

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: 2028.03  
COMPLAINT INVESTIGATOR: Sally Cook  
DATE OF COMPLAINT: April 21, 2003  
DATE OF REPORT: May 20, 2003  
REQUEST FOR RECONSIDERATION: yes/no change  
DATE OF CLOSURE: July 8, 2003

**COMPLAINT ISSUES:**

Whether the School City of Mishawaka and the Mishawaka-Penn-Harris-Madison Joint 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 implement the Behavioral Intervention Plan; and
- b. failing to implement Instructional Modifications.

**FINDINGS OF FACT:**

1. The Student is fifteen years old and is eligible for special education and related services as a student with an emotional disability.
2. The Student's individualized education program (IEP) incorporates a Functional Behavioral Assessment (FBA) / Positive Behavioral Intervention Plan (BIP) that was adopted by the case conference committee (CCC) on February 7, 2003, reviewed on March 17, 2003, and amended on April 1, 2003. The Student's IEP also incorporates a list of Instructional Modifications (Accommodations), some of which duplicate or blend into strategies in the BIP. The Parent consented to the initial IEP and to the amendments.
3. This complaint investigation is focused around March 31, 2003, rather than the full IEP period since February 7, 2003, because the letter of complaint alleges connections between the failure to implement the Student's IEP and events that culminated in the Student's suspension on March 31, 2003. However, a manifestation determination cannot be conducted through the state complaint process, nor can this complaint investigation determine the appropriateness of a particular disciplinary action.
4. A BIP strategy is to encourage use of the "Guide," a calendar booklet provided by the School to all students for a planner and hall pass. The School offered the information that the Student did not bring the Guide to class, but was reminded frequently by paraprofessionals to bring the Guide. The School has provided no documentation regarding encouragement of the use the Guide. The IEP goals and objectives include an objective that the Student will use [the] daily planner on a regular basis. During the period from February 7, 2003, until April 21, 2003, the Student wrote nothing in the Guide regarding homework assignments or tests.
5. Another BIP strategy is to approach the Student in a firm positive manner. "Firm" and "positive" are subjective terms. What seems to one person to be an insistent negative manner may seem to

someone else to be a firm and positive manner. There were no adult witnesses to the teacher's words, tone of voice, demeanor, or body language, on March 31, 2003. The teacher's written record of the events of March 31, 2003, includes firm positive words that the teacher planned to say, but did not get a chance to say.

6. A third BIP strategy was to remind the Student frequently of classroom procedures. Although "classroom procedures" does not necessarily include reminders of upcoming tests, the School has accepted the Complainant's interpretation that this BIP strategy did include reminding the Student of the test scheduled for March 31, 2003. The Student's daily report for speech class period on March 27, 2003, confirms that the substitute teacher reminded the class, when the Student was present, that a test would be given on March 31, 2003.
7. The Student's BIP calls for encouraging staff to use flexibility in how they deal with the Student. Methods of encouragement included the in-service training on January 31, 2003, and communications with the teacher of record and the special education teacher with whom the Student established rapport. With respect to this strategy, the letter of complaint addresses additional points that are beyond the scope of a complaint investigation.
8. Another BIP strategy is to have scripts with rehearsed reactions for social situations available. It is undisputed that the School has not sent home documents that are written like the text of a play. As used in the context of teaching social skills, "script" does not mean a written document. The Student met with a special education teacher on a daily basis. During these meetings, they discussed appropriate words and behaviors to use in various circumstances in school. These scripts were rehearsed (i.e., practiced) with the paraprofessional in real classroom situations.
9. The BIP allows the Student double the time for assignments when absent. The Accommodations include providing more time to complete assignments. "Assignments" means homework assignments, papers and projects, and in-class assignments. The list of Accommodations distinguishes between "assignments" and "tests." The letter of complaint refers to a test, not an assignment. As to the speech test scheduled for March 31, 2003, no new material was presented during the half-period that the Student missed on March 27, 2003. Although the Student was absent on March 28, 2003, the speech class did not meet on that day, due to the block scheduling system.
10. The BIP problem behavior reducing strategy, if the Student became upset or anxious (but not dangerous), was to provide the Student with an alternate setting (Resource Room) with special education staff present where the Student can complete academic work. In addition, as of March 31, 2003, the BIP included the strategy to offer the Student voluntary time outs. On March 31, 2003, the Student became upset or anxious about a test. In order to implement the alternate setting/time out strategies, the student needed a hall pass or an escort. The paraprofessional was in the classroom next door, telephoning a special education teacher regarding the Student. The Student did not wait for the paraprofessional, used profanity, and went someplace other than the Resource Room. The School did not block the implementation of the alternate setting strategy.
11. The BIP contains the following statement: "Use of the PBIP in no way precludes the school's ability to use general disciplinary measures used by [the School] and as outlined in the [School's] student handbook." As of the date of the filing of the complaint, the Student had been suspended one time for three days during the 2002-2003 school year. The CCC notes dated February 7, 2003, expressly refer to consequences, including those in the student handbook. The Complainant now objects to this provision of the BIP because it is not individualized. However, the Complainant has not revoked consent. A CCC may adopt a BIP that is consistent with 511 IAC 7-29-1(d) with respect to the authority of a principal or principal's designee to suspend a student with a disability for limited period of

time. Students with disabilities are entitled to certain procedural safeguards that are not available to non-disabled students, but are not exempt from rules of conduct that apply to all students.

12. Providing frequent feedback is an Accommodation listed in the Student's IEP. Providing feedback refers to providing a suggestion, a comment, an opinion, or an informal evaluation regarding a student's school work, statements, or actions. "Feedback" does not encompass reminders of an upcoming test.
13. The list of Accommodations includes providing frequent opportunities for review. In speech classes, frequent opportunities for review are built into the course, when students listen to the teacher's feedback after other students' speeches. In addition to the opportunities for review provided to all students, the Student received additional opportunities for review when working with the paraprofessional.
14. The Tests section of the list of Accommodations includes allowing more time for completion of test items. This refers to allowing the Student more minutes to finish a test than nondisabled students are allowed, for the same test. On March 31, 2003, the Student did not start taking the test and, therefore, the amount of time allowed for completion of the test did not come into play.

#### **CONCLUSIONS:**

- 1.(a) Findings of Fact #2, #4, #5, #6, #7, #8, #9, #10, and #11 indicate that, while the School has not documented implementation of the strategy to encourage use of the Guide, other aspects of the BIP were implemented or were not applicable to the events that culminated in the Student's suspension. Therefore, a violation occurred with respect to encouragement of use of the Guide.
- 1.(b) Findings of Fact #9, #12, #13, and #14 indicate that, to the extent that the accommodations were applicable in the circumstances, the accommodations were provided as required. Therefore, no violation occurred.

**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:**

If the Student's services, placement, and Behavioral Intervention Plan continue without change, the School City of Mishawaka and the Mishawaka-Penn-Harris-Madison Joint Services shall document the implementation of the strategy to encourage the Student to use the MiHigh Guide, during the remainder of the 2002-2003 school year. This documentation may be incorporated into other reports. The creation of separate documentation is not required.

If encouragement of use of the MiHigh Guide is no longer a part of the Student's Behavioral Intervention Plan or if a Behavioral Intervention Plan is no longer a part of the Student's IEP, then the School City of Mishawaka and the Mishawaka-Penn-Harris-Madison Joint Services shall submit an assurance letter that appropriate documentation of the implementation of Behavioral Intervention Plans shall be created and maintained in the future.

Either a copy of the documentation or the assurance letter shall be submitted by June 16, 2003, to the Indiana Department of Education, Division of Exceptional Learners.