

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2318.06
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: April 3, 2006
DATE OF REPORT: May 3, 2006
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: June 30, 2006

COMPLAINT ISSUES:

Whether the MSD Perry Township and RISE Special Services violated:

511 IAC 7-27-5(c) by failing to provide the parent with a copy of the written report of the case conference committee meeting no later than 10 business days after the case conference committee meeting.

511 IAC 7-27-5(d) by failing to obtain written consent from a parent before implementing the Student's individualized education program developed by the student's case conference committee meeting.

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 following requirements of the student's behavioral intervention plan (BIP):

- (a) suspending the student when the BIP prohibits suspension for behaviors that are a manifestation of the student's disability;
- (b) utilize a daily planner to organize homework assignments;
- (c) send a positive note or phone call to the parent as a reward for appropriate behavior;
- (d) sending home with the student a daily behavior sheet to be signed by the parent;
- (e) conducting a daily self-evaluation to be brought home; and
- (f) behavior consultation two times per week.

511 IAC 7-27-7(a) by failing to implement the student's IEP as written, specifically by failing to provide the parent with a progress report of the student's achievement towards the annual goals and short-term objectives.

FINDINGS OF FACT:

1. The Student, 10 years old, is a student identified as having an emotional disability, and has been determined eligible for special education and related services.
2. Though the IEP was not yet written at the end of the CCC meeting on February 6, 2006, the Program Supervisor offered the Complainant the opportunity to sign the Student's IEP/BIP based on the discussions that took place with the Complainant's input as is often, but not always, the usual custom of the School. The Complainant acknowledges signing the signature page of the IEP, but alleges that the School did not inform her that by signing she was providing the School with written consent to implement the IEP. The IEP's signature page states "I/We agree with this Individualized Education

Program. We give our permission for this IEP to be implemented.” This portion of the IEP is also initialed by the Complainant.

3. The School cannot document whether the written CCC Report from the CCC held on February 6, 2006 was provided to the Complainant within 10 business days. Both the School and Complainant acknowledge that the report was picked up at the School by the Complainant approximately one month later.
4. The Student received out-of-school suspension on February 16, 2006, for fighting and on March 8, 2006, for the use of profanity. The Student's BIP dated February 6, 2006, does not provide that the Student cannot be suspended.
5. The Student's BIP developed on February 6, 2006, contains strategies the Student can use in the classroom and school environment and strategies for the Student's teachers to use. The BIP indicates that the Student is to use her planner to write down homework assignments. A copy of the Student's planner indicates that the Student used it on a very inconsistent basis from January 10 to April 13, 2006. Although the BIP states that it is the Student's responsibility to maintain the planner, the School cannot show whether and to what extent it monitored the Student's use of the planner in order to address the Student's needs with regard to organizational skills.
6. The last section (Part C) of the Student's BIP dated February 6, 2006, lists consequences and rewards based on the Student's behavior. Under rewards, the BIP lists several suggestions for school personnel to consider, one of which is a “positive note or phone call to parent.” The Complainant has not received a positive note or phone call regarding the Student's appropriate behavior thus far during the 2005-2006 school year. The School cannot document that it has called the Complainant.
7. The subsequent revisions made to the Student's BIP on March 14, 2006, state that the Student and the Student's teachers will complete a daily behavior sheet to be sent home each day and then returned to school with the parent's signature. Attached with the revised BIP is a Student Daily Behavior Log Sheet that the School acknowledges was provided the Complainant at the CCC on March 14, 2006. The School acknowledges that this form has not been utilized by the Student nor sent home for the Complainant's signature until on or about the time this complaint was filed.
8. The Student's revised BIP dated March 14, 2006, indicates that the Student will also use a self-monitoring sheet to evaluate the Student's behavior each day. Attached to the revised BIP is a “Student Self-Monitoring Journal Sheet that the School acknowledges was provided the Complainant at the CCC on March 14, 2006. It was also attached to the revised BIP in an e-mail from the Program Supervisor to the Complainant on March 27, 2006, for the Complainant's review. The School acknowledges that this requirement of the BIP has not been implemented until on or about the time this complaint was filed.
9. The Student's revised BIP dated March 14, 2006, indicates that the Student is to meet with the Behavior Consultant two times per week to work on social skills and to review the Student's Daily Behavior Log and Self-Monitoring Sheet. According to the Behavior Consultant's log, behavior consultation with the Student occurred on March 21, and April 11, and 14, 2006, in accordance with the IEP (Student was absent March 24, and 27, 2006). Between March 14 and April 3, 2006, the Student had missed at least three behavior consultation sessions.
10. The Student's IEP dated February 6, 2006, and the revised IEP dated March 14, 2006, indicates that the Parent will be informed of the Student's progress toward the annual goals at each grading period.

The Director of Special Education acknowledges that the Student's progress report for the third quarter of the 2005-2006 school year was not sent to the Complainant.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the School failed to obtain written consent from the Complainant before implementing the Student's IEP. The School cannot obtain consent from a parent to an IEP that has not yet been written. Therefore, a violation of 511 IAC 7-27-5(d) is found.
2. Finding of Fact #3 indicates that the School failed to provide the Complainant with a copy of the written report of the CCC meeting convened on February 6, 2006, no later than 10 business days after the CCC meeting. Therefore, a violation of 511 IAC 7-27-5(c) is found.
3. Findings of Fact #4 through #9 address whether the Student's IEP was implemented as written with respect to the Student's BIP. Specifically:
 - (a) Finding of Fact #4 indicates that neither the Student's IEP/BIP dated February 6, 2006, did not include a provision prohibiting the Student from being suspended;
 - (b) Finding of Fact #5 indicates that, although the use of a planner is a strategy for the Student to use, the School failed to implement this requirement;
 - (c) Finding of Fact #6 indicates that the positive notes or phone calls to the Complainant are optional strategies, not required accommodations;
 - (d) Finding of Fact #7 indicates that the School failed to ensure that the Student utilized the Daily Behavior Sheet each day according to the BIP;
 - (e) Finding of Fact #8 indicates that the School failed to ensure that the Student utilized the Student Self-Monitoring Log on a daily basis according to the BIP; and
 - (f) Finding of Fact #9 indicates that the School failed to provide the required behavior consultation two times per week according to the revised BIP dated March 14, 2006. Finding of Fact #9 further indicates that the Student has missed at least three consultation sessions between March 14, and April 3, 2006.

Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to the School's failure to ensure that the Student utilizes, on a daily basis, the daily homework planner, the Daily Behavior Sheet and the Student Self-Monitoring Log, and to discuss these sheets/logs with the behavior consultant two times per week according to the Student's revised BIP dated March 14, 2006.

4. Finding of Fact #10 indicates that the School failed to ensure that the Complainant received a copy of the Student's Progress Report for the third quarter pursuant to the IEP. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to the provision of a progress report of the Student's annual goals.

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:

MSD Perry Township and RISE Special Services shall:

1. Send a written memorandum to all relevant school personnel regarding the School's compliance with Article 7's requirements of 511 IAC 7-27-5(c) and 511 IAC 7-27-5(d). A copy of the memorandum and a list of all school personnel who receive it shall be submitted to the Division no later than June 9, 2006.

2. Conduct an in-service with regard to the practice of having parents sign an IEP that has not yet been written at the end of a CCC meeting. The in-service shall include all relevant special education and school personnel, including, but not limited to, all those who are responsible for writing the IEPs and ensuring that an IEP is delivered to parents for review within 10 business days. The in-service must address the School's policy and procedures for conducting case conferences and how the School ensures that it obtains written parental consent before implementing an agreed upon IEP. A copy of the agenda, a list of all participants, and any relevant notes or handouts shall be submitted to the Division no later than June 9, 2006.
3. Convene the Student's CCC to determine whether and to what extent the Student's BIP shall be further revised to provide more specifics related to what is to be implemented, by whom, and with what resources. The CCC shall also determine to what extent at least three behavior consultations will be made up. A copy of the CCC Report/IEP shall be submitted to the Division no later than June 9, 2006.
4. Document the implementation of the Student's BIP with respect to the utilization of the daily homework planner, the Daily Behavior Sheet, Student Self-Monitoring Log, and required behavior consultation sessions for five instructional days (one full week of school). The documentation shall be submitted to the Division no later than June 9, 2006.