

Indiana Department of Education

Division of Exceptional Learners

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1850.02
COMPLAINT INVESTIGATOR:	Steve Starbuck
DATE OF COMPLAINT:	December 31, 2001
DATE OF REPORT:	February 7, 2002
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	March 27, 2002

COMPLAINT ISSUES:

Whether the North Newton School Corporation and the Cooperative School Services violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically:

- a. failing to provide speech therapy during the 2000-2001 and 2001-2002 school years as indicated; and
- b. failing to implement the behavioral intervention plan (BIP) during the 2000-2001 school year.

511 IAC 7-25-6(i) by failing to provide the parent with adequate notice of the school's intent to conduct a reevaluation of the student, specifically:

- a. failing to verbally notify the parent and include the notice in the case conference committee (CCC) report the year prior to the reevaluation; and
- b. failing to provide written notice to the parent no less than 20 days prior to the projected date of the reevaluation.

511 IAC 7-25-3(k) by failing to evaluate a student before determining the student was no longer eligible as a student with a communication disorder.

511 IAC 7-27-2(c) and (d), and 511 IAC 7-17-3 by failing to provide the parent with adequate written notice of the CCC meeting convened on November 20, 2001.

511 IAC 7-27-2(a) by scheduling a CCC meeting at other than a date, time, and place mutually agreed upon by the parent.

During the course of the investigation, additional issues were identified, which are:

511 IAC 7-27-6(a)(5) by failing to include in the October 23, 2000, IEP the length of time that the student would receive speech therapy.

511 IAC 7-25-6(a) by failing to conduct a reevaluation of the student at least every 36 months.

511 IAC 7-27-2(b)(1) by failing to keep detailed records of telephone calls made or attempted and the results of the calls when arranging a CCC meeting.

511 IAC 7-18-2(a) by failing to provide the student with a free appropriate public education.

The Complaint Investigation Report was originally due on January 30, 2002; however, due to the need to obtain additional information from the school, an extension was approved by the director of the Division of Exceptional Learners on January 29, 2002, extending the deadline until February 8, 2002.

FINDINGS OF FACT:

1. The student is nine years old, attends the fourth grade, and has been determined eligible for special education under the disability categories of other health impairment and learning disabled.
2. IEPs dated January 31 and October 23, 2000, reflect that the student was to receive speech therapy for the 2000-2001 school year. The January 31st IEP specifies that the student will receive speech therapy for 20 to 40 minutes per week. The October 23rd IEP specifies that the student will receive speech therapy two times per week, but does not specify the length that the service will be provided. On February 6, 2001, a speech evaluation was conducted. Based on this evaluation, it was determined at a CCC meeting convened on April 13, 2001, that the student no longer qualified for special education as a student with a communication disorder. The parent signed the IEP on April 13, 2001, indicating his agreement with the plan and the services recommended.
3. The director states that prior to transferring from one elementary to another within the planning district, the student received speech therapy during the first two months of the 2000-2001 school year. The director was unable to provide documentation to verify that the student received speech therapy as stated. In addition, the director acknowledges that students at two elementary schools within the planning district failed to receive speech services during the 2000-2001 school year. The student in question attended one of these schools. Besides the student, twenty-five students did not receive speech services and eighteen students did not receive speech evaluations during the 2000-2001 school year at school A. Twenty-nine students failed to receive speech services at school B. The director could not locate any documents to verify the number of students at school B that should have been evaluated for speech services during the 2000-2001 school year. However, the director states at the beginning of the 2001-2002 school year screenings were conducted at school B to ensure that students needing a speech evaluation received one. The director reports all students identified as needing a speech evaluation have been evaluated. The planning district was unable to locate and employ a speech therapist to provide the services during the 2000-2001 school year. Documentation provided by the director reflects that attempts were made by the planning district to employ a speech therapist throughout the 2000-2001 school year. The director provided verification to document that a speech therapist was employed for both schools prior to the beginning of the 2001-2002 school year.
4. The parent contends that school personnel failed to implement the student's BIP for the 2000-2001 school year. An addendum to the January 31, 2000, IEP was developed on May 31, 2000. At the May 31st CCC meeting a BIP was written for the student. The parent signed the addendum indicating his agreement with the plan and the services recommended. On October 23, 2000, a new IEP was developed for the student. At this CCC meeting it was determined that the student's behavior continued to affect his ability to learn and that a BIP needed to be developed. There is a space to check on the form if the current plan is to be continued. This space has been left blank. Subsequent CCC Reports reflect that a BIP needed to be developed for the student; however, a BIP was not developed until December 21, 2001. The BIP developed on May 31, 2000, was in effect from May 31st until October 23, 2000. The teacher of service submitted a written statement as to the

behavior plan she implemented during the 2000-2001 school year. This statement includes three consequences to be utilized with the student that are not included in the student's BIP or on the annual behavioral goal sheet. The TOR and gym teacher cited examples of how they implemented the student's BIP and stated that they would not allow the student to participate in recess when he exhibited behavior problems in the class. Denying the student access to recess as a consequence for negative behavior is listed on the student's annual behavioral goal form. The TOR submitted the student's annual behavioral goal sheet as documentation as to the behavioral plan that she had been implementing during the 2000-2001 school year. The page listing the student's annual behavioral goal and objectives include the requirements listed in the BIP.

5. The student's initial speech evaluation was conducted on September 8, 1997. A reevaluation to determine the student's need for speech services was not completed until February 6, 2001. No CCC Report was submitted by the director to indicate that a CCC had determined that the student was not in need of a speech evaluation. To comply with the timeframe of conducting a reevaluation at least every 36 months, the student should have been reevaluated for speech services no later than September 8, 2000. The director reports that there is no documentation to support that the parent was verbally notified of the speech reevaluation conducted on February 6, 2001, or that the need for the reevaluation was noted in the CCC Report the year prior to the reevaluation. In addition, the director was unable to provide documentation to verify that the parent was provided with written notice no less than 20 days prior to the projected date of the reevaluation.
6. The parent contends that on November 20, 2001, he went to meet with the assistant director to discuss disciplinary issues regarding his son. The parent states he was under the impression that the meeting with the director was to be an informal conference; however, upon arriving at the school, the parent states he discovered that a CCC meeting had been scheduled. The parent states he received no written notice of the November 20th CCC meeting. The November 20th CCC Report and IEP reflect that the parent participated in the CCC meeting and signed the IEP indicating his agreement with the plan and the services recommended by the CCC. The director states that from November 14 through 19, 2001, telephone calls were made or attempted to the parent to discuss arranging a meeting to discuss the parent's concerns regarding his child. The director acknowledges that school personnel failed to keep a detailed record of telephone calls made or attempted to the parent concerning the November 20th CCC meeting, and that the parent was not provided with a written notice of the meeting.

CONCLUSIONS:

1. Findings of Fact #2 and #3 establish that:
 - a. the student is not eligible for speech services during the 2001-2002 school year;
 - b. the student and 72 other students at two elementary schools within the planning district were to receive speech services during the 2000-2001 school year; and
 - c. the school failed to provide these services for the student and the other 72 students during this period of time. Therefore, a violation of 511 IAC 7-27-7(a) is found.
2. Finding of Fact #4 indicates that school personnel were not implementing the BIP as written due to utilizing consequences for modifying the student's behavior that were not listed in the student's BIP. Therefore, a violation of 511 IAC 7-27-7(a) is found.
3. Finding of Fact #5 reflects that the school was unable to provide documentation to verify that:
 - a. the parent was verbally notified of the need to conduct a speech reevaluation;

- b. the need for the reevaluation was noted in the CCC Report the year prior to the reevaluation; and
- c. the parent was provided with written notice of the reevaluation no less than 20 days prior to the projected date of the reevaluation.

Therefore, a violation of 511 IAC 7-25-6(i) is found.

- 4. Finding of Fact #2 indicates that a speech evaluation was conducted on February 6, 2001, and that based on this evaluation, a CCC determined the student was no longer eligible for special education due to a communication disorder. Therefore, no violation of 511 IAC 7-25-3(k) is found.
- 5. Finding of Fact #6 reflects that school personnel failed to keep detailed records of telephone calls made or attempted to the parent to arrange a CCC meeting, and that school personnel failed to provide the parent with adequate written notice of the CCC meeting convened on November 20, 2001. Therefore, violations of 511 IAC 7-17-3 and 511 IAC 7-27-2(b)(1), (c), and (d) are found.
- 6. Although Finding of Fact #6 indicates that the parent attended the CCC meeting convened on November 20, 2001, the school was unable to provide any documentation to verify that the parent had notice or prior knowledge that a CCC was to meet. Therefore, a violation of 511 IAC 7-27-2(a) is found.
- 7. Finding of Fact #2 reflects that school personnel failed to specify in the October 23, 2000, IEP the length of time that the student would receive speech therapy. Therefore, a violation of 511 IAC 7-27-6(a)(5) is found.
- 8. Finding of Fact #4 indicates that on October 23, 2000, a CCC determined that the student needed a BIP due to the fact that the student's behavior continued to affect his ability to learn. However, a BIP was not developed for the student until December 21, 2001. Therefore, the student did not receive a free appropriate public education during this time period and a violation of 511 IAC 7-18-2(a) is found.

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 North Newton School Corporation and the Cooperative School Services shall:

- 1. Inservice all appropriate school personnel as to the requirements specified in 511 IAC 7-17-3, 511 IAC 7-25-6(i), 511 IAC 7-27-2(a), (b)(1), (c), and (d), 511 IAC 7-27-6(a)(5), and 511 IAC 7-27-7(a). Submit documentation to the Division that all inservice training has been completed no later than March 15, 2002. The documentation shall include a list or an agenda of all issues discussed, any handouts that were distributed, and a list of attendees by name and title.
- 2. Convene a CCC meeting to determine the student's need for compensatory services for failing to provide the student with speech therapy and a BIP in a timely manner. The CCC Report shall reflect that the issue of compensatory services was thoroughly addressed by the CCC. Submit to the Division no later than March 15, 2002, a copy of the CCC Report and any revised IEP.
- 3. Mail a letter to the parents of the 72 students in question advising them that their child did not receive speech services as indicated during the 2000-2001 school year. The letter should offer the

parents the option of convening a CCC meeting to discuss the need for compensatory services as result of the school's failure to provide speech services. Include in the letter that compensatory services will need to be addressed at the next regularly scheduled meeting if the parent does not wish to schedule a CCC meeting at this time. List in the letter a deadline no less than three weeks from the date the letter is mailed for the parent to respond to the option of convening a CCC meeting. The letter should specify who the parent should contact to schedule a CCC meeting and how this individual can be reached. The letter shall be mailed to all parents no later than February 22, 2002. Submit a copy of the letter to the Division no later than March 15, 2002.

4. Submit an assurance statement to the Division no later than March 15, 2002, that ensures IEPs for all students will be implemented as written, and that BIPs will be developed for students in a timely manner. The assurance statement shall be signed by the director.

DATE REPORT COMPLETED: February 7, 2002