

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1996.03
 COMPLAINT INVESTIGATOR: Sandie Scudder
 DATE OF COMPLAINT: February 5, 2003
 DATE OF REPORT: March 6, 2003
 REQUEST FOR RECONSIDERATION: no
 DATE OF CLOSURE: March 27, 2003

COMPLAINT ISSUES:

Whether the Portage Township Schools violated:

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

511 IAC 7-29-1(f) by failing to provide services to enable the student to progress appropriately in the general education curriculum and toward achieving the goals set out in the student's IEP, and by not complying with the requirements of 511 IAC 7-29-5 when a student with a disability has been suspended for more than 10 cumulative instructional days.

511 IAC 7-29-5 by failing to convene a case conference committee (CCC) meeting to develop a behavioral intervention plan (BIP) within the required amount of time.

511 IAC 7-27-4(a)(4) and 511 IAC 7-29-1(j)(2) by failing to convene a CCC meeting when the student was suspended for more than 10 cumulative instructional days that constitute a pattern.

FINDINGS OF FACT:

1. The student (Student) is 14 years old, attends a local middle school (School), and is eligible for special education and related services as a student with an emotional disability and a learning disability. The Student was placed in special education on November 5, 2002, and transferred to another middle school in order to access services for students with emotional disabilities.
2. The Student Discipline Report documents that the Student has had nine incidents relating to behavior from December 4, 2002, through January 23, 2003, after the new school placement on November 11, 2002. Four of the incidents resulted in Saturday detention, two of the incidents resulted in home contacts, and three of the incidents resulted in the Student being assigned to the middle school program (Program) for a total of seven days. The Program is an alternative to in-school or out-of-school suspension. The director of special education (Director) states, and the Student Discipline Report supports, that the Student was never suspended from school; therefore, no interruption of services occurred, and the CCC did not need to convene.
3. While assigned to the Program, the Student received instruction from a full-time general education teacher, and was allowed to complete assigned work for credit. The teacher of record (TOR) consulted with the Program teacher, and provided appropriate materials for math instruction and accommodations

as listed in the IEP dated November 11, 2002. The Program also utilizes the services of a school social worker on a full time basis.

4. A Functional Behavior Assessment was included in the November 11, 2002, IEP; however, the CCC determined that a BIP was not warranted at this time. November 11, 2002, IEP documents that if the Student's behavior continued to interfere with his education after the transition into the new placement, a BIP would be developed at that time. The School feels the recorded incidents are, in part, due to the Student's adjusting to a new school. The Complainant signed the IEP in agreement.

CONCLUSIONS:

1. Finding of Fact #2 establishes that the Student was never suspended from school, but was assigned to the Program, an alternative to suspension, that is contained within the middle school building. Since the student was not suspended from school, the CCC did not need to convene. Therefore, violations of 511 IAC 7-7-27-4(a)(4) and 511 IAC 7-29-1(j)(2) are not found.
2. Finding of Fact #3 reflects that during the time the Student was assigned to the Program, services were provided as required in the IEP dated November 11, 2002. The TOR consulted with the teacher and provided math assistance and accommodations. Therefore, a violation of 511 IAC 7-29-1(f) is not found.
3. Finding of Fact #4 reflects that the CCC determined a BIP was not appropriate at the November 5, 2002, CCC meeting. The School stated that the incidents were related to the Student transitioning to new program and a new school, and did not warrant a BIP at this time. Therefore, a violation of 511 IAC 7-27-7(a) 7-29-5 is not found.
4. Finding of Fact #4 establishes that the IEP stated that if the Student's behavior continued to interfere with his education after a period of transition the teacher/case manager would convene the CCC. Page 21 of the November 11, 2002, IEP does not include a date after which the CCC will be convened to determine if a BIP is warranted. Finding of Fact #2 documents after enrolling on November 11, 2002, the Student has several incidents from December 4, 2002, through January 23, 2003. Therefore, a violation of 511 IAC 7-27-7(a) is 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 Portage Township Schools shall:

Convene the CCC and address the Student's behavior. If the CCC determines the Student's behavior warrants a BIP, the BIP shall be developed, provided to the Student's teachers, and implemented. **A copy of the CCC Report and BIP shall be submitted to the Division no later than March 21, 2003. A letter of assurance stating that the Student's teachers have received a copy of the Student's BIP shall be submitted to the Division no later than March 21, 2003.**