

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	CP-258-2008
COMPLAINT INVESTIGATOR:	Bobbie Ritz
DATE OF COMPLAINT:	September 17, 2007
DATE OF REPORT:	October 16, 2007
REQUEST FOR RECONSIDERATION:	N/A
DATE OF CLOSURE:	April 14, 2008

COMPLAINT ISSUES:

Whether the MSD of Perry Township Schools and the RISE Special Services violated:

511 IAC 7-27-4(a)(4) by failing to convene a case conference committee (CCC) meeting when a change of placement is proposed or considered, specifically regarding the Student's homebound services.¹

511 IAC 7-27-9(b) by failing to make available to a student with a disability the variety of educational programs and services and nonacademic and extracurricular activities that are made available to non-disabled students served by the school.

FINDINGS OF FACT:

1. The Student is a seventeen-year-old with a learning disability, and has been determined eligible for special education and related services. The Student is currently enrolled at Southport High School.
2. During the case conference committee (CCC) meeting that took place on May 18, 2007, it was agreed the Student would be placed in a "regular class" for less than 21% of the school day and "resource room" for at least 21%, but no more than 60% of the school day. The duration of this IEP was dated May 18, 2007 through May 18, 2008. The CCC also agreed that the Student may participate fully in nonacademic and extra-curricular activities.
3. Due to the increasing number of the Student's absences during the 2006-2007 school year, and in anticipation of future absences, the CCC agreed on May 18, 2007, the parent will contact the guidance counselor to make arrangements to pick up homework by the third day of future absences.
4. A Mediation session was held on May 11, 2007, with an agreement signed by both parties. The duration of this agreement was May 10, 2007 through May 24, 2007. The agreement included that the Student "will be allowed to try out for the basketball team."
5. August 14, 2007, was the first day of the 2007-2008 school year. The Student's physician issued a letter on August 16, 2007, which was received by the School on the same date. The letter indicated that [the Student] is . . . without a definitive diagnosis [, and] his symptoms seem to peak in the early morning hours and are often associated with vomiting. Because of this he is unable to attend school or has to be picked up early." In addition, the letter indicated that "[i]t would be beneficial if he could be allowed to start his school day at 11:00 AM and go until 3:00PM." However, the physician stated that if a shortened school day could not be done then

¹ During the course of the investigation, the issue was changed to better reflect the facts.

the option of homebound “will have to be considered.”

6. A Case Conference Notice was sent on August 20, 2007, requesting a CCC meeting on August 22, 2007. Due to the Student’s medical concerns, the CCC agreed in an IEP Addendum that the Student’s schedule will be altered to provide for a shortened day, with the following classes agreed upon: 4th period – Business Foundations, 5th period - Inclusion Biology, 6th period – Inclusion 10 English, 7th period – Inclusion Algebra. In addition, the IEP Addendum indicated that a “homebound application would be completed, also in order to put this service in place [sic] when [,] if needed.”
7. A Request for Homebound Instruction was signed by the Parent and physician on August 31, 2007, on the School’s Request for Homebound Instruction form. There is no documentation that the CCC convened to develop an IEP to reflect homebound services for the Student. However, the School began to attempt to implement the August 22, 2007, IEP Addendum during the second week of September, 2007. There is no documentation as to who would provide homebound services, where homebound services would be provided, what classes would be provided on homebound instruction, nor the number of hours the Student would receive homebound instruction.
8. Homebound English instruction has been provided on the following dates: September 12, 2007 (1 hour); September 17, 2007 (1 ½ hour); September 19, 2007 (1 hour); September 24, 2007 (1 ½ hour); September 26, 2007 (1 hour); October 1, 2007 (1 ½ hour); October 3, 2007 (1 ½ hour); October 8, 2007 (1 ½ hour); October 10, 2007 (1 ½ hour). Homebound Speech instruction has been provided on the following dates: September 24, 2007 (1 ¼ hour); September 27, 2007 (1 hour). In addition, three other dates were scheduled; however, the Complainant cancelled the sessions and services were not provided.
9. Per a phone interview, the Assistant Principal indicated the School has been attempting to fill the Biology and Algebra teaching positions, but acknowledges the teaching positions have not been filled.
10. Try outs for the School basketball team are scheduled for November 5, 2007. The Assistant Principal advised the Student is not eligible to try out for the basketball team under the current circumstances. According to school policy which follows Indiana High School Athletic Association (IHSAA) rules, the Student must be enrolled in 6-7 class periods per day and currently be receiving passing grades in five of the 6-7 classes.

CONCLUSIONS:

1. Findings of Fact #5, #6, #7, #8, and #9 address homebound services. Finding of Fact #5 indicates that the Student’s physician recommended that the Student be on a shortened school day; however, if a shortened day could not be done then the option of homebound instruction should be considered. Finding of Fact #6 indicates that a CCC convened to develop a program for the Student on a shortened school day. Finding of Fact #7 indicates a request for homebound instruction form was filled out by the Complainant and the physician. Because a CCC meeting was not convened to determine homebound services, there is confusion with respect to what is appropriate and medically necessary for the Student based on the physician’s letter (Finding of Fact #5), and what was determined at the August 22, 2007, CCC meeting (Finding of Fact #6). Moreover, although a CCC meeting was not convened to determine homebound services, the School attempted to implement the August 22, 2007 IEP Addendum in the homebound setting during the second week of September, 2007. Therefore, a violation of 511 IAC 7-27-4(a)(4) is found.
2. Finding of Fact #10 indicates the School has not failed to make available to a student with a

disability the variety of educational programs and services and nonacademic and extracurricular activities that are made available to nondisabled students served by the School. Finding of Fact #4 indicates that the Student would be allowed to try out for basketball, at the time of the mediation agreement, the Student was enrolled in the requisite number of class periods to be eligible under the IHSAA rules and School's policy. However, presently, the Student is not enrolled in the requisite number of class periods. Therefore, a violation of 511 IAC 7-27-9(b) 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 MSD of Perry Township and RISE Special Services shall:

1. Convene a CCC meeting **by October 31, 2007** to:
 - a) develop an IEP for the Student, including all the components in 511 IAC 7-27-6;
 - b) determine the appropriate placement for the Student, whether a shortened school day or homebound instruction, taking into consideration the Student's medical needs (Finding of Fact #5), the School's policy and IHSAA rules (Finding of Fact #10), and the Student's desire to participate in basketball;
 - c) determine with sufficient clarity the amount of instructional time to be delivered, who will provide the services, and where the services will be provided; and
 - d) determine compensatory services necessary to make-up for the instructional hours missed, beginning on September 10, 2007.

A copy of the CCC report and IEP shall be submitted to the Division **no later than November 9, 2007**. If there is disagreement between the Complainant and the School with respect to the compensatory services or the appropriateness of the Student's services or placement, resolution must be sought through mediation (511 IAC 7-30-1) or a due process hearing (511 IAC 7-30-3).