



Mississippi Department of Education
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June 22, 2012

Ms. Falana McDaniel
405 Vivian Merritt
Brookhaven, MS 39601

Dr. Lisa Karmacharya, Superintendent
Brookhaven School District (4320)
P. O. Box 540
Brookhaven, MS 39602

Re: Formal State Complaint/Individuals with Disabilities Education Act 2004

Dear Dr. Karmacharya and Ms. McDaniel:

The Office of Special Education (OSE) conducted an on-site investigation on May 31, 2012, in order to assess the District's compliance on each allegation in the Formal State Complaint for [REDACTED]

The enclosed Findings and Decision issued by the Mississippi Department of Education (MDE), Office of Special Education (OSE) outlines the District's noncompliance and an indication of what changes are required in response to the Formal State Complaint filed against the Brookhaven School District. Within thirty (30) days from receipt of this letter, the District must submit to the OSE an Improvement Plan outlining the actions that the District will implement in order to achieve compliance. These actions must be designed to ensure that the District corrects findings of noncompliance as detailed in the enclosed report.

The District must resolve all noncompliance within sixty (60) days of the date of the Findings and Decision. A follow-up visit will be conducted within 3-4 months to verify correction of the identified areas of noncompliance. All areas of noncompliance must be resolved no later than August 21, 2012. As required by Federal regulations, failure to resolve all deficiencies on record as soon as possible, but no later than 12 months from initial notification, may adversely affect the accreditation status of the District. Additional areas of noncompliance with State Board of Education Accountability Standards are included in the attached report and are being reported to the Office of Accreditation for appropriate action.

Mississippi Department of Education
Office of Special Education

Findings and Decision with Regards to the Formal State Complaint
Against the Brookhaven School District
June 22, 2012

SEQUENCE OF EVENTS

- April 24, 2012 A Formal State Complaint (Complaint) was filed by Ms. Falana McDaniel, on behalf of her son, [REDACTED] against the Brookhaven School District under the *Individuals with Disabilities Education Act of 2004 (IDEA)*.
- May 18, 2012 The Mississippi Department of Education (MDE), Office of Special Education (OSE) notified the District of its receipt of a Complaint.
- May 4, 2012 The MDE/OSE received the District's response to the Complaint.
- May 31, 2012 The MDE/OSE conducted an on-site investigation in response to the Complaint.
- June 22, 2012 The MDE/OSE issued its Findings and Decision.

CLAIMS INCLUDED IN THE COMPLAINT

The following claims of IDEA violations were made in the Complaint filed by Ms. McDaniel on behalf of her son, [REDACTED], on April 24, 2012, against the Brookhaven School District:

- A. *Child Find 34 C.F.R. §300.111; §300.304; and §300.8* – The Complainant alleges the District failed to comply with identifying, locating, and evaluating Mikeil as a child with a disability.
- B. *Protections for children not determined eligible for special education and related services 34 C.F.R. §300.534 (a) General and (b) Basis of knowledge (1)(2)(3)* –The Complainant alleges the District had knowledge that [REDACTED] may be a child with a disability, but failed to provide disciplinary protection.
- C. *State Board Policy 4300 Three Tier Instructional Model* –The Complainant alleges the District failed to implement the instructional management system for the behavioral concerns exhibited by [REDACTED]

- D. *Discipline Procedures 34 C.F.R. §300.530(3)(f)(i)* –The Complainant alleges the District failed to develop and implement functional behavioral assessments (FBAs) as well as consider ██████'s behaviors as a manifestation of his disability.

INVESTIGATION OF FORMAL STATE COMPLAINT

An on-site investigation was conducted by the Office of Special Education (OSE) on May 31, 2012. The investigation involved interviews with the parent, Ms. Falana McDaniel; the building level principal, Ms. Sonya Foster; and the Special Education Director, Ms. Brandy Myers. An examination of ██████'s discipline records included a calendar of suspensions, conference reports; discipline step plan/notices; and Teacher Support Team (TST) Tier documentation. Additional information for the team's review consisted of a psychological evaluation; e-mail correspondence from the parent to District administrators; and Brentwood Healthcare Center of Mississippi. Dr. Lisa Karmacharya, Superintendent was involved in previously scheduled District meetings, and was not present during the interviews, but was later briefed on the results of the interviews and a review of the District's documentation vs. the parent's documentation relative to this Complaint.

REVIEW OF COMPLAINT

- A. **Allegation:** The District failed to identify ██████ as a child with a disability under IDEA regulations as specified under *Child Find 34 C.F.R. §300.111 (a)(i) All children with disabilities residing in the State... who are in need of special education and related services are identified, located, and evaluated...* The District failed to evaluate ██████ by conducting an evaluation that was sufficiently comprehensive to determine if he was a child in need of special education and related services according to IDEA: *Evaluation Procedures at 34 C.F.R. §300.304(b), §300.304(1)(i), and §300.8(a) General(1).*

Findings:

The investigative team reviewed the educational and behavioral documentation available, and determined the District had not identified or evaluated ██████ as a child with a disability as specified in the Child Find process of *IDEA regulations*. The parent expressed to the District that her son is "...severely emotionally disturbed..."

Summary:

Based on the evidence noted in the OSE's finding above, the MDE determined the District violated Child Find requirements under 34 C.F.R §300.111(a)(i) and the requirements for Evaluation Procedures under 34 C.F.R. §300.304(b), §300.304(1)(i) and §300.8(a)(1) by the District's failure to conduct Child Find for ██████ and to conduct an evaluation on ██████ to determine whether he is a child with a disability who needs special education and related services as a result of a disability.

The District's failure to conduct Child Find procedures and to conduct an initial evaluation to determine whether [REDACTED] is a child with a disability may result in a denial of a free appropriate public education (FAPE) if [REDACTED] is subsequently determined to be a child with a disability under the IDEA.

Corrective Actions:

The District must obtain written parental consent to conduct an initial evaluation in accordance with State Board Policy 7219, §300.301, §300.304 through §300.306 (if it has not done so already).

Timeline: Immediately.

NOTE: The District indicated during the on-site visit, conducted on May 31, 2012 that [REDACTED] has been scheduled for an evaluation on June 25, 2012 in Hattiesburg, MS.

The District must conduct an initial evaluation and determine whether [REDACTED] is a child with a disability.

Timeline: Completed within 60 days from the date of parental consent for an initial evaluation.

If [REDACTED] is determined to have a disability and needs special education and related services as a result of the IDEA disability, an Individualized Education Program (IEP) Committee will convene an IEP meeting to develop an appropriate IEP for [REDACTED] addressing the needed special education and related services.

If eligible as a child with a disability, **compensatory services** for [REDACTED] must be considered by the IEP Committee as a remedy for the District's previous failure to evaluate [REDACTED] in a timely manner.

Timeline: Within 30 days of the date of the eligibility determination meeting.

The District must develop Child Find policies and procedures to ensure students are identified, located, and evaluated to determine the presence of a disability and to determine whether the students need special education and related services as a result of the determination of disability.

Timeline: Within 30 days of the date of the Findings and Decision.

The District must provide training to District staff and administrators regarding the Child Find policies and procedures.

Timeline: Within 60 days of the date of the Findings and Decision.

B. Allegation: The District failed to respond to the documentation provided by Ms. McDaniel, indicating [REDACTED] had a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD); therefore, *IDEA regulation of: Protections for children not determined eligible for special education and related services 34 C.F.R. §300.534 (a) General and (b) Basis of knowledge (1)(2)(3)*. The District failed to comply with *resolving the Complaint* and provide appropriate services to [REDACTED]

Findings:

The District has on file [REDACTED]'s psychological reports dating from May 27, 2008 to his most recent evaluation dated January 11, 2011. In 2008, his diagnosis by a clinical psychologist was *"Attention Deficit Hyperactivity Disorder (ADHD), Combined Type and Oppositional Defiant Disorder with conduct problems."* An additional evaluation was requested by Ms. McDaniel to assess his current psychological functioning and make recommendations concerning treatment. Ms. McDaniel informed the District's School Board in writing that her son *"... has some behavioral issues and was not referred to an interventionist...he's been sent to the alternative school several times."* The District did not complete an evaluation to determine whether [REDACTED] is a child with a disability and to determine his need for special education and related service needs. The District's response to [REDACTED]'s aggressive and/or disruptive behaviors has been punitive in nature rather than providing strategies and or supports; consequently, the District's knowledge that [REDACTED] is not yet determined eligible for special education should have asserted the same protections as an eligible student as required under "Basis of knowledge".

Dr. John B. Jolly, clinical psychologist revealed the following information relative to [REDACTED]'s behavioral concerns in a written report, which the District has on file:

- *"...[REDACTED]'s current emotional and behavioral functioning was assessed utilizing information provided by his mother, behavior rating scales completed by his mother, behavior rating scales completed by four of his teachers...It was noted that he had some social skill deficits. On the behavior rating scales, all of the raters reported quite similar problems. He was again rated clinically significant for Attention Deficit Hyperactivity Disorder, Combined Type as well as an Oppositional Defiant Disorder with conduct problems. It should be noted that his negative affect seems to have increased and he currently would meet criteria for Dysthymic Disorder..."*
- **DIAGNOSIS: AXIS I:**
 - *314.01 Attention Deficit Hyperactivity Disorder, Combined Type*
 - *313.81 Oppositional Defiant Disorder with conduct problems*
 - *300.40 Dysthymic Disorder*
Social Skills Deficit
Should be a slower learner (rule out specific additional math difficulties)

Summary:

Based upon the evidence noted in the OSE's findings above, the District had knowledge that [REDACTED] has three (3) diagnoses, and they were aware of Ms. McDaniel's request for an evaluation of [REDACTED]. The District did not address this critical information or take the appropriate actions to conduct the evaluation requested by Ms. McDaniel. As a result of the District's failure to respond to [REDACTED]'s needs and conduct the requested evaluation, Ms. McDaniel obtained an evaluation at personal expense. [REDACTED] has not been determined to be eligible for special education and related services under 34 C.F.R. Part 300, and he has engaged in behavior that violated a code of student conduct. Based upon protections for children who are not determined eligible for special education and related services under 34 C.F.R. §300.534(a), [REDACTED] may assert any of the protections provided for in 34 C.F.R. Part 300, if the District had knowledge (as determined in accordance with 34 C.F.R. §300.534 (b)(1)(2)(3)) that he was a child with a disability before the behavior that precipitated the disciplinary action occurred (multiple times being placed at the alternative school). Therefore, the MDE determined the District is in violation of 34 C.F.R. §300.534(a) and (b)(1)(2)(3).

Corrective Actions:

The District must ensure that [REDACTED] receives an appropriate evaluation that will address all of his needs (See Corrective Actions and applicable Timelines for Finding A relative to parental consent for an initial evaluation, conducting an initial evaluation within 60 days of parental consent, and determining whether [REDACTED] is eligible as a child with a disability).

NOTE: The District indicated during the on-site visit, May 31, 2012 that [REDACTED] has been scheduled for an evaluation on June 25, 2012 in Hattiesburg, MS.

The District must develop policies and procedures to address how the District will respond to parental requests for initial evaluations in accordance with State Board Policy 7219, §300.301.

Timeline: Within 30 days of the date of the Findings and Decision.

The District must also develop policies and procedures to address protections for children not determined eligible for special education and related services under 34 C.F.R. §300.534(a) and (b)(1)(2)(3).

Timeline: Within 30 days of the date of the Findings and Decision.

The District must provide training to District staff and administrators regarding the policies and the procedures to follow when parents make a request for an initial evaluation.

Timeline: Within 60 days of the date of the Findings and Decision.

The District must provide training to District staff and administrators regarding protections for children not determined eligible for special education and related services, including what constitutes a basis of knowledge under 34 C.F.R. §300.534 (a) and (b)(1)(2)(3).

Timeline: Within 60 days of the date of the Findings and Decision.

The District must reimburse the parent for the cost of the January 2011 evaluation conducted by Dr. John B. Jolly at parent's expense due to the District's failure to conduct an initial evaluation as requested by the parent.

Timeline: Within 60 days of the date of the Findings and Decision.

- C. Allegation:** The District failed to adequately implement scientific research-based interventions and strategies to address ██████'s repeated behavioral concerns; therefore, ██████ did not receive appropriate behavioral interventions needed to be successful in the general education curriculum as required by *State Board Policy 4300*.

Findings:

The District acknowledges that Tier III behavioral strategies were *not* initiated because they didn't '*...feel he ██████ exhibited behaviors that warranted Tier III...*' The following documentation was reviewed, which supports the District's failure to implement the required Tier process for behavior:

The Discipline Step Plan/Notices (behavioral concerns began in August 2011 through April 2012 (inclusive of a bus conduct write-up [April 2, 2012] where the teacher indicated in writing "*...this is the third time I've written him up in the past 4 days...*"

- a. Action taken by the District was consistently "*recess or break detention*";
- b. ██████ had 12 discipline notices from August 2011 – December 2011, and 7 notices from January to April. The District's response was one of the following: *In-school suspension; Out-of-school suspension; After school detention; or the alternative school;*
- c. The District has sufficient behavioral concerns noted since August of 2011, and there is no documentation of Tier III interventions for behavior, even though *all of Tier II strategies were unsuccessful for the targeted behavior;*
- d. The parent e-mailed the Superintendent on April 26, 2012 regarding the status of ██████'s behavioral assessment, and the e-mail was forwarded to the Special Education Director, Ms. Myers, and the Principal, Ms. Foster. No additional action was noted.

- e. In an e-mail from the District's behavioral specialist, Ms. Kathy Halliwell to the Special Education Director, Ms. Myers, the message states: "██████████ is a regular education 6th grade student at Lipsey Middle School. He has not been referred to me for interventions, FBA or Behavior Plan this year (2011-2012)."

Summary:

The MDE determined the District did not provide appropriate behavioral interventions necessary for ██████████ to be successful in the general education curriculum in accordance with State Board Policy 4300.

Corrective Action:

The District must provide appropriate training for District staff and administrators regarding the Teacher Support Team (TST) and State Board Policy 4300, including how to develop research-based interventions for behavior.

Timeline: Within 60 days from the date of the Findings and Decision.

- D. **Allegation:** The District failed to determine that ██████████'s behavioral concerns may have been associated with his diagnosis of ADHD, ODD, Conduct Disorder, and Dysthymic Disorder; consequently, *Discipline Procedures §300.530(3)(f)(i) Determination that behavior was a manifestation...conduct a functional behavioral assessment...* were not conducted by the District.

Findings:

The District was notified by the parent on October 12, 2011 of ██████████'s diagnosis of ADHD and ODD based on the Conference Report to develop a behavior modification plan. The parent also informed the District that ██████████ was on medication. According to the conference notes, when the parent asked Mr. Daniel, one of ██████████'s general education teachers about his grades, the teacher's response was: "He is zoning out during instruction. You can't ever tell when he's going to explode."

District documentation of November 3, 2011, indicated Ms. Foster, the principal notified staff at Lipsey Middle School that ██████████'s mother requested "discipline notices and teacher observation" because she was seeking a behavioral assessment. Teacher observation notes report that ██████████ is 'very disruptive by just yelling out things that do not pertain to class; the interventions helped for a few minutes and the behavior resumed...some professional counseling might help.' The Complaint further alleges the District did not adhere to its policy with the development of a 'behavior modification plan' because throughout the school's documentation, ██████████'s behavior is consistently described as "disruptive".

According to Lipsey Middle School policy, "... (5)...After the second incident of disruptive behavior as determined by the principal or assistant principal, the student's parent or guardian and the reporting teacher or teachers shall develop a behavior modification plan. The conference to develop the plan may be held in person or via telephone. If the parent / guardian does not respond or refuses to participate, the teacher(s) and the principal or assistant principal shall prepare the plan and mail a copy to the parent / guardian."

It is noted that the District does not have a record of or did not produce a copy of the "behavior modification plan" as specified in policy, which the parent alleged did not occur.

It should be noted that the District does not currently have a District-wide policy for discipline, i.e., according to the District's Discipline Plan, "...The Brookhaven School District Trustees has allowed each school in the District to adopt an assertive discipline plan to meet the needs of the individual school and its students..." The District acknowledges that a District-wide policy is being developed for the 2012-2013 school year. This issue of noncompliance related to District policies and code of conduct for discipline (under Accreditation Standard 2) will be reported to the Office of Accreditation.

In a note from the behavior specialist Ms. Halliwell, dated March 2012, she explained that [REDACTED] was dismissed from anger management group for 6th grade boys because he didn't want to continue, and it is inferred that the program is optional. Ms. Halliwell stated: [REDACTED] was placed in my small; anger management group (6th grade boys) in September 2011. [REDACTED] did not follow directions. He was oppositional during most of the sessions...Just before Christmas break in December 2011; [REDACTED] became more verbally combative with me and other students..."

Summary:

Based on the documentation reviewed, and the interviews conducted, the District failed to acknowledge that [REDACTED]'s disruptive behaviors were associated with his diagnoses of: Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), Conduct Disorder, and Dysthymic Disorder with Social Skills Deficit. The OSE's investigative team determined that sufficient data/documentation supports the parent's Complaint that [REDACTED] is in need of special education services, and should be evaluated to determine if he is a child with a disability. This need for an evaluation is supported by the psychological evaluation of the clinical psychologist in conjunction with the District's copious notes of aggressive and/or disruptive behaviors; inattentiveness; inability to focus; and not knowing when the student is going to "explode." [REDACTED]'s behavioral needs were not sufficiently addressed. The District had knowledge of the student's diagnosis of ADHD, and ODD with Conduct Problems as early as 2008, and based on the number of disciplinary referrals, educational impact was evident.