

PUBLIC SCHOOLS OF NORTH CAROLINA

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April 30, 2010

Donna Hargens, Interim Superintendent
Wake County Public School System
3600 Wake Forest Road
Raleigh, NC 27609

Jason Langberg, Esq.
Advocates for Children's Services
P.O. Box 2101
Durham, NC 27702

Re: Langberg v. Wake County Public School System
Complaint No. 09-28

Dear Dr. Hargens and Mr. Langberg:

The Department of Public Instruction, Exceptional Children Division, has completed the investigation of the formal complaint referenced above. The formal complaint process is designed to ensure that the local educational agency complies with special education rules and regulations under the Individuals with Disabilities Education Improvement Act (IDEA) Amendments of 2004 (20 U.S.C. 1400 et seq.), the IDEA regulations (34 CFR § 300), Article 9 §115C of the North Carolina General Statutes, and/or the North Carolina *Policies Governing Services for Children with Disabilities*. As part of the procedure, the investigator researches each allegation and uses documentation to establish findings of fact that result in a determination of compliance or noncompliance with federal and state laws.

This report constitutes the North Carolina Department of Public Instruction's final decision and its findings, conclusions, and reasons regarding the complaint. Findings of noncompliance were confirmed, and corrective actions are required by the Wake County Public School System. Please send documentation of the corrective actions to **Lynn Smith, Consultant for Dispute Resolution**, on the date as indicated in the Corrective Action section of the report. The file on this complaint will remain open and active pending the completion and subsequent verification of the approved corrective actions.

EXCEPTIONAL CHILDREN DIVISION

Mary N. Watson, *Director* | mwatson@dpi.state.nc.us

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AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

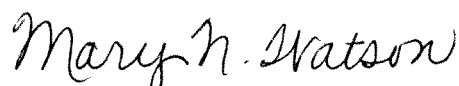
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If you have any questions about the investigation or our findings, please contact Ms. Lynn Smith, Consultant for Dispute Resolution, at (919) 807-3978 or LSmith@dpi.state.nc.us.

Sincerely,



Rebecca B. Garland, Chief Academic Officer
Academic Support and Instructional Services



Mary N. Watson, Director
Exceptional Children Division

RBG/MNW/LS/lc

By certified mail and facsimile

Enclosures

c: Robert Sturey, Special Education Services Director
Mary Hutchens, Regional Consultant
Bobbie Grammer, Monitoring Consultant

**North Carolina Department of Public Instruction
Exceptional Children Division**

Complaint Resolution Final Report

Case No. 09-28

April 30, 2010

Appropriate staff members of the Exceptional Children (EC) Division, North Carolina Department of Public Instruction (NCDPI), have completed an investigation of a complaint filed on December 11, 2009, against the Wake County Public School System (WCPSS). The complaint was filed by Jason Langberg, an attorney with Advocates for Children's Services (ACS).¹ The complaint alleged that the WCPSS restricts the educational services provided to students with disabilities, who have been long-term (LT) suspended, to four hours per week of home/hospital services; the IEP Teams do not make individualized determinations regarding the least restrictive environment for those students' placements; and students who receive LT suspensions are denied a free appropriate public education (FAPE). Based upon statements in the complaint, the EC Division staff identified the following issues to investigate:

- Whether the WCPSS develops IEPs based on the unique needs of each student with a disability, who is long-term (LT) suspended;
- Whether the WCPSS provides students with disabilities, who are LT suspended, with a placement in the least restrictive environment (LRE); and
- Whether the WCPSS provides students with disabilities, who are LT suspended, with a free appropriate public education.

The investigation consisted of reviews of the complaint and attachments; WCPSS's written response to the complaint and exhibits; lists of students that were removed from their schools for behaviors or LT suspensions; the April 1, 2010, WCPSS child count records; a representative sampling of the records of 34 WCPSS students with disabilities, whose placements were changed to hospital/homebound (H/H) because of behaviors or LT suspensions; and interviews with WCPSS special education staff. The interviews were conducted with the Senior Director for Special Education Services and the Senior Director for Counseling and Student Services, Senior Administrators for Special Education Compliance, the Homebound Lead Teacher, and special education department chairpersons and case managers in various Wake County middle and high schools. The findings of fact that follow are drawn from those sources.

The conclusions of law are drawn from the IDEA Amendments of 2004 (20 U.S.C. 1400 *et seq.*), the IDEA regulations (34 CFR § 300), Article 9 Chapter 115C of the North Carolina General Statutes, and the North Carolina *Policies Governing Services for Children with Disabilities (Policies)*. The following report conveys the issues, findings of fact, and conclusions of our investigation of the complaint.

¹ ACS is a statewide project of Legal Aid of North Carolina, Inc. Its staff attorneys represent Wake County students with disabilities who are facing long-term suspensions. The ACS stated that it has targeted Wake County for its advocacy work.

Issue 1: Whether the WCPSS develops IEPs based on the unique needs of each student with a disability, who is long-term (LT) suspended.

Findings of Fact:

1. The WCPSS stated in its written response to the complaint that the IEP Team must determine how services will be provided and amend the IEP to address the service delivery. To assist the individual IEP Teams in completing the necessary forms for changing the student's placement and special education services, the district's special education compliance team designed *Go-By-Forms*, which explain the process that guides the IEP Team to determine the services needed to enable the student to participate in the general curriculum and to progress toward IEP goals while on suspension. The Special Education Services (SES) staff also developed a form, *Monthly Review of Home/Hospital Instruction (Change of Placement due to Discipline)*, that provides structure and guidance to school administrators and staff when an IEP Team has determined that H/H is the appropriate placement for a student who has been LT suspended.
2. The WCPSS's Student Support Services Resource Guide (Guide), which is posted on the district's website, provides an overview of the alternative services provided to students placed on H/H. The district's response acknowledged that the Guide was not updated when the Home/Hospital Services Guidelines was developed in October 2008, and it should be updated. The Guide states:

The WCPSS provides instruction for special education students when H/H is determined to be the least restrictive environment by the IEP Team. H/H services can only be accessed by following the IEP process and determining that the student is not able to attend school due to his or her disability or because of a LT suspension. At all levels, a school-based special education teacher is responsible for insuring services to the student and that the IEP remains in compliance. Student contact hours range from 3 to 6 hours per week. The following are the available service delivery models:

 - Nexus Learning: Computer assisted instruction typically used at the secondary level for students performing at or near grade level.
 - School-Based Personnel: If the IEP committee determines that the computer assisted instruction is inappropriate, school-based certified teachers provide instruction in the content areas after school hours at a mutually agreed upon location.
3. The North Carolina State School Board Policy ID Number: GCS-G-001 establishes a requirement for 180 school days and 1000 hours of instruction per school year (27.75 hours per week).
4. The Home/Hospital Services Guidelines does not recommend a specific amount of instruction for students placed on H/H. The document provides the following points to be

considered when determining H/H services for students who have been removed for behavior or LT suspension.

- Academic/Curricular demands of the student’s program, e.g., the number of subjects and rigor of the curriculum; and
 - Behavioral supports needed and what support specialists have been accessed.
5. In response to the EC Division’s request, the WCPSS provided lists of students with disabilities whose placements were changed to H/H because of behavior or because of LT suspensions. A computer-generated list was printed on 1/17/10 and another on 3/18/10. Those lists revealed the following facts:
- On 1/7/10, 30 students were on H/H because of behavior. Twenty-six of those students were removed from H/H by 3/18/10;
 - On 3/18/10, 26 students from the previous printout had been removed from H/H, and 20 new students had been added; and
 - The 24 students receiving H/H services as of 3/18/10 received the following amounts: two students received 6 hours of H/H instruction; twelve students received 4 hours per week; six students received 3 hours per week; two students received 2 hours per week; and two students received 1 hour a week.
6. On 1/7/10, 74 students were listed as placed on H/H for LT suspensions. That list had increased to 141 students by 3/18/10 and to 175 on the April 1, 2010 Child count. The IEPs for the 175 students indicated that they would received from 1 to 6 hours of H/H instruction.
7. A representative sampling consisting of the records for 34 students with disabilities whose placements were changed to H/H between January 7, 2010, and March 18, 2010, were reviewed for the investigation. There appeared to be no relationship between the frequency and duration of special education services the student received before the change in placement and after the H/H placement, as demonstrated by some of the following examples. No related services were listed on the 34 student records that were reviewed for the investigation.

Duration of EC Services Before H/H	Frequency of EC Services Before H/H	Duration of EC Services After H/H	Frequency of EC Services After H/H
88 minutes (7.3 hours)	5 x weekly	2 hours	Per week
10 minutes	2 x reporting period	4.5 hours	Per week
10 minutes	2 x weekly	60 minutes (2 hrs)	2 x weekly
10 minutes	3 x weekly	2 hours (4 hrs)	2 x weekly
4 hours (20 hrs)	5 x weekly	60 minutes (2 hrs)	2 x weekly
90 minutes (7.5 hrs)	5 x weekly	60 minutes (4 hrs)	4 x weekly

8. In individual interviews, the special education chairpersons and case managers from four high schools were asked, "How does the IEP Team at your school determine the amount of special education services to provide to the students placed on H/H?" Each gave a similar response and explained that the IEP Team reviews the student's courses for the semester, the student's grades in those courses, and the amount of time remaining in the semester. It determines which courses that the student is likely to pass on H/H with individualized instruction and the number of hours of instruction necessary for the student to pass the courses. The Team focuses on core courses because some elective courses cannot be delivered outside the regular classroom. The IEP Team typically allocates one hour per week for each core subject. For students who are close to graduation and have the potential to pass all or most of their courses with additional instruction, up to six hours of instruction per week may be allocated. The chairpersons who were interviewed were not aware of any district guidelines or policies limiting the amount of homebound instruction. There was no evidence in the records that the homebound services included special education to address the goals for reading, written expression, or related services.
9. The IEP Team meeting minutes and *Prior Written Notices (DEC 5s)* that were reviewed in students' records provided little or no documentation about how the IEP Team determined the duration, frequency, and location of H/H services.
 - The IEP Team minutes for an 18-year-old student in ninth grade stated that his most recent psychological evaluation, which was administered in 2005, indicated that he had a specific learning disability, with significant weaknesses in mathematical calculation, reading comprehension, and written language. Although he had no history of behavioral problems, his psychological records also indicated concerns about anxiety, depression, learning problems, and school problems. Before he received a LT suspension, he received special education services for 10 minutes, twice each 9-week reporting period. His amended IEP for H/H specified that he would receive 4.5 hours per week, in order to pass three courses the first semester and two courses the second semester. The H/H instruction was for the core courses; it did not include social skills, behavioral strategies, or specialized instruction in reading or basic math.
 - A 19-year-old senior was placed on LT suspension for theft and gang-related behavior. Prior to his suspension, he received special education for 10 minutes once a month, even though his grades were Ds and Fs. In the H/H program, he receives 4 to 6 hours of instruction weekly, and the EC coordinator at his high school reported that he continues to work toward graduation.

Conclusions:

The regulations require that the IEP include: a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; a statement of measurable annual goals, including academic and functional goals designed to meet the child's

needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the child's disability; and a statement of the special education and related services; supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum; to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children. [34 CFR §300.320]

The federal regulations state that the IEP Team must, in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 CFR § 300.324(a)(2)(i)

The records revealed students who had been retained for multiple grades and had not passed the End-of-Grade (EOG) Tests in Reading and Math or the End-of-Course (EOC) Tests in high school, yet they received 10 minutes of special education services a week or a reporting period prior to their removals. The duration and frequency of special education services in the IEPs for the students with "regular" placements were, in most cases, very limited. The IEPs failed to provide adequate educational and behavioral supports for the students to progress in the general education curriculum or to remain in school.

In June 2009, the Office of Special Education and Rehabilitative Services (OSERS) issued a revised document called *Questions and Answers (Q&A) on Discipline Procedures*. The document was created to provide guidance to personnel in State educational agencies, local educational agencies, and families on discipline policies enacted for school-age students. OSERS gave the following response for Question C-3, which asked whether all services in a child's IEP need to be provided in the interim alternative educational setting (IAES) for a removal under 34 CFR § 300.530(c) or (g):

It depends on the needs of the child. The LEA is not required to provide all services in the child's IEP when a child has been removed to an IAES. In general, the child's IEP Team will make an individualized decision for each child with a disability regarding the type and intensity of services to be provided in the IAES. 34 CFR §300.530(d)(1) clarifies that a child with a disability who is removed from his or her current placement for disciplinary reasons under 34 CFR §300.530(c) or (g) must continue to receive educational services as provided in 34 CFR §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting his or her IEP goals. For removals that constitute a change of placement, the child's IEP Team determines the appropriate services under 34 CFR §300.530(d)(1). ... If a student whose placement has been changed under 34 CFR §300.530(c) or (g) is not progressing toward meeting the IEP goals, then it would

be appropriate for the IEP Team to review and revise the determination of services and/or the IAES.

It was not a coincidence that none of the 191 students with disabilities placed on H/H for behaviors or for LT suspension during the current school year received more than six hours per week of homebound instruction, as was recommended in the Student Support Services Resource Guide. Four high school staff members reported that their IEP Teams used a simple formula of one hour per course for guidance in determining the amount of H/H services to provide. The students' records provided no indication of how the IEP Team determined the amount of H/H services because the IEP Teams did not document those decisions on the *DEC 5s*. Many of the students who were placed on H/H had a history of retentions in multiple grades, failing scores on EOG Tests, and a disciplinary suspensions. Their records provided no indication that the educational, functional and emotional needs, deficits, or behaviors of many of the students were addressed on their IEPs before the change in placement or were considered after the placement change to H/H.

The WCPSS is found to be in noncompliance with the regulations for failing to develop an IEP based upon the unique needs of each student with a disability who is long-term suspended.

Issue 2: Whether the WCPSS provides students with disabilities, who are long-term suspended, with a placement in the least restrictive environment (LRE).

Findings of Fact:

1. The WCPSS lists several alternative schools that serve students with and without disabilities who have behavioral and/or emotional challenges. Those schools are either no longer available or are utilized for limited purposes. The staff acknowledged in interviews that limited interim alternative settings are available for its students who are LT suspended.
 - Mt. Vernon and River Oaks serve students with academic and behavioral challenges in grades six through eight, and Mary E. Phillips serves that student population in grades nine through twelve. Assigning a student to Mt. Vernon or Mary Phillips High School is not an option for IEP Teams. The brief description of each of those schools in the "Alternative Schools and Programs Overview," produced by the WCPSS, contained no references to their providing services to students with disabilities. Their admissions criteria appear to be designed for students with moderate academic and/or behavioral difficulties, which may rule out most students with IEPs.
 - Longview accepts students with severe emotional disabilities in grades six through twelve, who demonstrate aggressive and disruptive behaviors to such a degree that they cannot be successful in a regular school environment. It serves students who have been identified and placed in special education. It has space for 128 students, based on current staffing.

- Life Course Academy is a contracted program that provides education for up to 30 LT suspended special education students whose IEPs specified resource or separate placements.
 - The WCPSS operates “Second Chance Online Resource for Education” (SCORE), which provides online instruction for middle and high school students serving a long-term suspension. Core academic courses in Language Arts 6th - 8th, Mathematics 6th - 8th, English I-IV, Algebra I and II, Geometry, and Introductory Mathematics are available. SCORE is available for any student who has been given a LT suspension, but it requires the approval of the school administrator and a Special Education Services administrator. District staff stated that it is not an appropriate program for students with more severe cognitive deficits.
 - Richard Milburn was an alternative school that previously served students with and without disabilities who were LT suspended. The contracted arrangement was discontinued at the end of the 2008-2009 school year because of the school system’s budgetary constraints. Special education staff members expressed their disappointment with the loss of Richard Milburn as the only alternative school for students who are LT suspended.
2. Any student who is LT suspended may appeal the suspension to the Discipline Review Committee. Upon that committee’s recommendation, the superintendent may assign the student to one of the programs listed in Fact #1 for the interim alternative educational setting (IAES). The records revealed that some students with disabilities had been reassigned to one of those schools, and a small number of students had returned to their home school after the IEP Team reviewed the records and determined that the students’ behaviors were a manifestation of their disability, contrary to the initial IEP Team decision.
 3. When asked what alternative schools are available for IAES for students who are LT suspended, the universal response from the WCPSS staff was that there are no alternative schools; H/H is the only option available to an IEP Team. Some special education department chairpersons expressed disappointment that alternative programs are not offered on a school campus in the afternoon or evening.
 4. Each school in the WCPSS must provide the teachers who deliver instruction for its students that are placed on H/H for behavior or LT suspensions. Teachers who are interested in providing H/H services may sign up at the school where they teach, and they may be contacted when a H/H teacher is needed for a particular student. The schools attempt to provide H/H teachers who are certified in the courses they will teach, but they may not always be certified in each of the subject areas they teach. The Home/Hospital Services Guidelines state that the H/H teachers are not the teacher of record for the student. The teacher of record or case manager is responsible for providing and grading assignments, following standardized testing requirements, and preparing progress reports and report cards. Although this policy meets the legal requirement, the H/H teacher may not always be qualified to teach the subject or to address the student’s special needs.

5. Since regular classroom teachers provide homebound instruction after the end of the school day, the students are scheduled for H/H instruction in the afternoon, early evening, and on weekends, which may explain the significant absenteeism.
6. The SES Department created a *Monthly Review of Home/Hospital Instruction (Change of Placement due to Discipline)* to document compliance with § 115C-109.9(b) of the NC General Statutes. Some of the LT suspended students' records contained one or more copies of the form; however, many records contained no documentation that the student's homebound placement was reviewed monthly. The monthly review form provides space for the school designees to document that the student will continue to remain on H/H or that they cannot determine whether that placement continues to be appropriate, based upon the review of data. In case of the latter, the IEP Team is instructed to meet within ten days of the review. The records revealed that although many of the students did not receive the amount of services specified on their IEP, did not appear at the prescribed location for H/H services, or were failing all the courses for the semester, the designees did not recommend an IEP Team meeting to discuss the concerns and amend the current plan or develop a new one.

Conclusions:

The North Carolina Policies and the General Statutes state:

If a change of placement occurs under the discipline requirement of these *Policies*, an LEA shall not assign a student to homebound instruction without a determination by the student's IEP Team that the homebound instruction is the least restrictive alternative environment for the student. If it is determined that the homebound instruction is the least restrictive alternative environment for the student, the student's IEP Team shall meet to determine the nature of the homebound educational services to be provided to the student. In addition, the continued appropriateness of homebound instruction shall be evaluated monthly by the designee or designees of the student's IEP Team. NCGS § 115C-107.7(b) NC 1504-2.9(a)(b)

Educational services means the necessary instructional hours per week in the form and format as determined by the child's IEP Team and consistent with federal and State law. The instruction shall be delivered by appropriately qualified teachers to the extent required by federal and State law, which requires a free appropriate public education and the opportunity for a sound basic education; related services included in the child's IEP; and behavior intervention services to the extent required by federal law. NC 1504-2.9(d)

OSERS responded with the following directive to Question C-2 in the *Q&A on Discipline Procedures*, "May a public agency offer 'home instruction' as the sole IAES option?":

No. For removals under 34 CFR §300.530(c), (d)(5), and (g), the child's IEP Team determines the appropriate IAES (34 CFR §300.531). Section 615(k)(1)(D) of the IDEA and 34 CFR §300.530(d) are clear that an appropriate

IAES must be selected “so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP.” Therefore, it would be inappropriate for a public agency to limit an IEP Team to only one option when determining the appropriate IAES. As noted in the *Analysis of Comments and Changes* accompanying the regulations published on August 14, 2006, and became effective on October 13, 2006, at 71 Federal Register 46722:

Whether a child’s home would be an appropriate interim alternative educational setting under §300.530 would depend on the particular circumstances of an individual case such as the length of the removal, the extent to which the child previously has been removed from his or her regular placement, and the child’s individual needs and educational goals. In general, though, because removals under §§300.530(g) and 300.532 will be for periods of time up to 45 days, care must be taken to ensure that if home instruction is provided for a child removed under §300.530, the services that are provided will satisfy the requirements for services for a removal under §300.530(d) and section 615(k)(1)(D) of the Act.

Where the removal is for a longer period, such as a 45-day removal under 34 CFR §300.530(g), special care should be taken to ensure that the services required under 34 CFR §300.530(d) can be properly provided if the IEP Team determines that a child’s home is the appropriate IAES.

When the WCPSS discontinued its contract with the Richard Milburn School, it provided no other IAES as a placement option for students with disabilities who are given LT suspensions. Although the school system has developed SCORE, the SES staff admitted that it is not appropriate for all students with disabilities. The district’s decision, which was based upon budgetary constraints, left H/H as the only IAES placement option available to the IEP Teams and forced the IEP Teams to make noncompliant placement decisions. Each school must now find highly qualified teachers among its staff to deliver H/H instruction, and the frequency, duration, and delivery of services are limited by the availability of teachers who can provide H/H instruction after school, in the early evening, or on weekends.

The record review revealed a number of students who have been placed on H/H for disciplinary reasons. Their confidential records did not contain evidence of a monthly meeting to review the student’s educational services and determine the continued appropriateness of homebound instruction.

The WCPSS is found to be in noncompliance with the IDEA regulations for failing to provide a continuum of placements, for limiting its IEP Team to only one option when determining the appropriate IAES, and for failing to provide students with disabilities, who are long-term suspended, with a placement in the least restrictive environment (LRE). The WCPSS is also found to be in noncompliance for failure to convene monthly meetings

to determine the continued appropriateness of homebound instruction for each student with a disability whose H/H placement was for a disciplinary removal.

Issue 3: Whether the WCPSS provides students with disabilities, who are long-term suspended, with a free appropriate public education.

Findings of Fact:

1. The H/H teachers must complete an *H/H Education Verification Form*, with the dates and times that H/H educational services were provided, and the signature of an adult who was present, verifying the teacher's information. The forms must be signed by the school principal and submitted monthly to the H/H Lead Teacher so that the H/H teacher can be paid.
2. The Home/Hospital Services Guidelines state, "assignments should be ready within 3 days of placement on H/H to avoid a lapse in services." H/H services were delayed for a number of students for periods ranging from two weeks to two months until the school could find a teacher. The H/H Verification Forms in the students' folders documented that the provision of H/H services was inconsistent, i.e., the teacher met with the student on different days of the week, at different times each week, and some weeks, no services were provided. In some instances, the students were incarcerated during part of the suspension, and H/H services were not provided until the student was released. Some students' records indicated that compensatory services were required, but the records contained no evidence that the compensatory services were always provided. The H/H Education Verification Forms provided no way for the investigator to determine the reason services were not delivered, as specified on the IEP; therefore, an individual reviewing the document would not know whether the session was cancelled by the student or the teacher.
 - The IEP for a senior in the Occupational Course of Study specified 10 minutes of special education consultation three times a week prior to his suspension. He was suspended on November 5, 2009. His IEP for H/H stated that he would receive four hours instruction a week, beginning on January 4, 2010. The teacher's H/H Verification Forms documented that instead of the 16 hours a month that his IEP specified, he actually received 4 hours in January and 5.25 hours in February. The IEP Team met on March 1, 2010, and wrote in the meeting minutes that one teacher would provide instruction for 4 hours each week and a second teacher would provide 16 compensatory hours. H/H Education Verification Forms documented that 13.5 hours were provided in March, and the teacher met with the student for 30 minutes on April 1, 2010.
3. The H/H Attendance Guidelines provide the following directions:
 - If an H/H student misses two consecutive weeks of classes without notification to the H/H teacher, the case manager will write a letter to the parent documenting the dates of missed classes and duration of absences. The

parent should be notified that H/H will be discontinued until contact with the school is made to resume H/H services. A copy of the procedural safeguards should be included with the letter. Please forward a copy of the letter to the Lead Teacher for H/H.

- Following the above letter, if the parent of a student who is at least 16 years of age has not made an attempt to resume H/H services within a week to 10 days, the WCPSS attendance policy should be followed.
 - For students less than 16 years of age that have missed 3 consecutive weeks of classes, a parent letter should be sent documenting the dates of missed classes and duration of absences. The Compulsory Attendance Law² should be followed. A letter should be sent monthly asking the parent to arrange to resume services. Copies should be sent to the school data manager and the Lead Teacher for H/H.
4. The SES Department provides each school with written guidelines and forms that explain the process for keeping track of the H/H services for the students with disabilities and for reporting to the H/H Lead Teacher when the students do not attend H/H instruction. The SES Department does not collect or monitor data pertaining to the students' names, attendance, and dates that the schools dropped them from enrollment or the students withdrew; whether the school-based teachers provided the H/H services on the IEPs; and the placement information reported on the April 1, 2010, Child Count.
 5. The special education department chairpersons and case managers reported in interviews that some of the H/H students had never reported for instruction, and "those students could not be located." The names of those students were not submitted to the SES Department, and they were reported as enrolled on the April 1, 2010, Child Count. The names of 175 students, whose placements were H/H because of LT suspensions, were cross-referenced with the information submitted for the April 1, 2010, Child Count. That record review revealed the following information: at least 38 of the 175 students placed on H/H for LT suspensions are no longer enrolled in the WCPSS, according to the special education case managers at their schools. The placements for ten students on H/H are listed on the April 1, 2010, Child Count as "separate public schools"; eight are listed as "residential"; and the nine are listed as "regular" placements.
 6. The investigation team reviewed a representative sampling of records of 34 students with disabilities, who were placed on H/H for LT suspensions and behavior during the current school year.
 - None of the prior written notices for students who were LT suspended addressed the changes in placement, frequency, duration, or location of services on the questions about "other options considered and reasons rejected" and "any other factors that were relevant to the agency's proposal or refusal;" and

² NCGS § 115C-378

- None of the prior written notices following the change in the student's placement to H/H for behavior provided information about the frequency, duration, and location of H/H services.
7. The review of the students' records also revealed:
- Many students had been retained for two or three grades;
 - Several students had been placed on LT suspension for two or more consecutive school years without meaningful interventions on the IEP;
 - For many high school students on H/H, the most recent individual assessments, which were considered for the manifestation determinations, were conducted five or more years earlier;
 - Prior to their change in placement to H/H, the 34 students, whose records were reviewed, were in the following placements on the continuum: 15 were in regular; 8 were in a resource setting; 8 were in a separate setting, 1 was on a modified day, and 2 were not previously identified as eligible for special education;
 - IEPs for the high school H/H students frequently consisted of one goal for organization and one for making passing grades;
 - Some students did not progress in the general curriculum or toward their IEP goals while on H/H; others passed all their courses while placed on H/H;
 - Many students failed to participate in the H/H instruction that was provided at locations such as their home, the public library, and in one case, Taco Bell, and they were withdrawn by the school.

Conclusions:

The regulations state that in matters alleging a procedural violation, a finding of a denial of FAPE may be made only if the procedural inadequacies: impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making regarding the provision of a FAPE to the child, or caused a deprivation of educational benefit. [34 CFR §300.513]

The investigation and record review identified the following procedural violations:

- a. The IDEA regulations require that at the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP. 34 CFR §300.323(a)
 - The review of the records of 34 students whose placements were changed to H/H because of behavior or LT suspension found multiple incidences of students whose services that were not implemented within a week after the student's placement was changed. The H/H Education Services Verification Forms documented many incidences when the frequency, duration, and location of special education services specified on the IEP were not implemented as written.

These items documented noncompliance for failure to implement the students' IEPs as written.

- b. The regulations state that each local education agency (LEA) must collect valid and reliable information as needed to report annually to the state education agency (SEA) on the indicators established by the SEA for the LEA's continuous improvement performance plans. NC 1505-1.2(b)
 - Although the SES Department has developed forms and documents to guide the special education staff members at each school in reporting accurate data related to the students who are removed for LT suspensions, it does not collect or monitor the information pertaining to the students' attendance, implementation of their IEPs, their enrollment for compliance, and it does not monitor the accuracy of the placement data that is reported to the North Carolina Department of Instruction for Child Count. **The WCPSS is in noncompliance for failing to report valid and reliable information on the April 1, 2010, Child Count.**
- c. The public agency must provide written notice to the parents within a reasonable time before the public agency proposes to, or refuses to, initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. [34 CFR §300.503]
 - The prior written notices were incomplete and did not fully inform the parents about the changes to the student's special education services, including the duration, frequency, and location in which they would be delivered. The prior written notices that were written at IEP Team meetings at which the manifestation determination was made focused on that decision and did not mention the changes in placement and services that resulted from that decision. **As such, they had the effect of delaying any action by the students' parents and were a violation of the IDEA regulations.**

The school system's failure to develop IEPs based upon the individual needs of the students who were placed on H/H for LT suspensions and behaviors, failure to implement those IEPs, and failure to provide placements in the least restrictive environment impeded the students' rights to a free appropriate public education and deprived them of educational benefit. The violations for failing to provide the parents with compliant prior written notices significantly impeded their opportunity to participate in the decision-making regarding the provision of a FAPE to their children. **The WCPSS is found to be in noncompliance with the IDEA for failure to provide a free appropriate public education for the students who were placed on H/H for LT suspension and for behavior.**

Corrective Action

When allegations of noncompliance are substantiated by an investigation, corrective action is required. The WCPSS is directed to take the following corrective actions in order to remedy the violations identified. The Exceptional Children Division will conduct a record review during the second semester of the 2010-2011 school year.

By June 15, 2010:

1. The WCPSS SES Department will develop a spreadsheet to collect and report accurate information about students who have been placed on H/H because of LT suspensions or behavior.
 - a. The spreadsheet should include the following information:
 - Student's name, age, grade, school, and date of LT suspension;
 - Student's enrollment status, including placement, location, and/or school;
 - Number of hours of H/H special education and related services indicated on IEP;
 - Number of hours of H/H services provided each month that the student was placed on H/H, based upon H/H verification sheets. If the services were not provided as specified on the IEP, the Verification Forms should contain attachments noting the reason for changes;
 - If the student is no longer enrolled, the date and reason the student was withdrawn or dropped; and
 - Dates of monthly meetings to review the H/H placements for students with LT suspensions;
 - b. Each school will provide to the Director of the WCPSS SES Department accurate, monthly reports of the information listed on the spreadsheet for each student with a disability who is LT suspended.
 - c. The WCPSS must submit a bimonthly report of that data to the Exceptional Children Division during the 2010-2011 school year and until notified otherwise. Submit a copy of all current WCPSS policies for discipline, suspensions, homebound placements, and assignment to an interim alternative setting for students with disabilities.
2. Submit a corrected copy of the April 1, 2010, Child Count that reflects the enrollment and accurate placements of students placed on H/H.

By July 15, 2010:

1. Submit to the Exceptional Children Division the names of each H/H student for whom compensatory educational services are due from the 2009-2010 school year, the amount of services that were not provided for each, and a plan for providing those services.

2. Submit to the Exceptional Children Division the following information for each of the 141 students listed as H/H for LT suspensions on the 3/10/10 printout: student's name, student's grades for End-of-Grade Tests or End-of-Course Tests, and final course grades for the 2009-10 school year;

By August 5, 2010:

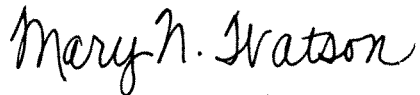
1. The WCPSS shall resolve the noncompliance for failure to provide the IEP Team with more than one option for interim alternate educational placements for students with disabilities, who are removed from school for long-term suspensions. The district shall locate or create an alternate special education program more closely tailored to the students' unique needs and that ensures a continuum of alternative placements for that student population. The solution must be in place prior to the beginning of the 2010-2011 school year, and the LEA shall submit the plan for resolving the noncompliance to the Division.
2. The WCPSS shall revise the Student Support Services Resource Guide to replace the statement, "Student contact hours range from 3 to 6 hours per week," with information that complies with the IDEA regulations.
2. The SES Department shall revise the H/H Educational Services Validation Form to require the H/H teacher to document any session that was not provided and the reason and document the reason for any session that was for more or less time than the time specified on the IEP.
3. The WCPSS shall ensure that the special education teachers, case managers, special education department chairpersons at each middle and high school receives training to address the issues of noncompliance in this complaint, with particular attention to content of the prior written notice and the development of an IEP that addresses each student's unique needs.
4. The records of many students who were placed on H/H for LT suspensions revealed multiple years of retentions and/or removals from school for suspensions. Those students' IEPs did not reflect the provision of special education services or related services that might have intervened with their behaviors or failing grades. The WCPSS shall develop and implement a plan for the 2010-2011 school year to review the records and services of students with disabilities who are failing their classes or have multiple retentions or suspensions, and provide significant interventions, including related services, based upon each student's individual needs. Documentation of the development and implementation shall be submitted. A report of the results of the implementation of the plan shall be submitted at the end of each semester.

Submit the bimonthly and semester reports as specified in this document. Submit documentation of the completion of corrective actions with timelines no later than ten business days after the dates listed in this corrective action to:

Wake County Public School System
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Lynn Smith, Consultant for Dispute Resolution
Exceptional Children Division
6356 Mail Service Center
Raleigh, NC 27699-6356

The file on this complaint will remain open pending the satisfactory completion and subsequent verification of the required elements of this corrective action plan.



Mary N. Watson, Director
Exceptional Children Division