

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: CP-169-2007
COMPLAINT INVESTIGATOR: Susan Reimlinger
DATE OF COMPLAINT: January 8, 2007
DATE OF REPORT: February 6, 2007
REQUEST FOR RECONSIDERATION: yes/revised-March 8, 2007
DATE OF CLOSURE: April 9, 2007

COMPLAINT ISSUES:

Whether the Delphi Community School Corporation and the Logansport Area Joint Special Services Cooperative violated:

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

511 IAC 7-25-4(b) by failing to convene a case conference within sixty (60) instructional days of the date the written parental consent for an initial evaluation is received by certified personnel.

511 IAC 7-27-4(c) by failing to utilize the case conference committee to develop, review, or revise an individualized education program (IEP), specifically providing written goal(s) at the case conference.

511 IAC 7-27-5(c) by failing to provide the parents with a copy of the student's written report at the case conference committee meeting or no later than ten (10) business days after the meeting.

511 IAC 7-27-7(a) by failing to implement the IEP as written, specifically related services and supports for personnel via in-service regarding student's disability.

511 IAC 7-29-1, IC 20-33-8-14, and IC 20-33-8-18 by failing to implement the requirements for suspension.

511 IAC 7-29-5 by failing to assess the student's functional behavior and develop a behavioral intervention plan.

FINDINGS OF FACT:

1. The student (Student) is an elementary age child, and is eligible for special education and related services as a student with an other health impairment. The Student participates in a public elementary school building in a general education classroom 36% of the day and in a separate resource classroom 64% of the school day.
2. The complainants indicated that the request for an initial evaluation of the Student was written on February 20, 2006, and the Parents signed permission for testing on March 8, 2006. The initial case conference was held on September 20, 2006. The Special Education Director (Director) acknowledged that the sixty (60) day timeline was not met.
3. The complainants alleged that goals were not discussed at the December 12, 2006, case conference. They did not sign agreement with the IEP at that conference. A new goal was added on the unsigned IEP

received by the Parents via mail on December 20, 2006. Documentation provided by the Director indicated in "Part X. Notes" of the December 12, 2006, IEP that the school staff believed academic goals for the area of reading should be looked at and that the Student needed additional support in the areas of vocabulary, comprehension, and decoding. The notes indicated that the Parents did not share the school's concern about reading.

4. The complainants alleged that the November 22, 2006, IEP was not given to the Parents at the case conference nor received by them via mail until December 20, 2006. Documentation in "Part X. Notes" of the December 12, 2006, IEP indicated that the school staff acknowledged the failure in relation to the November 22, 2006, IEP. However, the notes also indicated that a copy of the November 22, 2006, IEP was provided at the conference of December 12, 2006.
5. The complainants alleged that the in-service training regarding the Student's disability that the Parents believe the November 22, 2006, case conference committee agreed upon has not taken place. The November 22, 2006, IEP does not document that any specific in-service training will be conducted.
6. The complainants alleged that the related service of "behavior specialist" in the December 12, 2006, IEP was not implemented on the initiation date of December 13, 2006, nor as of the date of the complaint letter - January 5, 2007. The School submitted the requisite documentation to show compliance with 511 IAC 7-27-7(a) upon requesting a reconsideration of this complaint report. In a letter dated January 4, 2007 from the private provider, it stated that services for the Student would terminate on January 5, 2007. However, the January 5, 2007 case conference notes stated that "a letter was presented from [the private agency] concerning services and phone calls were made immediately to make sure services were still going to be provided." The School indicated that this was a private provider internal problem and services were not interrupted. Billing sheets provided by the private provider to the School dated January 23, 2007 and February 20, 2007 documented that the services began December 13, 2006 and continued through January 25, 2007.
7. The complainants alleged that at the November 22, 2006, case conference it was agreed that an observation to gather data to determine the antecedents to the Student's behavior would be conducted by the school psychologist, and that such observation had not occurred. Documentation was provided of an observation summary conducted on November 29, 2006. All other functional behavior assessments provided are dated prior to November 22, 2006. The first behavior intervention plans (BIP) is dated September 20, 2006, with modified BIPs dated as, and attached to the November 12, 2006, and December 12, 2006, IEPs.
8. The complainants alleged that 18 instances of out-of-school suspensions, and numerous instances of in-school suspensions and shortened school days, of the Student have occurred between September 2006, and January 5, 2007, both prior to and after determination of the Student's eligibility for special education. The complainants also demonstrated an effort to utilize bits of regulations to describe their concerns about the suspensions, including how to define a time of suspension, knowing their rights, and knowing the grounds for the suspensions. The Director submitted no documentation, acknowledging the school's failure to correctly implement regulations regarding suspension.
9. The complainants alleged, in the complaint letter, that on September 14, 2006, when the Student was suspended and the Parents went to school to pick up the Student, the Parents were not provided with a copy of the notice of parent rights. Via telephone conversation, the Parent alleged that no notice of parent rights had been provided prior to September 14, 2006. The initial case conference was held on September 20, 2006, at which time the Parents' signature on a blank on the IEP form indicated that they "received verbal and written explanation of parent/guardian rights." No documentation was provided as to whether a notice of parent rights had been given to the Parents at the time of initial referral for evaluation.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the school did not conduct a case conference within sixty (60) instructional days of the date the consent for initial evaluation was received. Therefore, a violation of 511 IAC 7-25-4(b) is found.
2. Finding of Fact #3 indicates that the December 12, 2006, IEP contains a reading goal as a result of the discussion. Although the goal was not developed nor presented to the Parents for review at the December 12, 2006, case conference, they had not yet signed agreement. Therefore, a violation of 511 IAC 7-27-4(c) is not found.
3. Finding of Fact #4 indicates that the November 22, 2006, IEP was not provided in accordance with regulations, therefore a violation of 511 IAC 7-27-5(c) is found.
4. Finding of Fact #5 indicates that there was no specified plan in the November 22, 2006, IEP for the school to provide in-service training to staff regarding the Student's disability, therefore, no violation of non-implementation of in-servicing is found.
5. Finding of Fact #6 indicates that the School provided documentation that the related service of "behavior specialist" was being implemented from December 13, 2006 to January 25, 2007. Therefore, no violation of 511 IAC 7-27-7(a) is found.
6. Finding of Fact #7 indicates that an observation was conducted on and that multiple functional behavioral assessments have been conducted, and multiple behavior intervention plans have been written, therefore no violation of 511 IAC 7-29-5 is found.
7. Finding of Fact #8 indicates that the school acknowledges its failure to follow suspension procedures, therefore violations of 511 IAC 7-29-1, IC 20-33-8-14, and IC 20-33-8-18 are found.
8. Findings of Fact #7, #8, and #9 address the Parents' various concerns regarding the Student's behavior, the school's application of consequences, and mixed understandings and implementations of legal requirements. While Article 7 requires that the notice of parent rights be given to parents at specified times, upon suspension of a student is not one of the required times. Therefore, no violation of 511 IAC 7-22-1(d) is found. However, federal and state requirements regarding notice of parent rights, or procedural safeguards, are the backbone of a free appropriate public education. Rather than a merely rote activity of affording parents the notice at the required times, the regulations also require that the public agency shall ensure that parents understand the notice.

The Department of Education, Division of Exceptional Learners requires corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

Delphi Community School Corporation and Logansport Area Joint Special Services Cooperative shall:

1. Ensure that staff fully understand the Coop's procedures for conducting initial *and* additional evaluations and case conferencing within the sixty (60) day timeline via review of local procedures and training and/or written reminder. Documentation of the review, a copy of training materials and/or memo reminding staff, and verification of the staff audience shall be sent to the Division **no later than February 28, 2007.**

2. Ensure that the related service “behavior specialist” is being implemented, via written documentation from the private agency of initiation and ongoing dates. Copies of some type of written record, such as time sheets, shall be sent to the Division **no later than February 28, 2007**. Due to the School’s documentation sent on reconsideration, no further action is necessary.
3. Ensure that staff follow procedures regarding delivery to parents of completed IEPs, via training and/or written reminder. Documentation of training and/or memo, and to which staff, shall be sent to the Division **no later than March 30, 2007**.
4. Convene a case conference meeting no later than February 28, 2007 to determine what compensatory services are necessary to make up for the time the Student did not receive services when suspended for more than 10 cumulative instructional days. Additionally, time may be needed for the Student to complete make-up work that may have been missed during suspension. Provide a compensatory service plan as part of the case conference report. The agreed-upon CC report and IEP shall be sent to the Division **no later than March 9, 2007**.
5. Ensure that all building administrators in the Coop, especially those involved in any actions related to suspension, fully understand *all* suspension regulations, including partial days and in-school suspensions, for not only Article 7 for identified students, but also Indiana Code for non- or pre-identified students, via training and/or written reminder. A copy of an assurance statement from administrators regarding the training/reminder they received shall be sent to the Division **no later than March 30, 2007**.