Indiana Department of Education Division of Exceptional Learners

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	CP-163-2007
COMPLAINT INVESTIGATOR:	Kylee Bassett
DATE OF COMPLAINT:	December 21, 2006
DATE OF REPORT:	February 2, 2007
REQUEST FOR RECONSIDERATION:	na
DATE OF CLOSURE:	April 25, 2007

COMPLAINT ISSUES:

Whether the Lebanon Community School Corporation and the Boone-Clinton-North West Hendricks Joint Services violated:

511 IAC 7-29-1(c) by failing to count the suspension of the Student for part of the day as a day of suspension.

511 IAC 7-29-1(f) by failing to do the following when a student with a disability has been suspended for more than ten (10) cumulative instructional days in the same school year:
- a) provide services to enable the Student to progress appropriately in the general curriculum; and
- b) provide services to enable the Student to advance appropriately toward achieving the goals set out in the Student's individualized education program (IEP);
- c) comply with the requirements of 511 IAC 7-29-5.[1]

511 IAC 7-29-5(a) by failing to convene a case conference committee (CCC) meeting to review the Student's existing behavioral intervention plan (BIP) and its implementation before but not later than ten (10) business days after suspending the Student for more than ten (10) cumulative instructional days in a school year.[2]

511 IAC 7-27-3(a) by failing to ensure the attendance of CCC participants at the November 3, 2006 meeting, specifically:
- a) a qualified public agency representative; and
- b) at least one of the Student's general education teachers.

511 IAC 7-27-2(c) by failing to give the Student's parent(s) adequate notice of the CCC meeting, early enough to ensure that one (1) or both parents have the opportunity to attend, specifically November 13, 2006 and December 12, 2006.[3]

511 IAC 7-27-2(d)(2) by failing to provide the Student's parents with adequate notice of the purpose of the CCC meeting, specifically November 13, 2006 and December 12, 2006.[4]

---

[1] The issue was changed to better reflect the standard.
[2] The original issue regarding 511 IAC 7-29-5 stated in the Notification Letter dated December 27, 2006 was clarified pursuant a memorandum from the Division dated January 3, 2007.
[3] The issue was changed to better reflect the facts.
[4] The issue was changed to better reflect the facts.

511 IAC 7-23-1(p) by disclosing personally identifiable information about the Student to an individual other than the parent, eligible student or authorized public agency official, without written and dated consent of the parent or eligible student.

511 IAC 7-27-5(c) by failing to provide a parent with a copy of the written report, specifically the written reports of the CCC dates of November 3, 2006 and November 13, 2006.[5]

An extension of time until February 2, 2007 was granted on January 17, 2007. The extension was requested by the School to allow for sufficient time to gather the proper documentation due to the School's winter break.

FINDINGS OF FACT:

1. The Student, 8 years old, is eligible for special education and related services as a student with emotional disability (primary) and other health impairment (secondary).

2. There is no provision in the Student's IEP or BIP for him to be sent home from School early due to behavior.

3. The Student was suspended on the following dates: August 29, 2006, September 20, 2006, September 21, 2006, September 22, 2006, September 28, 2006, September 29, 2006, October 11, 2006, November 6, 2006, November 7, 2006, and November 8, 2006.

4. According to the School's discipline information from the Student's information report, the Student was sent home early on the following dates: August 21, 2006, September 6, 2006, September 19, 2006, September 27, 2006, and November 3, 2006[6]. According to the Complainant's notes[7], the Student's father was required to pick up the Student on an additional date of October 10, 2006.

5. On November 5, 2006 (a Sunday), the Principal's phone log showed an attempt to contact the parents to inform them about the November 6, 7, and 8, 2006 suspension dates. The Principal's phone log on November 6, 2006 stated that the Principal spoke with the Student's father and informed him about the 3-day suspension (November 6, 7, 8, and 2006). On November 9, 2006, the Principal's phone log documented that he spoke with the Student's mother and a manifestation determination case conference was set for November 13, 2006.

6. On November 3, 2006, a CCC meeting was called by the Student's mother in order to get clarification to some of her questions and how the CCC intended to move forward with the Student's "treatment plan." Written at the bottom of the Case Conference and IEP Forms – Form 202 (which includes information regarding Purpose, Introduction of Participants, Teacher Input, Student Vision, Parent Vision, and Conference Notes) it is stated "see conference notes on 2nd copy of form 202." The second copy of form 202 contained type-written conference notes. The CCC notes reflected that the "flow chart"[8] was of concern for the Student's mother because she felt it was "a plan to move the Student out of full day public education." The "flow chart" was not in the Student's March 31, 2006 BIP. The Complainant alleged that that the parents were not provided with an accurate copy of the case conference notes for the November 3, 2006 CCC meeting, because the computer, where the notes

[5] Upon investigation, an additional issue was added pursuant a memorandum from the Division dated January 3, 2007.
[6] According to an e-mail from the Teacher of Record on November 12, 2006, it was reported that on November 3, 2006 the Student's mother was called and had to return to School to pick up the Student.
[7] The Complainant's log of dates the Student was sent home early was documented by the father's work pay stubs.
[8] The "flow chart" was a proposal made by the School in an effort to handle the Student's behavior. The "flow chart" consisted of the following headers: Standard Week → Evaluation → Removal Week → Evaluation → Partial Week → Evaluation → Alternative.

were being typed, shut down after 30 minutes into the CCC meeting. The Complainant alleged that the notes were typed from memory and some of the information was left out. The School did not provide any documentation regarding this allegation.

7. The Complainant alleged that a qualified public agency representative and a general education teacher were not in attendance at the November 3, 2006 CCC meeting. The participants reflected in the IEP from November 3, 2006 included: the conference chair (the Principal), Teacher of Record, Counselor, Cummins Counselor, Parent, Educational Consultant, and Advocate. In the response letter from the Director of Special Education, it was stated that the Principal acted as the public agency representative and was able to commit resources. In addition, the letter stated that a general education teacher was not at the conference, because the Student had had several suspensions and, therefore, was not participating in general education due to his behavioral concerns.

8. The IEP dated May 11, 2006 stated that the Student participated in the general education curriculum. Under the question in the IEP which stated, "[h]ow does the disability affect involvement in the Gen. Ed. Curriculum . . .," the question was answered that the Student "is able to participate in the General Education Curriculum, but will need to be in a separate class in order to maintain positive behavior." The IEP goals documented that the special education teacher and the general education teacher are responsible persons. Furthermore, the IEP goals showed the location was in "general education" and "special class."

9. On November 13, 2006, a CCC meeting was convened for purpose of a manifestation determination and to review the IEP. The CCC notes on November 13, 2006 reflected that an updated FBA had not been completed, but the data about his behavior was reviewed, as well as the BIP. In the November 13, 2006 IEP, it stated that a previous FBA was in the file and an updated FBA was in process. The School did not provide any evidence that the BIP was changed since March 31, 2006. It was found that the Student's behavior was a manifestation of his disability. As evidenced by the IEP's list of participants, both of the Student's parents and the parent's advocate attended the CCC meeting.

10. The Complainant alleged that the parents were not provided with an accurate copy of the CCC notes for the November 3, and 13, 2006 CCC meetings, because the computer, where the CCC notes were being typed, shut down after 30 minutes into the CCC meetings. Therefore, the Complainant alleged that the notes were typed from memory afterwards and some of the information was left out. The School acknowledged the computer problem, but stated that at both the November 3, and November 13, 2006 CCC meetings notes were taken by hand in replace of the computer malfunction, in order for the CCC meeting to proceed. The Complainant submitted the advocate's handwritten notes of the CCC meetings, and acknowledged that the School has handwritten the CCC notes, instead of using the computer, at the more recent CCC meetings.

11. On November 15, 2006 an incident occurred that caused the Student to be suspended for additional days. Voluntary Statements by the School's Counselor and the Teacher of Record were made to the Boone County Sheriff's Department. In a letter dated November 15, 2006 from the School Counselor to the parents, it was stated that the Student would be suspended for three days and would be welcomed back to school on November 20, 2006. The School's attendance information documented that the Student received OSS on the following dates: November 16, 2006, November 17, 2006, November 20, 2006, November 21, 2006, November 22, 2006, November 27, 2006, November 28, 2006, November 29, 2006, and November 30, 2006.

12. On December 4, 2006 an incident occurred in which caused the Student to be suspended for additional days. The Boone's County Sheriff's Department was again involved. A letter, dated December 4, 2006 from the Principal to the Student's parents, stated that the Student was going to be suspended for 10

days, starting December 4, 2006 through December 15, 2006. The School's attendance report recorded the following days as OSS: December 5, 2006, December 6, 2006, December 7, 2006, December 8, 2006, December 11, 2006, and December 12, 2006. The following days on the attendance report were recorded as homebound: December 13, 2006, December 14, 2006, December 15, 2006, December 18, 2006, December 19, 2006, December 20, 2006, December 21, 2006, and December 22, 2006.

13. The Complainant alleged that the Student was not provided services until November 29, 2006 and the services ceased on December 1, 2006. According to the phone log dated November 17, 2006, the Principal called the Student's parent to let them know that his suspension has been extended through Thanksgiving break. Further, the Principal noted in the phone log that he told the parents that a packet of homework materials would be available on November 20, 2006. In a side note, the Principal noted that the homework packet was given to the Student' father on November 29, 2006. According to the phone log dated November 28, 2006, the Principal called to set up a CCC meeting for December 4, 2006.

14. In the letter of response, the Director of Special Education indicated that the December 4, 2006 CCC meeting was cancelled because of a behavior incident which resulted in the Student's mother taking him to the hospital. The CCC meeting was rescheduled for December 12, 2006.

15. The December 12, 2006 CCC meeting was a manifestation determination. The CCC notes reflected that the December 4, 2006 incident was discussed and it was noted that the "FBA and BIP had been reviewed at the last case conference and asked if anyone had any questions about those." No further discussion, review, or revision of the BIP was documented. The CCC notes reflected that alternative educational settings were discussed for the Student. However, the notes indicated that further investigation in the direction of an alternative educational setting would be put on hold until the independent educational evaluation was completed. The CCC notes reflected that there was agreement that the Student would be placed on homebound instruction, which included one hour per day Monday through Thursday with the Teacher of Record at the School. The Student's father signed the form for change of placement on January 12, 2007. It was determined that the Student's behavior was a manifestation of his disability. Both of the Student's parents and the parent's advocate attended the CCC meeting.

16. The Complainant alleged that the School failed to provide the Student's parents with adequate notice of the purpose of the CCC meeting. The School provided a CCC notice dated November 13, 2006 for a manifestation determination conference scheduled for November 13, 2006. The School did not provide documentation of a parent reply to the notice of conference. With respect to the November 13, 2006 CCC meeting, the Principal's phone log reflected that a phone call to the Student's mother was made on November 9, 2006 for the purpose of setting up the November 13, 2006 manifestation determination conference. The School provided a CCC notice dated November 30, 2006 for the proposed December 4, 2006 manifestation determination meeting. The parent signed and dated the reply to notice of conference form on December 1, 2006. However, the December 4, 2006 CCC did not occur due to a behavioral incident involving the Student. A manifestation determination meeting was held on December 12, 2006. The CCC notice for the December 4, 2006 meeting was crossed out and replaced with December 12, 2006. A note at the top of the CCC notice stated that the notice was handed to the Student's mother when she came to the conference.

17. The Complainant alleged that personally identifiable information was disclosed to a private facility. On November 22, 2006, the Assistant Director of Special Education contacted the Student's mother and stated that if the parent called the private facility and mentioned the assistant director's name that private facility staff member would know what the parent was calling for. On November 27, 2006, the

Complainant stated that she set up an appointment with the private facility for a tour and a private facility staff member knew the name of her Student's doctor. The parent stated she did not sign any releases which authorized the School to disclose the information.

CONCLUSIONS:

1. Finding of Fact #2 indicates that neither the BIP nor the IEP provided for the Student to be sent home if he had behavioral concerns. Findings of Fact #4 and #5 indicates that between the dates of August 21, 2006 and November 3, 2006 the Student was sent home from School due to his behavior on seven separate occasions. A unilateral, temporary removal of a student from a student's current placement, not made pursuant to the Student's IEP, is a suspension. Suspension for part of a day constitutes a day of suspension. Therefore, the Student was suspended for seven days and a violation of 511 IAC 7-29-1(c) is found.

2. Findings of Fact #3 and #4 show that the Student was suspended in excess of 10 days. The 10th cumulative day of suspension occurred on September 29, 2006. Finding of Fact #4 indicates that the Student was picked up on October 10, 2006, thus resulting in the Student's 11th day of suspension. When a student is suspended for more than 10 cumulative instructional days, the School is required to provide services to enable the Student to advance in the general education curriculum; advance toward achieving goals in the Student's IEP; and comply with the requirements of 511 IAC 7-29-5 concerning the procedures for a FBA and BIP. There is no evidence the School provided educational services when the Student was suspended in excess of 10 instructional days, nor that it complied with the requirements of 511 IAC 7-29-5. Findings of Fact #12 and #13 indicate that the Student was suspended for a total of 15 additional days and there is no evidence that the School provided education services during the suspensions. Finding of Fact # 9 shows that a manifestation determination did not occur until November 13, 2006. Therefore, a violation of 511 IAC 7-29-1(f) is found.

3. Conclusion #2 determines that the 11th day of suspension occurred on October 10, 2006. Finding of Fact #9 indicates that the manifestation determination did not occur until November 13, 2006. From October 10, 2006 (the 11th cumulative day of suspension), the School had 10 business days to convene a case conference committee meeting to review the Student's existing BIP and its implementation and to modify and its implementation as necessary to address the behavior. There is no evidence the School convened a CCC within 10 business days to review the Student's BIP. Therefore, a violation of 511 IAC 7-29-5(a) is found.

4. Finding of Fact #7 indicates that a qualified public agency representative did attend the November 3, 2006 CCC meeting. The Principal meets the requirements as a representative of the public agency pursuant to 511 IAC 7-27-3(a)(1). Finding of Fact #8 indicates the School acknowledged that a general education teacher was not in attendance at the November 3, 2006 CCC meting. Finding of Fact #8 indicates that the IEP goals state the "location" as being in "general education" and "special class," in addition, both the general education and special education teacher are designated as persons responsible for implementing the goals. According to 511 IAC 7-27-3(a)(4), the presence of a general education teacher is required where the student is or may be participating in the general education environment. Therefore, a violation of 511 IAC 7-27-3(a)(1) is not found, but a violation of 511 IAC 7-27-3(a)(4) is found.

5. Findings of Fact # 9 and #15 indicate that both of the Student's parents and the parent's advocate attended the CCC meetings on November 13, 2006 and December 12, 2006. Further, there is no indication that the parent disagreed with the scheduled CCC meetings times. Therefore, a violation of 511 IAC 7-27-2(c) is not found.

6. Finding of Fact #16 indicates that the School failed to provide the Student's parents with adequate notice regarding the purpose of the November 13, 2006 and December 12, 2006 CCC meetings. Therefore, a violation of 511 IAC 7-27-2(d)(2) is found.

7. Finding of Fact #17 indicates alleged disclosure from the School regarding the Student's doctor's name fails to meet the definition of personally identifiable information. Personally identifiable information means information by which it is possible to identify a student with reasonable certainty pursuant to 511 IAC 7-17-58. Therefore, a violation of 511 IAC 7-23-1(p) is not found.

8. Finding of Fact #10 indicates that the School acknowledged the IEP computer program problem, but stated that the participants in the CCC meeting took handwritten notes to accommodate for the computer malfunction. There is no requirement within Article 7 that requires a particular mode for the written report. In addition, participants in the CCC meeting have the ability to attach to the CCC report written opinion, which could include CCC notes of their own. Therefore, a violation of 7-27-5(c) 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 Lebanon Community School Corporation and the Boone-Clinton-North West Hendricks Joint Services shall:

Convene a CCC meeting **no later than February 23, 2006** to determine what compensatory services are necessary to make up for the time the Student did not receive instruction when suspended for more than 10 cumulative instructional days in the same school year. Additionally, time may be needed for the Student to complete make-up work that may have been missed due to suspensions of lack of instruction. The CCC shall review the Student's current educational placement, the Student's IEP, and current or new educational evaluation data in accordance with 511 7-29-6(g). Provide a compensatory service plan as part of the CCC report and send the report and the IEP to the Division **no later than March 16, 2006.**

With the CCC meeting **no later than February 23, 2006**, develop a new FBA and review the Student's BIP to reflect the elements required in 511 IAC 7-17-8 and 511 IAC 7-29-5. Provide a copy of the FBA and BIP to the Division **no later than March 16, 2006.**

Send a written memorandum to all relevant school administrators and special education personnel regarding compliance with 511 IAC 7-27-3(a)(4), specifically with respect to ensuring that a general education teacher is in attendance if the student is or may be participating in the general education environment. A copy of the memorandum and a list of all who receive it shall be submitted to the Division **no later than March 16, 2006.**

Send a written memorandum to all relevant school administrators and special education personnel regarding compliance with 511 IAC 7-29-1(c), specifically clarifying that a removal for part of the day constitutes a day of suspension. A copy of the memorandum and a list of all who receive it shall be submitted to the Division **no later than March 16, 2006.**

Provide an assurance statement that the School will provide adequate notice of CCC meeting to parents with respect to 511 IAC 7-27-2(d). The School shall submit an assurance statement **no later than March 16, 2006.**