

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2222.05
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: February 23, 2005
DATE OF REPORT: March 23, 2005
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: May 6, 2005

COMPLAINT ISSUES:

Whether the Richmond Community Schools violated:

511 IAC 7-23-1(p) by failing to obtain written and dated consent of the parent before personally identifiable information is disclosed to anyone other than the parent, eligible student or authorized public agency officials.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by consistently removing the student from class for behavior.

During the course of this investigation an additional issue was identified:

511 IAC 7-27-4(c) by failing to utilize the case conference committee (CCC) to develop, review, or revise the student's IEP, specifically by developing an IEP addendum recommending a change of placement without the input of the student's CCC.

FINDINGS OF FACT:

1. The Student has been identified as having an emotional disability (ED) and determined eligible for special education and related services.
2. It is undisputed that the Student's physician and the Student's classroom teacher spoke by telephone at some point during the 2004-2005 school year to discuss the Student's behavior and medication for ADHD (Attention Deficit/Hyperactivity Disorder). The Complainant alleges that the Student's teacher made telephone contact with the physician and received erroneous personal health information, but fails to provide a date this interaction took place. The School asserts that it was the physician who contacted the teacher, and that the physician had voluntarily offered his opinion that the Student's medication should not be making the Student sleepy at school. Otherwise no other information was provided by the physician or solicited by the School. A copy of a transcribed phone message directed to the Principal regarding this phone conversation is not signed and indicates two dates: a date of March 4, 2005, in the space where the date of the message is to be; and a date of January 25 (no year) where the signature of the person writing the message is to be. The Complainant and the School cannot provide the date on which this phone conversation took place and no other documentation exists to indicate whether and to what extent personally identifiable information was shared without parental consent.
3. The Student's IEP dated April 30, 2004, indicates that the Student is placed in the general education classroom setting full-time with behavior consultation services two times per month. The Complainant

does not dispute that these consultations have taken place. The IEP also contains one goal involving the Student's behavior in the classroom. The IEP also indicates that the Student is struggling academically at school. During the fall semester of 2004, the Student was having problems staying awake in class and increasingly exhibiting inappropriate behavior. Between August 27 and October 25, 2004, the Student was sent to the school office once, received one verbal warning, lost recess privileges twice, spent 30 minutes in after-school detention once, received a half-day of in-school suspension, and had a conference requested with the Student's parent, which never took place. The Student's teacher of record and classroom teacher met during one of the consultations and developed a behavior plan for the Student that is dated November 22, 2004, and is signed by the Complainant. This behavior plan is not a part of the Student's IEP. On November 22, 2004, the Student was sent to the school office pursuant to the behavior plan. A discussion was held and the Student returned to the classroom.

4. Between December 17, 2004, and February 18, 2005, the Student had a notice sent home to the parent twice, received one day of out-of-school suspension, lost the right to participate in physical education class once, received 30 minutes of after-school detention once, and received one half-day of in-school suspension. On February 10, 2005, the Student's teacher of record and classroom teacher met to discuss recommended changes to the Student's placement, specifically changing it to general education with direct special education support outside of the classroom. This recommendation was put forth to the Principal who then contacted the Complainant. The teacher of record, after speaking with the Complainant by telephone, sent a copy of the recommended changes to the Complainant in the mail in the form of an IEP addendum dated February 11, 2005. This addendum was mailed to the Complainant on February 14, 2005, and included a permission for placement form. The signed permission form was received by the School on February 25, 2005, and the School acknowledges implementing the changes on February 28, 2005.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the School did not document whether and to what extent the Student's classroom teacher disclosed personally identifiable information to the Student's physician without first obtaining parental permission. Therefore, a violation of 511 IAC 7-23-1(p) is found.
2. Findings of Fact #3 and #4 indicate that the School did not fail to implement the Student's IEP as written. With regard to the Student's behavior, the IEP provides for consultation in the general education setting twice a month. Although the Student was some times removed or precluded from attending various class activities for bad behavior, it was not so frequent that the Student was prevented from progressing towards the general education curriculum or the one behavior-related goal in the Student's IEP. Therefore, a violation of 511 IAC 7-27-7(a) is not found.
3. Findings of Fact #3 and #4 also indicate that the School failed to utilize the Student's case conference committee to: (1) develop a behavior plan on November 22, 2004; and (2) develop an IEP addendum based on a recommended change of the Student's placement. Under both instances, school personnel met, made decisions, and drew up paperwork involving the Student's special education outside of and without input from the case conference committee. A behavior plan, and a proposed change of placement must be developed and decided on during the case conference committee process and not outside this process. Therefore, a violation of 511 IAC 7-27-4(c) is found.

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

CORRECTIVE ACTION:

Richmond Community Schools shall:

1. Send a written memorandum to all school building administrators, special education personnel, and all classroom teachers regarding the requirements of 511 IAC 7-23-1(p). The memorandum shall also include recommendations and guidance to all relevant personnel on the types of policies, procedures, and documentation necessary to ensure compliance. A copy of the memorandum and a list of all personnel who receive it shall be submitted to the Division no later than April 29, 2005.
2. Send a written memorandum to all school building administrators, special education personnel, and classroom teachers regarding the requirements of 511 IAC 7-27-4(c). The memorandum shall emphasize the case conference committee's role in making decisions on behalf of students with disabilities. A copy of the memorandum and a list of all personnel who receive it shall be submitted to the Division no later than April 29, 2005.
3. Convene the Student's case conference committee to discuss whether and to what extent the Student's behavior plan shall become a part of the IEP as a behavior intervention plan (BIP). If so, then the CCC shall agree to further review and revise the BIP based on the requirements of 511 IAC 7-17-8. In addition, the CCC shall also determine whether and to what extent the CCC agrees to the change of placement as written in the addendum dated February 11, 2005, (of which the parent signed on February 25, 2005). If not, the CCC shall determine the appropriate placement for the Student. A copy of the Case Conference Summary Report and IEP shall be submitted to the Division no later than April 29, 2005.