

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	CP-201-2007
COMPLAINT INVESTIGATOR:	Bobbie Ritz
DATE OF COMPLAINT:	April 11, 2007
DATE OF REPORT:	May 24, 2007
REQUEST FOR RECONSIDERATION:	Yes
DATE OF CLOSURE:	January 15, 2008

COMPLAINT ISSUES:

Whether the Northwest Allen County Schools and the Smith-Green West Allen Special Education Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the Student's individual education program (IEP) as written, specifically the Student's behavioral intervention plan (BIP) dated December 7, 2006.

511 IAC 7-22-1(d)(2) and (d)(5) by failing to provide the parent with a written copy of the notice of procedural safeguards at the time of notification of a case conference committee(CCC) meeting and at the date expulsion charges have been filed.

511 IAC 7-29-1(g)(3) by failing to provide an opportunity for the Student to participate with non-disabled students to the extent the Student would have in the Student's current placement while in in-school suspension.

511 IAC 7-29-1(d)(2) by inappropriately suspending the Student when the removals constitute a change of placement as described in subsection (j).

511 IAC 7-29-2(c) by failing, when a Student with a disability has been expelled, to do the following:
1) provide services to enable the Student to progress appropriately in the general curriculum;
2) provide services to enable the Student to advance appropriately toward achieving the goals set out in the Student's IEP; and
3) comply with the requirements of section 5 of this rule.¹

511 IAC 7-29-6(c) and (d) by failing to determine whether the Student's behavior is the result of deficiencies in the Student's IEP or special education placement at the CCC meeting convened on February 20, 2007.²

511 IAC 7-18-2(a) by failing to provide a free appropriate public education (FAPE) to the Student, specifically by requiring the parent to sign a statement agreeing that the School would drop the expulsion hearing contingent upon the Student's withdrawal from the School for the remainder of the school year.³

Indiana Department of Education, Division of Exceptional Learners:
Hearing File 158-2007

An Extension of Time was granted May 10, 2007 indicating a new completion date of May 24, 2007.

¹ Upon investigation, this issue was changed to better reflect the facts.

² Upon investigation, this issue was added to better reflect the facts.

³ Upon investigation, an additional issue was added.

FINDINGS OF FACT:

1. The Student, 15 years old, is eligible for special education and related services as a student with an other health impairment.
2. A CCC meeting was held on December 7, 2006, to discuss the Student's academic progress and the six days of suspension the Student had received thus far. During this meeting, the Student's mother gave written permission for school personnel to conduct a functional behavior assessment (FBA). The CCC became the assessment team, reviewed available data during the CCC meeting, and conducted a functional behavior assessment based upon the data already collected on the Student. As a result, a BIP was developed and attached to the Student's IEP developed December 7, 2006. In the summary, CCC meeting was scheduled for March, 2007, to review the BIP that was developed.
3. The BIP developed on December 7, 2006, states that when the Student "is in less structured environment (sic), the Student tends to make poor choices that result in disciplinary action." The BIP stipulates that if the Student becomes a threat to the safety of himself or others, he will immediately be sent to the office.
4. An incident occurred on one of the School's buses on February 12, 2007, which resulted in the Student receiving a 7th day of suspension with expulsion pending. The Student was riding the after-school study bus from School to home. When the incident occurred, the bus driver transported the Student back to School where the principal removed the Student from the bus, escorted the Student to the office, and called the Student's parents to transport the Student from the School to home. This incident resulted in the principal filing a written charge and request for expulsion and appointment of an expulsion examiner in a memorandum dated February 12, 2007. The documentation provided by the School does not indicate that the parents were provided a copy of the principal's written request for expulsion nor were they provided a copy of the Notice of Procedural Safeguards. The complainant states that the BIP was not implemented on the day of this occurrence although the complainant does not specifically indicate which element of the BIP was not implemented. The BIP dated December 7, 2006, does not address the specific behaviors that occurred on the bus. However; the BIP listed the bus as an unstructured environment and required the Student to have an assigned seat in that setting.
5. The Student had been suspended on two separate occasions resulting in a total of 6 days of suspension (November 1-2, and November 29-30, December 1 and December 4, 2006) during the 2006-2007 school year prior to the bus incident on February 12, 2007. The February 12, 2007 incident resulted in the Student being suspended on February 15, 16, and 19, 2007 (Suspension days of 7, 8, and 9). On February 13, and 14, 2007, School was not in session due to inclement weather. On February 20, 2007, the 10th day of Student's suspension, a CCC meeting was held to conduct a manifestation determination. The School advised the complainant that regardless of the outcome of the meeting, the Student would be offered educational services in some capacity. The CCC determined there was no direct relationship between the Student's misconduct and the Student's other health impairment, however, the parent disagreed with this determination and filed a written opinion. The School nonetheless recommended the expulsion meeting to proceed. The School further recommended that the Student return to School the following day to continue educational services until the expulsion examiner made a final determination. There is no documentation in the February 20, 2007 report indicating that the BIP was discussed or that the implementation of the BIP was determined to be consistent.
6. At the February 20, 2007 CCC meeting, the School discussed mediation or due process hearing options; the educational option of the Allen County Learning Academy; and advised the father if he chose the Learning Academy, transportation would be his responsibility. As documented in

the notes of the committee meeting, the Student's father expressed concern with providing transportation and stated that he did not feel he had options. The Student's father advised the School that his family was considering placing the Student in a private school. The case conference notes indicated the parent was provided with an explanation of parental rights by the Director of Special Education. On the Case Conference Summary dated February 20, 2007, the father's signature appears and the box stating *Procedural Safeguards offered/accepted* is checked.

7. The case conference notes dated February 20, 2007 provide that the Student's placement upon return to School on February 21st will be in an isolated or in-school suspension setting. The Student returned to the School on February 21, 2007 and received educational services in in-school suspension. The School did not provide documentation to demonstrate what services were provided to the Student.
8. The Student's father submitted a written opinion dated February 23, 2007 regarding the decision of the February 20, 2007 CCC in determining no direct relationship between the Student's misconduct and the Student's other health impairment. The Student's father stated that the Student's behavior on the February 12, 2007 bus incident was a result of his disability. In the same letter, the Student's Father notified the School of a request for an expedited due process hearing he had filed with the Indiana Department of Education, Division of Exceptional Learners. The proposed resolution stated by the father was "reversal of the decision made at the [February 20, 2007] case conference committee meeting."
9. An Independent Hearing Officer (IHO) was appointed by the Indiana Department of Education on February 26, 2007. On March 2, 2007, a resolution session was held. In a letter dated March 2, 2007, the Student's mother withdrew the pending expedited due process hearing. On March 6, 2007, the IHO filed an order of dismissal.
10. As a result of the March 2, 2007 resolution session, the Student's father submitted to the School a signed statement indicating the withdrawal of the Student from the School. The written statement, dated March 2, 2007, stipulated that the Student's father would not re-enroll the Student in any School within the local educational agency (LEA) during the remainder of the 2006-2007 school year. The School and the Student's father agreed that the expulsion process would be discontinued unless the Student attempted to re-enroll in any School within the LEA during the remainder of the 2006-2007 school year.
11. The Complainant alleged that he withdrew the Student from the School and placed the Student in a private school at his expense. The School acknowledged that the Student withdrew from School. There is no documentation regarding what private school the Student is attending.

CONCLUSIONS:

1. Findings of Fact #2, #3 and #4 indicate that the case conference committee, on December 7, 2006, discussed some of the Student's behavioral issues, but there is no evidence that considerations were made with respect to various positive strategies to address the Student's behavior. The BIP stipulates that if the Student becomes a threat to the safety of himself or others, he will immediately be sent to the office. In addition, the BIP listed the bus as an unstructured environment and required the Student to have an assigned seat in that setting. Finding of Fact #1 indicates that the intervention specified in the BIP was followed on February 12, 2007 with respect to sending the Student to the office. However, there is no documentation demonstrating that the Student was in an assigned seat when the incident occurred on the bus. Therefore, a violation of 511 IAC 7-27-7(a) is found.

2. Finding of Fact #4 indicates that the parents did not receive a copy of the Notice of Procedural Safeguards on the date expulsion charges were filed on February 12, 2007. Finding of Fact #5 indicates that on February 20, 2007 a CCC meeting was convened. Finding of Fact #6 indicates the School provided the parent with a copy of the Notice of Procedural Safeguards. Therefore, no violation of 511 IAC 7-22-1(d)(2) is found, but a violation of 511 IAC 7-22-1(d)(5) is found.
3. Finding of Fact #7 indicates that the School convened a CCC meeting on February 20, 2007 and determined that the Student's placement upon his return to School on February 21st would be in an in-school suspension setting to receive services. 511 IAC 7-29-1(g)(3) is a factor in determining whether an in-school suspension is considered a suspension for the purpose of rule 511 IAC 7-29-1(g). Finding of Fact #8 indicates that the CCC determined on February 20, 2007 that there is no direct relationship between the Student's misconduct and the Student's disability. Finding of Fact #7 indicates that the Student returned to school on February 21, 2007 and received service in an in-school suspension setting as determined by the CCC. Therefore, no violation of 7-29-1(g)(3) is found.
4. Findings of Fact #2, #4, #5 and #6 indicate that the Student did not reach a tenth cumulative or consecutive day of suspension until February 20, 2007. According to 511 IAC 7-29-1(d), a principal may suspend a student with a disability from the student's current placement for additional suspension of not more than ten (10) consecutive instructional days at a single time in the same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement as described in subsection (j). Finding of Fact #5 indicates that prior to February 12, 2007 the Student was only suspended for a total of 6 cumulative days. Finding of Fact #5 indicates that the February 12, 2007 incident resulted in the Student being suspended on February 15, 16, and 19, 2007 (Suspension days 7, 8, and 9).⁴ On the 10th day of suspension, February 20, 2007, the School appropriately held a CCC meeting to determine whether the Student's behavior was a manifestation of his disability. Therefore, no violation of 511 IAC 7-29-1-(d)(2) is found.
5. Findings of Fact #2, #4, #5 and #6 indicate that the Student did not reach a tenth cumulative or consecutive day of suspension until February 20, 2007. Finding of Fact #5 further indicates that a CCC meeting was convened on that tenth day to conduct a CCC meeting for the Student's infraction. Finding of Fact #7 indicates that there is no documentation of what services would be provided to the Student to ensure that he would progress appropriately in the general curriculum, nor was documentation provided to demonstrate that the Student's BIP was reviewed. Therefore, a violation of 511 IAC 7-29-2(c) is found.
6. Findings of Fact #5 and #6 indicates that there is no documentation regarding whether consideration was made at the February 20, 2007 CCC meeting as to whether the Student's behavior was the result of deficiencies in the Student's IEP or special education placement. In addition, there is no documentation that CCC systematically went through 511 IAC 7-29-6(2). Therefore, violations of 511 IAC 7-29-6(c) and (d) are found.
7. Finding of Fact #10 indicates that the Complainant signed a written statement stipulating that the Student's father would not re-enroll the Student in any School within the LEA during the remainder of the 2006-2007 school year. In addition, the written statement stated that the expulsion process would be discontinued unless the Student attempted to re-enroll in any School within the LEA. Finding of Fact #11 indicates that the Student withdrew from School, and the Complainant states that he enrolled the Student in a private school at the Complainant's expense. At the Resolution Session on March 2, 2007, when the Student's father submitted the signed statement agreeing to withdraw the Student, there is no documentation that the School informed

⁴ On February 13, and 14, 2007 school was not in session due to inclement weather.

the Complainant the Student has a right to a FAPE provided by the School, which includes services, even if the Student is expelled. In addition, there is no documentation that the Complainant was informed that the Student would not be provided FAPE, if the parent decided to unilaterally enroll the Student in a private school. Therefore, a violation of 511 IAC 7-18-2(a) 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:

Provide an assurance statement to ensure the School's compliance with 511 IAC 7-22-1(d)(5) to the Division no later than **June 29, 2007**.

Provide inservice training to all relevant staff dealing with discipline regarding Rule 29 in Article 7, specifically discipline procedures, including expulsion requirements pursuant to 511 IAC 7-29-2(c) and manifestation determination requirements pursuant to 511 IAC 7-29-6. Provide a copy of the training materials and a copy of the attendance sheet of participant to the Division by **June 29, 2007**.

Reconvene a CCC meeting to conduct a manifestation determination as required by 511 IAC 7-29-6, and in so doing, review the Student's FBA to ensure it fulfills requirements of 511 IAC 7-17-38 and the Student's BIP meets the requirements of 511 IAC 7-17-8. If a different result is reached, the CCC should determine what, if any, compensatory services should be provided to the Student. Provide a copy of the Student's IEP (including the Student's FBA and BIP) and the CCC notes to the Division by **June 29, 2007**.

As a part of the CCC meeting to be convened, the public agency shall inform the parents of the right of the student to continue to receive educational services, even if expelled, as well as the right of the student to receive some services should the student remain in the private school. The parents shall be informed that the public agency cannot prevent the student's re-enrollment. From this information, the parents shall make an informed decision. The public agency shall document this discussion and the parents' election in the CCC report that is to be submitted to the Division by **June 29, 2007**.