

**COMPLAINT INVESTIGATION SUMMARY**

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| COMPLAINT NUMBER:            | CP-262-2008        |
| COMPLAINT INVESTIGATOR:      | Brian Simkins      |
| DATE OF COMPLAINT:           | September 21, 2007 |
| DATE OF REPORT:              | October 19, 2007   |
| REQUEST FOR RECONSIDERATION: | no                 |
| DATE OF CLOSURE:             | January 15, 2008   |

**COMPLAINT ISSUES:**

Whether the Indianapolis Public Schools violated:

511 IAC 7-25-6 by failing to conduct a re-evaluation after 36 calendar months have elapsed since the last re-evaluation.<sup>1</sup>

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

511 IAC 7-29-5 by failing to develop a plan for assessing the student's functional behavior after the student was removed from school as a result of disciplinary action.

511 IAC 7-29-6 by failing to utilize the case conference committee to conduct a manifestation determination, specifically by failing to have the required participants in attendance.

**FINDINGS OF FACT:**

1. The Student, 14 years old, is identified as a student with a learning disability, and has been determined eligible for special education and related services.
2. The case conference report and IEP from the Student's annual case review held on October 12, 2006 indicates that the Student is to receive school counseling services for 40 minutes a month on an individual basis. Although documentation indicates that the Social Worker knows the Student and has worked with the Student on a regular basis going back to the beginning of the 2006-2007 school year, it does not indicate what services were provided and for how long for each session.
3. The Student was suspended following a behavioral incident involving fighting on school grounds that occurred on September 4, 2007. The case conference committee convened on September 5, 2007, to conduct a manifestation determination with all of the required participants in attendance, specifically the director of special education's designee, the teacher of record, a general education teacher, the Complainant (parent), and the Student's case worker from a local mental health organization. The case conference committee determined that there was no relationship between the Student's behavior and the Student's identified disability,

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<sup>1</sup> During the course of this complaint investigation, it was determined that the School failed to re-evaluate the Student by January 23, 2004. However, the Student was re-evaluated on March 4, 2005. The next re-evaluation date has been set by the case conference committee for March 8, 2008. Although the School acknowledges that it failed to re-evaluate the Student within 36 calendar months, according to 511 IAC 7-30-2(b), the violation occurred more than one year of the date this complaint was received by the Division. Therefore, no findings of fact or conclusions of law regarding this issue are in this complaint investigation report.

and decided to refer the Student to the District Adjudicator for placement in an alternative education program. The Student was suspended from school beginning September 5, 2007, and on September 13, 2007, was referred by the School to the District Adjudicator, who placed the Student in an alternative education placement.

4. On September 13, 2007, the case conference committee convened following the District Adjudicator's decision to place the Student in a local alternative education program. The purpose of the case conference was to review and revise the Student's IEP to reflect the change of placement to the alternate education program. The Complainant signed the IEP. The Student began attending school at the alternative education program on September 24, 2007, (the Student was allowed to stay in his current placement the week of September 17, 2007, in order to participate in statewide testing).
5. The case conference committee developed a behavioral intervention plan based on a functional behavior assessment on March 8, 2001, and has subsequently reviewed and revised it many times, the most recent revision on August 20, 2007, and review at the manifestation determination on September 5, 2007.

### **CONCLUSIONS:**

1. Finding of Fact #2 indicates that the School cannot document specifically whether and to what extent the Student has received 40 minutes of counseling per month within the past year of the date this complaint was filed. Therefore, a violation of 511 IAC 7-27-7(a) is found.
2. Findings of Fact #3 through #5 indicate that the Student had an existing behavioral intervention plan in place and it was reviewed at the manifestation determination case conference committee meeting on September 5, 2007, the day following a behavioral incident that required disciplinary action by the School. Therefore, a violation of 511 IAC 7-29-5 is not found.
3. Finding of Fact #3 indicates that all of the required participants, according to 511 IAC 7-27-3(a) were in attendance at the manifestation determination case conference committee meeting held on September 5, 2007. Therefore, a violation of 511 IAC 7-29-6 is not 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:**

Indianapolis Public Schools shall:

Convene the case conference committee to determine whether and to what extent compensatory counseling services shall be provided. The case conference must also determine a systematic method for documenting what dates the Student receives counseling services, for how long, and what was accomplished. The social worker, or other relevant personnel, providing the counseling services shall be in attendance to offer input. A copy of the case conference report and revised IEP shall be submitted to the Division no later than **November 30, 2007**.

Submit to the Division documentation that indicates the Student is receiving the required counseling services according to his IEP. The School shall utilize the new documentation method agreed to by the case conference committee. The documentation shall be submitted no later than **December 14, 2007**.