

**COMPLAINT INVESTIGATION REPORT**

**COMPLAINT NUMBER:** CP-078-2021  
**COMPLAINT INVESTIGATOR:** Reva Weiss  
**DATE COMPLAINT FILED:** 1/15/2021

**COMPLAINT ISSUES:**

1. Did Eastern Howard School Corporation (the School) implement the Student's individualized education program (IEP) as written? Specifically, did the Student receive his special education and related service during remote learning? 511 IAC 7-42-8(b)
2. If the IEP was not able to be implemented as written during remote learning, did the School convene the case conference committee (CCC) to revise the IEP to address appropriate services during remote learning? 511 IAC 7-42-9(a)(2)(D)

**FINDINGS OF FACT:**

1. The Student has been determined eligible for special education and related services.
2. The Student's CCC met on February 19, 2020 for the purpose of an annual case review.
3. The Student's IEP developed at that time included as special education services that the Student would attend guided study in the resource room for additional instruction, guided practice, reinforcement of skills, assistance with work completion, and progress monitoring one time per day for 48 minutes. The Student's least restrictive environment (LRE) was in a general education classroom.
4. The Student's IEP also included as accommodations the following: additional breaks, preferential seating, use of a calculator, extra time, directions and content read aloud, and a multiplication table in mathematics. The IEP also noted that he works best in small groups. The Student's IEP specified as accommodations to assist the Student in the school setting the following: preferential seating near the front of the classroom, limiting or assisting the Student when copying from the board, reducing or modifying spelling and vocabulary lists, chunking assignments into parts, no more than 3 choices on multiple choice tests, a word bank for quizzes and tests, a copy of class notes and visuals, shortened math assignments, shorter requirements for essays, audio copies of novels for home use, and a scribe to assist with essay writings or the use of speech to text.
5. The Student's daily class schedule as of January of 2020 included the following general education courses: English, reading, physical education, social studies, math, and science. The Student also had guided study in the resource room.
6. On March 11, 2020, in anticipation of the upcoming change in instruction due to COVID-19 concerns, the Student's teacher of record (TOR) met with and emailed the Student's general education teachers explaining that she would be modifying packets for the Student's eLearning assignments and that he would work on the modified assignments instead of the work assigned by the general education teachers. The TOR would grade and report the Student's scores to

the general education teachers based on the modified assignments. She noted that this was new for the Student due to the circumstances.

7. Starting March 16, 2020, school was in session through eLearning on Monday through Friday for two weeks. During this first two-week period, eLearning assignments were posted through Canvas (a learning management system). Students could communicate with teachers via email, but were not scheduled to attend live-sessions for any courses. Attendance during this timeframe was kept based on work completion.
8. On March 19, 2020, Governor Holcomb issued an executive order closing and ceasing all in-person instruction at Indiana public and nonpublic schools until May 1, 2020 due to the COVID-19 pandemic.<sup>1</sup>
9. On April 2, 2020, Governor Holcomb issued an executive order requiring schools to provide instruction via remote learning for the remainder of the 2019-2020 school year.<sup>2</sup>
10. On April 13, 2020, the Student's TOR notified the Student's general education teachers that the Student would continue to have alternate assignments and that the Student's completion of progress monitoring activities with the Student's TOR would be counted towards his participation in the general education classes as well as in the guided study class.
11. An announcement was sent out by the school principal on April 17, 2020 providing families an update regarding the coming weeks of eLearning instruction for students at the middle school. The principal highlighted that there were 14 days remaining of eLearning, that students should participate in all virtual meetings if possible, and there is a plan for students who could not access online meetings or digital documentation. The principal stressed that students must demonstrate participation and work for both course credit and attendance purposes. The overall grade and participation would be either a pass or fail for the term in each course. The principal explained that virtual meetings would be conducted via Zoom and recorded for students. The meetings would then be posted in Canvas and Skyward (a school management software system). Assignments could be distributed to students through Canvas, Zoom, Skyward, or email. In addition, the principal noted for students with 504 plans or IEPs, their TORs would be communicating with the parents to review individual plans.
12. School resumed mid-April after spring break and school closure due to COVID-19 with eLearning days on Tuesdays, Wednesdays, and Thursdays. Specifically, eLearning days occurred: April 21, 2020; April 22, 2020; April 23, 2020; April 28, 2020; April 29, 2020; April 30, 2020; May 5, 2020; May 6, 2020; May 7, 2020; May 12, 2020; May 13, 2020; May 14, 2020; May 19, 2020; and May 20, 2020. Each class was scheduled for instruction one day per week with periods 1 and 2 meeting on Tuesdays; periods 3 and 4 meeting on Wednesdays; and periods 5, 6, and 7 meeting on Thursdays. During eLearning in April and May of 2020, guided study was available to the Student one day per week (Thursdays) for one hour via Zoom.
13. Throughout the spring of 2020, the Student's TOR frequently sent emails to the Student to check in, offer to help with assignments, and remind him to submit assignments online. A Google Doc was also created by the Student's guided study course teacher to assist the Student with tracking his work completion in his various classes. On April 20, 2020, the

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<sup>1</sup> [https://www.in.gov/gov/files/EO\\_20-05.pdf](https://www.in.gov/gov/files/EO_20-05.pdf)

<sup>2</sup> <https://www.in.gov/gov/files/Executive%20Order%2020-16%20Education.pdf>

Student and Student's parent were notified by the TOR that the Student was welcome to join the Zoom meetings for his general education classes, but that he was not required to do the work assigned in those classes. Instead, he was to complete the assignments provided directly by the TOR and that had a focus on his goals. The TOR provided log-in information and a tutorial video on IXL (an online learning platform designed to personalize learning) where the TOR would be assigning various activities by subject area. The TOR on several occasions offered additional Zoom sessions for the Student to review general education materials and to progress monitor, outside of the otherwise scheduled guided study period. The TOR also emailed the Student if he missed a period and reminding him to stay on top of the assignments she provided so that he did not fall behind.

14. The School did not convene the Student's case conference committee (CCC) to address the fact that the TOR decided the Student was not required to participate in the general education classes (excluding reading) with general education teachers or to complete the work for those classes. Instead, the TOR was modifying assignments and grading that work prior to reporting the Student's score back to the general education teachers. The Student's schedule also did not provide daily a guided study course. The School also did not come to an agreement with the parent to collaboratively develop a written document to amend or modify the Student's current IEP without convening the CCC.
15. School resumed in-person at the start of the 2020-2021 school year and remained in-person throughout first semester. The Student's class schedule for first semester included health, English, algebra, biology, study skills, physical education, and elective physical education-advanced physical conditioning (APC). The Student's second semester schedule included algebra, English, preparing for college and career, biology, study skills, physical education, and elective physical education – APC. The Student's new TOR was present in the Student's English class as a co-teacher, as well as in the Student's study skills class.
16. Study skills is the equivalent of guided study at the high school level.
17. During the first semester, the Student participated in eLearning as a result of being under quarantine on the following days: November 5, 2020; November 6, 2020; November 9, 2020; November 10, 2020; November 11, 2020; November 12, 2020; and November 13, 2020. The Student also participated in eLearning due to being under quarantine on December 17, 2020 and December 18, 2020. Both live Zoom lessons and uploaded recordings of the lessons were posted to Canvas during these eLearning days. The Student was provided with guided study in the resource room during the eLearning days where he received additional instruction, guided practice, reinforcement of skills, assistance with work completion, and progress monitoring.
18. The CCC next convened on February 9, 2021. The Student's IEP developed at the meeting explained that the School uses eLearning when making up canceled school days, planned closures, and extended illness days. In these instances, instruction would be provided through online/downloaded materials on the Student's iPad. Consultation with the special education teacher, as well as the general education teacher, would also be available on those days and appropriate accommodations would be made. A continuous learning plan was also included to address how the Student would receive instruction.

## CONCLUSIONS:

1. An individualized education program (IEP) must be implemented as it is written. 511 IAC 7-42-8(b). Findings of Facts (FFs) # 3 and #4 show that the IEP in effect during the last year required as a special education and related service guided study in the resource room for additional instruction, guided practice, reinforcement of skills, assistance with work completion, and progress monitoring one time per day for 48 minutes. The Student's LRE was in the general education classroom and the Student also had accommodations including some reduction or modification in spelling and vocabulary lists, chunking of assignments, fewer options on multiple choice tests, and shortened math assignments. FFs # 8 and #9 show that school buildings were closed as a result of the COVID-19 pandemic and the Governor's orders. FF # 5 shows the Student's general education classes prior to the school building closing. FFs # 7, # 11, and # 12 show changes in how the School provided instruction during eLearning for all students. FF # 6, FF # 10, and FF #12 show changes to the Student's instruction and services and a change to how he was to complete assignments provided by the TOR rather than the general education teachers due to the circumstances. FF # 13 demonstrates that the Student's TOR communicated with the Student routinely, as well as with the Student's parent, around the Student's classes and assignments, participation, work completion, and additional learning opportunities through Zoom sessions. However, FF # 14 shows that the School did not convene the CCC to address the change in services and change in the Student's assignments being provided entirely by the TOR, despite the inability to implement the IEP as written. FFs # 15, # 16, and # 17 show that when school resumed in the fall, the Student was provided with guided study once per day as written in the IEP. In addition, the Student participated in his general education classes and received assignments assigned as a part of that curriculum rather than different assignment from his TOR. During the eLearning days for the Student as a result of quarantine, he continued to participate in the study skills and his general education courses as written in the IEP through Zoom lessons or uploaded recordings of lessons. **Therefore, a violation of 511 IAC 7-42-8(b) is found during the spring of 2020, but not during the fall of 2020.**
2. A student's case conference committee (CCC) must meet periodically, but not less than annually, to revise the IEP, as appropriate, to address other matters. 511 IAC 7-42-9(a)(2)(D) FFs # 8 and # 9 show that from mid-March through the end of the 2019-2020 school year, in-person instruction could not be provided. Given the change in circumstances (lack of daily resource room, alternate assignments provided entirely by the TOR and only optional participation in the general education classes) (FF # 6, FF # 7, FF # 10, FF #11, and FF #12), the CCC should have met to revise the IEP, as appropriate, to address other matters, including the use of eLearning where the IEP could not be implemented as it was written. FF #14 demonstrates that the CCC did not meet and the School also did not come to an agreement with the parent to collaboratively develop a written document to amend or modify the Student's current IEP without convening the CCC. **Therefore, a violation of 511 IAC 7-42-9(a)(2)(D) is found.**

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

The findings and conclusions in this matter show that while the School made an effort to provide services to the Student during the spring of 2020, it did not implement the Student's IEP as written, nor did it convene the Student's CCC to review or revise the IEP. Therefore, compensatory education

services must be considered. The purpose of compensatory services is to place a student in the position that the student would be in had the school provided the appropriate services in the first place. *Reid v. Dist. of Columbia*, 43 IDELR 32 (D.C. Cir. 2005).

1. The School is ordered to convene the Student's CCC to determine whether compensatory services are required. If the CCC determines that compensatory services are required, the CCC shall further determine the compensatory services to be provided to the Student. The School shall report to the Complaint Investigator on the CCC decision **no later than April 1, 2021**.

In making these determinations, the CCC must consider:

- a) The actual amount of service hours missed and the level of specialized instruction that would have been provided, including whether the missed services were provided in a small group setting or on a one-on-one basis.
  - b) What is the student's capacity to receive compensatory education hours, considering the age of the student, the severity of the disability, the cognitive and/or attentional ability, the physical/mental stamina to receive additional instruction outside of the school day, and other mitigating factors.
  - c) Was there a negative impact on the student's progress, and if so, to what extent? Consider whether the student made progress on annual IEP goals and in the general education curriculum.
2. If the CCC is unable to agree on whether compensatory services are due, or the nature and extent of any compensatory services required, the Complaint Investigator will make that determination.

**DATE REPORT COMPLETED:** February 26, 2021