

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2284.06
COMPLAINT INVESTIGATOR: Joe Bear
DATE OF COMPLAINT: October 14, 2005
DATE OF REPORT: November 21, 2005
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: January 18, 2006

COMPLAINT ISSUES:

Whether MSD of Perry Township and RISE Special Services violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to implement the student's safety plan; and

511 IAC 7-25-7 by requiring that the student get an additional evaluation at the parent's expense before the student could return to school.

FINDINGS OF FACT:

1. The Student, 15 years old, has been identified as having a visual impairment (primary) and an emotional disability (secondary) and has been determined eligible for special education and related services.
2. The Student's IEP developed on September 13, 2005, calls for her to receive special education services primarily in the regular classroom, with daily assistance in the resource room. The IEP includes a Functional Behavioral Assessment and a Behavior Intervention Plan, which does not call for the short-term removal of the Student from the school environment.
3. In addition to receiving services from the School, the Student sees a case manager from a private behavioral health agency (Private Agency). Two case managers provided services to the Student during October 2005: Case Manager #1 and Case Manager #2.
4. The Complainant acknowledged that she gave permission for the School to contact either case manager, and to release the Student to either case manager, as the Complainant is visually impaired and unable to drive.
5. On October 4, 2005, the Private Agency, the Complainant, and the Student developed a safety plan. One step in the plan was for the Student to report auditory hallucinations to adults. The plan was not shared with the School.
6. During second period on October 13, 2005, the Student informed the teacher that she was hearing voices. She also wrote the teacher a note, saying the voices were telling her to kill (but she did not know who). The teacher contacted the school office, and the Director of Guidance came to the classroom to remove the Student. The Director of Guidance called the Complainant, who gave her the telephone number to call Case Manager #2 to pick up the Student.

7. The Complainant stated that, shortly after being contacted by the Director of Guidance on October 13, 2005, she called the Student's TOR to request a CCC meeting. Either that day or the next, the time for the CCC meeting (on October 17, 2005) was set and agreed to by the Complainant.
8. While waiting for Case Manager #2 to arrive on October 13, 2005, the Director of Guidance consulted with the Principal on an appropriate course of action. The Principal decided that a psychological evaluation was necessary before the Student could return to school.
9. According to the Complainant and Case Manager #2, when Case Manager #2 arrived to pick up the Student, the Director of Guidance requested a guarantee from the Private Agency that the Student would not present a risk to herself or others before the Student could return to school. According to the Director of Guidance, she did not request a "guarantee," but did acknowledge that there would need to be a verification from the Private Agency that the Student would not present a threat to herself or others before she could return to school.
10. The School did not offer to pay for the evaluation at the Private Agency. The cost was the responsibility of the Complainant. Eighty percent (80%) of the cost was paid for by a private insurer; the remaining 20% was paid for by Medicaid.
11. On October 13, 2005 (Thursday), following the Student's removal from school that morning, Case Manager #2 took the Student to the Private Agency for an emergency consultation with a nurse practitioner. The consultation lasted approximately 45 minutes. The nurse practitioner asked the Student a series of questions to determine the nature of the voices heard by the Student, and reviewed the Student's medications. In so doing, the nurse practitioner determined that the Student did not have a plan to hurt herself or others, and that she did not need to be hospitalized again. The agency did not develop a written report of its findings.
12. On October 17, 2005 (Monday), a CCC meeting was held for the Student. Case Manager #2 reported on the emergency consultation, and the Student reported on her mental health (including that she knew the voices were not real, and that she did not have a plan to hurt herself or others). Case Manager #2 explained to the CCC that she could not guarantee that the Student would not hurt herself or others in the future; however, the Student was found to pose no threat at the time she was assessed. The CCC developed an Addendum to the IEP, which included changes that were intended to give the Student time in the middle of the day to unwind, study, and take a break. The CCC decided to change the Student's primary disability to emotional disability, and to designate a new TOR. Additionally, the CCC decided that Case Manager #2 would visit with the Student one day per week at the School.
13. On October 18, 2005, the Student returned to school, having missed three (3) days.
14. Another CCC meeting was held for the Student on October 27, 2005, to address remaining issues. It was at this meeting that the Complainant first presented a copy of the safety plan to the School. The Behavior Intervention Plan was reviewed and modified, so that it incorporated some of the elements of the safety plan.

CONCLUSIONS:

1. Finding of Fact #5 indicates that the safety plan was not a part of the Student's IEP. Therefore, the School did not fail to implement the Student's IEP as written, specifically the safety plan, and a violation of 511 IAC 7-27-7(a) is not found.

2. Findings of Fact #6 through #11 indicate that the School required the Complainant to ensure the Student received a private evaluation before returning to school. A parent cannot be required to obtain an evaluation at his or her own expense before a student is allowed to return to school. Therefore, a violation of 511 IAC 7-25-7 is found.

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

CORRECTIVE ACTION:

MSD of Perry Township and RISE Special Services shall:

1. Convene the CCC to determine compensatory services for three (3) days of school the Student missed. Provide CCC notes with a description of the compensatory services to the Division by December 30, 2005.
2. Meet with the Complainant to determine whether she consents to the use of the Student's private insurance to pay for the evaluation that was conducted at the Private Agency on October 13, 2005. The requirement of parental consent is contained in 511 IAC 7-18-4(c). If the School does not have the Complainant's consent, the School must reimburse the private insurer for 80% of the total expense of the evaluation. Provide a consent form signed by the Complainant, or a letter from the insurer indicating the dollar amount it paid for the evaluation and a copy of the School's reimbursement check for that amount, to the Division by December 30, 2005.
3. Send a written memorandum to teachers and administrators to explain that a parent cannot be required to obtain an evaluation at parental expense for a student before the student returns to school. Provide a copy of the memorandum and a list of people receiving it to the Division by December 30, 2005.