student with respect to behavior. Finding of Fact #7 indicates that the Complainant expected the partial day arrangement to have an academic focus based on a similar arrangement the previous year as indicated by Finding of Fact #2. The goals in the Student's Case Conference Report/IEP dated August 12, 2005 are all behavior related rather than academic. The Case Manager provided services under the supervision of the special education teacher or the TOR to address the goals and objectives identified in the Student's IEP. Therefore, a violation of 511 IAC 7-27-4(c) is not found.
3. Findings of Fact #3 and #9 indicate that the School did not fail to make physical education available to the Student. Finding of Fact #9 indicates the case conference committee discussed physical education and decided that the Student would not participate in it while attending school only part-time. The Complainant participated in the discussion and signed the IEP. Therefore, a violation of 511 IAC 7-27-9(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 North Montgomery Community School Corporation and the West Central Indiana Special Services Cooperative shall:

Convene the Student's case conference committee to further develop, review, or revise the Student's IEP, specifically the provision of special education services. Greater detail must be provided to this particular section of the Student's IEP. In addition, the case conference committee must determine the extent compensatory services or extended school year services needed to ensure the Student progresses through the 7th grade curriculum. A copy of the Case Conference Report/IEP, including the determination of compensatory services or extended school year services shall be submitted to the Division no later than December 2, 2005.