

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2253.05
COMPLAINT INVESTIGATOR: Joe Bear
DATE OF COMPLAINT: May 4, 2005
DATE OF REPORT: June 3, 2005
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: December 13, 2005

COMPLAINT ISSUES:

Whether Scott County School District #2 and Madison Area Educational Special Services Unit violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to provide the required amount of homebound instruction during an expulsion.

During the course of the investigation, the following additional issue was identified:

511 IAC 7-29-2(c) by failing, when a student with a disability has been expelled, to do the following:

- 1) provide services to enable the student to progress appropriately in the general curriculum;
- 2) provide services to enable the student to advance appropriately toward achieving the goals set out in the student's individualized education program; and
- 3) comply with the requirements of section 5 of this rule (concerning the behavioral intervention plan and functional behavioral assessment).

FINDINGS OF FACT:

1. The Student has been identified as having an emotional disability and has been determined eligible for special education and related services. The Student is following the general curriculum.
2. On February 4, 2005, the Student was suspended after the Student was found to have two weapons on school grounds. The suspension was to begin on February 7, 2005, and to last until February 22, 2005 (11 instructional days). This was the Student's first suspension of the school year, although the case conference committee (CCC) had previously addressed behavior problems.
3. The Student's expulsion was sought by the School, and an expulsion examiner was assigned by the Superintendent on February 4, 2005. The Assistant Principal recommended that the expulsion examiner continue the suspension ordered on February 4, 2005, until the time when a decision regarding expulsion was made.
4. A CCC meeting was held on February 15, 2005, for the purpose of determining whether the Student's actions were a manifestation of, or caused by, his disability. The CCC determined that the Student's actions were not a manifestation of his disability. The Student's functional behavioral assessment (FBA) and behavioral intervention plan (BIP), which were developed by the CCC on January 5, 2005, were reviewed at this meeting. The Complainant was provided a notice of parent rights, and signed that she agreed with the decision of the CCC.

5. The Student's IEP dated February 15, 2005, states that the Student will receive services at an alternate location two times per week for a total of three hours, beginning immediately. The location was determined to be the public library. This placement was not intended to be an interim alternative educational placement, which can be used when a student's violation involves weapons or drugs; the placement was through the end of the school year.
6. Also on February 15, 2005, a new expulsion examiner continued the School's suspension of February 4, 2005, until a decision was made concerning whether the Student would be expelled. No deadline was given for this decision.
7. The Student was expelled on February 23, 2005. However, the Student's last day in school was February 4, 2005, due to the previous suspension.
8. The School informed the Complainant of the Student's expulsion after providing notice to the Complainant of her right to appear at an expulsion meeting. Two response sheets were sent to the Complainant, on February 7 (requiring a response by February 14) and on February 15 (requiring a response by February 22). The expulsion notice of February 23 states that because the Complainant failed to request an expulsion meeting, the Complainant's rights to contest and appeal the proposed action were forfeited.
9. The documentation presented by the School shows that services at the alternate location began on March 1, 2005 (approximately two weeks after the February 15 CCC meeting), and continued through April 4, 2005. The teacher usually met with the Student for two or three times per week.
10. A letter from the teacher (dated April 8, 2005) states that on March 14, 2005, the Student did not attend instruction as scheduled. The letter states that on March 16, 2005, the Student was told that the teacher would resign as his instructor the next time he failed to attend a scheduled session without first providing notice; however, the Student was absent again on April 7, 2005. The letter refers to three other absences for which telephone messages had been left with the School. The letter was signed by the teacher and the Student, but was not shared with the Complainant or the School. (The School received it after contacting the teacher for documentation to assist with the complaint investigation.)
11. The Student's three absences for which telephone messages had been left with the School were on March 4, March 28, and April 1, 2005. The Student was sick and unable to attend instruction on March 4 and April 1, and was absent due to a funeral on March 28. The Complainant called in for the Student when he was unable to attend. The School recorded two times when the Student had unexcused absences, those referred to in the teacher's letter (March 14 and April 7, 2005).
12. The teacher providing instruction at the alternate location had previously mentioned to the Director that she was considering resigning if the Student's attendance did not improve. However, the teacher gave no official notice to the Director or the School after instructing the Student for the final time.
13. The teacher did not provide instruction to the Student after April 4, 2005. The teacher met the Student on April 8, 2005, and told him that she would not be teaching him anymore. Both the teacher and the Student signed the previously mentioned letter during the meeting.
14. The Complainant contends that the Student's sessions with the teacher were usually very quick. The documentation does not indicate the duration of each session.

15. The School has not documented that the services provided to the Student during the expulsion were conducted to enable the Student to progress appropriately in the general curriculum, to achieve the goals set out in his IEP, and to comply with the requirements concerning an FBA and BIP.
16. On April 19, 2005, the Complainant wrote to the Director regarding the teacher's resignation, and stated that she had not heard anything regarding a replacement for the teacher. The Director replied to the Complainant on April 28, 2005, and said that a new teacher had been assigned.
17. A new teacher began providing services to the Student on April 29, 2005 (just over three weeks from the last instruction provided by the previous teacher). The Complainant stated that the services lasted for two sessions, but the School has not documented the extent or duration of the services from the second teacher. As of June 3, 2005, the School had not received a report or grading information from the second teacher.
18. The school year ended on May 27, 2005. The School has not developed or shared with the Complainant a plan for compensatory instruction.

CONCLUSIONS:

1. Findings of Fact #2 through #18 indicate that the School failed to provide services to the Student for over five weeks (two weeks from the CCC meeting on February 15 until the start of services on March 1, and for three weeks after the first teacher resigned). The School did not document the extent or duration of services provided by the second teacher. Furthermore, the School did not document that it provided three hours of instructional services per week. No plan for compensatory instruction has been developed. Therefore, a violation of 511 IAC 7-27-7(a) is found.
2. Findings of Fact #14, #15, and #17 indicate that the School failed to document whether the services provided during the expulsion met state requirements. Therefore, a violation of 511 IAC 7-29-2(c) is found.

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

CORRECTIVE ACTION:

1. Convene the Student's case conference committee by August 19, 2005, to determine the amount and type of compensatory services that will be provided to the Student to make up for missed periods of instruction and interruption in service during the Student's expulsion.

Documentation of compliance (consisting of the CCC report) shall be submitted to the Division by September 9, 2005.

2. Provide a two-week record of compensatory instruction to the Student (or a portion of the compensatory instruction called for during the CCC meeting that will be held by August 19, 2005), including notes regarding progress toward goals set out in the Student's IEP.

Documentation of compliance (consisting of the two-week record and notes) shall be submitted to the Division by September 9, 2005.