

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	CP-230-2007
COMPLAINT INVESTIGATOR:	Kylee Bassett
DATE OF COMPLAINT:	June 12, 2007
DATE OF REPORT:	July 27, 2007
REQUEST FOR RECONSIDERATION:	Yes/August 23, 2007 – not revised
DATE OF CLOSURE:	October 17, 2007

COMPLAINT ISSUES:

Whether the Hanover Community School Corporation and the Northwest Indiana Special Education Cooperative violated:

511 IAC 7-27-3(a)(4) by failing to ensure that the case conference committee (CCC) participants include one of the Student's general education teachers, specifically at the May 14, 2007 and July 13, 2006 CCC meetings.

511 IAC 7-30-3(x) by failing to implement the Independent Hearing Officer's (IHO) orders in hearing #1555.06, specifically item C and items G through W.

FINDINGS OF FACT:

1. The Student, 10 years old, is eligible for special education and related services as a Student with moderate mental disability (primary disability) and communication disorder (secondary disability).
2. A request for a due process hearing was initiated by the Complainant (the Student's mother) on December 30, 2005 and a decision was rendered on March 28, 2006. The IHO ordered the CCC to reconvene within 10 school days and incorporate into a revised individualized education program (IEP) for the Student a list of stated components (listed as A through X) from the IHO's orders. On April 27, 2006, the Complainant filed a Petition for Review to the Board of Special Education Appeals (BSEA). The BSEA conducted its review and issued a final order on June 15, 2006, which affirmed the IHO's decision in its entirety. The Complainant alleged that the School failed to comply with the IHO's orders, item C and items G through W.
3. On June 19, 2006, a Lake County Superior Court Judge issued a court order, awarding educational decision-making to the Student's father. The Judge's order stated that: "Effective immediately, the [Student's father], is granted sole and exclusive right and authority to make, effectuate, and implement, all decisions related to the educational needs of [the Student], including the sole authority to approve any IEP, and to determine the appropriate school placement, until further order of the Court."
4. CCC meetings were convened on April 11 and 18, 2006 to discuss the IHO's orders. The Complainant had concerns regarding the Student's services and goals, and the CCC notes indicated that the CCC agreed to reconvene on April 28, 2006. However, due to the Complainant's appeal to the BSEA, the scheduled April 28, 2006 did not take place. After the BSEA's decision, a CCC was convened on July 13, 2006. The Student's IEP dated July 13, 2006 indicated that "the case conference was convened to review the portions of the IEP developed at the April 11 and 18 [, 2006] conference. . . [and] finalize the IEP and services to initiate the new IEP as school begins on August 15, 2006." The Complainant and

the Student's father both attended the CCC meeting.

5. The Student's July 13, 2006 IEP did not include a general education teacher as a CCC participant. The IEP indicated that the general education teacher will not "attend as agreed by [the Student's father]." A document titled *Agreement to Excuse Member of Case Conference* was signed by the Student's father and Director of Special Education on July 13, 2006, agreeing that the general education teacher would not be in attendance and the form indicated that the general education teacher's report was submitted at the April 11, 2006 case conference.
6. On July 20, 2006, the Student's father signed the Student's July 13, 2006 IEP, agreeing with the change of placement decision of the CCC and the services as indicated for the 2006-2007 school year.
7. A CCC meeting was convened on May 14, 2007 to discuss the Student's present levels of performance and to develop an IEP to meet his needs. Both of the Student's parents attended the CCC meeting on May 14, 2007. The CCC notes indicated that the conference was scheduled for 8:00 a.m. The IEP dated May 14, 2007 indicated that the Student's general education teacher participated in the CCC meeting, specifically at 8:12 a.m. The CCC notes indicated that the general education teacher (the Student's music teacher) reported on the Student's progress and the Student's father agreed to excuse the general education teacher from the CCC meeting to enable her to return to class. The CCC notes indicated that the Complainant and the Complainant's advocate arrived after the general education teacher was excused. The Student's father signed in agreement with the Student's IEP on May 20, 2007.
8. Per the audio-tape recording and the CCC notes from the May 14, 2007 CCC meeting, the IHO's orders were a point of contention between the Complainant (and the Complainant's advocate), School, and Student's father. The Complainant's advocate indicated that he did not feel the Student's July 13, 2006, IEP was consistent with the IHO's orders. The School explained that the Student's IEP was a CCC decision and the CCC took into consideration the hearing officers *recommendations* as well as what would be beneficial and meet the needs of the Student. The School indicated that the CCC decided what was appropriate and the Student's father agreed to the Student's July 13, 2006, IEP. Per the audio-tape recording and the CCC notes, the School acknowledged that the Student's July IEP was not fully consistent with the IHO's orders.
9. The Division of Exceptional Learners, in a Memorandum dated June 22, 2005 to all Directors of Special Education and other school personnel, informed the Directors what parts of the Individuals with Disabilities Education Improvement Act (IDEIA) were presently in force and which were not, specifically stating that current Article 7 requirements for CCC meetings remained in force and that CCC members could not be excused.

CONCLUSIONS:

1. Finding of Fact #5 indicates that the Student's general education teacher was not present at the CCC meeting on July 13, 2006. Finding of Fact #5 indicates that per a form titled *Agreement to Excuse Member of Case Conference* the Director of Special Education and the Student's father agreed that the Student's general education teacher would not be in attendance. Finding of Fact #7 indicates that the Student's general education teacher attended the CCC meeting on May 14, 2007, and was excused to return to class after her report. Finding of Fact #9 indicates the local directors of special education had been previously informed that CCC members cannot be excused in this manner. Per 511 IAC 7-27-3(a)(4), "the public agency shall ensure that the case conference committee participants include. . .[o]ne (1) of the student's general education teachers, if the student is or may be participating in the general education environment." Article 7 does not allow the excusal of a student's general education teacher or any other CCC participant (pursuant to 511 IAC 7-27-3(a)) from all or part of a CCC meeting.

The IDEIA was reauthorized and took effect on July 1, 2005. IDEIA permits members of the CCC to be excused from all or part of a CCC meeting if certain conditions are met. However, Article 7 imposes a *higher requirement* than what is required by IDEIA, and Schools are required to continue to implement the Article 7 requirement until the Article 7 requirement is amended. Thus, a general education teacher (if the student is or may be participating in the general education environment) must continue to participate in the CCC meeting. Therefore, a violation of 511 IAC 7-27-3(a)(4) is found with respect to the CCC meetings convened on July 13, 2006 and May 14, 2007.

2. Finding of Fact #2 indicates that a due process hearing decision was rendered on March 28, 2006. A Petition for Review was filed on April 27, 2006 and the BSEA affirmed the IHO's decision in its entirety on June 15, 2006. Finding of Fact #3 indicates that on June 19, 2006 (4 days after the BSEA's final order) the Student's father was given "sole and exclusive right and authority to make, effectuate, and implement, all decisions related to the education needs of [the Student]. . . ." Findings of Fact # 4 and #6 indicate that a CCC meeting was convened on July 13, 2006 (after the BSEA's decision was rendered) to finalize the Student's IEP for the 2006-2007 school year. The Student's father signed in agreement with the IEP on July 13, 2006. Findings of Fact #2 and #8 indicate that the Complainant indicated that she did not feel the Student's IEP was consistent with the IHO's orders. Per 511 IAC 7-30-2(n), a public agency's failure to implement a due process decision must be resolved through the complaint process. A public agency has the responsibility to implement timely the IHO's decision. According to 511 IAC 7-30-3(x), any party involved shall have thirty (30) calendar days from the date the IHO's written decision is received to: 1) implement the order(s) in the hearing decision; or 2) initiate an appeal pursuant 511 IAC 7-30-4. In this case, the facts are unique in that the Complainant initiated a due process hearing, but 4 days after the BSEA's final decision, a court order awarded sole educational decisions to the Student's father. Thus, the Student's July 13, 2006 IEP was agreed upon by the Student's father. Therefore, no violation of 511 IAC 7-30-3(x) is found. However, Finding of Fact #8 indicates that the School interpreted the IHO's orders as *recommendations* to the CCC. It is important to stress that the public agency to a due process hearing has a responsibility to *implement* the IHO's orders. Such orders are not considered permissive.

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 Hanover Community School Corporation and the Northwest Indiana Special Education Cooperative shall:

1. Effective immediately, discontinue the utilization of the CCC participant excusal form and the practice of dismissing required CCC participants from all or part of a CCC meeting in all 10 school corporations within the Northwest Indiana Special Education Cooperative. The School shall provide an assurance statement to the Division stating that it will comply with the current Article 7 and ensure that the required CCC participants per 511 IAC 7-27-3(a) are in attendance at CCC meetings. Additionally, the Northwest Indiana Special Education Cooperative shall send an assurance statement to the Division stating that all 10 school corporations will comply with 511 IAC 7-27-3(a). The assurance statements shall be submitted **no later than August 24, 2007**.
2. Send a written memorandum to all relevant school administrators and special education personnel (in all 10 school corporations) regarding the School's responsibility to ensure the attendance of required CCC participants per 511 IAC 7-27-3(a). A copy of the memorandum and a list of all who receive it shall be submitted to the Division **no later than August 24, 2007**.