

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	CP-310-2008
COMPLAINT INVESTIGATOR:	Brian Simkins
DATE OF COMPLAINT:	December 10, 2007
DATE OF REPORT:	January 25, 2008
REQUEST FOR RECONSIDERATION:	Yes –Revised/February 27, 2007
DATE OF CLOSURE:	June 24, 2008

COMPLAINT ISSUES:

Whether the Mississinewa Community School Corporation and the Grant County Special Education Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to implement the behavioral intervention plan (BIP) before the student was suspended from school on November 1, and 2, 2007.

An extension of time until February 8, 2008, was granted by the Assistant Superintendent on January 9, 2008, because of the delay in receiving the required documentation due to the school's winter break.

FINDINGS OF FACT:

1. The Student, 14 years old, is a student with a learning disability, and has been determined eligible for special education and related services.
2. The Student was on homebound as pursuant to a physician's prescription, and as determined by the Student's case conference committee, from the beginning of the 2007-2008 school year until on or about October 22, 2007. Neither the IEP dated August 6, 2007, nor the subsequent revised IEP dated October 11, 2007, include a behavioral intervention plan (BIP). However, the Student's October 11, 2007 IEP indicated that the Student's behavior impedes his/her learning or others' learning" and a "behavior plan" is checked; however, no BIP is attached to the IEP. The Student's August 6, 2007 IEP indicated that the Student's behavior does not impede his/her learning or others' learning, and the "behavior plan" was not checked. The Complainant alleged that the BIP from the October 12, 2006 IEP should be in place. The October 12, 2006 IEP (which includes the Student's BIP) has a duration date from October 13, 2006 to October 13, 2007. There is no documentation from the School clarifying the confusion between the three IEPs for the Student.
3. The purpose of the CCC meeting on August 6, 2007 was to discuss the Student's health and "return to school." The discussion page of the IEP indicates that the Complainant "is pleased with the IEP written last year." The IEP does not address the Student's BIP. The IEP dated August 6, 2007, indicates that the school Counselor will be the Student's primary contact person any time the Student feels overwhelmed. Further, notes indicate that the Counselor will continue to be the Student's contact person and the Student's Teacher of Record will be the contact person when the Counselor is out of the building.

4. The Student was suspended from school on November 1, and 2, 2007, for a behavior incident that took place on October 31, 2007. The Student reported to the Principal's office during a passing period, and requested to speak to the Counselor. The Student was having a "problem" with another student. The Counselor was not present, and the Principal invited the Student to stay in her office to "refocus." The Student became very angry with the Principal when she discovered that the Principal was not going to immediately call the other student to the office with her present. The Student left the office and began yelling at the Principal, first in the school office foyer, then out into the hallway. The Student, in response to the Principal's instructions, eventually calmed down and sat outside the Counselor's office.

CONCLUSION:

Finding of Fact #3 indicates the Student's Teacher of Record should be the contact person when the Counselor is out of the building. There is no evidence that the Student's Teacher of Record was contacted with respect to the behavioral incident. In addition, Finding of Fact #2 indicates there is confusion and misunderstanding as to whether the Student has a BIP in place for the 2007-2008 school year. Where an ambiguity exists in an IEP, the ambiguity will be construed against the public agency that is responsible for its development and implementation. IEPs and case conference reports have to have sufficient clarity so that both the parent and school personnel know what services a student is to receive and from whom. Therefore, a violation of 511 IAC 7-27-7(a) is found. Finding of Fact #2 indicates that there was not a BIP to be implemented. Findings of Fact #3 and #4 indicate that the Principal, knowing that the Counselor was not present, implemented the IEP with respect to allowing the Student to sit and calm down. Therefore, a violation of 511 IAC 7-27-7(a) is not found.

The Department of Education, Division of Exceptional Learners requires no corrective action based on the Findings of Fact and Conclusions listed above.

The Mississinewa Community School Corporation and the Grant County Special Education Cooperative shall:

Convene a CCC meeting **no later than March 21, 2008** to review and revise the Student's IEP, specifically regarding the Student's BIP. The BIP should specifically address what the Student should do if the Counselor is not in the building or unavailable. In addition, the BIP should address the Student's issues with respect to the perceived bullying. The BIP should specify strategies that the Student should utilize if put in a bullying situation. The School shall submit the Student's IEP (including the BIP) to the Division **no later than March 28, 2008.**