

**COMPLAINT INVESTIGATION SUMMARY**

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| COMPLAINT NUMBER:            | CP-158-2007                         |
| COMPLAINT INVESTIGATOR:      | Kylee Bassett                       |
| DATE OF COMPLAINT:           | December 13, 2006                   |
| DATE OF REPORT:              | January 22, 2007                    |
| REQUEST FOR RECONSIDERATION: | yes/February 16, 2007 – not revised |
| DATE OF CLOSURE:             | December 20, 2007                   |

**COMPLAINT ISSUES:**

Whether the C. A. Beard Memorial School Corp and the New Castle Area Special Services violated:

511 IAC 7-27-7(a) by failing to implement the Student's Individualized Education Program (IEP) as written, specifically by:

- (a) failing to provide direct services daily in study hall;
- (b) failing to allow the Student to have accommodations required in the IEP during ISTEP;
- (c) failing to allow extra credit work for spelling tests;
- (d) allowing other students to grade the Student's assignments and tests; and
- (e) failing to follow the IEP with respect to the Student's bullying situation.<sup>1</sup>

511 IAC 7-27-7(b) by failing to ensure that the assigned Teacher of Record informed the Student's general education teachers of the specific responsibilities related to implementing the Student's IEP.

An extension of time until January 25, 2007 was granted on December 18, 2006. The extension was requested by the School because of the time restraints to gather the appropriate documentation due to the School's holiday break beginning December 20, 2006.

**FINDINGS OF FACT:**

1. The Student,<sup>2</sup> 12 years old, is eligible for special education and related services as a Student with a learning disability.
2. On March 21, 2006, an annual case conference committee (CCC) meeting convened to develop an IEP for the 2006-2007 school year. The Student's placement is in a general education classroom with special education services for less than 21% of the instructional day.
3. The IEP stated the Student will receive direct services daily in study hall for up to 200 minutes per week. The Complainant (the parent) alleged that the Student, pursuant to School policy, is required to read every Wednesday for the entire duration of study hall and consequently does not receive the daily direct services. The School acknowledged the school-wide reading policy on Wednesdays. However, the School maintained that the Student is given other times each day (including Wednesdays) to seek support. In addition, the School claimed that the Student has the "option to inform us when she needs

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<sup>1</sup> Upon investigation, the issue was changed to better reflect the allegations.

<sup>2</sup> The Complainant alleged violations against two of her children; however, after investigating the allegations, it was determined that the issue concerning her other child was not an Article 7 claim.

to complete an assignment” and, if sought, the Student could use the designated reading time to study, but, to date, has never needed this option.

4. Regarding participation in standardized statewide testing, the IEP stated that “this Student will fully participate in the standardized Statewide or Corporation wide testing program with accommodations. Any accommodation listed on page 7 which are allowed by State and/or publisher guidelines.” According to the IEP on page 7, the Student is to receive extra test time for all subjects. The Complainant alleged that the Student was not given extra test time for the ISTEP. The School claimed that the Student was offered extended time for the ISTEP, but did not need it. The Student successfully passed both sections of the ISTEP.
5. As a strategy for spelling, the Student’s IEP stated that the Student will be given credit for writing each spelling work 5 times and putting them in alphabetical order. After failing two spelling test, the Complainant alleged that she called the Teacher of Record regarding the extra credit strategy not being implemented. The School acknowledged that the mistake of not allowing extra credit was made, but stated that the Teacher of Record corrected the mistake by informing the general education teacher of the non-implementation.
6. Under “practical strategies for all students” in the IEP, a box was check for the Student that stated “[a] special education student assignment/test should only be graded by the student or an adult.” The Complainant is concerned because the Student’s assignments/tests are being graded by other students. This was evident by two of the Student’s math assignments graded by another student (marked as “graded by” followed by another student’s name) submitted by the Complainant. The School stated that “[t]eachers report that if [the Student’s] assignments or tests are being graded by another student it is because she has allowed this to happen.” In addition, the School claimed that the Student’s grades are such that “she might not mind having her work graded by another student.” However, the School acknowledged that the Student should not be placed in a position where she has to refuse to have her work graded by another student; thus, the School stated that staff will be reminded that the Student is not the person who should carry the responsibility regarding this matter.
7. The School did not provide documentation that ensured that the Student’s general education teachers were informed of their specific responsibilities related to implementing the Student’s IEP.
8. In the previous year, the Complainant alleged that the Student was being continually harassed by another student in her class. In the 2005-2006 IEP dated May 3, 2005, the bullying situation was described and it was stated that the principal addressed the discipline with the appropriate students on May 13, 2005. There is no indication from the Complainant that this is a continuing or systematic problem. The School acknowledged this was a problem during the 2005-2006 school year, but because of a change of classroom placement and increased monitoring by staff the incidents were not longer reported. Furthermore, the School and the Complainant stated that there have been no reported incidents during the 2006-2007 school year. The 2006-2007 IEP is silent with respect to the Student’s harassment situation.

## **CONCLUSIONS:**

- 1a. Finding of Fact #3 indicates that the IEP states that the Student will receive daily study hall direct services up to 200 minutes per week. Although the School claimed the Student was given other times to seek support, or could seek to use the designated reading time to study, there is no documentation to show the School provided the daily study hall to the Student on Wednesdays. Further, “up to 200 minutes per week” is not specific, and the IEP contains no provision as to how it is determined, how many minutes per week the Student will receive, or who makes this determination. The IEP contained

ambiguous language that resulted in misinterpretations and misunderstandings between the Complainant and the School. Where an ambiguity exists in an IEP, the ambiguity will be construed against the School that is responsible for its development and implementation. IEPs must have sufficient clarity so that both the parents and school personnel understand what services a student is to receive. As a result, a violation of 511 IAC 7-27-7(a) is found.

- 1b. Finding of Fact #4 indicates that the IEP states that the Student will be given extra test time as an accommodation for the ISTEP. Although the Complainant alleges that the Student was not given extra test time, there is nothing in the record to suggest that the School denied this testing accommodation. The School states that the Student did not need the extra time and successfully passed both sections of the ISTEP. Therefore, no violation of 511 IAC 7-27-7(a) is found.
- 1c. Finding of Fact #5 indicates that the IEP states that the Student is to receive extra credit as a spelling strategy. The School acknowledges its failure to allow extra credit work and has corrected the non-implementation issue by speaking with the teacher and allowing the Student to make-up the extra credit for the two failed tests. A violation of 511 IAC 7-27-7(a) is found. Because of the School's self-correction, no further corrective action will be required.
- 1d. Finding of Fact #6 indicates that the IEP states that the Student's assignments/tests only are to be graded by the Student or an adult. The School acknowledges that other student's graded the Student's assignments. Therefore, a violation of 511 IAC 7-27-7(a) is found.
- 1e. Finding of Fact #8 demonstrates that the bullying incidents regarding the Student and another student took place in the previous 2005-2006 school year and the School appropriately addressed the issue as written in the IEP. There is no indication of a continuing or systemic bullying problem in the 2006-2007 school year and the 2006-2007 IEP makes no reference to any incidents related to bullying. Therefore, no violation of 511 IAC 7-27-7(a) is found.
2. Finding of Fact #2 indicates that the Student's placement is in a general education classroom with special education services for less than 21% of the instructional day. Therefore, the majority of the Student's instruction is being provided by general education teachers, whom are required to be informed of their specific responsibilities relating to the implementation of the IEP. Findings of Fact #5 and #6 indicate that the School, after acknowledging the violation, informed teachers and other staff of the IEP implementation concerns. Finding of Fact # 7 shows the School failed to provide documentation regarding the Teacher of Record's responsibility of informing the Student's general education teachers of their specific responsibilities in implementing the Student's IEP. Therefore, a violation of 511 IAC 7-27-7(b) 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:**

The C. A. Beard Memorial School Corp and the New Castle Area Special Services shall:

1. Convene a CCC meeting to revise the Student's IEP for the 2006-2007 school year with specific attention to and inclusion of a clear statement of how the Student will receive the daily direct services in study hall up to 200 minutes per week. "Up to 200 minutes" is not specific and provides a range of 0-200. Whenever a range is used, there has to be an objective measure to establish how it is determined, how many minutes per week the Student will receive, and who makes this determination. The School shall submit a copy of the CCC report and agreed-upon IEP (signed by the Complainant)

**no later than February 23, 2007.**

2. Send a written memorandum to all relevant school administrators and special education personnel regarding the responsibilities of the Teacher of Record, specifically regarding compliance with both 511 IAC 7-27-7(b)(3) in order to ensure that the Student's general education teachers are informed of their specific responsibilities in implementing the Student's IEP. A copy of the memorandum and a list of all who receive it shall be submitted to the Division **no later than February 23, 2007.**