

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2286.06
COMPLAINT INVESTIGATOR: Joe Bear
DATE OF COMPLAINT: October 17, 2005
DATE OF REPORT: November 30, 2005
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: January 12, 2006

COMPLAINT ISSUES:

Whether the New Albany-Floyd County Consolidated School Corporation 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 a tutor in math;

511 IAC 7-29-5(b) by failing to convene a case conference committee (CCC) meeting within ten (10) instructional days of the completion of a functional behavioral assessment (FBA) to develop a behavioral intervention plan and provide for its implementation; and

511 IAC 7-29-1 by failing to document the Student's removal from school as a suspension, and by not providing services when the Student was suspended beyond 10 days.

During the investigation the following additional issue was identified:

511 IAC 7-27-2(a) by failing to convene a CCC meeting at a mutually agreed time and place.¹

On November 15, 2005, the Director of the Division of Exceptional Learners granted an extension of time until November 30, 2005, due to the complexity of the issues.

FINDINGS OF FACT:

1. The Student, 16 years old, has been identified as having a learning disability and has been determined eligible for special education and related services.
2. The Student moved to the area from another state, and was found eligible for special education before coming to Indiana. The Student enrolled at the School on September 15, 2005. On September 16, 2005, the Complainant and the School scheduled the first CCC meeting on September 23, 2005.
3. The Complainant alleges that she received a telephone call from the Principal on September 21, 2005, in which the Principal said that the Student was being sent home "because he wouldn't listen," and that the Student could not return to school until after the CCC meeting on September 23, 2005. The School acknowledges that it called the Complainant regarding the Student's behavior, but claims that it and the Complainant agreed that the Student should stay home until after the CCC meeting.
4. When the CCC convened on September 23, 2005, a new IEP was developed for the Student. The IEP calls for the Student to receive assistance in math from a peer tutor or instructional assistant

every other day in the Instructional Resource Period (IRP) for 30 minutes. The Student is to practice his multiplication tables with flash cards and other methods during this time. The IEP lists exceptions to this as assemblies and club meetings during IRP.

5. The CCC decided on September 23, 2005, that an FBA and a Behavior Support Plan would be developed for the Student. The Complainant signed consent for testing and observation of the Student to assist in conducting the FBA.
6. The Student received tutoring during IRP on two occasions before the filing of the complaint on October 17, 2005: October 5 and 7, 2005.
7. A peer tutor's note from October 5, 2005, says that she was asked by the IRP teacher (Student's TOR) to help the Student with a math worksheet. The Student "eased through it without question," and even did some work that was not required. The peer tutor does not mention any instruction she offered, and the log does not include the amount of time the peer tutor spent with the Student. On October 7, 2005, the TOR assisted the Student on math homework from another class during IRP. They worked on conversion factors, but the TOR did not record the amount of time she spent with the Student.
8. On September 27, 2005, the Student was suspended from school for five (5) days due to leaving the classroom without permission, failing to comply with the teacher's directives, and responding inappropriately to a second teacher who tried to direct him back to class. The suspension was to begin that day (September 27), and the Student was to return to class on October 4, 2005. The Complainant alleges that she received a hand-written note regarding the suspension, but did not receive any documentation of the reasons for the suspension.
9. The Notice of Student Suspension says that a CCC meeting will be held on October 3, 2005 at 1:00 p.m., and is signed by the Assistant Principal, who determined the time of the meeting without consulting with the Complainant. On October 3, 2005, the Complainant was unable to attend the scheduled CCC meeting due to her work schedule.
10. An FBA was conducted for the Student on September 29, 2005. It was conducted by the TOR, the Counselor, and the Student's teachers. The FBA included Motivational Assessment Scales that were filled out by the Student's teachers on September 27, 2005, as well as teachers' observations and those contained in the IEP. The FBA includes the Student's strengths and weaknesses, behaviors that have caused him to be at risk for disciplinary interventions, ways in which behaviors impede the Student's learning and the learning of others, and statements regarding a particular behavior that most impedes the Student's learning. The Complainant reported that she never received a copy of the FBA, and the School does not have documentation that the FBA was sent to her.
11. On October 4, 2005, a home-school liaison went to the Complainant's home to deliver a notice regarding a CCC meeting that was scheduled by the School for October 6, 2005. The purpose of the meeting was to discuss the FBA and develop a Behavior Support Plan for the Student. The Complainant was unable to attend on October 6 and reported this to the School.
12. The Assistant Principal called the Complainant on October 5, 2005, in an effort to set up a CCC meeting. The School alleges that the Complainant hung up on the Assistant Principal. The School also alleges that the Assistant Principal received a similar response from the Complainant when she called again on October 10, 2005.

13. Without the participation of the parent, the School developed a Behavior Support Plan for the Student on October 5, 2005. The team members listed on the plan are the TOR, the Assistant Principal, the Counselor, the Assistant Director of Student Support Services, and the Student. The Assistant Principal said that the plan was left undated because the Complainant had not yet signed the plan to indicate her approval.
14. The School sent a copy of the Behavior Support Plan to the Student's home with the Student on October 5, 2005.
15. On October 10, 2005 (Monday), the Student began a suspension from school for five (5) days for approaching a staff person in a threatening manner after being sent to the office, and for refusing to stay seated when asked. Although the notice says that the Student was to return on October 17, 2005, it also says that a CCC meeting must be held prior to the Student's return to school.
16. The School left a message with the Complainant on October 12, 2005, asking whether it would be possible for her to meet with the CCC on October 13. The Complainant returned the telephone message on October 12, 2005, to say that she could not attend a CCC meeting on the next day due to illness. She could not attend the following day, either, due to a doctor's appointment. The Complainant and the School agreed to schedule the CCC meeting on October 18, 2005. The Student remained on suspension during this time.
17. On October 18, 2005, the CCC reconvened to review the Student's special education program and Behavior Support Plan. The CCC discussed ways in which the School could provide support due to behavior problems, and decided that the School would work to identify a student who could assist the Student in finding his classes (since the CCC believed the Student got into trouble when he could not find his classes).
18. The Complainant became upset at the CCC meeting on October 18, 2005, and left before the meeting was finished. No agreement was reached regarding the Behavior Support Plan.
19. On October 19, 2005, the Student returned to school following the suspension that began on October 10, 2005. The Student was supposed to have been suspended for five (5) days, but ended up being out of school for seven (7) days, due to the timing of the CCC meeting. October 17 and 18, 2005, were counted as unexcused absences, even though the Complainant had been told not to bring the Student back to school until after the CCC meeting.
20. In summary, the Student had the following absences: September 21 through 23, September 27 through October 3 (first suspension), October 4 (unexcused absence), and October 10 through 18, 2005 (second suspension).

CONCLUSIONS:

1. Finding of Fact #20 indicates that the Student was suspended from September 27 through October 3, 2005, and from October 10 through 17, 2005, which is why he did not attend IRP on these days. However, Findings of Fact #4, #6, and #7 indicate that the School has not documented that it provided tutoring in math to the Student in accordance with his IEP on October 5 and 7, 2005. Finding of Fact #4 indicates the kind and amount of tutoring required by the IEP. The Student is to receive 30 minutes of tutoring in math from a peer tutor or instructional assistant during IRP, in which he practices his multiplication tables. Finding of Fact #6 indicates that the School did not document the amount and type of instruction that was provided to the Student on October 5, as well as the amount

of time that was spent with the Student on October 7. Therefore, a violation of 511 IAC 7-27-7(a) is found.

2. Findings of Fact #5 and #10 through #17 indicate that the School failed to convene a CCC meeting within ten (10) instructional days of the completion of an FBA to develop a BIP and provide for its implementation. Additionally, Finding of Fact #12 indicates that the School developed the BIP unilaterally, outside of the CCC. Therefore, a violation of 511 IAC 7-29-5(b) is found.
3. Finding of Fact #3 indicates that there is a dispute regarding the terms of the Student's absence from September 21 through 23, 2005. A school cannot agree to allow a student to stay at home unless it is a short-term removal pursuant to a student's IEP. Additionally, Finding of Fact #20 indicates that the Student was suspended for 12 days in the aggregate. Therefore, a violation of 511 IAC 7-29-1 is found.
4. Findings of Fact #9 and #11 indicate that the School did not consult with the Complainant before establishing a date and time for the CCC meeting. CCC meetings are to occur at mutually agreed upon dates, times, and places. Therefore, a violation of 511 IAC 7-27-2(a) 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:

New Albany-Floyd County Consolidated School Corporation shall:

1. Convene the Student's CCC to determine compensatory services for tutoring that was not provided to the Student when the Student was in school during October 2005. The CCC will also determine compensatory services for the Student being out of school due to suspensions two (2) days over 10 days. Provide a copy of the CCC report and the plan for compensatory services to the Division by January 13, 2006.
2. At the CCC meeting, develop a behavioral intervention plan (BIP) with the participation of all CCC members. Provide a copy of the agreed-upon IEP to the Division, with the BIP included, by January 13, 2006.
3. Provide a letter of assurance to the Division regarding the School's intention to schedule CCC meetings at times that are agreeable to the parent. Parental participation by telephone conference call by also be utilized to ensure parental participation. Provide the letter of assurance to the Division by January 13, 2006.