

COMPLAINT INVESTIGATION REPORT

COMPLAINT NUMBER: CP-066-2015
COMPLAINT INVESTIGATOR: Jennifer Simpson
DATE COMPLAINT FILED: February 5, 2015

COMPLAINT ISSUES:

1. Did MSD Washington Township (“the School”) return the Student to the placement from which the Student was removed, following the determination that the Student’s conduct was a manifestation of the disability, unless the parent and the public agency agreed to change the placement? 511 IAC 7-44-5(e)(2)
2. Did the School provide the services in the Student’s individualized education program (“IEP”) on the Student’s eleventh (11th) cumulative day of removal for violating a code of student conduct? 511 IAC 7-44-1(a)

FINDINGS OF FACT:

1. The Student has been determined eligible for special education and related services.
2. On November 4, 2014, the case conference committee (“CCC”) convened and developed an IEP (“IEP #1”) with effective dates of November 4, 2014 to November 4, 2015. Direct special education services included: forty-five (45) minutes per week in general education Math, Science and Reading classes, and forty five (45) minutes per week in the resource room for Math, Science and Reading for a total of two-hundred seventy (270) minutes per week; and small group reading Core + class in the ED self-contained classroom once per week for two-hundred twenty-five (225) minutes.
3. On September 16, 2014, the Student was suspended for six (6) days. On December 4, 2014 the Student was suspended for two (2) days: serving one day of out-of-school suspension and one day of in-school suspension. On December 12, 2014, the Student served one (1) day of in-school suspension. On January 26, 2015, the Student was suspended pending expulsion for a behavioral incident involving threats to a teacher and an aide. On January 27, 2015 the Student reached the eleventh (11th) cumulative day of suspension for the 2014-2015 school year.
4. On February 2, 2015 the CCC convened and determined the January 26, 2015 behavioral incident was a manifestation of the Student’s disability. The School proposed homebound placement and suggested reconvening the CCC to discuss an alternative placement for the Student. The parent did not agree to homebound services. No final decision on placement was made by the CCC. Due to safety concerns, the School did not permit the Student to return to school.
5. On February 16, 2015 the CCC convened and developed an IEP (“IEP #2”) with effective dates of February 16, 2015 to February 16, 2016.¹ Direct special education services include: instruction in Language Arts and Math once per day for one hundred twenty (120) minutes at a day treatment program beginning February 23, 2015.

¹ The parent has not received a copy of the IEP developed on February 16, 2015 so the effective date of the IEP cannot be February 16, 2015. 511 IAC 7-42-6 (i) requires the School to provide a copy of the IEP at the end of a CCC meeting or not later than ten (10) business days after the date of the CCC meeting. The School should have provided the parent a copy of the IEP no later than March 2, 2015. 511 IAC 7-42-8(a)(2) provides that services in the IEP must be provided on the eleventh instructional day after the School provides written notice of its proposed action. No written notice has been provided.

6. From February 23, 2015 to the date of this report the School has provided the Student the services in IEP #2.

CONCLUSIONS:

1. Finding of Fact #4 shows the CCC determined the behavioral incident on January 26, 2015 was a manifestation of the Student's disability. Finding of Fact #4 shows the parent and the public agency did not agree to change the Student's placement and the Student did not return to school. Thus, a violation of 511 IAC 7-44-5(e)(2) is found.
2. Finding of Fact #3 shows the Student's eleventh (11th) cumulative day of suspension occurred on January 27, 2015. Finding of Fact #2 shows IEP #1 provides two-hundred seventy (270) minutes per week in Math, Science, and Reading instruction and two hundred twenty five (225) minutes per week in small group reading instruction in a self-contained classroom. Findings of Fact #2 and #5 show the Student did not receive the services in IEP #1 from January 27, 2015 through February 20, 2015, a total of nineteen (19) instructional days. Finding of Fact #6 shows the Student has received special education services from February 23, 2015 to the present.

IEP #1 contemplates weekly services instead of daily services. Using a five day per week calculation the services in Math, Science, and Reading total fifty-four (54) minutes per day, or eighteen (18) minutes per topic per day, and the small group reading services total forty-five (45) minutes per day. The deficit of services accumulated over nineteen (19) instructional days total one thousand twenty six (1,026) minutes of Math, Science, and Reading instruction, and eight hundred fifty five (855) minutes of small group reading instruction in a self-contained classroom.

The School failed to provide the services in IEP #1 beginning January 27, 2015, the Student's eleventh (11th) cumulative day of removal, and did not provide services until February 23, 2015. Therefore, a violation of 511 IAC 7-44-1(a) is found.

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

CORRECTIVE ACTION:

MSD Washington Township shall:

Provide the parent a copy of IEP #2.

Convene the CCC to determine the amount and nature of compensatory services due to the Student for the lost educational opportunity associated with the School's failure to provide special education services for nineteen (19) instructional days, including one thousand twenty six (1,026) minutes of Math, Science, and Reading instruction and eight hundred (855) minutes of small group reading instruction in a self-contained classroom. A copy of the revised IEP, including the compensatory services, shall be sent to the complaint investigator **no later than May 29, 2015.**

Conduct an in-service training for all special education personnel, administrators, and teachers on the topics of 511 IAC 7-44-5(e)(2) and 7-44-1(a). A copy of the training materials and a sign-in sheet for all participants shall be sent to the complaint investigator **no later than May 29, 2015.**

DATE REPORT COMPLETED: March 16, 2015