

Indiana Department of Education

Division of Exceptional Learners

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1640.00
COMPLAINT INVESTIGATOR: Steve Starbuck
DATE OF COMPLAINT: October 18, 2000
DATE OF REPORT: December 8, 2000
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: July 27, 2001

COMPLAINT ISSUES:

Whether the MSD of Lawrence Township violated:

511 IAC 7-27-7(b) and 511 IAC 7-17-72 with regard to the school's alleged failure to ensure the student's teacher of record:

regularly monitored the implementation of the student's individualized education program (IEP); and made sure that the supplementary aids and services, and program modifications and supports are provided in accordance with the student's IEP.

511 IAC 7-21-5(b) with regard to the school's alleged failure to develop a disaster plan for the student that includes warning and evacuation procedures in accordance with the student's physical limitations.

511 IAC 7-27-9(b) with regard to the school's alleged failure to make non-academic and extracurricular activities available to a student with a disability, specifically, participation in a pep rally and other after-school activities.

511 IAC 7-27-7(a) with regard to the school's alleged failure to implement the student's IEP as written, specifically:

- a. failing to provide the student with access to a printer for the Alphasmart word processor;
- b. failing to provide the student with use of an elevator and a key to the elevator;
- c. failing to develop a plan for when the student's aide(s) are absent from school;
- d. failing to ensure the clinic restroom is unlocked at the designated times the student is to use the restroom facilities;
- e. failing to provide enough notice regarding field trips so that staff can make arrangements to ensure the student's participation in these activities;
- f. failing to provide a working automated door for the student's use; and
- g. failing to provide the student with a two-way radio.

28 CFR 35.150(a) with regard to the school's alleged failure to provide the student with wheelchair access to the auditorium portion of the school's Little Theater.

During the course of the investigation, an additional issue was identified, which is:

28 CFR 35.150(a) with regard to the school's alleged failure to provide the student with wheelchair access to the school's football/track stadium.

The complaint report was originally due on November 17, 2000; however, due to the need to obtain additional information from the school and to complete legal research two extensions were approved by the state director of special education extending the deadline until December 8, 2000.

FINDINGS OF FACT:

1. The student is fourteen years old and is in the ninth grade. He has been determined eligible for special education due to an orthopedic impairment.
2. At a meeting convened on November 20, 2000, the director acknowledged the school was non-compliant with 511 IAC Article 7 with respect to:
 - a. the student's teacher of record regularly monitoring the implementation of the student's IEP;
 - b. the student's teacher of record making sure that supplementary aids and services, and program modifications and supports are provided in accordance with the student's IEP;
 - c. the school's development of a disaster plan for the student that includes warning and evacuation procedures in accordance with the student's physical limitations;
 - d. the school making non-academic and extracurricular activities available to a student with a disability, specifically, participation in a pep rally and other after-school activities;
 - e. the school providing the student with access to a printer for the Alphasmart word processor;
 - f. the school providing the student with use of an elevator and a key to the elevator;
 - g. the school's development of a plan for when the student's aide(s) are absent from school;
 - h. the school ensuring the clinic restroom is unlocked at the designated times the student is to use the restroom facilities;
 - i. the school providing enough notice regarding field trips so that staff can make arrangements to ensure the student's participation in these activities;
 - j. the school providing a working automated door for the student's use; and
 - k. the school providing the student with a two-way radio system sufficient to meet the student's needs.
3. The director acknowledges that the "home" side of the school's football/track stadium and the auditorium portion of the school's Little Theater are not wheelchair accessible. Beginning January 1, 2001, Phase 3 of the School's renovation will begin, including recommendations to make the stadium seating accessible to individuals with disabilities.
4. At the CCC meeting on November 30, 2000, the following occurred:
 - a. The parents reviewed a copy of the evacuation plan for the student and recommended a change in the tornado portion of the plan.
 - b. A plan was developed to ensure the Student had an instructional assistant in the absence of the regularly assigned instructional assistant.
 - c. The school will ensure the Student has a key to the clinic restroom no later than December 6. All special education staff will be provided with a similar key.
 - d. The School advised that it had contracted with a local architectural firm to make the Little Theater accessible. An event planned for December will be moved to an accessible location if the Little Theater renovation is not complete.
 - e. The Student has been provided with a key to the elevator, and the CCC suggested that peer assistance with the elevator would be beneficial.
 - f. The parents will be provided with a list of available extracurricular activities.
5. The school also reports that:

- a. the "dead spots" in the use of the two-way radio have been identified and that the Student and staff have been advised of these areas;
 - b. the Student will receive assistance from peers and staff to utilize the accessible doors at the School's entrance; and
 - c. the Student's instructional assistant has been provided a key to the elevator.
6. The parents are not requesting compensatory educational services.

CONCLUSIONS:

1. Finding of Fact #2 reflects that the school was non-compliant with the identified sections of 511 IAC Article 7. Findings of Fact #4 and #5 indicate that some of these violations have subsequently been corrected. However, violations are found with respect to: 511 IAC 7-17-72, 511 IAC 7-21-5(b), 511 IAC 7-27-7(a), 511 IAC 7-27-7(b), and 511 IAC 7-27-9(b).
2. Although Finding of Fact #3 indicates the School's stadium seating and Little Theater are not accessible, the Division is without authority to substantiate a violation with respect to 28 CFR 35.150(a). However, Findings of Fact #3 and #4 reflect that the School has initiated corrective action to make the stadium and the Little Theater accessible to individuals with disabilities, and the Division will continue to monitor this corrective action.

The Department of Education, Division of Special Education, requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The MSD of Lawrence Township shall:

1. Submit to the Division no later than January 10, 2001, a listing of all students with disabilities who require special warning or evacuation procedures who attend the student's high school. Include with the list a disaster plan for each individual student with provisions for warning and evacuating each student based on the student's disability.
2. In-service all appropriate staff as to the requirements specified in 511 IAC 7-17-72, 511 IAC 7-21-5(b), 511 IAC 7-27-7(a), 511 IAC 7-27-7(b), and 511 IAC 7-27-9(b). Submit documentation to the Division that all in-service training has been completed no later than January 17, 2001. The documentation should include a list or an agenda of all issues discussed, any handouts that were distributed, and a list of attendees by name and title.
3. Provide documentation:
 1. that the student has access to a printer for the Alphasmart word processor;
 2. that the student and the instructional assistant have been provided with an elevator key;
 3. of the plan for when the student's aide(s) are absent from school;
 4. that the student and special education staff have been provided with a key to the clinic restroom;
 5. on the process to ensure that sufficient notice is provided to staff regarding field trips so that staff can make arrangements to ensure the student's participation in these activities;
 6. of assurance that a working and unlocked automated door is available for the student's use and the contingency plan for the student when the door is locked or otherwise not working;

7. of the plan for addressing the “dead spots” in which the student’s two-way radio does not work;
and
8. of assurance that the student’s election to participate in any of the non-academic and extracurricular activities will not be precluded due to lack of accessibility.

Submit this documentation to the Division no later than January 17, 2001.