

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1578.00
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: May 23, 2000
DATE OF REPORT: June 22, 2000
REQUEST FOR RECONSIDERATION: yes (revisions resulting from reconsideration are underscored)
DATE OF CLOSURE: September 19, 2000

COMPLAINT ISSUES:

Whether the Flat Rock-Hawcreek School Corporation and the Blue River Special Education Cooperative violated:

511 IAC 7-3-50 with regard to the school's alleged failure to ensure the student's teacher of record monitored the implementation of the student's individualized education program (IEP).

34 CFR 300.342 (b)(3)(i) with regard to the school's alleged failure to ensure that each teacher and related service provider was informed of his or her specific responsibilities in implementing the student's IEP.

511 IAC 7-12-1 with regard to the school's alleged failure to implement the student's IEP as written, specifically:

- a. Failing to provide identified accommodations, modifications, or supports;
- b. Failing to permit the student to participate in field trips; and
- c. Failing to provide the parent with progress reports at the identified levels.

511 IAC 7-12-2(h) with regard to the school's alleged failure to allow a student with a disability equal opportunity to participate with nondisabled students in nonacademic activities and services, specifically, field trips.

34 CFR 300.346(a)(2)(i) with regard to the school's alleged failure to ensure that the case conference committee considered positive strategies, supports, and interventions for a student whose behavior impedes his learning or that of other students.

34 CFR 300.347(a)(7) with regard to the school's alleged failure to include in the student's IEP a statement of how the student's progress will be measured and how the student's parent will be notified of that progress.

FINDINGS OF FACT:

1. The Student is fourteen years old and attends a local junior high school (the "school"). He is eligible for special education and related services as a student with an "other health impairment."
2. The Student's IEP indicates a short-term objective stating the Student will meet his teachers at the end of each class period to initial the Student's assignment book. The IEP further provides that the

Student will meet daily with his teacher of record ("TOR") to ensure that his assignment book is completed. The Student's general education teachers and TOR indicated they had difficulty finding the Student available at the end of class periods and at the end of the day. Progress reports distributed to the Student's general education teachers by the TOR to monitor the IEP do not indicate whether the Student's assignment book was signed. Additionally, no attempt was made in a case conference committee ("CCC") meeting to revise the objective to ensure more success. The same objective is present in the Student's IEP from June 30, 1999 through the February 16, 2000 CCC.

3. At the beginning of the 1999-2000 school year, the Student's TOR provided information to each of the Student's general education teachers and any related service personnel who would be working with the Student. The information was assembled in a packet and included the Student's goals and objectives pages from the IEP, a list of accommodations for the Student, and the Student's behavior plan. The TOR also provided regular progress report forms to the Student's general education teachers asking them to describe the Student's progress in meeting the goals and objectives in his IEP.
4. According to the Student's IEP, all accommodations, modifications, and supports are related to dealing with the Student's behavior. The school's discipline plan involves issuing white slips to students for disciplinary infractions. A student's movement along the continuum of disciplinary penalties provided by the discipline plan is based on the number of white slips a student receives. A student can go back down the continuum if he or she goes without a disciplinary referral for two weeks. The school modified the application of the discipline plan to the Student. The Student's behavior plan provided that the Student would be issued a white slip only after the interventions called for in the behavior plan were used. The behavior plan also shortened the time it would take for the Student to move back one level on the continuum to five rather than ten school days. The Student's parent has signed off on his IEPs.
5. According to the school's discipline plan, behaviors are identified that will warrant the issuance of white slips and the consequences to the student after he or she has accumulated a designated number of white slips. One of the consequences is not being allowed to participate in field trips. The School's documentation indicates there were seven field trips during the 1999-2000 school year in which the Student could have participated. The Student could not participate in four of these field trips due to disciplinary penalties. The parent asserts there were eight field trips, and the Student was precluded from participating in five of them. Participation for all students was contingent upon the number of white slips a student received within a given time period. The white slip eligibility requirements apply equally to all students. The school's data establish that a number of students had too many white slips to be eligible.
6. According to the Student's IEP, there are statements of measurable annual goals, including measurable short-term objectives related to the Student's needs. School special education personnel met with the parent monthly during the 1999-2000 school year to discuss the Student's progress. However, no statement exists in the Student's IEP describing how the Student's annual goals and short-term objectives would be measured, nor how the Student's parents would be regularly informed of his progress.
7. On June 30, 1999, the CCC met to develop the Student's IEP. A behavior plan was included as part of the Student's IEP developed at this meeting. The school states that "an Independent Hearing Officer ruled that the behavior plan the School had developed for the student was appropriate, [that] on June 30, 1999, the case conference committee met to develop an IEP which incorporated the Hearing Officer's findings and conclusions, [and that] this IEP included a behavior plan for the student based upon recommendations made by the Hearing Officer" related to the appropriateness of the school's discipline plan as applied to the Student. However, documentation

does not support this representation as the hearing officer's written decision was not issued until August 6, 1999 and made no findings, conclusions, or orders with respect to the school's proposed behavior plan. The June 30 behavior plan identified expected behaviors and sequential strategies to address the unacceptable behaviors. The strategies included various positive interventions to redirect the student toward the expected behavior, as well as positive reinforcers for acceptable behaviors. Although the parent signed the IEP, indicating agreement with the IEP as written, the parent subsequently sent a written opinion, dated July 9, 1999, to be attached to the IEP, disagreeing with one component of the behavior plan related to the use of "white [behavior reporting] slips," in addition to the CCC's determination that the Student's disability did not require modifications of the standard school discipline procedures. The Student's progress was reviewed at CCC meetings on September 29, November 8, and December 13, 1999 and on February 16, 2000. The CCC did not modify the Student's behavior plan at any of these meetings. The parent submitted a written opinion to the September 29 and November 8 CCC Reports/IEPs reiterating his disagreement with a component of the behavior plan and the CCC's determination that modifications to the School's standard discipline procedures was unnecessary. The parent also sent a dissenting opinion in response to the December 13 CCC meeting stating that the "behavior plan and current school discipline policies are not tailored to meet [the Student's] needs and are inappropriate for [the Student]."

CONCLUSIONS:

1. Finding of Fact #2 reflects that, although efforts were made to consistently monitor the Student's IEP, the Student's teachers had difficulty implementing the requirement to sign the assignment book on a daily basis. Although the TOR was aware of this problem, there is little evidence of any attempt to remedy the situation. Therefore, a violation of 511 IAC 7-3-50 is found.
2. Finding of Fact #3 reflects that the Student's general education teachers and related special education personnel were informed of their responsibilities in implementing the Student's IEP. No violation of 34 CFR 300.342(b)(3)(i) is found.
3. Findings of Fact #4 and #5 reflect that the identified accommodations and modifications were implemented as described in the IEP and that the Student had opportunities to participate in field trips. Finding of Fact #6 indicates that the Student's IEP did not specify how the student's progress will be reported to the parents. Therefore, the Student's IEP was implemented as written, and no violation of 511 IAC 7-12-1 is found.
4. Finding of Fact #5 reflects that the Student was provided equal opportunity to participate with nondisabled students in field trips. No violation of 511 IAC 7-12-2(h) is found.
5. Finding of Fact #7 reflects that the CCC meetings considered positive strategies, supports, and interventions for a student whose behavior impedes his learning or that of other students. Therefore, no violation of 34 CFR 300.346(a)(2)(i) is found.
6. Finding of Fact #6 indicates that the Student's IEP did not contain a statement of how the Student's progress toward annual goals will be measured or how the Student's parents will be regularly notified of this progress. Therefore, a violation of 34 CFR 300.347(a)(7) is found.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Flat Rock-Hawcreek School Corporation and the Blue River Special Education Cooperative shall:

1. Conduct a meeting involving the Student's TOR, general education teachers, special education personnel, the Student's parents, and all other related service providers. The purpose of the meeting shall be to review, revise, and improve ways to better monitor the accommodations and modifications in the Student's IEP, especially in regard to checking the Student's assignment book and adequately measuring the progress of the short-term objectives in the IEP. Copies of attendance, meeting notes, and an IEP monitoring plan shall be sent to the Division no later than September 15, 2000.
2. Convene a CCC meeting to revise the Student's IEP to comply with 34 CFR 300.347(a)(7) and 511 IAC 7-27-6(a)(7) regarding progress reports. Copies of the CCC meeting notes and the revised IEP shall be sent to the Division no later than September 15, 2000.