

COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.13
Complaint Investigator: REDACTED
Date Complaint Filed: October 3, 2023
Date of Report: REDACTED

Introduction

This complaint originally contained three issues, however, the family and district agreed to mediate one issue. The mediation of that issue resulted in a full agreement and the complainant asked that it be withdrawn from the investigation.

The student addressed by this complaint is an eighth-grade student attending a local middle school. The student returned to the middle school from a Level 3 program at the beginning of the 2023-2024 school year. The student receives 60 minutes of special education service 5 days every week and 30 minutes of consultative OT service per quarter under the eligibility categories of other health impairments, autism, and orthopedic impairment.

It is noted in the May 10, 2023, IEP that the student's behavior was previously impeding the student's ability to mainstream in the general education setting and hence was placed in the Level 3 program. The placement at the Level 3 program provided a highly structured environment and the social skills model implemented in this program assisted the student with social skills in order to return to the general and special education classroom settings.

Since returning to the middle school the student has received two behavior management records and two in-school suspensions for a total of five school days. The student does not have a formalized behavior intervention plan in effect but has behavioral supports in place that have been shown to be effective in the past. Additionally, the school is increasing adult check-ins with the student to provide additional behavioral and emotional support.

Issues Investigated

1. Did the District provide special education and related services, specifically the supplementary aids and services/accommodations and special considerations to the student in accordance with the IEP? [92 NAC 51-007.02] Withdrawn due to full agreement reached in mediation.
2. Did the District follow special education procedures when suspending a student receiving special education services? [92 NAC 51-016.02C; 92 NAC 51-016.02E]

3. Did the District follow special education procedures in regard to conducting a functional behavior assessment following a student suspension? [92 NAC 51-016.02F1]

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint dated October 3, 2023, received by NDE October 3, 2023
- Individualized Education Program dated May 10, 2023
- Prior Written Notice dated May 10, 2023
- Behavior Record for student dated September 27, 2023
- Email from mother to principal, the school psychologist, father, special education teacher, and Director of Student Services dated September 30, 2023, at 6:25 PM
- Timeline of Events and Important Information notes from parents undated, inclusive of September 30, 2023 - October 14, 2023
- Parent hand-typed note regarding October 17, 2023 behavior incident
- Email from the mother to the principal dated October 17, 2023, at 7:47 PM
- Email exchange among mother, teacher, and principal dated October 18, 2023, between 3:07 PM and 4:20 PM

From the School District

- Letter of Response dated October 30, 2023; received by NDE October 30, 2023
- Individualized Education Program dated May 9, 2023
- Behavior Management record listing dated September 14, 2023, September 26, 2023, September 27, 2023, October 17, 2023
- Notice of Meeting dated October 6, 2023
- Notice of Meeting dated October 26, 2023
- Prior Written Notice dated October 30, 2023
- Individualized Education Program, meeting October 30, 2023, in effect dated October 31, 2023
- Email between complaint investigator and Director of Student Services dated November 16, 2023, between 9:44 AM and 6:57 PM
- Student Behavior If...Then Response Chart undated

Findings of Fact

1. The IEP dated May 9, 2023, reported that the student's behavior significantly impeded the student's ability to mainstream in the general education setting. Placement at a Level 3 program provided the student with a highly structured environment. The program's Social Skills model implemented at the Day School assisted the student in social skills to the

extent that starting with the 23-24 school year the student transitioned back to the home school full time.

2. The Behavior Management record showed that the student used a computer inappropriately on September 14, 2023, resulting in the district calling the mother and the student's computer being on lockdown restriction.
3. The Behavior Management record showed that the student spoke of self-harm which was investigated on September 26, 2023.
4. The Behavior Management record showed an incident between the student and two classmates before the school day on September 27, 2023. The Behavior Record provided by the parent dated September 27, 2023, reported action code 1, stating, "2 day in school suspension". The record showed that a conference was held with the parent (action code 2) and with the parent (action code 3). The parent and district provided a copy of the Behavior Record dated September 27, 2023, reporting action code 1, "Emergency Exclusion". Action codes 2 and 3 remain the same. In both records, the student received a two-day in-school suspension.
5. In an email dated, November 29, 2023, sent from the Middle School Principal to the Complaint Investigator the change in action code was explained as follows: "Originally, we had marked the consequence as ISS, but after working through our process, we changed it to Emergency Exclusion(EE). EE is utilized for situations where there may be a threat to a student or other students. In this case, we use EE because the students were physical with each other outside before school. We wanted to work with the students to ensure there were no further altercations."
6. An email from the mother to school staff on September 30 at 6:25 PM showed that the parent requested an IEP meeting.
7. The parent reported in a hand-typed note that on October 3, 2023, the school psychologist came to [school] and met with the parent to discuss the student's behavior. The parent asked the school psychologist if the student had a FBA.
8. Emails exchanged between the school psychologist and mother show the school psychologist working directly with the student at the beginning and end of the day, reviewing social skills from the Level 3 program, and setting up a checkout with the teacher from the previous program.
9. The parent reported in a hand-typed note that on October 14, 2023, the parent discovered three behavior documentations entered into the behavior portal for October 9, 10, and 11, 2023. The parent stated that she had only been notified of the behavior incident for October 9, 2023.

10. The Behavior Management record showed that the student slapped another student in front of five other students while out on the playing field on October 17, 2023. The record showed the student was given a three-day in-school suspension starting October 19, 2023 – October 23, 2023.
11. The parent reported in the hand-typed note regarding the father receiving a call from the principal at 1:55 PM on October 17, 2023, reporting a behavior incident. At 2:36 p.m. the principal called back and relayed that in Technology class a classmate called the student a name. The student reportedly stated, "Don't call me that again.". The classmate put a finger under the student's chin and told the student to move away and pushed the student. At that point, the student open-handed slapped the classmate across the face. The father was informed that the student would be given three days of in-school suspension. The parent reported that a functional behavior assessment was not mentioned as a part of this call.
12. In an email from the mother to the principal dated October 17, 2023, at 7:47 PM she asked, "Doesn't [school] have a zero tolerance policy for bullying? Please help [father] and I better understand why preventative measures haven't already been taken considering [student] and [classmate] are in two classes together and three adults have been previously notified of issues? Finally, please explain to me what actions you and/or the district intend to take to ensure (sic) the well-being of [student] and this other student."
13. An email among the mother student's teacher and principal on October 18, 2023, at 4:20 PM showed the parent requesting the following be added to the agenda of the October 19, 2023, IEP team meeting: the discipline reports, bullying, FBA, and BIP.
14. The Notice of Meeting and revised IEP show that a new IEP was developed on October 30, 2023, and in effect on October 31, 2023. It contains a goal for the student to learn strategies to deal appropriately with frustrations when given feedback or challenging work. As well, several accommodations address the student's behavior including 1) incorporating specific, consistent language and skills as included in the Behavior Response Chart; 2) consistent and frequent reinforcement; 3) immediate feedback regarding behavior and a positive reinforcement plan using a check-in and check-out with preferred adults; and 4) take into account the student's diagnosis when choosing appropriate consequences.

Issue # 1

Did the District provide special education and related services, specifically the Supplementary Aids and Services/Accommodations and Special Considerations to the student in accordance with the IEP? [92 NAC 51-007.02]

This issue was resolved through mediation and withdrawn from the complaint.

Issue #2

Did the District follow special education procedures when suspending a student receiving special education services? [92 NAC 51-016.02C; 92 NAC 51-0162E]

92 NAC 51-016.02C states:

016.02 *Authority of School Personnel*

016.02C *For disciplinary changes in placement that would exceed 10 consecutive school days. If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 92 NAC 51-016.02E, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures that would be applied to children without disabilities, except as provided in 92 NAC 51-016.02D.*

016.02E *Manifestation Determination*

016.02E1 *Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative, the parent, and relevant members of the child's IEP team (as determined by the parent and the school district or approved cooperative) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:*

0162.02E1a *If the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or*

0162.02E1b *If the conduct in question was the direct result of the school district's or approved cooperative's failure to implement the IEP.*

016.02E2 *The conduct must be determined to be a manifestation of the child's disability if the school district or approved cooperative, the parent, and relevant members of the child's IEP team determine that a condition in either 92 NAC 51-016.02E1a or 016.02E1b was met.*

016.02E3 *If the school district or approved cooperative, the parent, and relevant members of the child's IEP team determine the condition described in 92 NAC 51-016.02E1b was met, the school district or approved cooperative must take immediate steps to remedy those deficiencies.*

Allegations/Parent Position

The parents alleged in their October 2, 2023, complaint to the state that a behavior that occurred on September 26, 2023, was a manifestation of the student's disability and the school district disciplined the student with a 2 day in-school suspension.

District Response

The district responded in their October 30, 2023, response letter that the "total days of discipline that [student] has faced is under 5 days, therefore the district has not held a manifestation meeting."

Investigative Findings

The Behavior Management records provided by the district and emails between the parents and school show that the student has received a total of 5 days of In-school suspension during the 2023-2024 school year to date.

Summary and Conclusions

Based on the Behavior Management records and emails the student has not been removed from the school for ten days and therefore a meeting to determine if the behavior is a manifestation of the student's disability is not warranted at this time. As such, the District implemented the requirements of 92 NAC 51-016.02C and 92 NAC 51-0162E, and **no corrective action** is required.

Issue # 3

Did the District follow special education procedures in regard to conducting a functional behavior assessment following a student suspension?

92 NAC 51-016.02F1 states:

016 *Disciplinary Removal of Children with Disabilities*

016.02 *Authority of School Personnel*

016.02F *If the school district or approved cooperative, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must:*

016.02F1 *Either conduct a functional behavioral assessment, unless the school district or approved cooperative had conducted a functional behavioral assessment before the behavior that resulted in a change of placement occurred, and implement a behavioral intervention plan for the child; or if a behavioral intervention plan has*

already been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior;

Allegations/Parent Position

The parents alleged that following a behavior on September 26, 2023, that led to a two-day in-school suspension the district did not complete a functional behavior assessment (Letter of Complaint dated October 3, 2023).

District Response

According to the district's October 30, 2023, response the parents alleged that a functional behavior assessment should have been conducted as a matter of course following the suspension. The district responded that an FBA was not created because the district did not feel that it was the correct next step. Instead, they met with the IEP team to revise the IEP to include goals and accommodations to address the behaviors.

Investigative Findings

The findings of Issue 2 are incorporated herein by reference. The district reported in their response to the child's complaint that they did not feel conducting a functional behavior support plan was necessary at this time and instead relied on strategies that had been used in the past while at the Level 3 program, such as increased behavior supports as described in a September 30, 2023, email and consulted with the Level 3 program teacher. According to the Notice of Meetings, IEPs, and PWNs the IEP team met twice to discuss addressing behavior for the behaviors that were being seen at the school. The IEP dated October 30, 2023, documented a behavioral goal and accommodations that were being incorporated with success with the student.

Summary and Conclusions

Based on the findings of Issue 2, the district was not obligated to conduct an FBA following the September 26, 2023, nor later after the October 17, 2023, incident. The Director of Student Services stated in an email with the Complaint Investigator that they did not think that the behavior that caused the ISS was in direct relation to the student's disability, however, did acknowledge that behaviors were starting to increase and immediately started some interventions to head off escalation. Instead, according to emails provided by the district the school psychologist began a check-in/check-out with the student at the beginning and end of the school day. Further, the teacher at the Level 3

program from the previous year was contacted to ensure continuity of support and the IEP team met on October 30, 2023, according to meeting minutes to ensure that the language from the previous school year was being used.

Based on the review of the documentation and clarifications from the district, the District implemented the requirements of 92 NAC 51-016.02F1 and **no corrective action** is required.

Notice to District

Having found that the district is implementing the requirements of 92 NAC 51 in the areas raised in the complaint, the complaint is closed as of the date of this letter.