

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	CP-330-2008 ¹
COMPLAINT INVESTIGATOR:	Brenda Alyea
DATE OF COMPLAINT:	February 11, 2008
DATE OF REPORT:	March 9, 2008
REQUEST FOR RECONSIDERATION:	N/A
DATE OF CLOSURE:	April 2, 2008

COMPLAINT ISSUES:

Whether M S D Perry Township Schools and RISE Special Services violated:

511 IAC 7-27-7(c)(3) by failing to implement the Student's individualized education program (IEP) (provide services comparable to those described in the IEP) of a Student transferring to an Indiana school from another state until a new evaluation is conducted (if necessary) and the case conference committee convene to develop an IEP. [See 20 U.S.C. § 1414(d)(2)(C)(i) and 34 CFR § 300.323(f)]

511 IAC 7-27-4(c) by failing to utilize the case conference committee to review, revise, or develop the Student's IEP, specifically with respect to:

- a) the Student's placement from the general education classroom to the self-contained special education classroom;
- b) the Student's shortened school day;
- c) the elimination of art, music, physical education, convocations, and lunch with peers from the Student's schedule;
- d) the Student's identification from Other Health Impaired to Emotional Disability; and
- e) the Student's placement and program during the case conference committee meeting on August 23, 2007, November 12, 2007, and January 10, 2008.

511 IAC 7-25-4(k) by failing to ensure that a copy of the evaluation report is made available at the school the Student attends no less than 5 instructional days prior to the scheduled case conference committee on November 12, 2007 and with respect to the behavioral evaluation for the case conference committee on January 10, 2008.

511 IAC 7-25-4(b) by failing to obtain informed parental consent prior to conducting a behavioral evaluation, with respect to the behavioral consultant's classroom observation of the Student.

FINDINGS OF FACT:

1. The Student, 8 years old, is identified as a student with an Other Health Impairment and has been determined eligible for special education and related services.
2. The Student moved from Ohio during the summer of 2007 and currently resides with his maternal grandmother and grandfather, the Complainants. The Student's mother currently resides in Ohio.

¹ CP 330-2008 is a continuation of CP 319-2008. The Complainant filed a request for a due process hearing on January 30, 2008. The Division of Exceptional Learners (DEL) asked that the issues be subsumed by the Independent Hearing Officer on January 30, 2008, however the issues were sent back to the Division of Exceptional Learners for a complaint investigation on February 11, 2008. Due to complaint timelines, DEL opened the issues from the Independent Hearing Officer into a new complaint.

A custodial statement and agreement third party custody form is located in the Student's file, which indicates that the grandparents have agreed in writing to assume all the duties and be subject to all the liabilities of the Student.

3. The Student enrolled at M S D Perry Township on August 15, 2007. The Student's first day of attendance was August 16, 2007.
4. According to the Complainant, the School was informed at registration that the Student was identified as a Special Education student, however, the Complainant did not recall giving the School a copy of the Student's IEP from Ohio. The Complainant reported that the Student was placed in a regular education classroom at enrollment.
5. Documentation indicates that the Springboro Community City Schools, Ohio, faxed the IEP, dated April 13, 2007, on August 17, 2007 to Henry Burkhart Elementary School. Under the present levels of academic and functional performance, the IEP indicates that "[C]urrently, the Student is receiving services in the resource room for all academic areas including reading, written expression and math." The IEP further indicates that a weekly spelling test, morning work, science and social studies activities are in the regular education classroom. The IEP also indicates that the Student requires a one-on-one aide and has shown the capacity for violence.
6. A comprehensive evaluation had been completed in March 2005 at which time the Student was 5 years old; the School procured consent to conduct a current comprehensive evaluation. According to the referral document, the notations include "would like to do a full evaluation to look at different eligibilities, including PT/OT & speech & behavior." The consent to conduct an educational evaluation was signed by the maternal grandmother on August 23, 2007. The evaluation was conducted over the period of time between August 24, 2007 and September 17, 2007.
7. Three student conduct referrals were made between August 16, 2007 and the Case Conference Committee meeting held on August 23, 2008. On August 23, 2007 a Case Conference Committee meeting was held to review programming at the previous school and formulate an Individualized Education Program for the Student. In the Special Factors section of the IEP, it was noted that a Functional Behavioral Assessment (FBA) was to be conducted and a Behavioral Intervention Plan (BIP) developed upon completion of the assessment. The IEP also indicated that the Least Restrictive Environment was a self-contained classroom and the Student was to receive Speech services 2 times per week for 20 minutes per occurrence. The IEP was signed by both grandparents. According to the IEP dated August 23, 2007, Speech is the only therapy listed.
8. The FBA was conducted including a review of records from the previous school and a BIP was written, dated August 30, 2007. The BIP included target behaviors, goals, positive interventions/strategies, consequences and rewards, replacement behaviors, and skill teaching needs.
9. An Occupational Therapy evaluation was completed on September 28, 2007, as part of the comprehensive evaluation.
10. A Case Conference Committee meeting was held October 8, 2007, by request of the grandmother to review new information, discuss evaluation issues, least restrictive environment issues, behavioral issues and to choose a date for another Case Conference Committee meeting.
11. An update on the FBA was conducted on September 21, 2007.
12. An addition to the FBA was conducted to include additional behavioral issues and the BIP was

modified, dated October 12, 2007.

13. A Case Conference Committee meeting was held November 12, 2007 to review additional evaluative material. The placement for the Student is listed as Separate Class. At the same Case Conference Committee meeting, the Student's eligibility is listed as Emotional Disability. A note on page 5 of the IEP indicates that a behavioral implementation plan is attached and that the Student will be able to participate in "specials" with the regular education class based on behavior. The IEP was signed by both the grandmother and mother.
14. The IEP dated November 12, 2007, indicates that Occupational Therapy consultation is to be conducted for 60 minutes per semester. According to the IEP dated November 12, 2007, Speech therapy services are to be provided two times per week for 20 minutes.
15. A Case Conference Committee meeting was held December 7, 2007, to discuss behavioral problems and a shortened school day. The BIP was reviewed at the meeting and updated. The Addendum to the IEP was signed by the grandmother.
16. A Case Conference Committee meeting was held January 10, 2008, with the grandmother in attendance to review the results of observations conducted by the behavioral consultant.

CONCLUSIONS:

1. Finding of Facts # 2 and # 3 indicate that the Student moved from Ohio to Indiana in the summer of 2007, and enrolled in the school on August 15, 2007. Finding of Fact # 5 indicates that the Student's IEP was faxed to the school on August 17, 2007. A Case Conference Committee was convened 5 instructional days after the Student was enrolled to attend the School. The Student's IEP was not implemented (of comparable services given) between August 16 and August 23, 2007, A Case Conference Committee was convened in a reasonable amount of time. Therefore, a violation of 511 IAC 7-27-7(c)(3) is not found.
2. Findings of Facts #s 10, 11, 12, 13, 15, 16, indicate that during the period between August 16, 2007, the first day of attendance and January 10, 2008, numerous meetings were held with the guardians and/or parent. In all cases of meetings where the IEP was written or revised, the guardian signed in agreement. Therefore a violation of 511 IAC 7-27-4(c) is not found.
3. Finding of Fact # 3 indicates that the timeline of events presented by the School does not include a notation that the copy of the evaluation was available at the School the Student attends no less than 5 instructional days prior the scheduled Case Conference Committee meeting. Therefore a violation of 511 IAC 7-25-4(k) is found.
4. Finding of Fact # 7 indicates that the guardian signed the permission to conduct an evaluation. Therefore, a violation of 511 IAC 7-25-4(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:

M S D Perry Township and the RISE Special Services will send a memorandum to all evaluation teams indicating that all evaluative material is to be made available to parents no less than 5 days prior to the scheduled Case Conference Committee meeting and that parents are to be informed of the availability of such information at the point of referral.