

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	CP-215-2007
COMPLAINT INVESTIGATOR:	Sharon Knoth
DATE OF COMPLAINT:	May 4, 2007
DATE OF REPORT:	May 30, 2007
REQUEST FOR RECONSIDERATION:	Yes/July 2, 2007 – not revised
DATE OF CLOSURE:	October 12, 2007

**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 by failing to implement the behavioral intervention plan (BIP) with regard to the use of cards as warnings and visual and social stories.

511 IAC 7-26-12(c) by failing to ensure that the student's teacher has received specialized inservice training in the area of other health impairment<sup>1</sup>.

**FINDINGS OF FACT:**

1. The Student is a six-year old enrolled full time in a general education kindergarten classroom. Up until May 4, 2007 the student received special education and related services as a child with an Other Health Impairment (OHI) and a Communication Disorder (CD) listed as a secondary disability. Documentation provided by the school and the special education planning district provide information that the OHI was a combination of anxiety issues, medical issues, and fatigue/ fragility concerns. The Director of Special Education stated that the student was initially identified on October 10, 2005 as OHI with "a pervasive developmental disorder (not otherwise specified) and a mood disorder (not otherwise specified)."
2. According to the Supervisor of special education the teacher of record (TOR) for the Student is the consultant for students with an emotional disability. This individual is also the district's behavioral consultant. The Student is served in the general education classroom except for speech services (that are delivered in the speech room).
3. The individualized education program (IEP) in effect for the Student at the time of the alleged incident of the complaint was developed at a case conference committee convened on April 20, 2006 and the corresponding Addendums dated August 25 and October 17, 2006. The IEP lists a speech and language goal and a social skills goal. The speech and language pathologist (SLP) is listed to implement the speech and language goal two days per week for 20 minutes each visit. The TOR is listed to assist the general education staff, parents and the student in implementing the social skills

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<sup>1</sup> The original issue was cited as 511 IAC 7-26-2(d). Upon investigation, the issue was changed to better reflect the facts. On May 17, 2007 the Director of Special Education for the special education cooperative called to speak with the investigator. The child was identified as Other Health Impaired (OHI) up until May 4, 2007 (the date the complaint was filed).

goal through two 20-minutes sessions per month. Except for these two services, the Student's educational program is the full time, full day kindergarten curriculum without any modifications or adaptations listed.

4. The IEP Addendum dated October 17, 2006 indicates that a functional behavioral assessment (FBA) and behavioral intervention plan (BIP) "will be completed". It states that the Complainant wanted the Student to be moved from "sitting next to a specific boy" and other "disruptive students". The IEP states that visuals are already present in the kindergarten classroom but that a visual chart and emotions board will be used at the Student's desk as well as social stories to reinforce what the Student is doing.
5. The FBA states the targeted behavior as "Managing school anxiety." The FBA lists transition to settings or activities as a trigger for the Student's anxiety. The FBA states that the anxiety is less prevalent when visual schedules are provided and when the Student understands directives or directives are clarified. The BIP lists strategies to be used with the student as "Check for understanding of directives, Repeat and/or clarify directives; Behavior consultant or school staff will process behavior issues individually with [the Student], Provide visual cues as needed, Visual schedule, [and] School staff will use social stories to help [the Student] process expectations when a behavior issue occurs."
6. The Special Education Supervisor stated that the visual chart and emotions board were used with the student as were the social stories to reinforce what the Student does. The emotions board has cards with pictures of activities or events on them (e.g., playing quietly). The letter from the kindergarten teacher describes the use of the emotions board and visual chart with the student and states that the March 29, 2007 'card pulling incident' was the "only behavior issue during her school experience with me". The letter states that the Student's "classroom behavior is exemplary".
7. In the IEP addendum dated March 15, 2007 there was no change of placement or change of exceptionality area noted but the Student's BIP was amended to state that she "will pull a card as a final warning, not as a consequence" and that the school will use visuals and social stories with the Student as part of the BIP. The notes from the meeting stated that the TOR provided the case conference committee with copies of visuals used in the classroom and 'explained social stor[ies]' to the committee participants. The revised BIP states that the Student will restate directives and refer to visual prompts and will not lose recess time for incomplete assignments. The individuals listed to implement the BIP are the TOR and other staff working with the student.
8. The various case conference committee meeting reports and addendums are sketchy but allude to the fact that the Student would be permitted to play quietly while her peers napped due to her inability to sleep during the day. According to the Student's kindergarten teacher during the week of March 26, 2007 the Student needed reminders to play quietly during nap time. The Student has a 'picture card at her rest place to remind her to play quietly'. The kindergarten teacher states that after several reminders she had the Student practice pulling a card (which means that if the Student has to pull the card 'for real' the Student loses five minutes of play time). She states that by having the Student restate why she was pulling the card and what it would mean if the Student had to pull the card "for real" the kindergarten teacher was complying with the consequences stated in the BIP. On Thursday of that same week (the 29<sup>th</sup> of March) the Student again needed reminders to play quietly as her peers napped. This ultimately resulted in the kindergarten teacher's aide having the Student pull her card and 'serve' her five minutes without play time. The letter provided by the kindergarten teacher indicates that after the Student had served her five minutes "she was able to tell me in her own words why she had to pull a card".
9. The April 20, 2006 case conference committee report lists 'inservices for special education preschool staff' under Supports for Personnel. At this time the student's exceptionality area was listed as OHI and CD.

10. At the case conference committee meeting on May 4, 2007 the Student's exceptionality area was changed to Autism Spectrum Disorder (ASD) with the secondary disability area remaining as CD. Notations in the Triennial Reevaluation Plan indicated that the exceptionality area was changed based upon an independent evaluation supplied by the parent.
11. When asked about inservice training available for staff, the supervisor for special education services at the Student's school stated that the district has a library of materials and publications available for staff to access.
12. The student's IEP developed on April 13, 2007 (and revised/updated on May 4, 2007) under the heading of Supports for personnel states "E.D. consultant will work with [Student] and teachers, OT, Speech, Autism library, Autism inservices, Consultation with Autism Team." In looking at handwriting and how amendments to the IEP were made, it would appear that the first three services were written in at the April 13, 2007 case conference committee meeting and the Autism-specific items were added at the May 4, 2007 case conference committee meeting. This was confirmed by the Supervisor of special education for the Student's school. At the time the IEP was developed in April 2007 the Student's exceptionality area was OHI. At the May 4, 2007 case conference committee meeting the exceptionality area was changed to ASD.
13. Documentation provided by the special education planning district indicate that the behavioral consultant provided the Student's kindergarten teacher with information regarding anxiety disorders in children "the last week of February" 2007. Included in that packet was also a tip sheet on strategies for working with students who have ASD and strategies for use by the classroom teacher (to help with students who have ASD) which included information regarding the use of visual strategies and the elements incorporated in social stories and a sign-in sheet where the Student's teacher attended an inservice training on ASD. The materials used at the September 21, 2006 training session on ASD covered visual strategies and supports used with students who have ASD. There is no documentation that student-specific training in the area of OHI (anxiety disorders) was provided other than the handouts that were given to the Student's kindergarten teacher regarding this condition.

## CONCLUSIONS:

1. Finding of Fact #7 indicates that the Student's BIP did not prohibit the use of a strategy referred to as 'pulling a card' and only prohibited loss of play time for incomplete assignments. The BIP did place parameters over how the strategy would be executed (e.g., checking for understanding and asking the Student to restate directives) which the teacher stated she did implement but cannot document. However, Finding of Fact #8 indicates that the visual card was used during rest time with the Student and that the loss of recess time was due to misbehavior during the time when the Student was to be playing quietly so her peers could nap (and not for an incomplete assignment) which no one in the investigation disputes. Therefore, no violation of 511 IAC 7-27-7(a) is found with regard to the School's failing to implement the student's individualized education program (IEP) by failing to implement the BIP with regard to the use of cards as warnings and visuals or social stories.
2. The current version of 511 IAC 7-26 requires specialized inservice training for professional and paraprofessional staff serving students who have Autism Spectrum Disorder (ASD), are Deaf-Blind, have an Other Health Impairment (OHI) or have a Traumatic Brain Injury (TBI). Findings of Fact #1 and #10 indicate that the Student's exceptionality area does fall within one of the four prescribed areas that requires specialized inservice training. Findings of Fact #9 and #12 indicate that the Student's case conference committees did discuss the required supports needed for the staff who would be working with the Student. Finding of Fact #13 indicates that training in the area of ASD was provided for the staff but the OHI (and specifically the anxiety and mood disorders) was covered solely via a handout and access to the district's resource library. The provision of handouts and

access to a resource library does not constitute specialized inservice training for staff and personnel working with the Student. This is especially true when the Student's entire educational program is provided by general education staff. Therefore, a violation of 511 IAC 7-26-12(d) is found with respect to the district ensuring that staff serving the Student received specialized inservice training in the area of other health impairment and anxiety/mood disorders.

**CORRECTIVE ACTION:**

The Indiana Department of Education, Division of Exceptional Learners (the Division) requires the MSD of Perry Township and the RISE Special Services to conduct specialized inservice training for all professional and paraprofessional staff who will be working with the Student for the 2007/2008 school year. This inservice training shall be for all staff who will work with her at that time and must cover how ASD is manifested in this Student and the specific educational needs of this Student. The training should also include guidance for all involved with the Student regarding how to implement and document implementation of the Student's BIP. Documentation of the training, including copies of or references to training materials and sign-in sheets of attendance shall be provided to the Division no later than September 1, 2007.