

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	CP-347-2008
COMPLAINT INVESTIGATOR:	Brian Simkins
DATE OF COMPLAINT:	April 14, 2008
DATE OF REPORT:	May 14, 2008
REQUEST FOR RECONSIDERATION:	No
DATE OF CLOSURE:	July 31, 2008

COMPLAINT ISSUES:

Whether the Westview School Corporation and the Northeast Indiana Special Education Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to provide an interpreter for the student's academic needs and related services such as speech therapy.

511 IAC 7-18-2(a) by failing to provide a free appropriate public education (FAPE), specifically with respect to the certification of educational interpreters in accordance with 511 IAC 7-17-61 (Qualified Professional) and 460 IAC 2-5-6 (Certificate requirements for practicing interpreters and translators).

511 IAC 7-21-6(f) by failing to monitor the maintenance and repair of the equipment, specifically a FM system, used by the student at school.

511 IAC 7-21-6(g)(5) and (6) by failing to provide training or technical assistance to the student and school personnel who work with the student regarding the student's FM system.

FINDINGS OF FACT:

1. The Student, six years old, is identified as hearing impaired, and has been determined eligible for special education and related services. The Student was implanted with a cochlear implant before attending kindergarten, and is not proficient in the use of sign language.
2. At the case conference committee meeting on May 23, 2007, the School proposed to place the Student at Prairie Heights Elementary School where there are more services for hearing impaired students, and where the teachers know sign language. The Complainant (parent) did not agree with the placement. The Complainant wanted the Student to remain at Meadowview Elementary School (the "School"), the Student's home school, and wanted the School to emphasize oral language more than sign language. The Student was still getting accustomed to a cochlear implant and was behind in language skills. The case conference agreed to keep the Student at his home school for kindergarten with hearing impaired consultation services. The case conference notes indicate that the School will provide either an interpreter or a teacher aide who can use sign language to interpret for the Student what the teacher says in class in all areas of the Student's education. The Least Restrictive Environment (LRE) section of the IEP dated May 23, 2007, indicates that the Student will receive an interpreter. However, the IEP does not identify the use of a certified interpreter as a related service.

3. By the start of the 2007-2008 school year in August 2007, the School had hired a teacher assistant who could use sign language. The assistant is not a licensed teacher, and knows sign language as a Child of Deaf Adults (CODA). According to the School, a teacher assistant was assigned to work with the Student rather than a certified interpreter primarily because of the Complainant's decision to have the Student only use sign language minimally while learning to use speech to express himself. The case conference notes indicate that the Complainant did not want the Student to continue using sign language as the primary way to communicate. Problems arose whenever the teacher assistant was absent. On days when the teacher assistant was not available, the Student could not understand what was going on and would struggle to keep up academically. Documentation indicates that the teacher assistant was absent from school a total of 15 days from August 16, 2007, to the date this complaint was filed. The IEP is silent with respect to whether and how the Student's IEP would be implemented in the event that the teacher assistant was not available.
4. The Student's IEP dated May 23, 2007, indicates that the Student shall be provided speech therapy services two to three sessions a week for 30 minutes a session (documentation indicates that the Student is scheduled every Tuesday, Thursday, and Friday morning). The Complainant specifically alleges, because the speech therapist does not know sign language, it has been difficult for the Student to benefit from the speech therapy sessions. It is undisputed that the speech therapist does not know sign language. The School expressed concern about this in the case conference notes from May 23, 2007. The Teacher Aide Services Description submitted by the School explains the teacher assistant's duties and responsibilities with respect to the academic assistance provided to the Student. It does not mention whether and to what extent the teacher assistant shall also assist the Student during speech therapy sessions. The speech therapy log does not indicate the involvement of the teacher assistant. Documentation indicates that the FM (Frequency Modulated) system is used during speech therapy sessions.
5. The Student's IEP indicates that the Student is to utilize assistive technology, specifically a FM system for instruction. The FM amplification system transmits the teacher's voice directly to the Student at a constant level, insuring that the teacher's voice is heard above the level of distracting background noise. The Complainant alleges that the system did not work well, and that a new system was recommended to the school hearing impaired teacher in February. An e-mail from the classroom teacher to the Principal dated August 24, 2007, indicates that the purchased FM system did not work and that another one was ordered to fit the Student. The "Parent-teacher Conference Form" dated October 23, 2007, states under school help, "[t]ried FM system." Documentation indicates that the wrong connector was ordered. The School used a back-up system while waiting for the connector. Documentation also indicates that the system was utilized consistently throughout the school year.
6. The Complainant alleges that the FM system used by the School was not a good fit for the Student and as a result the Student often would not recognize when he was not hearing with the system. The Complainant wanted the School to teach the Student and the classroom teacher how to troubleshoot and maintain the system when necessary. The School maintains, and documentation indicates that school personnel have monitored the maintenance and repair and that school personnel and the Student have been trained to use the system. Documentation also indicates that the hearing impaired teacher (also teacher of record) was concerned about the Student's inability to self-advocate and communicate to staff when the system is not working. The hearing impaired teacher spoke with the Student's audiologist on March 20, 2008. The audiologist confirmed that the system the School used was fine, but that a portable system that sits on the Student's desk may be better for the Student and easier for the teacher to monitor. A new classroom soundfield system was installed in the Student's classroom on April 21, 2008.

7. During this investigation, the case conference committee convened on May 5, 2008, to address the issues in this complaint and the Student's progress. The case conference will re-convene on May 23, 2008.

CONCLUSIONS:

1. Findings of Fact #2 and #3 indicate that the Student does not have an assigned certified interpreter, but an assigned one-on-one teacher assistant who knows sign language. The agreed upon IEP dated May 23, 2007, indicates in the case conference notes that either an interpreter or a teacher assistant may be hired to work with the Student during the 2007-2008 school year, but indicates in the LRE section that an interpreter will be provided. The teacher assistant provided the Student with academic assistance in accordance with the IEP, and followed the Teacher Aide Description. However, the IEP does not stipulate what shall be done when the assistant is absent. On days when the teacher assistant is absent from school the Student goes without academic assistance. Finding of Fact #4 indicates that the requisite amount of speech therapy has been provided, but there is a question with respect to how well the Student may have benefited since it is acknowledged that the speech therapist does not know sign language. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to not being able to provide academic assistance to the Student when the teacher assistant is not available.

*NOTE: Related services should be stated as a "range" (e.g., "2 to 3 times a week") (see Finding of Fact #4) only when necessary to meet the unique needs of the student. When a range is used, the IEP must also specify the criteria for determining the amount of services that will actually be provided the student.

2. Findings of Fact #2 through #4 indicate that the Student does not have an assigned certified interpreter. The IEP dated May 23, 2007, was not clear with respect to whether a certified interpreter would be provided. The case conference committee should have convened earlier in the school year to clear up the ambiguity in the IEP and any misunderstandings thereof. However, a violation of 511 IAC 7-18-2(a) is not found.
3. Finding of Fact #5 indicates that the School did not fail to monitor the maintenance and repair of the Student's FM system. Therefore, a violation of 511 IAC 7-21-6(f) is not found.
4. Finding of Fact #6 indicates that the School did not fail to provide training or technical assistance to the Student and staff regarding the FM system. It is not clear how consistently effective the system was since the Student struggled to communicate to staff when it was not working. However, a violation of 511 IAC 7-21-6(g)(5) and (6) 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 Westview School Corporation and the Northeast Indiana Special Education Cooperative shall:

Re-convene the Student's case conference committee as scheduled to develop an accurate IEP that specifically states what the Student is to receive, from whom, and with what resources. The case conference shall discuss and document whether the Student is to receive the services of a certified educational interpreter or an instructional assistant who knows sign language. The case conference must also address ways to ensure the Student's academic needs and related services will be

provided for on days when the assigned teacher assistant is absent. Finally, the case conference shall determine whether and to what extent the Student should be provided compensatory educational services for the approximately 15 days his academic needs were not met because the teacher assistant's absences. A copy of the case conference report and revised IEP shall be submitted to the Office of Special Education no later than **June 20, 2008**.