

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: 2098.04  
COMPLAINT INVESTIGATOR: Joe Bear  
DATE OF COMPLAINT: February 24, 2004  
DATE OF REPORT: March 19, 2004  
REQUEST FOR RECONSIDERATION: no  
DATE OF CLOSURE: April 7, 2004

**COMPLAINT ISSUES:**

Whether North West Hendricks School Corporation and Boone-Clinton-Northwest Hendricks 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 conduct a functional behavioral assessment (FBA) during the 2002-2003 school year;
- b. failing to implement recommendations made by a behavior consultant that were not incorporated into the student's IEP dated October 1, 2003; and
- c. failing to inform a substitute teacher of the health requirements and medical information contained in the student's IEP.

**FINDINGS OF FACT:**

1. The Student is four years old and attends an elementary school in a neighboring school corporation. The Student has been determined eligible for special education as a student with autism spectrum disorder.
2. The Student's IEP of September 17, 2002, states that "a functional behavioral assessment will be conducted once [the Student] can be observed in the school setting." The teacher (who was also the TOR), had many opportunities to observe the student, and to revisit the issue of an FBA with the case conference committee (CCC). To address concerns raised by the Complainant, however, the School developed a Behavior Action Plan, dated February 19, 2004. The copy received by the Complainant was clearly marked as a draft copy, and was not discussed in the CCC. It was not preceded by an FBA.
3. An education consultant observed the Student in the classroom on September 12, 2003, for the purpose of providing recommendations to the CCC. The consultant's written report was not received by the School until after the CCC meeting of September 19. The teacher reported on the consultant's recommendations at the CCC meeting. The consultant's specific recommendations were not specified in the Student's IEP, but were used with other information to guide the development of the IEP.
4. Due to the existence of several allergies, the Student requires a clean classroom environment. The teacher has been instructed to keep the classroom neat and free of food, partly due to the risk of cross-contamination, and there is a note regarding medical and dietary restrictions in the front of the Student's IEP. The Student's home therapist provided assistance in the classroom on January 30,

2004, when a substitute teacher was present, and was told that no medical or dietary information, or other information relating to the Student's special needs, was left for the substitute. Documentation has not been provided to show whether the substitute had the information on January 30, or if it was available at that time.

#### **CONCLUSIONS:**

1. Findings of Fact #2, #3, and #4 indicate that:
  - a. an FBA was not conducted according to the signed IEP of September 17, 2002;
  - b. the consultant's recommendations, while not explicitly stated, contributed to the development of the IEP; and
  - c. documentation has not been provided to show that the substitute teacher on January 30, 2004, had the necessary medical and dietary information relating to the Student.

Therefore, a violation of 7-27-7(a) has been found relating to Findings of Fact #2 and #4, as indicated by Conclusions 1a and 1c above.

**The Department of Education, Division of Exceptional Learners, requires corrective action based on the Findings of Fact and Conclusions listed above.**

#### **CORRECTIVE ACTION:**

North West Hendricks School Corporation and Boone-Clinton-Northwest Hendricks Joint Services shall:

1. convene a CCC meeting to determine whether the Student's behavior continues to be problematic, necessitating the development of a Behavior Intervention Plan (BIP). (Behavior Action Plan dated February 19, 2004, does not fulfill the requirements of a BIP.) If a BIP is deemed necessary, an FBA must first be completed.

**Convene the CCC meeting by April 15, 2004, and send a letter to the Division on the determination made by April 16.**

2. ensure that procedures to be followed when there is a substitute teacher, especially procedures limiting the risks of cross-contamination, are agreed to by the School and the Complainant and included in the Student's IEP.

**Send a letter to the Division, signed by a representative of the School and the Complainant, verifying that agreement has been reached on this issue, and that a copy of the procedures to be followed when there is a substitute has been included in the IEP. Send by April 16 (can be same letter as that referenced in Corrective Action #1, as long as each issue is fully addressed).**