

COMPLAINT INVESTIGATION REPORT

COMPLAINT NUMBER: CP-101-2015
COMPLAINT INVESTIGATOR: Traci Tetrick
DATE COMPLAINT FILED: May 21, 2015

COMPLAINT ISSUES:

1. Did Phalen Leadership Academy (“the School”) consider reevaluation for the Student after receiving a parental request for reevaluation? 511 IAC 7-40-8(b)(3)
2. Within ten (10) instructional days of receipt of a parental request for reevaluation, did the School provide the Complainant with written notice that included a statement that the School was proposing or refusing to reevaluate the Student? 511 IAC 7-40-8(f)

FINDINGS OF FACT:

1. The Student has been determined eligible for special education and related services.
2. The Student’s teacher for the 2014-15 school year noticed that the Student was “very emotional” and would “cry and throw a little tantrum when he is redirected even for something very small.” She documented in writing that the Student “exhibited a lot of tantrums at the beginning of the year.”
3. On October 30, 2014, the Complainant sent an email to both the principal and the general education teacher, requesting that the School reevaluate the Student.
4. On November 3, 2014, a case conference committee (“CCC”) meeting was held, with the Complainant participating by telephone. At this meeting, the School discussed the appropriateness of reevaluation. The speech therapist reported that the Student was receiving speech services, and the general education teacher reported that the Student was making satisfactory academic progress. During the meeting, the School verbally informed the Complainant that the School was refusing to reevaluate on the basis that (1) adequate academic progress was being made; and (2) the School’s policy of not testing students for ADHD, unless there is evidence that the student has already been diagnosed with ADHD and the ADHD is impacting the student’s learning process. During the meeting, the School verbally referred the Complainant to a third party to evaluate the Student.
5. Following the discussion that occurred at the November 3, 2014, CCC meeting, the School did not generate a written notice that included a statement that the School was refusing to evaluate the Student.

CONCLUSIONS:

1. Finding of Fact #2 shows that the School had notice that, at the beginning of the 2014-15 school year, the Student was displaying behaviors of concern to the general education teacher. Finding of Fact #4 shows that the School discussed the need for reevaluation at the CCC meeting convened on November 3, 2014 and that the School’s position was that reevaluation was (a) unnecessary because the Student was reportedly making adequate academic progress; and (b) not required where ADHD was suspected without evidence that the student had already been diagnosed with ADHD and the ADHD was impacting the student’s learning. Schools “have an affirmative obligation to locate, identify, and evaluate a child who is suspected of having a disability to determine eligibility for special education and related services. Since ADD/ADHD can adversely [a]ffect a child’s educational performance in a variety of ways, such an

evaluation must be conducted that meets the requirements of the [Individuals with Disability Act].” *Letter to Harkness*, 35 IDELR 94 (OSEP March 20, 2001). The behaviors of concern that were noted by the general education teacher were not considered in the November 3 meeting. Denying a request for a reevaluation because a student is making adequate academic progress, and refusing to evaluate for a suspected disability without evidence a student had already been diagnosed with that disability are contrary to law and do not constitute adequate consideration of the need for reevaluation. Thus, a violation of 511 IAC 7-40-8(b)(3) is found.

2. Finding of Fact #3 shows that the School received, by email, a written parental request to reevaluate the Student on October 30, 2014. Finding of Fact #5 shows that the School failed to generate the requisite written notice that it was refusing to evaluate the Student. Because the School failed to provide this written notice within ten (10) instructional days of receipt of a parental request for reevaluation, a violation of 511 IAC 7-40-8(f) 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 Phalen Leadership Academy shall:

Develop training materials and conduct an in-service training for all staff and administrators on the topic of reevaluation requirements, as set forth in 511 IAC 7-40-8, **no later than July 31, 2015**. A copy of the training materials shall be sent to the complaint investigator prior to the in-service training for review, **no later than July 20, 2015**. An in-service attendance list, identifying attendees by name and by title, shall be submitted to the complaint investigator **no later than August 7, 2015**.

Communicate in writing with the Complainant to determine if reevaluation is still being requested; if so, the School shall proceed with the reevaluation process, pursuant to the requirements of Article 7. Documentation of this communication shall be submitted to the complaint investigator **no later than July 20, 2015**.

Review and revise the School’s evaluation policies and procedures with regards to evaluating students suspected of having ADD/ADHD. A copy of the revised policy shall be submitted to the complaint investigator **no later than July 31, 2015**.

Register and require the attendance of the Director of Special Education and at least one (1) other special education staff member at the charter school training to be held **on September 15-16, 2015** in Indianapolis. The Director shall contact the complaint investigator for more information on registering for this training **no later than July 31, 2015**.

DATE REPORT COMPLETED: June 26, 2015