

Indiana Department of Education

Division of Exceptional Learners

### ***COMPLAINT INVESTIGATION SUMMARY***

COMPLAINT NUMBER:	1936.02
COMPLAINT INVESTIGATOR:	Sandie Scudder
DATE OF COMPLAINT:	July 16, 2002
DATE OF REPORT:	September 20, 2002
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	October 11, 2002

### **COMPLAINT ISSUES:**

Whether the Gary Community School Corporation violated:

511 IAC 7-25-5(a) with regard to the school's failure to provide the parent information about where an independent educational evaluation (IEE) may be obtained and the public agency's criteria applicable to independent evaluations.

511 IAC 7-25-5(c) with regard to the school's failure to either initiate a due process hearing to show that its educational evaluation is appropriate or notify the parent in writing that the independent educational evaluation will be at public expense within 10 business days of the school's receipt of the parent's request.

511 IAC 7-25-7(a)(1) and (b) with regard to the school's failure to conduct an additional evaluation to identify an area or areas not previously evaluated.

511 IAC 7-27-7(a) with regard to the school's failure to implement the student's IEP as written, specifically, failing to provide a personal paraprofessional and failing to follow the behavioral intervention plan.

511 IAC 7-18-2(a)(2)(B) with regard to the school's failure to provide the student a free appropriate public education by continuously suspending the student.

511 IAC 7-27-2(a) with regard to the school's failure to schedule a case conference committee (CCC) meeting with the parent at a mutually agreed upon date, time, and place.

### **FINDINGS OF FACT:**

1. The student (Student) is 13 years old, and is eligible for special education and related services as a student with an emotional disability.
2. The Student was hospitalized from July 31 through August 9, 2001, and from September 26 through October 5, 2001. The CCC met in October 2001, after the CCC reviewed an evaluation conducted by the hospital during the Student's hospitalization. Although the Complainant asserts that she verbally requested an IEE, she has no documentation to show such a request was made. The advocate states that the Complainant verbally requested an IEE at the CCC meeting in October 2001. The School does not recall the Complainant requesting an IEE, was unable to locate a copy of the CCC Report, and did

not provide the parent information regarding where an IEE could be obtained. Both the School and the Complainant acknowledge that the CCC agreed to conduct a triennial re-evaluation of the Student. The triennial re-evaluation was conducted on November 11, 2001.

3. The CCC convened on February 1, 2002, to discuss the results of the triennial re-evaluation conducted on November 11, 2001. Although escalating behavior problems were discussed, the Complainant asserts that the School did not conduct additional testing addressing the Student's behavior. As part of the triennial re-evaluation, the Student was administered the Devereux Behavior Rating Scale. An Emotional Handicap Eligibility Criteria checklist, dated February 1, 2002, was included with the February 1, 2002, IEP. The February 1, 2002, CCC Report documents a change of placement from a mild mental disability to an emotional disability-full time.
4. Page 5 of the May 2, 2002, IEP states: "Needs more supervision, more one on one, and less unstructured time. Needs one-on-one para." Page 9 of the May 2, 2002, IEP lists the paraprofessional as a recommended service beginning May 19, 2002. The Student was hospitalized on May 16, 2002, and returned to school on May 28, 2002. A paraprofessional was assigned on May 29, 2002, to assist the Student.
5. The Complainant alleges that the School did not follow the BIP that was developed on March 13, 2002. Student Disciplinary Referral Forms and teacher notes document that the Student exhibited negative behaviors from March 27, through April 30, 2002. The BIP states that if behaviors persisted, the CCC would reconvene after a month to consider other strategies and interventions. The CCC convened on May 2, 2002, and developed a new BIP, addressing off task behavior, truancy from class, and defiance of authority. Student Disciplinary report Forms and teacher notes document continued inappropriate behavior after the May 2, 2002, CCC meeting. The Student was hospitalized from May 16, 2002, through May 27, 2002.
6. On February 25, 2002, the Student transferred from her home school to a school located in the same school district. The Complainant alleges that the Student was sent home from both schools on a "regular basis or suspended continuously." The Student was suspended from the home school for a period of two days on January 31 and February 1, 2002, and was suspended from the present school for a period of two days on April 17 and 18, 2002, and for one day on May 17, 2002. The School acknowledges that its attendance records for the Student are not accurate. The School was not able to provide the investigator with a complete and accurate attendance record to clarify the number of days the Student was suspended, or sent home early.
7. The Complainant alleges that the School would not schedule CCC meetings at mutually agreeable times. Both parents had to miss work on several occasions as CCC meetings were scheduled during the school day. The advocate stated that there were conflicts in scheduling CCC meetings because the School did not want to meet after 3:00p.m. The School acknowledges that Case Conference Notification Letters could not be located to document when CCC meetings were scheduled.

## CONCLUSIONS:

1. Finding of Fact #2 indicates that the Complainant could not provide documentation confirming the allegation that a verbal request for an IEE was made. The School does not recall the Complainant requesting an IEE, and could not provide documentation that the request was made. Therefore, no violations of 511 IAC 7-25-5(a) and 511 IAC 7-25-5(c) are found. However, corrective action is needed

to help the School understand its obligation to address parent requests for an IEE according to 511 IAC 7-25-5(a) and 511 IAC 7-25-5(c).

2. Finding of Fact #3 indicates that the School did address the Student's behavioral-emotional issues by conducting the Devereux Behavior Rating Scale as a part of the triennial re-evaluation, on November 11, 2001, and the Emotional Handicap Eligibility Criteria checklist was completed on February 1, 2002. Finding of Fact #3 shows the School did examine other areas previously not evaluated resulting in a change of eligibility. Therefore, a violation of 51 IAC 7-25-7(a)(1) and (b) is not found.
3. Finding of Fact #4 reflects that the IEP dated May 2, 2002, documents the assignment of a paraprofessional as a "recommended service" for the Student beginning May 19, 2002. The Student returned to school on May 28, 2002, after being hospitalized. The paraprofessional was assigned to begin working with the Student on May 29, 2002. Therefore, no violation of 511 IAC 7-27-7(a) is found, with regard to the issue of whether a paraprofessional was provided.
4. Finding of Fact #5 indicates that the School completed a BIP on March 13, 2002. The CCC was to convene after one-month if the Student's behavior did not improve. Due to the Student's continuing inappropriate behavior, the CCC convened on May 2, 2002, to modify the Student's BIP. The School implemented the BIP, dated May 2, 2002, until the Student was hospitalized on May 16, 2002. Therefore, a violation of 511 IAC 7-27-7(a) is not found, with regard to the implementation of the BIP.
5. Finding of Fact #6 establishes that the Student was suspended from school for a total of five days during the 2001-2002 school year. The School did not submit requested data documenting the number of days the Student was sent home early due to negative behavior. If the Student's IEP does not require the Student to be picked up from school early, then any day the Student is removed early from school is a considered a day of suspension. Therefore, a violation of 511 IAC 7-18-2(2)(B) is found.
6. Finding of Fact #7 establishes that the School could not locate copies of the Case Conference Notification Letters that were provided to the Complainant for the past school year to establish if CCC meetings were scheduled at mutually convenient times, places, and dates. Schools cannot schedule the CCC meetings for administrative or faculty convenience. Therefore, a violation of 511 IAC 7-27-2(a) 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 Gary Community Schools shall:

1. Send a written reminder to all school administrators and special education personnel stating that:
  - (a) Students' attendance records must accurately indicate all suspensions. The written memorandum shall also include a reminder that a removal for part of a school day for behavior problems constitutes a day of suspension when such removal is not pursuant to or provided for in the student's IEP.
  - (b) All CCC meetings must be scheduled at mutually convenient times, dates, and places. CCC meetings cannot be scheduled at administrative or faculty convenience. Personnel must document dates of attempts to schedule CCC meetings, and the type of contact made:

telephone, letter, or verbal. Required participants must attend the CCC meetings to provide pertinent information needed to develop the IEP.

- (c) The School has a duty to accommodate a parent who makes a verbal request for an IEE by following 7-25-5(a) and 7-25-5(c).

**A copy of the written reminder shall be submitted to the Division no later than October 1, 2002, including a list of personnel signatures designating receipt of the written memorandum.**