Indiana Department of Education **Division of Exceptional Learners**

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	CP-203-2007
COMPLAINT INVESTIGATOR:	Bobbie Ritz
DATE OF COMPLAINT:	April 20, 2007
DATE OF REPORT:	June 8, 2007
REQUEST FOR RECONSIDERATION:	N/A
DATE OF CLOSURE:	January 24, 2008

COMPLAINT ISSUES:

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

511 IAC 7-23-1 regarding the school's procedures for ensuring that the confidentiality of the Student's records was maintained.

511 IAC 7-27-7(a) regarding the implementation of the student's individualized education program (IEP), specifically by failing to:

(a) provide the Student a paraprofessional during lunch time;
(b) assign the correct amount of homework;
(c) allow the Student to use a calculator;
(d) implement the Student's behavior intervention plan (BIP) with respect to the "behavior bucks;" and
(e) implement the Student's BIP with respect to the Student's crisis plan.[1]

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.[2]

511 IAC 7-29-1(f) by failing to do the following when a student with a disability has been suspended for more than ten(10) cumulative instructional days in the same school year:

a) provide services to enable the Student to progress appropriately in the general curriculum;
b) provide services to enable the Student to advance appropriately toward achieving the goals set out in the Student's individualized education program (IEP);
c) comply with the requirements of 511 IAC 7-29-5.[3]

511 IAC 7-29-5(a) by failing to convene a CCC meeting to review the Student's exisintg BIP and its implementation before but not later than ten (10) business days after suspending the Student for more than ten (10) cumulative instructional days in a school year.[4]

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[1] During the course of the investigation, this issue was changed to better reflect the facts.
[2] During the course of the investigation, the original issue regarding 511 IAC 7-29-1 was divided into three separate issues (511 IAC 7-29-1(c) 511 IAC 7-29-1(l) and 511 IAC 7-29-1(f)) to better reflect the facts.
[3] During the course of the investigation, the original issue regarding 511 IAC 7-29-1 was divided into three separate issues (511 IAC 7-29-1(c) 511 IAC 7-29-1(l) and 511 IAC 7-29-1(f)) to better reflect the facts.
[4] The issue was changed to better reflect the standard.

511 IAC 7-29-1(l) by failing to follow the procedures required by IC 20-33-8-18 when suspending a student with a disability.[5]

511 IAC 7-26-2(d) by failing to ensure that professional and paraprofessional staff serving a student with autism spectrum disorder have received specialized inservice training.[6]

An Extension of Time was granted May 17, 2007 indicating a new completion date of June 8, 2007.

FINDINGS OF FACT:

1. The Student, 12 years old, is eligible for special education and related services as a student with an autism spectrum disorder and communication disorder.

2. On April 16, 2007, the Complainant contacted the School and requested all school records regarding the Student. The Principal agreed to have all information ready for the Complainant by the end of the school day. Later in the school day, the grandfather of the Student picked up the requested materials from the main office. The materials were in a sealed manila envelope. The parent acknowledged that she received the requested materials from the Student's grandfather in the sealed manila envelope. However, the parent did not approve of the School releasing the Student's documents to anyone other than herself.

3. The Complainant alleged that the Student received excessive detentions due to not having a paraprofessional during lunch time. The IEP dated December 13, 2006 requires access to a paraprofessional daily as needed in the classroom. There is no further explanation in the IEP of the specifics of when and to what extent the paraprofessional would be utilized by the Student. In the March 19, 2007 CCC meeting notes, it was agreed that a paraprofessional will accompany the Student during lunchtime.

4. The Complainant alleged that the School failed to follow the IEP as to how much homework should be assigned to the Student. The IEP dated December 13, 2006, under the heading "Accommodations and Support Services," indicates by a "√" that the Student needs accommodations and support services and "Form 307 Addendum is attached." However, the form is not attached to the Student's IEP so there is no indication of what accommodations and support services were agreed upon. In a letter of response from the School, the School claims that the Student's accommodations "are provided with consistency and fidelity." The School failed to provide documentation as to what accommodations were required and to what extent such accommodations were provided to the Student.

5. The Complainant alleged the School failed to allow the Student the use of a calculator as required by the Student's IEP. The IEP dated December 13, 2006, under the heading "Accommodations and Support Services," indicates by a "√" that the Student needs accommodations and support services and "Form 307 Addendum is attached." However, the form is not attached to the Student's IEP so there is no indication of what accommodations and support services were agreed upon. In a letter of response from the School, the School claims that the Student's accommodations "are provided with consistency and fidelity." The School failed to provide documentation as to what accommodations were required and to what extent such accommodations were provided to the Student.

6. The Complainant alleged the School failed to implement the "behavior bucks" as required in the

[5] During the course of the investigation, the original issue regarding 511 IAC 7-29-1 was divided into three separate issues (511 IAC 7-29-1(c) 511 IAC 7-29-1(l) and 511 IAC 7-29-1(f)) to better reflect the facts.
[6] During the course of the investigation, this issue was changed to better reflect the facts.

Student's Behavior Intervention Plan (BIP). The BIP dated December 13, 2006 allows the Student to earn behavior bucks for good behavior and lose behavior bucks for inappropriate behavior. In a March 19, 2007 CCC meeting, the case conference notes indicated the continuation of the "token economy." The School failed to provide documentation that the behavior bucks and token economy were implemented.

7. The Complainant alleged the School skipped steps in the Student's crisis plan and directly called police authorities. A crisis plan was developed for the Student in the IEP dated December 13, 2006 which included the following:
   "Crisis plan for aggressive behavior:
   1. remove class
   2. adults stay calm, in neutral position (near door)
   3. another adult called
   4. call SRO (student resource officer) and [the autism consultant]
   5. send home remainder of day."

   The crisis plan was amended during the CCC meeting on March 19, 2007 to include the following:
   1. "Change staff to a neutral person (another teacher or an administrator).
   2. Move [the Student] to a safe room (use a high reinforcer to get him there) or remove the class.
   3. Phone his mother.
   4. Ask [the Student] to go home. This would be a suspension.
   5. Contact a school resource officer or local police if SRO is not available."

8. According to the Student's Intervention Summary and Discipline Referrals, the Student was sent home on the following dates: September 22, December 8, December 20, December 21, 2006, and March 13, 2007. In addition, the March 23, 2007 disciplinary referral indicates that both the mother and police were called and the School noted that it would be pressing charges. There is no documentation that the School followed the crisis plan before sending the Student home and contacting the police.

9. The School provided the Student's 2006-2007 Attendance Record, 18 Student Intervention Summary and Discipline Referrals and 3 Student Suspension Notices. Because of the numerous discrepancies displayed in the School's documentation, the Student's records are inconsistent. According to the attendance record, the Student was suspended for 23 days from August 30, 2006 - April 16, 2007. The 23 days of suspension included in-school and out-of-school suspensions. With respect to the in-school suspensions, the School failed to provide documentation that the Student was provided the opportunity to: (1) progress appropriately in the general curriculum; (2) receive the special education services specified in the Student's IEP; and (3) participate with non-disabled students to the extent the Student would have in the Student's current placement.

10. According to the Student's attendance records, the Student received out-of-school suspensions on the following dates: November 9-10, 2006, February 26, 2007 to March 6, 2007, March 14-15, 2007, and April 16, 2007. On November 9, 2006, the School provided notice of the Student's suspension, indicating that the Student would be suspended for 1 day (November 10, 2006). In addition, the Student's attendance records show that the Student received out-of-school suspension for two class periods on November 9, 2006. On February 26, 2007, the School provided notice of the Student's suspension, indicating that the Student would be suspended beginning February 26, 2007 "through pending [a] conference." The Student's attendance records show that the Student received out-of-school suspension for a total of seven days. The CCC meeting did not take place until March 19, 2007. The attendance records are not clear as to the date that Student returned to school, but the records indicate that between March 7, 2007 and

March 19, 2007 the Student received 3 days of in-school suspension and 2 days of out-of-school suspension. On April 16, 2007, the School provided notice of the Student's suspension, indicating that the Student would be suspended starting on April 16, 2007 "through pending [a] conference." April 25, 2007 is the last day listed on the attendance record for the Student. A CCC meeting was held on May 2, 2007.

11. A CCC meeting was conducted on March 19, 2007 for the purpose of a Manifestation Determination. The CCC determined that the Student's behaviors were a manifestation of his disability. The CCC notes indicate that the Student's BIP was reviewed, and changes were made to the Student's BIP with respect to the crisis plan.

12. The Complainant alleged that School personnel working with the Student have not received training, specifically the Complainant was concerned about the student resource officer, administration, lunchroom personnel, bus driver, and paraprofessionals. The School provided documentation of three paraprofessionals who received autism training. The School failed to provide documentation of in-service training in the area of autism spectrum disorder to all other staff who worked with the Student during the 2006-2007 school year.

13. On May 2, 2007 a CCC meeting was convened for the purpose of the reviewing the Student's FBA and BIP and to discuss compensatory services. The most recent functional behavior assessment (FBA) was dated May 10, 2006. The CCC determined the Student would be placed on homebound instruction for the remainder of the 2006-2007 school year and the 2007-2008 school year. The CCC notes document that the School offered extended school year or compensatory services through the summer with these decisions to be determined at a CCC meeting to be reconvened within one week. In addition, it was stated that the behavior plan for the remainder of the school year (homebound) would be discussed.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the Complainant requested all of the Student's records. Finding of Fact #2 indicates that the School placed the Student's records in a sealed manila envelope and gave the records to the Student's grandfather when the grandfather arrived to pick up the Student from School. According to 511 IAC 7-23-1(p), written and dated consent of the parent shall be obtained before personally identifiable information is disclosed to anyone other than the parent. Although the Complainant acknowledged that she received the Student's educational records from the grandfather in the sealed manila envelope, the Complainant did not give written and dated consent before the School released the Student's records to the grandfather. Therefore, a violation of 511 IAC 7-23-1 is found.

2. Finding of Fact #3 through #5 address whether the Student's IEP was implemented as written.
    a. Finding of Fact #3 indicates that the Student's IEP requires access to a paraprofessional daily as needed in the classroom. The Complainant asserts that the Student is receiving excessive detentions in the lunch room because he does not have a paraprofessional with him during lunch time. Finding of Fact #3 indicates that the CCC notes at the March 19, 2007 meeting indicated that a paraprofessional would accompany the Student during lunchtime from that date forward. The School failed to provide documentation that the IEP was implemented with respect to the paraprofessional during lunchtime.
    b. Finding of Fact #4 indicates that the Complainant claimed that the School failed to follow the Student's IEP with respect to the amount of homework the Student is assigned. Finding of Fact #5 indicates that the Student needed accommodations and support services; however, the form, indicating the extent of the Student's accommodations and support services, was not provided.
    c. Finding of Fact #5 indicates that the Complainant alleged that the Student was not

allowed to use a calculator as required by his IEP. Finding of Fact #5 indicates that the Student needed accommodations and support services; however, the form, indicating the extent of the Student's accommodations and support services, was not provided.

The School provided minimal documentation to document how the above stated accommodations are to be implemented. In addition, the language in the IEP is ambiguous as to when, to what extent, and by whom the above stated accommodations are to be implemented. The language resulted in misinterpretations and misunderstandings. Where ambiguity exists in an IEP, the ambiguity will be construed against the School for its development and implementation. IEPs must have sufficient clarity so that both the parents and the school personnel understand what services a student is to receive. Therefore, a violation of 511 IAC 7-27-7(a) is found.

3. Findings of Fact #6 and #7 address whether the Student's BIP was implemented as written. Finding of Fact #6 indicates that the Student's BIP included the use of "behavior bucks" for "good" and "inappropriate" behaviors. However, the School failed to provide documentation that documented the implementation of the "behavior bucks." Finding of Fact #7 indicates that the Student has a crisis plan that allows for the Student's parent and the student resource officer (or local police if the student resource officer is unavailable) to be called. In addition, the crisis plan allows for the student to be sent home. The Student's crisis plan consists of 5 steps. Findings of Fact #7 and #8 show the Student's discipline referrals and the School failed to provide any documentation regarding how each behavioral incident was handled with respect to the Student's crisis plan or that the steps were followed before sending the Student home or calling the student resource officer. Therefore, a violation of 511 IAC 7-27-7(a) is found.

4. Finding of Fact #8 indicates that the Student was sent home on 6 separate occasions. Finding of Fact #7 indicates that the December 13, 2006 IEP states that the School can send the Student home at step 5 of the 5 step crisis plan process. Finding of Fact #7 indicates that the March 19, 2007 IEP states that the Student can be sent home at step 4 of the 5 step crisis plan process. Because the School failed to document that the Student's crisis plan was followed, the 6 days that the Student was sent home constituted a removal. Finding of Fact # 8 indicates that the Student received 23 days of suspension, which included in-school and out-of-school suspensions. Because the school failed to provide documentation that the Student progressed appropriately in accordance with 511 IAC 7-29-1(g) during his in-school suspension, the in-school suspension are considered a removal. Findings of Fact #8 and #9 indicate that the Student was suspended for a total of 29 occasions. A unilateral, temporary removal of a student from a student's current placement, not made pursuant to the Student's IEP, is a suspension. Suspension for part of a day constitutes a day of suspension. Therefore, a violation of 511 IAC 7-29-1(c) is found.

5. Findings of Fact #8 and #9 show that the Student was suspended in excess of 10 days. The 10th cumulative day of suspension occurred on February 22, 2007. Finding of Fact # 10 indicates that the Student was suspended on February 26, 2007, thus resulting in the Student's 11th day of suspension. When a student is suspended for more than 10 cumulative instructional days, the School is required to provide services to enable the Student to advance in the general education curriculum; advance toward achieving goals in the Student's IEP; and comply with the requirements of 511 IAC 7-29-5 concerning the procedures for a functional behavioral assessment (FBA) and BIP. There is no evidence the School provided educational services when the Student was suspended in excess of 10 instructional days, nor that it complied with the requirements of 511 IAC 7-29-5. Findings of Fact #8 and #9 and Conclusion #4 indicate that the Student was suspended for a total of 19 additional days and there is no evidence that the School provided educational services during the suspension. Finding of Fact #11 indicates that a manifestation determination did not occur until March 19, 2007. Therefore, a violation of 511 IAC 7-29-1(f) is found.

6. Conclusion #5 determines that the 11th day of suspension occurred on February 26, 2007. Finding of Fact #11 indicates that the manifestation determination did not occur until March 19, 2007. From February 26, 2006 (the 11th cumulative day of suspension), the School had 10 business days to convene a CCC meeting to review the Student's existing BIP and its implementation and to modify its implementation as necessary to address the behavior. There is no evidence that the School convened a CCC within 10 business days to review the Student's BIP. Therefore, a violation of 511 IAC 7-29-5(a) is found.

7. Finding of Fact #10 indicates that the Student received out-of-school suspension on 4 separate occasions. For three of the 4 occasions the Complainant received a notice of suspension. Finding of Fact #10 indicates that the February 26, 2007 and April 16, 2007 suspension notices indicated that the Student would be suspended, pending a conference. According to IC 20-33-8-18(b), the principal shall send a written statement to the parent of the suspended student describing the following: 1) the student's misconduct. 2) the action taken by the principal. Because on two occasions the School failed to provide notice to the Complainant with respect to the number of days the Student would be suspended and failed to provide notice on one of the occasions, the School failed to comply with procedures set forth in IC 20-33-8-18. Therefore, a violation of 511 IAC 7-29-1(l) is found.

8. Finding of Fact #12 establishes that, although three of the Student's paraprofessional received inservice training on autism spectrum disorder, others working with the Student did not receive the requisite inservice training. Therefore, a violation of 511 IAC 7-26-2(d) 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 Anderson Community School Corporation and the Anderson Area Special Education Cooperative shall:

Send a written memorandum to all relevant School personnel regarding the proper procedures to follow when disclosing personally identifiable information pursuant to 511 IAC 7-23-1(p). The School shall submit a copy of the written memorandum and a list of personnel receiving it to the Division **no later than July 23, 2007.**

Convene a CCC meeting **no later than July 16, 2007** to determine the following:

- What compensatory services are necessary to make up for the time the Student did not receive instruction when suspended for more than 10 cumulative instructional days in the same school year. Additionally, time may be needed for the Student to complete make-up work that may have been missed due to suspension of lack of instruction. The CCC shall review the Student's current educational placement, the Student's IEP, and current or new educational evaluation data in accordance with 511 IAC 7-29-6(g);
- Review and revise the Student's IEP with specific attention to providing clear statements of how the Student's accommodations will be implemented. In addition, the IEP should be clear as to when the Student will utilize the paraprofessional;
- Conduct a new FBA and review the Student's BIP to reflect the elements required in 511 IAC 7-17-8 and 511 IAC 7-29-5.

The School shall provide a compensatory service plan as part of the CCC report and send the report and the IEP, including the Student's BIP, to the Division **no later than July 23, 2007.**

Provide specialized in-service training of autism spectrum disorder for all professional and paraprofessional staff working with the Student in accordance with 511 IAC 7-26-2(d). Not only does the

staff need to be trained on autism spectrum disorder in general, but there needs to be student-specific training for staff working with each student with autism spectrum disorder. The School shall submit a copy of the inservice agenda, handouts or other materials provided to the in-service participants, name(s) and title(s) of the presenter(s), and a list of participants with signatures and titles confirming attendance **no later than September 1, 2007.**