

COMPLAINT INVESTIGATION REPORT

COMPLAINT NUMBER: CP-103-2015
COMPLAINT INVESTIGATOR: Traci Tetrick
DATE COMPLAINT FILED: May 29, 2015

COMPLAINT ISSUE:

Did the MSD Wayne Township (“the School”) implement the Student’s individualized education program (“IEP”) as written? Specifically, did the School remove the Student from class to the Student Support Center (“SSC”) when his behaviors warranted removal? 511 IAC 7-42-8(b)

FINDINGS OF FACT:

1. The Student has been determined eligible for special education and related services.
2. The Student’s IEP dated February 19, 2015, refers to a functional behavioral assessment (“FBA”) and a behavior intervention plan (“BIP”), located in the Student’s Educational Evaluation Report.
3. The Student’s Education Evaluation Report dated February 19, 2015 (“the Evaluation Report”), contains an FBA that identifies two behaviors that are adversely impacting the student’s education performance. These two behaviors are not following directions and physical/verbal aggression. Specific examples of the identified behaviors include, but are not limited to: refusal to follow adult directives, refusal to participate in activities, refusal to complete work, throwing pencils, and destroying school property. The FBA identifies setting events/antecedents most likely to trigger these behaviors. The “not following directions” behavior is most likely to occur in the classroom and the “physical aggression” behavior is most likely to occur in the office. The Evaluation Report’s summary states, “Overall, the significance of [Student’s] behaviors as documented in the FBA and their marked degree do appear to be the primary factor that is adversely affecting his education performance.” The Evaluation Report does not suggest specific strategies or instructional experiences to be provided, allowing the CCC to make these instructional determinations based on the FBA.
4. There is only one strategy/instructional experience identified in the BIP section of the Student’s IEP to address the two identified behaviors. This strategy is the use of a reward chart to reinforce positive behavior; there are no strategies or instructional guidance to be followed when the student is engaging in the identified behaviors. However, the BIP states, “See ‘Services and Other Provisions.’”
5. The sole special education service required by the Student’s IEP is ten (10) minutes per week of indirect support in the form of consultative services, to be provided by the teacher of record (“TOR”) in conjunction with the classroom teacher. The narrative describing this special education service further states that the Student “may be removed from class to the SCC on an as needed basis if/when he has a behavior warranting removal from the classroom.”
6. The reward chart used for the Student contains a combination of Lego men, blocks, and sad faces. When the Student refrains from engaging in the identified behaviors, he earns Lego men; when he engages in the identified behaviors he loses Lego men. The reward chart template contains a sad face icon next to every activity for the day. These sad faces are not changed by the classroom teacher, even when the teacher commentary that accompanies each activity for the Student is “good” or “great.”
7. On May 15, 2015, the Student completed language, spelling, and reading lessons satisfactorily, earning

positive reinforcement points and rewards. While walking to the library, he lost one Lego man for stomping on feet with another student, but at lunch and computer he earned additional Lego men. During the afternoon math lesson, the Student refused to work on his assignment, pulled his shirt over his legs, and allegedly threw crayons at another student, based on a student report to the teacher. At that time, the teacher warned the Student he would lose a Lego man if she saw him do it again. The Student subsequently continued to break and throw crayons. In response to the breaking of crayons and ongoing refusal to complete work, the teacher sent a note to the office. By this time, the class had transitioned to science and the students were taking a test. Another staff member came to the class window to observe the Student. Seeing this staff member, the Student used his paper and his hand to block her from view. When the Student stopped blocking the view, the staff member left. The Student then broke and threw more crayons, and the teacher told the other students to move away from the Student. The Student continued to break and throw crayons, until the teacher sent another note to the office, and a staff member came down to escort the Student to the office.

8. The Student was suspended from school and given an incomplete on his science test in response to his behavior on May 15, 2015.

CONCLUSION:

IEPs must be implemented as written. 511 IAC 7-42-8(b). Finding of Fact #2 shows that the BIP section of the Student's IEP incorporates by reference the FBA data contained in the Evaluation Report. Finding of Fact #3 shows that the incorporated FBA specifically identified that adversely affect the Student's education performance and that these behaviors are most likely to occur in the classroom or in the office. Findings of Fact #4 and 5 show that the BIP section of the IEP included the use of a positive reward chart, to address the Student's behavior and provided that the Student may be removed from class to the SCC if his behavior so warrants. Finding of Fact #7 shows that on May 15, 2015, after a successful morning, the Student refused to complete work, refused to participate in activities, refused to follow direct adult instructions, and threw crayons. These behaviors persisted long enough for students to move from the math lesson to a science test and for two staff members to come to class following the dispatch of two separate notes from the teacher about the Student's behavior.

The behaviors exhibited by the Student are precisely the type of behaviors identified by the FBA. Although the teacher was using the reward of offering/removing Lego men, at no time did the teacher remove the Student to the SSC in order for the Student's behavior to deescalate. Although the IEP does not establish clear criteria as to when the Student "needs" a removal, or clearly list the behaviors that "warrant" removal, the repeated and ongoing exhibition of the specific behaviors, identified by the FBA, by the Student on May 15, 2015, clearly constitute the need for removal from the classroom. Finding of Fact #7 shows that instead of removing the Student to the SSC, the teacher sent notes to the office, removed other students from the Student's personal space, and eventually removed the Student to the office, an area which Finding of Fact #3 shows has been a previous trigger for additional behavior. Finding of Fact #8 shows that the School ultimately suspended the Student in response to his engaging in these behaviors. Because the Student was not removed to the SCC when his identified behaviors were affecting his educational performance, the School did not implement the IEP as written. Therefore, a violation of 511 IAC 7-42-8(b) 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:

The MSD Wayne Township shall:

Convene the CCC for the purpose of reviewing and revising the Student's IEP. Specifically, the CCC shall develop a BIP that describes the positive interventions and supports, and other strategies, to address the Student's behavior and maximize consistency of implementation. In addition, the BIP shall identify the skills that should be taught and monitored in an effort to change the pattern of behavior. Moreover, the language in the narrative that accompanies the Services to be provided to the Student shall be revised to provide more specific guidance as to when removals to the SSC are to occur. A copy of the revised IEP shall be submitted to the complaint investigator **no later than July 31, 2015.**

Reconsider the appropriateness of the suspension of the Student in response to the Student's behavior on May 15, 2015, in light of the contents of the Student's FBA and the failure of the teacher to remove the Student to the SSC on that date. If the School determines that suspension was inappropriate, the suspension shall be removed from the Student's educational record no later than July 31, 2015. A brief report summarizing this reconsideration shall be provided to the Complainant and to the complaint investigator **no later than July 31, 2015.**

DATE REPORT COMPLETED: July 6, 2015