

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: CP-186-2007
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: March 9, 2007
DATE OF REPORT: April 5, 2007
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: August 2, 2007

COMPLAINT ISSUES:

Whether the Shenandoah School Corporation and the New Castle Area Programs for Exceptional Children violated:

511 IAC 7-27-7(d) by continuing to implement an individualized education program (IEP) for a period of more than 12 months.¹

511 IAC 7-27-3(a)(3) by failing to ensure that at least one of the student's general education teachers attends the case conference committee meeting.

511 IAC 7-27-2 by failing to provide the parents adequate notice of the case conference committee meeting early enough to ensure that one or both parents have an opportunity to attend.

511 IAC 7-29-6 by failing to conduct a review of the relationship between the student's disability and the behavior subject to disciplinary action to determine if the behavior is a manifestation of the student's disability when the student was unilaterally removed from his current placement.

511 IAC 7-25-6 by failing to conduct the student's re-evaluation after 36 calendar months have elapsed since the previous re-evaluation, specifically regarding the receptive language evaluation.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to:

- (a) hire an aide to work with the student; and
- (b) provide special education and related services for one hour on a shortened school day.

511 IAC 7-27-3(a)(1) by failing to ensure that the student's case conference committee has in attendance a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction, be knowledgeable about the general education curriculum, and be knowledgeable about the availability of resources.

511 IAC 7-27-5(c) by failing to provide the parent with a copy of the written case conference committee report dated January 4, 2007.

FINDINGS OF FACT:

¹ The issue 511 IAC 7-27-4(a)(9) has been changed to 511 IAC 7-27-7(d) to better address the facts herein.

1. The Student, 14 years old, is identified as a student with a mild mental disability, and has been determined eligible for special education and related services.
2. The case conference convened on August 10, 2006 to discuss the Student's transition into the local middle school for the 2006-2007 school year. The School acknowledges that a general education teacher was not in attendance at this meeting. The case conference committee developed an IEP addendum dated August 10, 2006. This was an addendum to an IEP dated May 25, 2005. The School acknowledges that it continued to implement an IEP that was more than 12 months old until it was reviewed and revised on January 3, and 4, 2007.
3. The Complainant was called on December 18, 2006, and asked to attend the case conference committee meeting scheduled for that same day. The School mailed a copy of the written case conference notification form on December 18, 2006. The case conference committee meeting was cancelled and rescheduled for January 3, 2007.
4. On December 14, 2006, the Principal suspended the Student from school attendance until January 9, 2007, and requested that the Student's suspension be continued until a decision could be made on the expulsion of the Student. The case conference committee convened on January 3, 2007, in order to discuss the Student's education situation and to conduct a manifestation determination. At that case conference committee meeting, the Director of Special Education realized that, although there were several subsequent IEP addendums, the latest dated August 10, 2006, the School was implementing an IEP dated May 25, 2005. The case conference committee, chaired by the Principal, decided to drop the request for an expulsion, and return the Student to school with a new IEP, including a new behavioral intervention plan (BIP). Based on this, the Director of Special Education stated that the case conference committee would not conduct a manifestation determination.
5. However, in the process of developing a revised IEP, the case conference committee on January 4, 2007, discussed the Student's behavior in relation to his schedule and placement. The IEP indicates that the Student's behavior impedes his learning and the learning of other students. The case conference committee convened again on February 27, 2007, to further discuss the Student's behavior.
6. According to the Student's IEP dated May 25, 2005, the Student's re-evaluation date was February 26, 2007. The case conference committee on January 4, 2007, agreed that additional information about the Student was needed and recommended conducting a re-evaluation, including conducting a receptive language evaluation. The Student was re-evaluated on January 23, 24, and 25, 2007. The Evaluation Report is dated February 12, 2007. A case conference committee meeting was convened on February 27, 2007, in part to discuss the results of the re-evaluation.
7. The IEP dated January 4, 2007, indicates that a receptive language evaluation will be completed by the speech language pathologist. Case conference notes dated February 27, 2007 indicate that the receptive language evaluation still had not been completed. According to the School the evaluation was scheduled to be conducted on March 29, 2007, but there is no documentation submitted to show this.
8. The IEP dated January 4, 2007, indicates that an additional aide will be hired to observe and document interactive behavior between the Student and other students. The aide is not to be a personal aide for the Student (a job description is attached to the IEP). As of March 27, 2007, the School acknowledges that an additional aide has not been hired.
9. The Student attends school on a shortened schedule for the 2006-2007 school year. The Student arrives at school at 10:30 a.m. School was dismissed at noon due to inclement weather on one day in

February 2007. The Complainant called the Principal to ask whether the Student should go to school due to the shortened day (the Student would be at school for about one hour). The Complainant says she was told by the Principal to not send the Student to school. The Complainant kept the Student at home. The School did not offer compensatory services to make up the lost time.

10. On February 27, 2007, the case conference committee discussed increasing the length of the Student's school day by adding one class period per month. The Director of Special Education stated that adding one class period at a time may be difficult due to the availability of bus drivers who work under specific contracts, but that it could still be done. However, the IEP addendum dated February 27, 2007 states that the Student's schedule will remain unchanged due to transportation issues. This issue is also related to disagreements between the Complainant and the School about whether the Student should immediately be on a full-day schedule or placed in an alternative school altogether.
11. The Complainant did not receive a copy of the Case Conference Report and IEP dated January 4, 2007. The School cannot document whether a copy was provided to the Complainant at the meeting or mailed within 10 business days.

CONCLUSIONS:

1. Findings of Fact #2 and #4 indicate that the School acknowledges implementing IEP addendums to an IEP dated May 25, 2005. The School continued to implement an IEP for a period of more than 12 months. Therefore, a violation of 511 IAC 7-27-7(d) is found.
2. Finding of Fact #2 indicates that the School failed to ensure that at least one of the Student's general education teachers attended the case conference committee meeting on August 10, 2006. Therefore, a violation of 511 IAC 7-27-3(a)(3) is found.
3. Finding of Fact #3 indicates that the School failed to provide the Complainant with adequate notice of the case conference committee meeting scheduled for December 18, 2006 early enough for one or both parents to have an opportunity to attend. However, the case conference committee meeting for that date was cancelled and rescheduled for January 3, 2007. Therefore, a violation of 511 IAC 7-27-2 is not found.
4. Finding of Fact #4 indicates that the case conference committee on January 3, and 4, 2007, did not specifically determine whether the Student's behavior was a manifestation of the Student's disability. Findings of Fact #4 and #5 indicate that, although the School decided not to expel the Student, the School was aware of the Student's behavioral problems and did address the connections between the Student's behavior and his disability and, taking into consideration of the deficiencies of the old IEP, revised the Student's IEP. Therefore, a violation of 511 IAC 7-29-6 is not found.
5. Finding of Fact #6 indicates that the School conducted the Student's re-evaluation within 36 calendar months since the Student's previous re-evaluation. However, Finding of Fact #7 shows that not all parts of the re-evaluation, specifically the receptive language evaluation, were completed in a timely manner. Therefore, a violation of 511 IAC 7-25-6 is found.
6. Findings of Fact #8, and #9 address whether the School implemented the Student's IEP:
 - (a) Finding of Fact #8 indicates that the School has failed to hire an aide to observe and document interactive behavior between the Student and other students; and
 - (b) Finding of Fact #9 indicates that the School should have offered to make up about one hour of instructional time for the day the Student did not go to school because of an early dismissal due to weather.

Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to not hiring an aide, and providing one hour of compensatory services to the Student.

7. Finding of Fact #10 indicates that the case conference committee cannot agree on whether the Student shall incrementally increase his school day, immediately go to a full-day schedule in his current placement, or change the Student's placement to the alternative school. The Student's schedule remains unchanged at least in part because of transportation issues. Although a school representative attended the case conference committee meeting, Finding of Fact #10 indicates that the case conference committee may have based its decision upon the perceived lack of resources rather than the needs of the Student. Therefore, a violation of 511 IAC 7-27-3(a)(1) is not found. However, corrective action is still required.
8. Finding of Fact #11 indicates that the School cannot document whether the Complainant received a copy of the Case Conference Report and revised IEP dated January 4, 2007. Therefore, a violation of 511 IAC 7-27-5(c) is 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 Shenandoah School Corporation and the New Castle Area Programs for Exceptional Children shall:

Convene the Student's case conference committee to determine: (1) whether and to what extent the Student's schedule will increase to a full day and how transportation will be provided in order to develop an IEP based upon the individualized needs of the Student rather than the availability of resources; (2) one hour of compensatory instructional time; and (3) whether an aide, as originally agreed, will in fact be hired. If not, then the case conference committee must include a written plan for how the Student's behavioral interactions with other students will be observed and documented. If so, then the School needs to hire an aide to carry out that which is described in the job description attached to the Student's IEP no later than **May 11, 2007**. A copy of the Case Conference Report and IEP shall be submitted to the Division no later than **May 11, 2007**.

If the receptive language evaluation has been conducted, then the School shall submit documentation indicating that it has been conducted no later than **May 11, 2007**. If not, or if the school cannot document, then the School must conduct the evaluation and submit the documentation to the Division no later than **May 11, 2007**.

Send a written memorandum to all school personnel regarding compliance with 511 IAC 7-27-3(a)(4) with respect to ensuring that general education teachers attend case conference committee meetings. A copy of the memorandum and a list of all who receive it shall be submitted to the Division no later than **May 11, 2007**.

Send a copy of the Case Conference Report and IEP dated January 4, 2007, to the Complainant. Documentation indicating that the Complainant has received a copy shall be submitted to the Division no later than **May 11, 2007**.