

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: CP-199-2007
COMPLAINT INVESTIGATOR: Bobbie Ritz
DATE OF COMPLAINT: April 4, 2007
DATE OF REPORT: May 3, 2007
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: July 5, 2007

COMPLAINT ISSUES:

Whether the School City of Mishawaka and the Mishawaka-Penn-Harris-Madison 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.¹

511 IAC 7-18-2 by failing to provide a free and appropriate education (FAPE), as defined in 511 IAC 7-17-36, including the "at no cost" provision requirement defined in 511 IAC 7-17-7, specifically regarding a private drug screen taken by the student.

FINDINGS OF FACT:

1. The Student, 18 years old, is eligible for special education and related services as a student with a primary emotional disability and secondary mild mental disability. In addition, the Student is diagnosed with schizoaffective disorder.
2. According to the November 9, 2006, IEP, the Student's placement for special education and related services is in a private separate day facility, and the Student receives 240 minutes of services five times per week.
3. On March 16, 2007, the complainant alleged that the Student was improperly suspended for alleged marijuana use. The School acknowledged that the Student was accused of using marijuana, as evidenced by the reported smell of marijuana on the Student and the Student's "eyes looking funny." Both the Student's mother and School acknowledged that the School notified the mother regarding the possible drug use and upon the mother's request, did not proceed to question the Student until she arrived at the school.
4. Due to the Student's schizoaffective disorder, the mother asked the School to refrain from questioning the Student for fear that the School's standard procedure of questioning students of alleged drug use would be damaging to the Student. In a letter dated April 16, 2007 from the Special Education Director summarizing the incident, the Director stated that the School's standard procedure for determining whether a student was under the influence of drugs or alcohol consisted "of an interview and observation by [the School's resource officer], who is trained in detecting when an individual is under the influence. . ." Because the Student's mother did not want the Student questioned, as an alternative, she suggested a drug screen in conjunction with the Student's weekly lab tests for medication management. The School acknowledged its acceptance of the proposal. The School stated that it was not required to pay for the drug test because the Student's mother refused the School's normal procedure of questioning and

¹ During the course of investigation, the issue was changed to better reflect the facts.

interviewing a student suspected of drug use. In the letter dated April 16, 2007, the Director stated that the School, because of safety concerns, suspended the Student until the School received "information to show that [the Student] was not under the influence of drugs at school." There is no documentation that the School offered to provide a drug screen.

5. The Student's IEP dated May 31, 2006, included a Contingency Plan that gives a list of options the School should use when the Student is verbally and physically aggressive. The Student's IEP does not include a functional behavioral assessment (FBA) or a behavioral intervention plan (BIP). The Student's IEP is silent with respect as to how the School should address the allegations of the Student's drug use. The School's policy is silent with respect to what actions taken beyond questioning and observation of students regarding drug use.
6. According to the Special Education Director, the Student left with his mother to obtain a private drug screen. The Student's disciplinary report for the 2006-2007 school year indicated that on March 16, 2007, the Student was suspected of drug use, and left with his parent for a drug screen on 10:02 A.M. The Student's attendance log indicated that the Student was excused from School in the P.M. There is nothing denoted for the A.M. on March 16, 2007.
7. On March 16, 2007, the Student's lab report showed that the Student had a urinalysis performed to determine drug use. According to the Special Education Director, the school received a fax dated March 18, 2007, which demonstrated a negative drug screen. The Student was permitted to return to School on Monday, March 19, 2007.
8. The mother alleged the school should be responsible for the cost of the drug screen. According to the school's April 13, 2007, Purchase Order, the School has authorized payment to the mother for the cost of the drug screen.

CONCLUSIONS:

1. Finding of Fact #4 indicates that due to safety concerns, the School suspended the Student from School until the School received information that the Student was not under the influence of drugs. Finding of Fact #6 indicates that the Student's attendance log denotes that the Student was excused in the P.M. on March 16, 2007. Under 511 IAC 7-29-1(a), a suspension is defined as a "unilateral, temporary removal of a student from the student's current placement by the public agency." In addition, according to 511 IAC 7-29-1(c), "a suspension for part of a day constitutes a suspension." Therefore, the removal of the Student on March 16, 2007 constituted a day of suspension, and a violation of 511 IAC 7-29-1(c) is found.
2. Finding of Fact #4 indicates that the mother did not want the Student questioned regarding the School's allegation that the Student was under the influence of drugs. Finding of Fact #4 indicates that the mother proposed, as an alternative, to have the Student drug tested, and the School acquiesced in the request. Finding of Fact #4 indicates that the Student was going to be suspended until the School received information that the Student was not under the influence of drugs. Finding of Fact #4 indicates the School did not offer to provide a drug screen or an alternative. However, Finding of Fact #7 indicates that the School, in good faith, has authorized payment to the mother for the cost of the drug screen. Finding of Fact #5 indicates that the Student's IEP is silent with respect to how the School should address allegations of the Student's possible drug use. Therefore, no violation of 511 IAC 7-18-2 is found. However, it is apparent that the Student needs an accommodation with respect to the School's standard procedure of questioning students of alleged drug use, should these allegations arise again.

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:

1. The School City of Mishawaka shall send a written memorandum to all relevant school administrators and special education personnel regarding compliance with 511 IAC 7-29-1(c). A copy of the memorandum and a list of all who receive it shall be submitted to the Division **no later than June 11, 2007**.
2. Convene a CCC meeting **no later than May 25, 2007**. The CCC shall review and revise the Student's IEP with specific attention to necessary accommodations for the Student with respect to the School's standard procedure of questioning students of alleged drug use. The School shall submit a copy of the CCC report and agreed-upon IEP **no later than June 11, 2007**.
3. Submit documentation that that the Student's mother has been reimbursed for the drug screen **no later than June 11, 2007**.