

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: CP-200-2007
COMPLAINT INVESTIGATOR: Brian Simkins
DATE COMPLAINT: April 10, 2007
DATE OF REPORT: May 10, 2007
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: July 13, 2007

COMPLAINT ISSUES:

Whether the Avon Community School Corporation and the West Central Joint Services violated¹:

511 IAC 7-29-6 by failing to determine whether, in relationship to the student's behavior subject to disciplinary action, the student's individualized education program and placement were appropriate.²

FINDINGS OF FACT:

1. The Student, 9 years old, is identified as a student with an emotional disability, and has been determined eligible for special education and related services.
2. The Complainant specifically alleges, not that the School did not review the Student's IEP and placement, but that the School did not comply with the procedures as required by 511 IAC 7-29-6(d)(1) and (2) with respect to the order in which they were followed. The Complainant alleges that the School first determined that the Student's behavior was a manifestation of his disability, and that the Student should be placed in a temporary homebound setting before reviewing the current IEP and placement.
3. The case conference committee was convened on February 23, 2007, in order to conduct a manifestation determination. According to the case conference notes, the committee first considered all relevant information in terms of the behavior subject to disciplinary action with a description of the events that led to several suspensions (see also Finding of Fact #4 below). Then the case conference committee continued by examining evaluation data, present levels of educational performance, goals and objectives, behavioral needs, the Student's functional behavioral assessment (FBA) and behavioral intervention plan (BIP), and placement in the least restrictive environment (LRE). Due to time constraints, the case conference committee had to reconvene on March 8, 2007 to determine further LRE recommendations.
4. The case conference committee on February 23, 2007 agreed there is a direct relationship between the reported misconduct and the Student's disability and that the Student be placed in a temporary homebound setting until the case conference could determine a placement on or before April 27, 2007. In the letter of response, the Principal, a participant in the manifestation determination, states that the case conference committee began with a discussion of the School's

¹ During the investigation it was discovered the allegation that the School violated 511 IAC 7-27-3(f) involves a case conference committee meeting that convened in either December 2005, or January 2006. According to 511 IAC 7-30-2(b), the complaint must allege a violation that occurred within one year of the date the complaint is received by the Division. Therefore, the issue was not investigated.

² In the letter of complaint, the Complainant expressed concern about the School's time-out room having a locking mechanism. See the attached memorandum regarding a variance issued by the Fire Prevention and Building Safety Commission.

attempts to help the Student maintain appropriate conduct by clearly defining expectations and explaining the school rules to the Student; explaining the consequences of rule violations; conducting conferences with the Student with respect to behavioral adjustment; meeting with the Student's parents to discuss behavioral concerns; and implementing in-school disciplinary procedures to promote the Student's appropriate behavioral adjustment. The Complainant alleges that at this point the School determined that the Student's disability impaired his ability to understand the impact and consequences of his behavior and his ability to control the behavior subject to disciplinary action.

5. At the end of the case conference committee meeting on February 23, 2007, the Complainant asked to see the case conference notes. The Principal, recording the notes on the School's newly adopted web-based IEP program, attempted to save the notes, but the program failed and the notes were lost. A draft IEP without the case conference notes and the manifestation determination forms was provided until the notes (five pages) could be recreated.

CONCLUSION:

Findings of Fact #3 and #4 indicate that although the School may not have specifically determined that the Student's behavior subject to disciplinary action was a manifestation of his disability at the start of the manifestation determination, a review of whether the Student's disability impaired his ability to understand the consequences of and control the behavior subject to disciplinary action was conducted before reviewing the appropriateness of the Student's current IEP and placement. Finding of Fact #5 indicates that the original case conference notes dated February 23, 2007, were lost due to a program failure to save the notes electronically and that the notes had to be recreated. This makes it difficult for the investigator to determine with certainty what was decided when and in what order. Therefore, a technical violation of 511 IAC 7-29-6 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 Avon Community School Corporation and the West Central Joint Services shall:

Submit an assurance statement, signed by the Director of Special Education, stating that the School will address compliance with 511 IAC 7-29-6 in future in-service trainings with school personnel particularly with respect to how to conduct a review of the relationship between a student's disability and the behavior subject to disciplinary action. The Director of Special Education must also assure that the School's web-based program used to conduct case conference committee meetings will be in working order. A copy of the assurance statement shall be sent to the Division no later than **June 15, 2007**.