

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1652.00
COMPLAINT INVESTIGATOR: John Hill
DATE OF COMPLAINT: November 9, 2000
DATE OF REPORT: December 8, 2000
REQUEST FOR RECONSIDERATION: yes (revisions to original report are underscored)
DATE OF CLOSURE: February 7, 2001

COMPLAINT ISSUES:

Whether the New Castle Community School Corporation and the New Castle Area Programs for Exceptional Children violated:

- 511 IAC 7-17-72 with regard to the school's alleged failure to assign a teacher of record to a student with a disability.
- 511 IAC 7-27-7(a) with regard to the school's alleged failure to implement the student's individualized education program (IEP), specifically, failing to enroll the student in the STAR program.
- 511 IAC 7-27-7(b) with regard to the school's alleged failure to ensure that the student's teacher of record monitored the implementation of the student's IEP.
- 511 IAC 7-29-1(f) with regard to the school's alleged failure to provide services to a student with a disability who has been suspended for more than ten cumulative school days during the current school year.

During the course of the investigation, the following additional issue was identified:

Whether the New Castle Community School Corporation and the New Castle Area Programs for Exceptional Children violated:

- 511 IAC 7-27-3(a)(2) and 511 IAC 7-17-72(2) with regard to the school's alleged failure to ensure that the CCC participants included the student's current teacher of record.

During the course of the reconsideration, the following issue was identified:

Whether the New Castle Community School Corporation and the New Castle Area Programs for Exceptional Children violated:

- 511 IAC 7-29-1(d)(1) with regard to the school's suspension of the Student for more than ten consecutive instructional days by suspending the Student for three consecutive instructional days and then precluding the Student's attendance at school, subsequent to the period of suspension, for an additional eight consecutive instructional days.

FINDINGS OF FACT:

1. The student is a sixteen-year-old, tenth-grader who has been determined eligible for special education and related services due to an Emotional Handicap.
2. The student has continuously had an assigned teacher of record (TOR). The student's assigned teacher of record during the 1999/2000 school year retired at the end of the 1999/2000 school year. A new teacher was hired and assigned as the student's teacher of record for the 2000/2001 school year. In early September, 2000, the student's TOR was changed again in order to better serve him.
3. The student's May 20, 1999, Case Conference Summary/Individual Educational Program Addendum indicates on page 16 under goals and objectives, that the student will participate in the Star Program.
4. The student did not participate in the Star Program.
5. The school acknowledges that the TOR failed to adequately monitor the student's IEP from the first 2000/2001 school day until October 24, 2000.
6. The student's discipline record indicates that the student was formally suspended from his current placement for 8 cumulative days this school year:
 - 3 days - September 22, 25 and 26;
 - 2 days - October 18 and 19; and
 - 3 days - October 24, 30 and 31.

School was not in session on October 25 and October 26 due to fall break. The Student was also required to serve "Saturday suspension" on five occasions. The School also precluded the Student's attendance at school between November 1 and November 10, although there is no documentation of the reason for the School's action.
7. As a result of the number of suspensions, the Student was referred for expulsion in accordance with school policy on October 25, 2000. The principal recommended that the suspension not be extended beyond October 31 pending the expulsion hearing. A CCC was convened on October 24, 2000 in order to revise the Student's IEP and placement for the Student's return upon the expiration of the period of suspension. The CCC was unable to reach an agreement on changes in services or placement.
8. According to the director of special education, the School did not want the Student returning to his IEP-identified placement and did not allow the Student to return to school on November 1, 2000, despite the fact that the Student had served the three-day suspension. Between November 1 and November 10, the School precluded the Student's attendance, pending a CCC meeting. The School made several attempts to schedule a CCC meeting. Although the School offered the opportunity to complete assignments during this time, and the school attempted to make arrangements for homebound instruction, the parent declined the services. A CCC was convened on November 10, 2000 to conduct a manifestation determination. The CCC determined the Student's behavior was a manifestation of the School's failure to implement the Student's IEP as written. The Student's IEP was revised, consented to by the parent, and the Student returned to School on November 13, 2000. The Student will receive compensatory services to ensure no loss of credit earning opportunities as a result of the interruption in services. No expulsion hearing was conducted.
9. The student's October 19, 2000, CCC summary and October 24, 2000, CCC summary indicate that the student's teacher of record did not participate in the CCC meetings.

CONCLUSIONS:

1. Finding of Fact #2 reflects that the student has continuously been assigned a teacher of record. Therefore, no violation of 511 IAC 7-17-72 is found.
2. Findings of Fact #3 and #4 reflect that the student did not participate in the Star program that was identified in the student's May 20, 1999, Case Conference Summary/ Individual Educational Program Addendum. Therefore, a violation of 511 IAC 7-27-7(a) is found.
3. Finding of Fact #5 reflects that the TOR failed to adequately monitor the student's IEP from the first 2000/2001 school day until October 24, 2000. Therefore, a violation of 511 IAC 7-27-7(b) is found.
4. Findings of Fact #6 and #8 reflect that the Student was suspended from his current placement for 16 cumulative days during this school year. Services were required to be provided beginning November 3. The School offered the Student the opportunity to complete homework assignments during this time and attempted to arrange for homebound instruction, but the parent declined such services. Therefore, no violation of 511 IAC 7-29-1(f) is found.
5. Finding of Fact #9 reflects that the student's TOR did not participate in the October 19, 2000, CCC or the October 24, 2000, CCC. Therefore, violations of 511 IAC 7-27-3(a)(2) and 511 IAC 7-17-72(2) are found.
6. Findings of Fact #6, #7, and #8 indicate that the Student was suspended October 24, 30, and 31 (three consecutive instructional days) and subsequently precluded by the School from attending on November 1 through November 10, 2000 (eight consecutive instructional days). Therefore, a violation of 511 IAC 7-29-1(d) is found.

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

CORRECTIVE ACTION:

The New Castle Community School Corporation and the New Castle Area Programs for Exceptional Children shall:

1. In-service all appropriate staff regarding the requirements as specified in:
 - 511 IAC 7-27-7(a);
 - 511 IAC 7-27-7(b);
 - 511 IAC 7-27-3(a)(2); and
 - 511 IAC 7-17-72(2).Submit documentation to the Division that the in-service has been completed no later than January 15, 2001. The documentation should include a list or agenda of all issues discussed, any handouts that were distributed and a list of attendees by name and title.
2. In-service all appropriate staff regarding the following issues:
 - a. A single period of suspension is limited to ten consecutive instructional days (511 IAC 7-29-1(a) and (d)).
 - b. A student must be permitted to return to his/her IEP-identified placement upon the expiration of a period of suspension or expulsion unless:
 - i. the school believes the student poses a substantial risk to the student or

- ii. others, and the school requests an expedited due process hearing; or the CCC agrees, prior to the expiration of the period of suspension or expulsion, that the student's placement will be changed upon the student's return to school.

Submit documentation to the Division that the in-service has been completed no later than January 31, 2001. The documentation should include a list or agenda of all issues discussed, any handouts that were distributed and a list of attendees by name and title.