

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1716.01
COMPLAINT INVESTIGATOR: Jane Taylor-Holmes
DATE OF COMPLAINT: March 21, 2001
DATE OF REPORT: April 20, 2001
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: May 23, 2001

COMPLAINT ISSUES:

Whether the Clark-Pleasant Community School Corporation and the Johnson County Special Services violated:

511 IAC 7-25-4(b) with regard to the school's alleged failure to conduct an initial educational evaluation and convene a case conference committee within sixty instructional days of the date of written parental consent.

511 IAC 7-29-8(a) with regard to the school's alleged failure to afford a student the protections of 511 IAC Article 7 when the school is deemed to have knowledge that the student is a student with a disability and the school removes (suspends) the student from school.

FINDINGS OF FACT:

1. The student (the "Student") is fifteen years old and is in the ninth grade at the School. The Student is eligible for special education and related services as a student with an emotional handicap ("EH").
2. The Complainant reported that the Student had been independently diagnosed with ADHD and dyslexia since early elementary school; however, prior to the seventh grade the Student was able to compensate and made good grades. The Complainant contends that the Student began having academic difficulties in the seventh grade and failed the eighth grade.
3. The Student received mostly "A's" and "B's" in grades three through five. The following are the student's first and second semester middle school grades:

Sixth Grade	1 st semester	2 nd semester
language 6	A-	B
math 6	A	A-
science 6	B-	B
soc. studies 6	B	B

Seventh Grade	1 st semester	2 nd semester
language 7	D-	D
math 7	D	D

science 7	C-	C
world culture	C	F

Eighth Grade 1st semester 2nd semester

language 8	D+	F
pre-algebra 8	F	F
science 8	C-	C
U.S. history	D+	D-
8 th choir		B-

4. The Complainant contends that either during the Student's seventh or eighth grade year she talked to the guidance counselor at the local middle school (the "Middle School") regarding the Student's constant struggle with reading. The Complainant stated during the conversation with the guidance counselor that the guidance counselor mentioned Section 504.
5. When the Student was in the eighth grade at the Middle School, the Complainant talked with the high school Assistant Principal and inquired about 504. The high school Assistant Principal informed the Complainant that she needed to contact the Assistant Principal at the Middle School concerning Section 504 ("504"). The high school Assistant Principal informed the Middle School principal that the Complainant would be coming to the Middle School to discuss 504.
6. The Complainant contends that during the spring of 2000, when the Student was in the eighth grade at the Middle School, she talked to the Middle School Assistant Principal about the Student's problems and ("504"). The Complainant reported that the Middle School Assistant Principal told the Complainant what she needed to do to get the 504 process started.
7. The Complainant reported that she contacted the Student's doctors and was under the impression that the doctors were going to send information documenting the Student's attention deficit hyperactive disorder ("ADHD") and dyslexia to the Middle School.
8. A BIP was developed for the Student on November 6, 2000, and given to all of the Student's teachers. As part of the BIP the Student began meeting with the program support teacher ("Program Support Teacher") on a weekly basis to discuss School concerns and to develop strategies to enable the Student to more effectively manage her behavior. In a chronological summary dated April 10, 2001, the Program Support Teacher wrote "[Student] has a long - standing history of behavioral difficulties in the school setting."
9. The Student began receiving discipline referrals during her seventh-grade year, and accrued a total of fourteen referrals for that year. The Student accrued eight discipline referrals during her eighth-grade year.
10. On October 2, 2000, the Mother gave written permission for the Student's initial educational evaluation (the "Evaluation") to be conducted.
11. Between September 12, 2000, and November 3, 2000, the Student was sent to the alternative to suspension program in lieu of an out-of-school suspension on nine different days. Four of those days were served after and including October 2, 2000, when the Mother gave written permission for the Student to be evaluated for special education services. The alternative to suspension program is a county-wide effort that is operated in conjunction with the local court. No instructional services are provided in this program.
12. The Assistant Director reported that the Student was provided with all of her assignments and her

absences from School were excused.

13. The case conference committee (the "CCC") met on December 12, 2000, to discuss the results of the Evaluation and to determine eligibility for special education services. A chronological summary submitted by the Program Support Teacher states that the results of functional behavioral assessment were also discussed at the CCC meeting. The CCC report states that a consensus could not be reached regarding the Student's eligibility and that the CCC "agreed to reconvene at a later date and to collect more information regarding [Student's] behavior and emotionality while in middle school."
14. On December 14, 2000, the Student engaged in conduct contrary to School rules. The Principal notified the Superintendent in a *Written Charge and Request for Expulsion* memorandum dated December 14, 2000. The Principal recommended expelling the Student from School until January 4, 2001. The Student was suspended from School pending the appointment of the expulsion examiner, but was placed in an alternative placement (the "Stay-In-School Program") until January 5, 2001. The Stay-In-School Program is a special education classroom with a teacher and paraprofessional and is operated in conjunction with the community corrections program.
15. The Student's first out-of-school suspension occurred on October 4, 2000, two days after the Mother gave written permission for the Student to be evaluated. The Student's ninth cumulative out-of-school suspension was on December 14, 2000.
16. The Assistant Director reported that services were intended to be provided when the Student was suspended on December 14, 2000. However, when the Principal explained to the Student and the Mother that the Student was to take her books home to continue her work, the Mother refused to take the Student's books home. No services were provided to the Student from December 15, 2000 through January 7, 2001 (11 instructional days). This period of time increased the student's cumulative out-of-school suspension to 20 days during the 2000-2001 school year.
17. The CCC reconvened on January 5, 2001, and determined that the Student was eligible for special education as a student with an EH. As of January 5, 2001, fifty-five instructional days had elapsed from the date of the parent's written consent to evaluate. The CCC recommended the Student continue in the Stay-In-School Program, beginning on January 10, 2001. The Mother gave written permission for the recommended services and for the individualized education program to be implemented at the conclusion of the January 5, 2001, CCC meeting. The CCC report also states "reconvene on 1-24-01 to discuss placement at stay-in-school program and review her progress (2 weeks will be on a trial basis). The manifestation determination review will continue at that time."
18. On January 24, 2001, the CCC met and determined that the Student's misconduct was a manifestation of the Student's disability. The CCC recommended that the Student continue to receive special education services in the Stay-In-School Program.

CONCLUSIONS:

1. Findings of Fact #10, #13, and #17 indicate that the CCC met to discuss the Student's eligibility within sixty instructional days from the date that the parent gave written permission for the Student's initial educational evaluation. Although the CCC was unable to make a determination at the first CCC, Finding of Fact #17 indicates that a determination of eligibility was determined at the reconvened CCC meeting, that also occurred within the sixty instructional day timeline. Therefore, no violation of 511 IAC 7-25-4(b) occurred.
2. Findings of Fact #2, #3, #4, #5, #6, #7, #8, and #9 indicate that the Student's grades significantly

dropped in the seventh and eighth grades, that the Student was experiencing academic and behavioral difficulties, and that the Complainant made attempts to get educational assistance for the Student. Finding of Fact #10 demonstrates the School had knowledge that the Student was a student with a disability as of October 2, 2000, when the parent made a formal request for an educational evaluation. Findings of Fact #11, #12, #14, #15, and #16 reflect that the Student experienced the tenth cumulative day of suspension subsequent to the parent's request for an evaluation. At that time, the school advised the parent to take the Student's books home to continue her work, but the parent refused. There is no indication that the School made any other attempt to provide services to the Student during the remaining 11 days of suspension. The School did not provide the student with instruction to enable her to progress in the general curriculum after the Student had been suspended for more than 10 cumulative days. Findings of Fact # 14 and #17 indicate that more than ten instructional days elapsed between the School's decision to expel the Student and the manifestation determination. Therefore, a violation of 511 7-29-8(a) 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 Clark-Pleasant Community School Corporation and the Johnson County Special Services shall:

- 1.a. reconvene the Student's CCC and discuss the need for compensatory services for those days that the Student was suspended and not receiving instructional services. A copy of the *CCC Report* shall be submitted indicating that discussion of compensatory services occurred and the decision made regarding said services shall be submitted to the Division no later than May 18, 2001.
- 1.b. disseminate a notice to all local school corporation professional personnel regarding the school corporation's responsibility to follow the procedures to follow as indicated in 511 IAC 7-29-8. A copy of the notice and an assurance statement signed by all individuals (name and title) in receipt of the notice shall be submitted to the Division no later than May 18, 2001.

DATE REPORT COMPLETED: April 18, 2001