

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1962.02
 COMPLAINT INVESTIGATOR: Sandie Scudder
 DATE OF COMPLAINT: October 10, 2002
 DATE OF REPORT: November 22, 2002
 REQUEST FOR RECONSIDERATION: no
 DATE OF CLOSURE: January 6, 2003

COMPLAINT ISSUES:

Whether the Alexandria Community School Corporation and the Anderson Community Special Education Cooperative violated:

511 IAC 7-29-1(f) by failing to provide special education services specified in the student's individualized education program (IEP) to the student during in-school suspension, according to 511 IAC 7-29-1(g), from September 9, 2002, to the present.

511 IAC 7-29-5 by failing to convene a case conference committee (CCC) meeting within ten business days of expelling a student with a disability to develop a plan for a functional behavioral assessment (FBA) or review and revise an existing behavioral intervention plan (BIP). (Pursuant to 511 IAC 7-29-2(a)(1), a suspension for more than ten consecutive instructional days constitutes an expulsion).

511 IAC 7-29-2(b) by failing to follow appropriate change of placement procedures when suspending a student for more than ten consecutive instructional days.

511 IAC 7-29-6(b) by failing to convene the CCC meeting within ten instructional days of expulsion to make a manifestation determination.

511 IAC 7-27-7(a) by failing to implement the student's IEP as written, specifically, by failing to provide counseling sessions.

An extension of time until November 22, 2002, was granted on November 8, 2002, to allow the investigator sufficient time to review the information related to the complex issues involved.

FINDINGS OF FACT:

1. The student (Student) is 16 years old and is eligible for special education as a student with an emotional disability and a learning disability. The Student's parents are seasonally employed, and the Student attends a local school during the fall.
2. The Student enrolled in the local school in August 2002. Upon enrollment, the Student was placed in two special education classes and two general education classes. The CCC did not convene until September 10, 2002. The IEP developed on March 28, 2002 by the school the Student previously attended in another state identified the Student's primary placement to be a self-contained classroom for students with mental disabilities with some unspecified participation in general education. The Student was to be provided with

unspecified modifications. Although counseling was identified as a related service in a previous IEP, it was not included in the March 28 IEP. The current IEP includes four annual goals, three of which identified the special education teacher as responsible for implementing the goals. The IEP indicates that the Student is to participate with nondisabled students in all nonacademic and extracurricular activities.

3. A meeting was conducted on September 10, 2002, where the Complainant met with the special education teacher, assistant principal, social worker, and two classroom teachers to discuss the Student's inappropriate behavior. Although the School considered this meeting to be a CCC meeting, the School did not send written notification to the Complainant that it was to be a CCC meeting. However, a CCC Summary was completed, and the Complainant signed as having participated in the CCC meeting. The identified purpose of the meeting was to review and revise the Student's IEP, although the discussion summary states that the CCC was convened to discuss the Student's behavior. During the meeting, the Complainant was informed that the Student would be suspended from school September 10 through September 13, 2002. Written notification of the suspension was provided to the Complainant. The Student served four consecutive days of the out-of-school suspension.
4. The CCC Summary indicates the CCC determined that the Student should "complete [the Student's] school work in ISS [in-school suspension]" when the Student returned to school on September 16, 2002, with the provision that "[the Student] will work her way out of ISS – one class at a time." A behavior intervention plan was developed. The Complainant signed a change of placement form, indicating her consent to the Student's placement in ISS. The IEP from the out-of-state school was not reviewed, revised, or otherwise modified to objectively determine whether and when the Student would be able to return to the previous placement.
5. The Student was placed in ISS on September 16, 2002. According to the log maintained by the ISS Supervisor, dated September 16 through October 11, 2002, documents that the Student was provided class work while in ISS, and occasionally was released to attend one of the classes the Student attended prior to placement in ISS. However, there is no documentation that the Student received any instruction from a special education teacher while in ISS, or that any modifications were provided as required by the Student's IEP.
6. The Student remained in placement in ISS until October 18, 2002, for a total of 25 consecutive instructional days. At that time, the Student's family moved out of state. No CCC was convened between September 16 and October 18, 2002.

CONCLUSIONS:

1. Pursuant to 511 IAC 7-27-9(d) the school is to make available a continuum of placement options, and the CCC must determine which placement option is appropriate for an individual student. In-school suspension is not included in the continuum of placement options. Rather, in-school suspension is considered a disciplinary measure in that it removes the student from his or her current placement. 511 IAC 7-29-1(g) dictates that time spent in an in-school suspension is counted as a suspension from school unless, during the in-school suspension, the student has the opportunity to progress appropriately in the general curriculum, receive the special education services identified in the student's IEP, and participate with nondisabled students to the extent the student would in the student's current placement. Findings of Fact #2 through #5 reflect that the Student was placed in in-school suspension upon the decision of the CCC, but that the Student was not provided with special education instruction or modifications in accordance with the Student's IEP. Therefore, for purposes of Article 7, the 25 days the Student spent in ISS are considered as 25 days of suspension from school, and require the school to comply with the requirements of 511 IAC 7-29-1(f), as well as 511 IAC 7-29-5.

When a student has been suspended for more than ten cumulative instructional days, 511 IAC 7-29-1(f) requires the school to provide the student with services to enable the student to progress appropriately in the general curriculum, to advance appropriately toward achieving the IEP identified annual goals, and to convene a CCC within ten business days after the tenth cumulative day of suspension. Findings of Fact #3 and #6 reflect that the eleventh cumulative day of suspension occurred on September 22. Finding of Fact #5 indicates that, although the school provided class work for the Student to complete, the Student was provided with no special education instruction or modifications that would allow the Student to progress toward achieving the goals identified in the IEP. Further, Finding of Fact #6 demonstrates that no CCC was convened subsequent to the Student's tenth cumulative day of suspension. Therefore, a violation of 511 IAC 7-29-1(f) is found.

2. 511 IAC 7-29-5 requires a CCC to convene within ten business days of the tenth cumulative day of a student's suspension. If the student has an existing behavioral intervention plan, the CCC is to review and, if necessary, revise the behavioral intervention plan. Findings of Fact #3 through #6 reflect that the Student was suspended for more than ten cumulative instructional days, that the Student had an existing behavioral intervention plan, and that the school failed to convene a CCC within ten business days from the tenth cumulative day of suspension review and revise the Student's existing behavioral intervention plan. Therefore, a violation of 511 IAC 7-29-5 is found.
3. 511 IAC 7-29-2(a) defines expulsion as a suspension for more than ten consecutive instructional days. Findings of Fact #2 through #5 resulted in the conclusion that the Student's days of being assigned to in-school suspension are counted as days of suspension. As a result of that conclusion, Findings of Fact #2 and #6 demonstrate that the Student was suspended for a period of 29 consecutive instructional days. For purposes of Article 7, the Student is considered expelled, and as a result, the school is required, among other things, to follow appropriate change of placement procedures. Such procedures were not followed; therefore a violation of 511 IAC 7-29-2(b) is found.
4. When a student is expelled, the CCC must convene within ten instructional days to conduct a manifestation determination. Finding of Fact #6 demonstrates that no CCC was convened. Therefore, a violation of 511 IAC 7-29-6 is found.
5. Finding of Fact #2 reflects that, although counseling services were required, as part of a previous IEP, the current IEP, dated March 28, 2002, did not require this related service. Therefore, no violation of 511 IAC 7-27-7(a) is found with regard to the school not providing counseling services.

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

The Alexandria Community School Corporation and the Anderson Community Special Education Cooperative shall:

1. Send a written reminder to appropriate staff that:
 - a. when a student has been suspended for more than ten cumulative instructional days the school is required to provide the student with services to enable the student to progress appropriately in the general curriculum, to advance appropriately toward achieving the IEP identified annual goals, and to convene a CCC within ten business days after the tenth cumulative day of suspension;

- b. 511 IAC 7-29-5 requires a CCC to convene within ten business days of the tenth cumulative day of a student's suspension. If the student has an existing behavioral intervention plan, the CCC is to review and, if necessary, revise the behavioral intervention plan; and
- c. 511 IAC 7-29-2(a) defines expulsion as a suspension for more than ten consecutive instructional days, and when a student is expelled, the CCC must convene within ten instructional days to conduct a manifestation determination. The school is also required to follow appropriate change of placement procedures.

A copy of the written memorandum and a list of all individuals to whom the memorandum was sent shall be submitted to the Division no later than December 20, 2002.

- 2. Submit an assurance statement that all appropriate school personnel acknowledge:
 - a. that ISS is not included in the continuum of placement options for special education;
 - b. that ISS is considered a disciplinary measure in that it removes a student from his or her current placement; and
 - c. that 511 IAC 7-29-1(g) dictates that time spent in ISS is counted as a suspension from school unless, during ISS, the student has the opportunity to progress appropriately in the general curriculum, receive special education services identified in the IEP, and participates with nondisabled students to the extent the student would in the student's current placement.

The assurance statement shall be submitted to the Division no later than December 20, 2002.