



STATE OF CONNECTICUT
STATE DEPARTMENT OF EDUCATION



February 17, 2015

[REDACTED]

[REDACTED]

[REDACTED]

Re: [REDACTED]
C15-0267

Dear [REDACTED]

This office is responding to the complaint filed by [REDACTED] from [REDACTED] against the [REDACTED] (district) and [REDACTED] on behalf of the above-referenced student. In the complaint, [REDACTED] claimed the district and [REDACTED] failed to meet their Child Find obligation under the Individuals with Disabilities Education Act (IDEA). The complaint inquiry letter set forth the issues to be investigated as follows:

Issue 1: 34 CFR § 300.111 requires the State to ensure that all children with disabilities residing in the State who are in need of special education and related services are identified, located and evaluated. Regulations of Connecticut State Agencies (RCSA) § 10-76d-6 states that each board of education is responsible for the identification of children requiring special education and related services. RCSA § 10-76d-7 requires the prompt referral to a planning and placement team (PPT) of any student who demonstrates unsatisfactory attendance, behavior or academic performance in order to determine if the student should be evaluated.

Issue 2: 34 CFR § 300.534 provides that children not determined eligible for special education and related services may assert IDEA protections in response to discipline under certain circumstances. One of these circumstances is where the school district is deemed to have knowledge that the student is a student with a disability before the behavioral incident occurred that precipitated the discipline action. 34 CFR § 300.536 and § 300.530(e) require a manifestation determination be conducted within 10 school days of any decision to change the placement of a child with a disability because of a violation of school code of conduct.

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The following materials were reviewed: complaint; March 12, 2014, letter from the student's pediatrician; PowerSchool discipline log; student's 2013-14 report card; [REDACTED] referral worksheet; district referral; March 10, 2014, notice of expulsion hearing; March 31, 2014, and April 29, 2014, individualized education programs (IEP); signed five day waiver; August 3, 2014, letter from [REDACTED] M.S.; May 28, 2014, letter from [REDACTED] June 13, 2014, letter to the student's mother from [REDACTED] August 2014 state complaint; e-mails exchanged between the district and the parent; district's response to the complaint; Section 504 meeting notice dated August 20, 2014; March 6, 2014, letter to the parent from [REDACTED], [REDACTED] with attachments related to expulsion hearing, including police report; joint [REDACTED] and district response to complaint; [REDACTED] counselor accountability record; e-mails exchanged between [REDACTED] and parent; minutes of discipline hearing; attendance record; Family with Service Needs petition; psycho-educational evaluation; educational evaluation; and other health impairment eligibility documentation. Additionally, this investigator communicated with [REDACTED] and [REDACTED]

Findings of Fact:

1. The student is 14 years old and attends grade 9 at [REDACTED]. The student has been determined to be ineligible for special education under the Individuals with Disabilities Education Act (IDEA). The student attended T [REDACTED] during the 2013-14 school year. [REDACTED] is operated by the [REDACTED] and offers instruction in grades 6-8.

2. The student's grades fluctuated during the second quarter of the 2013-14 school year. The student's teacher, [REDACTED] e-mailed the student and his father on January 17, 2014, noting that [REDACTED] grades had "been going steadily down all year" and that the student's performance on a STAR reading assessment went from an "almost a sixth grade reading level to a fourth grade reading level." Throughout the 2013-14 school year the student engaged in behavior at [REDACTED] such as being disruptive in class, pushing peers, swearing, and kicking a peer. Staff e-mailed the family about their concerns regarding the student's behavior. [REDACTED] Dean of Students [REDACTED] created a Positive Behavior Intervention System (PBIS)-style points/check sheet individualized to meet the student's target goals which included: arrive to class on time; remain on task; complete assigned classwork; and maintain appropriate boundaries with adults and peers. Additionally, [REDACTED] provided an "unofficial mentoring relationship to" the student. It is unclear when or if [REDACTED] implemented the behavior plan. The magnet school was not able to provide this investigator with any of the completed point sheets. The student was suspended out-of-school for five days on December 5, 2013, seven days on February 12, 2014, 10 days on March 6, 2014, following an incident on the school bus on March 5, 2014.

In the fall of 2013, the student's mother contacted the student's guidance counselor at [REDACTED], [REDACTED], on several occasions to discuss the student's difficulties in school and to inform her that he had been diagnosed with ADHD. On December 3, 2013, the student's mother, with the help of [REDACTED] filed a Family with Service Needs petition with the Superior Court, Juvenile Matters stating that the student was beyond the control of his parents and that his behavior was impacting his education, resulting in discipline referrals at school. The [REDACTED] guidance counselor helped the mother prepare the petition.

3. On January 28, 2014, a "Student Referral Worksheet" was completed by [REDACTED]. Three areas of concern were noted: academic; attendance; and emotional/behavioral. This worksheet is used by [REDACTED] staff to bring a student to the attention of the Early Intervention Process Team (EIPT) who then brainstorm intervention strategies intended to address the concerns noted in the referral. It does not appear that an EIPT met regarding the student. No actual referral of the student to a PPT was made at this time. In February 2014, [REDACTED] approached [REDACTED] to ask that the student be evaluated to determine his eligibility for special

education services. In its response to the complaint inquiry letter, [REDACTED] and Pupil Services, [REDACTED], described how referrals are handled by [REDACTED] staff. According to [REDACTED], [REDACTED] promptly communicates directly with [REDACTED] for students [REDACTED] believes should be referred to a PPT. Where it is a parent who is referring his child, [REDACTED] tells the parent to contact the district. So, when the parent asked for a PPT meeting the parent was referred to the district. [REDACTED] submitted a written referral dated March 4, 2014. According to the referral, the alternative strategies that were attempted by [REDACTED] staff included meeting with the guidance counselor "as situations arise", homeroom change, and making the student part of mentor group. The referral also notes the student received tiered reading intervention in grade 6 "until scores determined he no longer needed it." In a letter dated March 6, 2014, [REDACTED] principal, informed the parent that the student was suspended out of school for 10 days. The letter goes on to state that the student "will remain out of school until [REDACTED] places him in their Alternate School Program." The parent received a letter from [REDACTED] dated March 10, 2014, that an expulsion hearing was scheduled for March 14, 2014.

4. On March 13, 2014, a PPT meeting was convened to consider the student's referral. The team recommended that an initial evaluation of the student be conducted and the parent signed consent. The team did not discuss the pending evaluation or conduct a manifestation determination. The scheduled expulsion hearing was convened the next day, as scheduled. The parent notified the expulsion hearing officer that a special education referral had been made and that an evaluation was pending. The hearing officer determined the expulsion hearing could not go forward until the completion of the special education evaluation.

5. The [REDACTED] Secretary prepared a document on August 3, 2014, she refers to as "minutes" of the expulsion hearing that was adjourned in March, five months earlier. The parent was not provided a copy of this document. The minutes state that the "Hearing Officer recommended for Student ID #91844, an 8th grade student at [REDACTED], agreed to be tested for special education services. Once evaluation is complete, 45 days, an alternative educational program at the [REDACTED] will be provided. The hearing was informal and will resume after such testing has been completed." At the expulsion hearing, the district told the parent that the district would place the student in the [REDACTED] at night and provide tutoring during the day for a 45 day placement while he was being evaluated.

6. Once the March expulsion hearing was adjourned, [REDACTED] of [REDACTED], asked the family to stay behind because he wanted to speak to them. The family stayed behind as did [REDACTED], a therapist who was present at the hearing to support the family. M. [REDACTED] informed the parent that he interpreted state guidelines on expulsion from magnet schools to give him discretion to expel students and that he was going to expel the student. He explained that attending a magnet school was a privilege and as such, could be revoked at any time. He told the family the student could not return to [REDACTED]. In response to the complaint, [REDACTED] stated that the basis for transferring the student was to comply with the hearing officer's directive.

7. The PPT that met on March 13, 2014, did not decide to place the student at [REDACTED]. The team met to consider the special education referral and after doing so, the team suspected the student might have a disability and designed an evaluation of the student to determine his eligibility to include the following areas of assessment: cognitive/processing, achievement; developmental history, and rating scales for behavioral, attention, social, and emotional. [REDACTED], [REDACTED] assistant principal, and [REDACTED], were in attendance at the meeting. The paperwork reflects that the student was attending grade 8 at [REDACTED]. The team did not discuss transferring the student to MRA for the evaluation.

8. After the expulsion hearing, having no other education program to attend, the student began attending the [REDACTED]. The PPT met on April 29, 2014, to review the evaluation results. The team determined the student was not eligible for special education services. The student received a letter dated May 28, 2014, from the principal of the [REDACTED] addressed *To Whom it May Concern* stating the student was now a registered student at [REDACTED].

9. On July 22, 2014, [REDACTED] informed the parent the district was not going to pursue the expulsion hearing. Thereafter, the student was offered a Section 504 Plan and enrolled in [REDACTED]. As of December 2014, when the complaint was filed, the student was attending [REDACTED] had not received any disciplinary offenses and is earning mostly A's and B's

10. The district and [REDACTED] take the position that the parent and the district agreed that the student would be placed at [REDACTED] while he was being evaluated. This position is set forth in a July 2, 2014, e-mail to the parent in which [REDACTED] states that the student was "exited as a joint agreement between you and [REDACTED]. [REDACTED] offered you a placement while they tested [REDACTED] for Special Education services and you agreed to it." However, [REDACTED] had clearly stated in his letter to the parent dated March 6, 2014, that the student "will remain out of school until [REDACTED] places him in their Alternate School Program." Further, [REDACTED] told the parents the same thing after the expulsion hearing adjourned. There was no agreement between the parent and [REDACTED] that the student would transfer to [REDACTED].

Conclusions:

34 CFR § 300.111 requires the State to ensure that all children with disabilities residing in the State who are in need of special education and related services are identified, located and evaluated. RCSA §10-76d-6 states that each board of education is responsible for the identification of children requiring special education and related services. RCSA § 10-76d-7 requires the prompt referral to a planning and placement team of any student who demonstrates unsatisfactory attendance, behavior or academic performance in order to determine if the student should be evaluated. Child Find is one of the most important responsibilities of a public school district. If educators are not diligent in carrying out their Child Find responsibilities, schools are certain to overlook students in need. Under the IDEA, districts have an affirmative duty to identify, locate, and evaluate all students who need, or are suspected to need, special education and related services. This duty is not dependent on the parent asking for an evaluation. Failing to meet Child Find requirements is a matter of serious concern that can deprive FAPE to a student who should have been identified. School districts are required to have an effective screening mechanism and procedures in place that will enable them to find such children. The Child Find duty requires referral for an evaluation when the district has reason to suspect a disability and reason to suspect that special education services may be needed to address that disability. Meeting Child Find obligations isn't always a clear-cut process for a district. District Child Find systems must ensure that district staff understands how to apply IDEA Child Find requirements consistently and the need to effectively communicate information about students.

1. Consistent with RCSA § 10-76d-7, this student should have been referred to a PPT to determine whether or an evaluation was warranted to determine his eligibility for special education and related services as the student demonstrated unsatisfactory academic performance and behavior earlier in the 2013-14 school year than March of 2014. While State law requires general education interventions prior to making a special education referral, in this case, there is little evidence that [REDACTED] provided much in the way of general education supports. While the [REDACTED] Early Intervention Process Team was notified of the student's difficulties, no action was taken by the team. The student's teachers noted the student's poor behavior from the start of the 2013-14 school year. The student's mother asked for help from the magnet school in December. In January the

student's teacher e-mailed the family about the student's reading regression and worsening grades. The parent informed [REDACTED] that the student had been diagnosed with Attention Deficit Disorder. The Dean of Students developed a behavior chart for the student. By February 12, 2014, the student had been suspended out of school for 12 days. The magnet school's failure to be in communication with [REDACTED] about the student such that the district could refer the student to a PPT has resulted in a violation of IDEA's Child Find requirements and requires corrective action; as noted below.

2. 34 CFR § 300.534 provides that children not determined eligible for special education and related services may assert IDEA protections in response to discipline under certain circumstances. One of these circumstances is where the school district is deemed to have knowledge that the student is a student with a disability before the behavioral incident occurred that precipitated the discipline action. A school is deemed to have prior knowledge if the parent requested an evaluation of the student and/or staff from the educational agency expressed specific concerns about the student to the school's supervisor personnel. In this case, staff expressed various concerns throughout the 2013-14 school year and the mother made a written referral on March 4, 2014. The student engaged in conduct that resulted in discipline action the next day on March 5, 2014. On March 6, 2014, [REDACTED] suspended the student out of school for 10 days and on March 10, 2014, the district notified the parent of the district's intention to expel the student. 34 CFR § 300.536 and § 300.530(e) mandates that a manifestation determination be conducted within 10 school days of any decision to change the placement of a child with a disability because of a violation of school code of conduct. [REDACTED] was required to conduct a manifestation determination within 10 day of the March 5, 2014, decision to suspend the student for 10 days and it failed to do so. Corrective action is required, as noted below.

3. Contrary to [REDACTED] statement to the parent, the magnet school had no discretion to expel the student from [REDACTED]. The parent did not agree to leave [REDACTED]. The expulsion hearing officer had no authority to order the transfer and it is concluded the expulsion hearing officer did not direct that the student be transferred from [REDACTED]. The magnet school effectively expelled the student without providing the student with any due process. Instead, the student should have returned to [REDACTED] at the completion of the out of school suspension and a manifestation review should have occurred. Corrective action is required; as noted below.

Required Corrective Actions:

1. The magnet school must propose a corrective action plan that ensures compliance with RCSA § 10-76d-7. The proposed corrective action plan must be submitted to the Bureau for approval no later than three weeks following the date of this report. The plan must include the provision that a review of policies and procedures will be undertaken to determine if a system is in place that results in a regular monitoring of student data (grades, discipline and attendance) in order to determine if the student's progress is acceptable or marginally acceptable and where the progress is unsatisfactory, ensures that the responsible local education agency is advised of the student's unsatisfactory performance so that the district can make a prompt referral to a PPT to determine if the student should be evaluated.

2. The [REDACTED] and [REDACTED] must provide training to staff regarding IDEA's protections provided to students subject to disciplinary actions. Documentation that this training has occurred, who provide the training and who attended the training must be provided to this office no later than March 21, 2015.

3. The student must be afforded the opportunity to enroll at [REDACTED] for the 2015-16 school year. [REDACTED] is directed to contact [REDACTED] to discuss this opportunity. The student, through his attorney, is required to notify [REDACTED] in a timely way

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what his decision is regarding enrolling in [REDACTED]. This office must be notified of the student's decision.

I will be monitoring the district's and the magnet school's compliance with the required corrective actions. If you should have any questions, please do not hesitate to contact me at [REDACTED].

[REDACTED]