

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: 2264.06  
COMPLAINT INVESTIGATOR: Joe Bear  
DATE OF COMPLAINT: July 5, 2005  
DATE OF REPORT: August 4, 2005  
REQUEST FOR RECONSIDERATION: n/a  
DATE OF CLOSURE: December 14, 2005

**COMPLAINT ISSUES:**

Whether the Charter School of the Dunes and the Virtual Special Education Cooperative violated:

511 IAC 7-29-1(f) for failing to do the following when a student has been suspended for more than 10 cumulative instructional days in the same school year:

- 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 (IEP); and
- 3) comply with the requirements of section 5 of this rule (concerning the student's functional behavioral assessment and behavioral intervention plan).

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

511 IAC 7-27-4(a)(5) for failing to convene the case conference committee within 10 instructional days of the enrollment date of a student who has been receiving special education in another state or another district within the state.

**FINDINGS OF FACT:**

1. The Student, 13 years old, has been identified as having an emotional disability and has been determined eligible for special education and related services.
2. The Student enrolled at the School on September 27, 2004. The Student had previously been receiving special education services at a private school in the area.
3. In October 2004, the Student was suspended from school three separate times for misbehavior: on October 6, for two (2) days; on October 18, for three (3) days; and on October 21, for three (3) days. These suspensions total eight (8) days. The Student was sent home early on each of these three days as well.
4. The Student's general education teacher completed a Problem Behavior Questionnaire and Profile on November 23, 2004, and the resource room teacher completed a Behavior Observation Form on November 30, 2004. These instruments were used to generate a better understanding of problem behaviors, as well as actions that contribute to or lessen the likelihood of the problem behaviors occurring. The School has referred to these instruments collectively as the Student's Functional Behavioral Assessment (FBA). The Complainant was not involved in the development of the instruments or guiding the degree to which they were aligned with the resulting Behavior Improvement Plan.

5. The Student's case conference committee (CCC) convened for the first time on November 30, 2004, in response to the Student's increasing days of suspension and need for behavior intervention. The CCC meeting was continued on December 6, 2004, at which time a new IEP was developed. A draft Behavior Improvement Plan, based on data collected through the above instruments, was discussed at the meeting. The Complainant agreed to the plan.
6. The Behavior Improvement Plan includes the Student's present level of performance, targeted behaviors, a plan to encourage appropriate behaviors, accommodations and considerations for success, and a crisis plan. Incorporated into the IEP, it describes how the Student's environment will be altered, identifies positive behavioral intervention strategies, and specifies which skills will be taught in an effort to change a specific pattern of behavior. The Behavior Improvement Plan says that if the Student "inappropriately touches another student or staff member," the Student is to be "sent home for the remainder of the day (and the entire following day if it occurs after 2:00)." Following revision at a CCC meeting on March 14, 2005, it also calls for the Student to be sent home when the Student curses at a teacher or staff member.
7. The School acknowledged that the Student was sent home early on January 11 and April 12, 2005. The Behavior Log for January 11, 2005, does not include inappropriate touching; however, the Behavior Log for April 12, 2005, includes profanity toward the teacher (which, by that date, met the Behavior Improvement Plan's requirement for sending the Student home).
8. The Student was suspended on February 28 and April 22, 2005, for two days each time (total of four days). Including the eight days of suspension during the first semester, the Student had been suspended for a total of 12 days. The Student also was sent home early on February 28 and April 22, 2005. The February 28, 2005, Behavior Log states that the Student used profanity (the Behavior Improvement Plan did not yet provide for sending the Student home for this), and the April 22, 2005, Behavior Log indicates that the Student hit another student.
9. In total, the Student was sent home early on seven (7) days: October 6, October 18, and October 21, 2004; January 11, February 28, April 12, and April 22, 2005. Two of these short-term removals of the Student were pursuant to the IEP in effect at the time (April 12 and April 22, 2005).
10. Another CCC meeting was held on June 20, 2005. The Complainant was told at this meeting that the Student had been sent home early six (6) times during the school year. The CCC did not discuss the provision of services to the Student following the tenth day of suspension, which would enable the Student to progress appropriately in the general curriculum, to advance appropriately toward achieving the goals set out in the Student's IEP, and to comply with the requirements of 511 IAC 7-29-5 (concerning FBA and behavioral intervention plan procedures).

## **CONCLUSIONS:**

1. Finding of Fact #4 indicates that the CCC did not implement a systematic collection and analysis of data required of an FBA, in accordance with 511 IAC 7-17-38 and 511 IAC 7-29-5. After developing a plan for assessing a student's functional behavior, the CCC must convene again within 10 instructional days to develop a Behavioral Intervention Plan (BIP) and provide for its implementation. Because the Student's Behavior Improvement Plan was based on data that did not meet FBA requirements, it did not meet the strict requirements of a BIP and was incorrectly incorporated into the IEP. However, since the Complainant did not raise the FBA or the Behavior Improvement Plan as an issue, and agreed to the latter on December 6, 2004, the suspensions that were implemented in accordance with the Behavior Improvement Plan will be considered valid.

Findings of Fact #5 and #6 indicate that the Behavior Improvement Plan (developed on December 6, 2004) allowed for the Student to be sent home when the Student inappropriately touched another student or staff member, and, as of March 14, 2005, used profanity toward another student or a teacher. The Student was sent home a total of seven times during the school year (even though the School had discussed six partial days at the CCC meeting on June 20, 2005). Five (5) of these short-term removals were not implemented pursuant to the IEP in effect at the time, and therefore should have been considered suspensions: October 6, October 18, and October 21, 2004, and January 11 and February 28, 2005 (Findings of Fact #3, #7, #8, and #9).

The Student was suspended for a total of 12 days (Findings of Fact #3 and #8). However, the School should have counted 17 total days of suspension, adding the 12 days of suspension to the five "send-home" days that did not meet the requirements of the IEP. Finding of Fact #10 indicates that a plan was not developed to provide services (meeting general curriculum needs, IEP goals, and IEP requirements) after the Student's tenth day of suspension. Therefore, a violation of 511 IAC 7-29-1(f) is found.

2. Findings of Fact #2 and #4 indicate that the Student enrolled at the School in September 2004 and had a CCC meeting for the first time in November 2004. Therefore, a violation of 511 IAC 7-27-4(a)(5) 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:**

The Charter School of the Dunes and the Virtual Special Education Cooperative shall:

1. Convene the CCC for the following purposes: (1) to develop a new Functional Behavioral Assessment, to which the parent has contributed; (2) to develop a Behavioral Intervention Plan that is based on data from the FBA and properly incorporated into the Student's IEP; (3) to determine the compensatory services necessary to ensure that the Student progresses appropriately in the general curriculum, advances appropriately toward achieving IEP goals set out in the IEP, and receives instruction in accordance with the FBA and BIP; and (4) to develop a new IEP for the Student. The CCC shall determine whether the continuation of the short-term removal option in the Student's BIP is an appropriate behavior intervention strategy, and shall include discussion of the matter in the CCC notes.

Documentation of compliance (consisting of a revised IEP, including CCC notes, a new FBA, BIP, and any other relevant meeting notes) shall be submitted to the Division by September 30, 2005.

2. Provide inservice training to teachers and CCC coordinators at the School to introduce or clarify the following requirements: (1) to align the FBA, BIP, and IEP, and to involve the whole CCC in the development of each; (2) to provide services to a student with a disability after the tenth day of suspension to enable the student to progress appropriately in the general curriculum, to advance appropriately toward achieving the goals set out in the student's IEP, and to comply with the requirements of 511 IAC 7-29-5 (concerning FBA and behavioral intervention plan procedures); (3) to count the suspension of a student for part of a day as a full day of suspension, unless it is implemented pursuant to the IEP; and (4) to convene a CCC within 10 days for a student who moves in from another state or another district within the state. The inservice training shall include a caution to teachers and CCC coordinators regarding overuse of the short-term removal option, even when it is

implemented pursuant to the IEP, because it can too easily be used as a way to avoid suspending the Student and providing the aforementioned educational services.

Documentation of compliance (consisting of a training agenda, materials, and a list of participants) shall be submitted to the Division by September 30, 2005.