

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2037.03
COMPLAINT INVESTIGATOR: Connie Rahe
DATE OF COMPLAINT: May 9, 2003
DATE OF REPORT: June 18, 2003
REQUEST FOR RECONSIDERATION: yes/revised July 16, 2003
DATE OF CLOSURE: August 28, 2003

COMPLAINT ISSUES:

Whether the MSD Warren Township violated:

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

511 IAC 7-29-1(f) by failing to provide services to a student with a disability who has been suspended for more than ten cumulative instructional days in the current school year.

An extension of time until June 20, 2003, was granted on June 6, 2003, to allow the investigator sufficient time to review the information related to the issues involved.

FINDINGS OF FACT:

1. The Student is 13 years old, attends the local middle school (the School), and qualifies for special education and related services under the category of emotional disability (ED).
2. The Student's IEP, dated November 26, 2002, includes the following accommodations and supports: "access to school counselor, access to Resource teacher, in-school intervention and/or time out." However, the IEP does not identify the situations in which these accommodations and supports are to be utilized. The IEP also includes a BIP that targets two behaviors: "cooperation with authority and maintaining positive/appropriate relationships with peers." A continuation of notes at the bottom of the BIP states "avoiding responding to instigating comments or instigating inappropriate comments, use of profanity, shouting out, threats, or outbursts when authority intervenes." Two goals are identified for the target behaviors. Three strategies/interventions are listed for each of the goals. To address the target behavior of not cooperating with authority, the strategies/interventions include: "1. access to counselor; 2. communication w/ parents [and] 3. redirection about choices available during a frustrating situation." Interventions to allow the Student to maintain appropriate relationships with peers include access to the counselor and communication with parents, as well as "daily/hourly feedback about behavior." The BIP does not specify how the strategies/interventions for a particular behavior are to be used, specifically, whether any of the strategies are to be an ongoing activity to prevent the unacceptable behavior (i.e., seeing the counselor daily, being provided daily/hourly feedback) or if the strategies and/or interventions are to be implemented subsequent to the occurrence of unacceptable behavior. If the strategies are to be used subsequent to the occurrence of the unacceptable behavior, the BIP fails to identify whether the strategies are to be used concurrently or consecutively. The School reports that the Student had daily access to the counselor between 9:30 and 11:00 a.m. However, the

Complainant's expectation is that the Student has access to the counselor when the Student's behavior has or is about to get her into trouble. In addition, the BIP is not specific regarding "communication with parents" and whether this means that the Student is to be allowed to communicate with her parents when certain situations arise or if school personnel are to contact the parent. Neither the BIP nor the IEP precludes suspension as a consequence for the Student's misbehavior. Although the IEP included a letter from the clinical psychologist treating the Student indicating that the Student "be permitted and supported in taking medication as prescribed," there is nothing in the IEP or the BIP regarding the Student's medication regimen.

3. There are two *Middle School Referral Forms* for a single incident that occurred on March 12, 2003. One form identifies use of abusive language, defiance, and inappropriate conduct. The form indicates that the Dean had a conference with the student, contacted the student's father, and assigned the student one day of in-school "reassignment" and one day out-of-school suspension. The second referral form indicates use of abusive language, and reports part of the incident identified in the other referral. The second form states "Isolated in office on 3/12/03. Report to Mr. R's office on 3-13-03 AM." There is no indication that the Student was provided access to the counselor subsequent to the incident or that any attempts to redirect her behavior were made. On March 13, 2003, a *Middle School Referral Form* was completed indicating the Student engaged in "disruption/disorderly conduct." The Dean conferenced with the Student, and the Student was "isolated in counselor office [with] Ms. Austin." The *Referral Form* does not list any telephone contact with the parent, but the parent was provided with a *Notice of Student Suspension* dated March 13, 2003. The Student served a one-day out-of-school suspension for the behavior on March 14, 2003.
4. On May 1, 2003, a teacher heard the Student talking "very loudly" in the hallway and asked the Student to come back into the classroom. The Student complied, but subsequently engaged in an unacceptable verbal outburst. The teacher sent the Student to the Dean's office. The *Middle School Referral Form* indicates the Dean conducted a conference with the Student, spoke with the Student's father, and assigned the Student one day of out-of-school suspension. The form also indicates the teacher called the Student's mother. There are conflicting reports of the role played in this incident by a school security officer. The Complainant asserts that "the police officer . . . [was] summoned to speak with [the Student]" and that "[the Student] was taken into custody by the police, held and questioned for over an hour." The School reports that the school security officer was in the area near the Dean's office to assist with another student when the Student "raised her voice at the principal. . . [and] started to yell at other children." According to the School, the principal's attempts to redirect and calm the Student were unsuccessful, and the security officer asked the Student to move to a different room to allow her time to calm down. The school reports that the security officer subsequently took the Student to the counselor.
5. The Student was suspended from educational services for 17 days prior to parental consent for an initial evaluation on November 20, 2002. The Student was determined eligible for special education on November 26, 2002. After being determined eligible for special education services, the Student received 5 days of suspension on January 14, 2003, (3 days); March 14, 2003 (1 day); and May 1, 2003 (1 day, but allowed to make up assigned work).

CONCLUSIONS:

1. Finding of Fact #2 indicates the Student's IEP requires the Student to be provided certain behavioral accommodations and supports, but does not identify the situations in which these are to be provided. The BIP included with the IEP identifies strategies/interventions to be provided for non-cooperative behavior and inappropriate relationships with peers, but provides insufficient specificity about how

these interventions are to be used. The lack of specificity of these two components of the IEP results in ambiguity about the implementation of the accommodations, supports, and interventions. Findings of Fact #3 and #4 reflect that on two separate occasions the Student engaged in non-cooperative behavior that should have triggered the use of the strategies/interventions identified in the BIP, beginning with access to the school counselor. Finding of Fact #3 reflects that the Student was not provided with any redirection or access to the counselor subsequent to the incident on March 12, 2003, although the school administrator communicated with the parent. Finding of Fact #4 indicates that, although the Student was not provided immediate access to the counselor after the incident on March 13, 2003, the Student was permitted to see the counselor later the same day. There was no personal communication with the parent. Because the BIP was not implemented as written on these two occasions, a violation of 511 IAC 7-27-7(a) is found.

2. Finding of Fact #5 indicates that the School did not exceed the 10 days of suspension after November 20, 2002, when the Student was afforded the safeguards of IDEA and Article 7 upon referral for special education. Therefore, no violation of 511 IAC 7-29-1(f) is found for failing to provide services to a student with a disability who has been suspended for more than ten cumulative instructional days in a school year.

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 MSD Warren Township shall:

1. Convene the case conference committee to review and revise the Student's IEP, specifically the accommodations and supports section and the BIP, to clarify:
 - a. in what situations the behavioral accommodations and supports ("access to school counselor, access to Resource teacher, in-school intervention and/or time out") are to be used and how they are to be implemented; and
 - b. how the intervention strategies will be implemented (i.e. will all of the identified intervention strategies for a particular behavior be implemented, or will the first intervention strategy be implemented with the second intervention not being implemented unless the first strategy is unsuccessful.

The accommodations and supports and the BIP must be written in such a manner that both the parents and school personnel can clearly identify what accommodations or interventions will be provided in a given situation and the manner in which the accommodations or interventions will be provided. A copy of the CCC Report, revised IEP, and revised BIP are to be submitted to the Division no later than September 5, 2003.

2. Distribute a memorandum to all administrators and special education teachers, reminding them of the requirements under 511 IAC 7-27-7 to implement the student's IEP as written, including the requirement to implement the student's behavior intervention plan as written. An assurance statement shall be signed by the Director and Superintendent affirming that all administrators and special education teachers have read and understand the requirements of 511 IAC 7-27-7(a) for implementing a student's IEP and BIP as written. A copy of the memorandum and the signed assurance statement shall be forwarded to the Division by September 5, 2003.