

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: CP-181-2007
COMPLAINT INVESTIGATOR: Kylee Bassett
DATE OF COMPLAINT: March 1, 2007
DATE OF REPORT: March 30, 2007
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: August 10-2007

COMPLAINT ISSUES:

Whether the Anderson Community School Corp and the Anderson Area Special Education Cooperative violated:

511 IAC 7-27-7(a) by not implementing the individualized education program (IEP) as written, specifically by not following the Student's Behavior Intervention Plan (BIP).

511IAC 7-29-5(d) by failing to convene a case conference committee (CCC) meeting to modify an existing BIP.

511 IAC 7-26-2(d) by failing to provide specialized in-service training in the area of autism disorder to professional and paraprofessional staff serving the Student.

FINDINGS OF FACT:

1. The Student, 7 years old, is eligible for special education and related services as a student with autism spectrum disorder and communication disorder.
2. According to the December 8, 2006 IEP, the Student's placement is in a full-time general education classroom, with special education and related services during the instructional day (0-20% special education services).
3. Four CCC meetings during the 2006-2007 were convened to discuss the Student's BIP. On September 12, 2006, a CCC meeting was convened to discuss the Student's behavior, review data for the Student's FBA, and develop a BIP. The purpose of the November 22, 2006 CCC meeting was to review the Student's educational evaluation report, review and revise the IEP, and review and revise the Student's FBA and BIP. On December 8, 2006 a CCC meeting was convened to conduct a manifestation determination regarding the Student's physical and verbal aggression, as well as review and revise the BIP. On February 26, 2007 a CCC meeting was held to review and revise the Student's BIP.
4. The Complainant alleged that the School did not to follow the Student's BIP by failing to use the sensory room as directed in the Student's BIP, and instead sent the Student to the Principal's office. According the Student's BIPs dated September 12, 2006, December 8, 2006, and February 26, 2007, the Student's "problem behavior" was defined in stating that "[the Student] becomes upset and easily angered during the school day when he is asked to transition from activity to activity or adult to different

adult. [The Student] will throw items, hit, kick, will drop to floor, or run away from adult.” The Student’s BIPs address the use of the sensory room under the heading “Meltdowns.” The BIPs dated September 12, 2006, December 8, 2006, and February 26, 2007 indicate seven steps to follow when the Student is having a meltdown. The first step states: “Get [the Student] to the sensory room as quickly and calmly as possible . . . Do not take him to office or other room with noise, activity or people.” In addition, step number five states: “If physical aggression occurs toward a student then the principal will determine if suspension would be for that remaining day or a full day suspension the following day. . . .”

5. The School submitted documentation of 26 dates, ranging from September 5, 2006 to March 14, 2007, that the Student exhibited physical aggression towards other students or adults. On 12 of the 26 occasions, a discipline referral was completed because of the Student’s physical aggression towards other students or adults. On 17 out of the 26 occasions the School documented that the sensory room was used in dealing with the Student’s behavior. Eight of the 12 discipline referral incidents, the School documented that the sensory room was used that day.
6. The December 8, 2006 CCC notes indicated that the TOR stated that she was “concerned about defining [the Student’s] physical aggression . . . and sees a difference between his physical aggressive (hitting, kicking, shoving) behavior when [the Student] is in a ‘rage’ or ‘meltdown’ situation than the times he has purposefully attacked a peer or adult.” Further, the CCC notes indicated that “the CCC decided [it was up to the Principal] to decide on the consequence if/when [the Student] was physically aggressive toward peers or adults (when not in a meltdown or rage) [and] could be removed from the classroom and/or suspended up to 1 day from school.”
7. In a letter (undated) from the Student’s general education teacher to the Complaint, the general education teacher explained that she attached a copy of her discipline plan (the School Wide Discipline Card system) with a few adjustments for the Student, which was to begin on February 12, 2007. Because of snow days, the letter and addition to the BIP was sent home to the Complainant February 16, 2007. The “Addendum to Behavior Intervention Plan” clarified that the December 8, 2006 BIP was still in effect; however, a modified version of the school wide discipline card system to accommodate the Student’s needs was included “to provide him with ‘natural’ consequences for misbehavior.” The Student’s Card System (revision date February 7, 2007) explained what would happen if a card was pulled: “1st Card Pulled = Warning, 2nd Card Pulled = Miss 10 Minutes of Recess, 3rd Card Pulled = Time Out in [TOR’s] Room, 4th Card Pulled = In-School Detention in [TOR’s] Room, and 5th Card Pulled = Call and Conference with Dad.” In addition, it was stated that “if a more severe offense occurs (runs or threatens to run away, drops to the floor, threatens or attempts physical aggression toward another student or a staff member), [the Student] will be removed from that environment and will be taken to the small conference room in the office to complete his work for the rest of the day. . . [which] will be referred to as The Time Out Room . . . and the Student’s father will be called.” In addition, the Card System stated that “if [the Student] is physically aggressive (hits, kicks, punches, or shoves) toward another student or a staff member, then the principal will determine if suspension would be for the remaining day or a full day suspension the following day.” There was no documentation that a CCC meeting was convened to discuss changes to the Student’s BIP.
8. The February 27, 2007 CCC notes indicated the Complainant expressed concern in the CCC meeting that the School was not following the Student’s BIP by taking him to the office. The CCC notes indicated that the School was going through the steps and the Student is only going to the office when he has physically attacked a staff member. An additional page to the Student’s BIP was added at the February 27, 2006 CCC meeting. The Student’s behaviors were defined as follows: “Aggressive Behavior = hitting, kicking, pushing/shoving – a student, an adult, items in the school environment . . . , and/or verbal threatening . . . , physical. (and) Meltdown = [The Student] is known to drop to the floor in hallways, classroom floors, or on the ground in recess. He refuses to stand-up or move. [The Student]

will whimper or cry loudly while on the floor . . . Meltdown often last 15 – 25 minutes.” The added page to the Student’s BIP defined time-out area for aggressive behaviors and time-out area for a meltdown. The time-out area for aggressive behavior is in a small room down the hall from the conference room, where the Student is to be supervised. The time-out area for a meltdown is in the sensory room.

9. During the 2006-2007 school year, the Student had two different one-on-one paraeducators. The School documented that both paraeducators attended autism training presented by the School’s Autism Team on August 15, 2006.
10. The TOR attended the Helping Answer Needs in Developing Specialists in Autism (HANDS) autism training on June 26, 2006 through June 30, 2006. The TOR attended a one-day workshop regarding tools and strategies to use in working with student’s with autism on November 29, 2006. The TOR received training in the area of BIPs on February 21, 2007.
11. The School documented training by the School’s autism consultant regarding the specific Student. The TOR was trained on the following dates: August, 29, 2006, August 31, 2006, September 5, 2006, September 6, 2006, September 12, 2006,¹ September 14, 2006, September 19, 2006, September 20, 2006, September 26, 2006, October 3, 2006, November 9, 2006, December 11, 2006 and January 30, 2007. The Student’s paraeducators² were trained on the following dates: August 28, 2006, August 31, 2006, September 5, 2006, September 6, 2006, September 14, 2006, September 19, 2006, September 20, 2006, September 26, 2006, October 3, 2006, October 11, 2006, November 6, 2006, December 18, 2006, January 8, 2007, January 8, 2007,³ January 25, 2007, February 1, 2007, February 22, 2007, and February 23, 2007. The Student’s general education teacher⁴ was trained on the following dates: December 15, 2006, December 18, 2006, and January 30, 2007. The Student’s speech language pathologist was trained on December 11, 2006.

CONCLUSIONS:

1. Finding of Fact #4 indicates what the Student’s current BIP states regarding the Student’s problem behavior and what is to occur when the Student has a meltdown. Finding of Fact #5 indicates dates where the Student exhibited physical aggression and the dates the Student received a discipline referral because of his physical aggression towards other students or adults. In addition, Finding of Fact #5 indicates the number of documented times the School utilized the sensory room. Finding of Fact #6 acknowledges the School’s awareness of the need to better define the Student’s physical aggression during a meltdown situation and purposeful physical aggression toward a peer or an adult. According to Finding of Fact #3, the Student’s BIP has been reviewed and revised several times during the 2006-2007 school year; however, there is still confusion between the Complainant and the School as to the definition of physical aggression and what is to occur when the Student is physically aggressive. Thus, the ambiguous nature of the BIP resulted in misinterpretations and misunderstanding between the parties. Where an ambiguity exists in an IEP, the ambiguity will be construed against the School that is responsible for its development and implementation. IEPs must have sufficient clarity so that both the parents and school personnel understand what services a student is to receive. Although Finding of Fact #8 demonstrates that the School acknowledges Complainant’s confusions and has taken corrective measures to better define the Student’s aggressive behaviors and meltdowns, a violation of

¹ On September 12, 2006, the TOR was trained twice regarding two different subject matters relating to the Student and autism.

² The Student had two different paraeducators during the 2006-2007 school year. Paraeducator (A) ended on December 13, 2006 and Paraeducator (B) started December 14, 2006.

³ On January 18, 2007, the paraeducator was trained twice regarding two different subject matters relating to the Student and autism.

⁴ Because of the Student’s change of placement, the Student’s general education did not work with the Student until he was placed in a full-time general education placement pursuant to the CCC meeting decision on December 8, 2006.

511 IAC 7-27-7(a) is found.

2. Finding of Fact #7 indicates that the Complainant received a letter and an “Addendum to the Behavior Intervention Plan” on February 16, 2007. Although this revision to the Student’s BIP was, in essence, an implementation of the school-wide discipline card system for the Student, the card system was modified for the Student, affected and addressed similar behaviors in the Student’s current BIP, and added confusion to the Complainant’s understanding of the implementation of the Student’s BIP. A CCC meeting should have been convened to make the necessary modifications to the Student’s BIP. Therefore, a violation of 7-29-5(d) is found.
3. Findings of Fact #9, #10, and #11 indicate that the School’s professional and paraprofessional staff serving the Student with autism spectrum disorder have received specialized inservice training. Therefore, no violation of 511 IAC 7-26-2(d).

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 Anderson Community School Corporation and the Anderson Area Special Education Cooperative shall:

Convene a CCC meeting to revise and further develop a BIP, with input from the Complainant, to include clear statements of all the stated elements as defined in 511 IAC 7-17-8, including positive behavioral intervention strategies. The School shall submit a copy of the CCC report and IEP (which includes the BIP) **no later than April 30, 2007**.

Provide an assurance statement that the School will convene a CCC meeting when modifications are needed to be made to students’ BIPs. The School shall submit an assurance statement **no later than April 30, 2007**.