

Indiana Department of Education

Division of Exceptional Learners

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1895.02
COMPLAINT INVESTIGATOR:	Sandie Scudder
DATE OF COMPLAINT:	March 21, 2002
DATE OF REPORT:	April 26, 2002
REQUEST FOR RECONSIDERATION:	n/a
DATE OF CLOSURE:	August 14, 2002

COMPLAINT ISSUES:

Whether the Gary Community Schools violated:

511 IAC 7-18-2(a) by failing to provide a student with a disability a free appropriate public education.

511 IAC 7-27-4(a)(3) by failing to convene a case conference committee (CCC) upon the parent's request.

511 IAC 7-25-6 by failing to conduct a reevaluation of the student every 36 months.

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

511 IAC 7-27-4(c) and 511 IAC 7-27-5(d) by unilaterally changing the student's placement without convening the CCC or obtaining the parent's consent.

511 IAC 7-29-1(1) by failing to comply with IC 20-8.1-5.1-12 when suspending a student with a disability.

511 IAC 7-29-2(b) failing to follow appropriate changes of placement procedures (pursuant to - 511 IAC 7-29-5) when suspending a student with a disability for more than ten consecutive instructional days.

511 IAC 7-29-6 by failing to convene a CCC to conduct a manifestation determination within ten instructional days of the date of the decision to suspend the student for more than ten consecutive instructional days.

511 IAC 7-29-5 by failing to convene a CCC to develop a plan for assessing the student's functional behavior and to develop a behavioral intervention plan (BIP) based on that assessment.

FINDINGS OF FACT:

1. The student (Student) is 14 years old, is in the 8th grade, and is eligible for special education and related services as a student with a severe mental handicap and an autism spectrum disorder.

2. The Complainant asserts that the Student is not receiving a free appropriate public education. On February 12, 2002, the Student was suspended from the school bus after a confrontation with the bus matron. The principal states that she advised the Complainant on February 12 during a phone call and in a letter that the Student was not suspended from school. However, the Complainant states she was unaware of any problems until February 13, 2002, when the school bus failed to pick the student up for school. The Complainant called the transportation department and was told about the confrontation and suspension. The School's letter to the Complainant regarding the incident did not specify the number of days the Student was suspended from the bus, but indicated that the suspension would continue until the CCC convened.
3. The Student's IEP requires the School to provide the Student with a variety of special education and related services, including transportation. Subsequent to the Student's suspension from the bus, the School provided no alternative method of transportation for the student to attend school. As a result, the Student has been unable to get to school since February 12, 2002. The School has provided no special education or related services to the Student since the date of suspension from the bus.
4. The CCC convened on February 19, but when the Complainant was unable to attend, the principal adjourned the meeting. Despite several contacts by the Complainant and the advocate to the principal and assistant director requesting a CCC meeting, the School took no action to reconvene the CCC meeting until receipt of a letter from the complainant on April 8, 2002, requesting a CCC meeting. On Monday, April 22, 2002, a CCC meeting was scheduled for Friday, April 26, 2002.
5. As of the date of this report, the Student has been excluded from School for 48 instructional days. The School did not seek the complainant's consent for this change from the Student's current IEP-identified placement. The School has not convened a CCC to determine if a change of placement is warranted. The School has not convened a CCC to conduct a manifestation determination, develop a plan for assessing the Student's behavior, or review an existing behavioral intervention plan.
6. The Complainant asserts that the school has not conducted a reevaluation with the Student. The Student's last reevaluation was conducted on November 18, 1999, the next reevaluation is not due until November 2002.

CONCLUSIONS:

1. Findings of Fact #1, #2, and #3 indicate that the School has failed to provide a Student with a disability with any education and related services since February 12, 2002, despite the existence of an IEP for the Student. Therefore, a violation of 511 IAC 7-18-2(a) is found.
2. Findings of Fact #4 reflects that the School has not responded to the Complainant's requests to schedule a CCC in a timely manner. Therefore, a violation of 511 IAC 7-29-1(1) is found.
3. Finding of Fact #6 demonstrates that the Student's 36-month reevaluation is not due until November 2002. Therefore, a violation of 511 IAC 7-25-6 is found.
4. Finding of Fact #3 indicates that the Student has an IEP and that the School has provided no special education and related services as required by the IEP since February 12, 2002. Therefore, a violation of 511 IAC 7-27-7(a) is found.
5. Findings of Fact #3, #4, and #5 reflect that the Student's suspension from the bus and the School's failure to provide an alternative means of transportation as required by the Student's IEP effectively

resulted in the unilateral removal of the Student from the Student's current placement for more than ten consecutive school days. No CCC has been convened to determine if a change of placement is needed, and the School did not obtain parental consent for this change of placement. Therefore, violations of 511 IAC 7-27-4(c) and 511 IAC 7-27-5(d) are found.

6. 511 IAC 7-29-1 requires a school to comply with I.C. §20-8.1-5.1-12 when suspending a student with a disability. Indiana Code §20-8.1-5.1-12 states: "A principal may suspend a student for not more than ten (10) school days. Findings of Fact #2, #3, and #5 demonstrate that the Student's suspension from the bus has effectively resulted in the Student being suspended from School in excess of ten instructional days. Therefore, a violation of 511 IAC 7-29-1 is found.
7. Finding of Fact #2, #3, and #5 indicate that the School's failure to provide alternative transportation for the Student resulted in the unilateral removal of the Student from his current educational placement for more than ten consecutive instructional days. Unilaterally removing the Student for more than ten consecutive instructional days is considered an expulsion and a change of placement for the Student. However, the School failed to follow appropriate procedures for effecting this change of placement. Therefore, a violation of 511 IAC 7-29-2(b) is found.
8. Findings of Fact #2, #3, #4, and #5 reflect that the School unilaterally removed the Student from his current placement for more than ten consecutive instructional days. Such removal is defined by 511 IAC 7-29-2 as an expulsion and requires the school to convene a CCC to conduct a manifestation determination within ten instructional days pursuant to 511 IAC 7-29-6. 511 IAC 7-29-5 also requires the to consider a plan for assessing the Student's functional behavior or review an existing behavioral intervention plan. The School failed to convene a CCC to conduct a manifestation determination, develop a plan to assess the Student's functional behavior, or review an existing behavioral intervention plan. Therefore, violations of 511 IAC 7-29-5 and 511 IAC 7-29-6 are 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 Gary Community Schools shall:

1. Immediately arrange for transportation for the Student to allow the Student to attend school. An assurance statement from the principal and director of special education shall be faxed to the division **no later than May 1, 2002**, documenting that transportation is being provided, and the Student is back in school.
2. Convene the CCC to:
 - a. Determine the nature and amount of compensatory services the Student will receive as the result of the interruption of services from February 12, 2002 until the date the Student returns to school. The compensatory services may include services provided during the summer as part of extended school year services. The CCC Report/IEP shall detail the CCC's consideration of compensatory services and shall clearly identify which services are being provided to compensate the Student. The IEP shall clearly identify the length, frequency, location, and duration of all services to be provided to the Student.
 - b. Develop a plan for assessing the Student's functional behavior, including timelines for conducting such assessment and reconvening the CCC. The CCC Report/IEP shall clearly describe the plan, identify the timelines and individuals responsible for the assessment, and

indicate the date the CCC will convene to review the assessment and develop or revise a behavioral intervention plan.

The School must submit the CCC Report/IEP to the Division no later than May 6, 2002.

3. Conduct an in-service for all building administrators and transportation administrators regarding the requirements and limitations of suspending a student with a disability, including suspensions from transportation. The in-service shall also cover the following:
 - a. when a student is suspended from transportation and student's IEP includes transportation as a related service, the school is required to make alternate transportation arrangements for the student; and
 - b. failure to arrange alternate transportation results in the student being excluded (suspended) from school with all of the attendant responsibilities.

A copy of the in-service agenda with the name of the individual who provided the training, a list of attendees (by name and title), and any handouts utilized must be submitted to the Division no later than May 17, 2002.

4. Send a written memorandum to all building administrators reminding them that a case conference committee must be convened upon a parent's request. **A copy of the memorandum and list of individuals to whom the memorandum was sent must be submitted to the Division no later than May 6, 2002.**