

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2308.06
COMPLAINT INVESTIGATOR: Joe Bear
DATE OF COMPLAINT: February 8, 2006
DATE OF REPORT: March 13, 2006
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: June 2, 2006

COMPLAINT ISSUES:

Whether the School Town of Highland and Northwest Indiana Special Education Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the Student's individualized education program (IEP); ¹

511 IAC 7-22-2(a) by failing to provide written notice to the parent a reasonable time before the public agency proposes:

- 1) to initiate or change the identification, evaluation, or special education placement of the student or the provision of a free appropriate public education to the student;
- 2) refuses to initiate or change the identification, evaluation, or special education placement of the student or the provision of a free appropriate public education to the student;

511 IAC 7-23-1(d) by failing to permit the parent, or parent's representative, to inspect and review any educational record of the parent's children from birth to eighteen (18) years of age that are collected, maintained, or used by the public agency;

511 IAC 7-25-7 by failing to conduct an additional evaluation of the student upon request of the parent; and²

511 IAC 7-22-1(d) by failing to give the parents a copy of the procedural safeguards.

During the course of the investigation, the following issue was added:

511 IAC 7-27-4(a)(3) by failing to convene a case conference committee (CCC) meeting upon the request of a teacher, parent, or administrator.

FINDINGS OF FACT:

1. The Student, 16 years old, has been identified as having an emotional disability and has been determined eligible for special education and related services.
2. On October 10, 2005, the Student's CCC developed a new IEP that calls for the Student to receive assistance in the resource room for one hour per day, and for 40-79 percent of his coursework to be in

¹ The issue has been changed from 511 IAC 7-25-1 to 511 IAC 7-27-7 to better reflect the facts.

² This issue has been adjusted to better reflect the facts herein.

general education. The CCC developed a new behavioral intervention plan (BIP), to address the Student's behavior. The BIP calls for school personnel to determine a place for the Student to cool down, to have the Student use an "escape pass" to see the TOR or the counselor, and to redirect the Student when he becomes angry. The BIP includes a crisis contingency plan, which allows the Student to call the Complainant to remove him from school when he is having trouble.

3. The Complainant signed the IEP on October 10, 2005. The Complainant initialed the IEP to indicate that he had received a copy of the Notice of Student and Parent Rights (procedural safeguards).
4. On January 9, 2006, the Student refused to bring a colored attendance card to class. The School uses the cards to determine how much time a student will have to make up missed assignments. When the Student found the TOR in the hall and asked her what he should do, the TOR said that the Student should call the Complainant to pick him up if he was not going to follow the rules. The counselor called the Complainant, who agreed to pick up the Student. When the Complainant arrived, he requested a CCC meeting and said that he would keep the Student at home until the meeting could be held.
5. The School acknowledged that the Complainant requested a CCC meeting. When the Complainant had not heard from the School about the requested CCC meeting one week later, he told the School he needed a meeting "right away." A meeting was scheduled for January 23, 2006. The Student, who had not been suspended, was at home and receiving no educational services during this time.
6. On January 23, 2006, the CCC discussed alternative services for the Student. Due to the Student's behavior toward staff and other students, and the possibility that he could present a threat to himself and others, the CCC considered homebound services or a therapeutic day program. The Complainant said that he was not prepared to make a decision, and that he would call the District Supervisor to let her know what he had decided.
7. On February 3, 2006, the Complainant came to the School to view the Student's educational record. The Complainant viewed the file, but stated that it only contained CCC meeting reports, and that it had no additional information about specific behaviors of the Student. The computers were down that day, so some information, such as attendance and grading information, could not be obtained. This information was later given to the Complainant at the February 6 CCC meeting.
8. On February 6, 2006, a CCC meeting was held at the request of the Complainant. The Complainant wanted the Student to return to school, but the CCC offered homebound instruction or the therapeutic day program. At the CCC, the School offered four (4) hours of homebound instruction per week and allowed the Student to make up work from the first three weeks of January 2006. The Complainant stated that he discussed the need for a reevaluation of the Student with the CCC.
9. The Complainant came to school the next day, February 7, 2006, and wrote on the CCC Report that he was signing for services under protest and wanted the homebound instruction to be reevaluated in six weeks or less and another CCC meeting to be held by May 31, 2006. The Complainant wrote on the CCC Report that he had not received the notice of procedural safeguards.
10. The School Psychologist called the Complainant for clarification on what kind of evaluation he wanted on February 9, 2006, and received signed parental consent for testing on February 14, 2006. Behavior rating scales were sent to teachers at the same time for their input, and the School Psychologist met with the Student on February 23, 2006.

11. Homebound services began for the Student on February 14, 2006. The Student is currently receiving instruction on Tuesdays and Thursdays, for a total of four (4) hours per week. One hour is devoted to each of the core subjects of English, mathematics, science, and social studies.

CONCLUSIONS:

1. Findings of Fact #5 and #11 indicate that the Student did not receive any services between January 10 and February 14. Moreover, Findings of Fact #9 and #11 indicate that after the Complainant agreed and signed for services on February 7, 2006, the School allowed another week to pass before the Student was provided with homebound instruction. Therefore, a violation of 511 IAC 7-27-7(a) is found.
2. Findings of Fact #6 and #8 indicate that the School made a proposal to change the Student's placement either to homebound or a therapeutic day program. Finding of Fact #9 indicates that, although the Complainant disagreed with the School's offer, he gave permission for the School to provide homebound services to the Student. Therefore, no violation of 511 IAC 7-22-2(a) is found.
3. Finding of Fact #7 indicates that the School allowed the Complainant to inspect and review the educational records of the Student on February 3, 2006. Therefore, a violation of 7-23-1(d) is not found.
4. Finding of Fact #8 indicates that the Complainant requested an evaluation on February 6, 2006. Finding of Fact #10 indicates that the School obtained consent for the evaluation on February 14 and that the evaluation is currently underway. Therefore, a violation of 511 IAC 7-25-7 is not found.
5. Finding of Fact #9 indicates that the Complainant claims that he did not receive the Notice of Procedural Safeguards when he gave permission for the homebound placement. A review of the CCC notes from the January 23 CCC meeting (when the placement was first proposed) does not indicate that the School gave the Complainant another copy of the Notice of Procedural Safeguards. Therefore, a violation of 511 IAC 7-22-1(d) is found.
6. Finding of Fact #4 indicates that the Complainant asked the School for a case conference meeting. Finding of Fact #5 indicates that, although the School acknowledged the Complainant asked for a CCC meeting, the School did not respond to the request until the Complainant asked again. Therefore, a violation of 511 IAC 7-27-4(a)(3) 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 School Town of Highland and Northwest Indiana Special Education Cooperative shall:

1. Convene the CCC to determine the amount of compensatory services necessary to make up for the amount of time the Student received no services and to determine what level and type of service will meet the Student's specific needs and will allow the Student to make progress in the curriculum. Documentation of the CCC notes, including a plan to address compensatory services and whatever other services are necessary to assist the Student in progressing in the curriculum, shall be provided to the Division by April 17, 2006.

2. Provide an assurance statement that the School will give a copy of the Notice of Procedural Safeguards at each of the points in time required by 511 IAC 7-22-1(d). A copy of the assurance statement shall be provided to the Division by April 17, 2006.
3. Provide an assurance statement that the School will schedule a CCC meeting upon the request of the parent as provided in 511 IAC 7-27-4(a)(3). A copy of the assurance statement shall be provided to the Division by April 17, 2006.