

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2265.06
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: July 19, 2005
DATE OF REPORT: September 1, 2005
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: January 6, 2006

COMPLAINT ISSUES:

Whether the School City of East Chicago violated:

511 IAC 7-29-8(a) and (b) by failing to provide the protections under Article 7 for a student not yet eligible for special education who has engaged in behavior that violated school rules.

511 IAC 7-30-3(n)(3) by failing to allow a parent, or parent representative, involved in a due process hearing to inspect and review a requested educational record or to receive copies of the record from the public agency.¹

An extension of time until September 2, 2005 was granted on August 18, 2005 to allow the investigator sufficient time to review the information related to the issues involved.

FINDINGS OF FACT:

1. The Student is a 14 year-old general education student and has not completed the seventh grade at the local junior high school (the "School"). At present, a referral for an educational evaluation has not been initiated.
2. During the 2004-2005 school year, the Student was suspended eight times for a total of 14 days of out-of-school suspension.
3. On April 22, 2005, after serving two days of out-of-school suspension for a violation of school rules on April 8, 2005, the School expelled the Student from school until January 2006.
4. During the 2004-2005 school year the School's certified social worker sent a memorandum to the Principal. The memorandum states in relevant part, "I have been made aware that this young lady [the Student] has chronic and severe behavioral and emotional outbursts that not only negatively impact her education, but also the education of other students. It is also my understanding that her grades are poor. I have observed her in the hallways and have noted her extreme negative behavior." The memorandum is not dated.

¹ Although the notification letter originally included 511 IAC 7-23-1(c) and (f), the issue has been changed to better reflect the facts herein.

5. The Student has exhibited poor grades. One 7th grade report card for the period ending on January 26, 2004 indicates five courses in which the Student received an F, two D grades, and one C. Another 7th grade report card for the period ending February 1, 2005 indicates one course in which the Student received an F, three D grades, and three C grades. The Student also failed to pass the mathematics portion of the statewide assessment for 7th grade after having passed both sections in 6th grade.
6. The Complainant alleges that the Parent sent her 18 year-old daughter (the Student's sister) to the School to retrieve a copy of the Student's educational record on her behalf some time during the "...later part of May 2005." This was in response to the Student's expulsion hearing, not an Article 7 due process hearing. The Parent acknowledges that this request was not made in writing nor did the Parent communicate in writing to the School her intention to obtain a copy of the educational record before sending her daughter to retrieve it. The Parent did not receive the Student's educational record and the School has no record of a request to review or obtain the Student's educational record.

CONCLUSIONS:

1. Findings of Fact #1 through #5 indicate that the School knew or should have known that the Student may be in need of special education and related services. The Student has not been referred for an initial educational evaluation. Therefore, a violation of 511 IAC 7-29-8(a) and (b) is found.
2. Finding of Fact #6 indicates that the Parent did not make a written request to have an eligible representative review or obtain the Student's educational record. In addition, the Student was not a party to an Article 7 due process hearing. Finding of Fact #1 indicates that a referral to evaluate the Student for special education has not been initiated. Therefore, a violation of 511 IAC 7-30-1(n)(3) is not found.

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 School City of East Chicago shall:

Immediately refer the Student for an expedited initial educational evaluation once parental consent is obtained. If the School is unable to secure parental consent mediation or a due process hearing may be pursued in an effort to resolve the issue (see 511 IAC 7-25-1). The School shall then submit to the Division documentation of efforts to obtain written consent. If written parental consent for an educational evaluation is obtained, then the evaluation shall be expedited and case conference convened to determine whether the Student is eligible for special education and related services. If the Student is determined eligible, the case conference must also conduct a manifestation determination to determine whether the Student's behavior is a manifestation of the Student's disability (see 511 IAC 7-29-6). If so, the Student must come back to school and the Student's

individualized education program (IEP) implemented immediately upon return. If the Student is found eligible, but the Student's behavior is found to not be a manifestation of the Student's disability, then the Student shall remain expelled but provided educational services such that the Student may progress towards achieving the goals in the IEP during the period of expulsion. If the Student is not found eligible for special education services, then the School should treat the Student as any other similarly situated general education student. A copy of the Case Conference Report or documentation regarding the School's compliance with the corrective action shall be sent to the Division no later than September 30, 2005.