

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

**Complaint Investigation Final Report
Case No. 19-107
July 28, 2020**

The Exceptional Children (EC) Division, Department of Public Instruction (DPI), has completed the investigation of the complaint filed on May 29, 2020, against Vance County Schools (VCS). Based upon statements in the complaint, the EC Division identified the following issues to be investigated:

- Whether VCS followed the *Policies* regarding a Free appropriate Public Education (FAPE), specifically when the student was detained in jail or detention center;
- Whether VCS followed the *Policies* regarding the re-evaluation process; and
- Whether VCS followed the *Policies* regarding development of the student's Individualized Education Program (IEP) based on the student's unique needs.

If VCS is in violation of *Policies* regarding a FAPE specific to when the student was detained in jail or detention center, then this issue will be investigated as a systemic issue.

The findings that follow are drawn from the information in the complaint letter, the school system's letter of response, and supporting documentation provided by both parties. The conclusions of law are drawn from the Individuals with Disabilities Education Improvement Act (IDEA) Amendments of 2004 (20 U.S.C. 1400 *et seq.*), the IDEA regulations (34 CFR §300), the North Carolina *Policies Governing Services for Children with Disabilities (Policies)*, and Article 9 Chapter 115C of the NC General Statutes. The following report conveys the issues, findings of fact, and conclusions of our investigation of the complaint.

Background

At the time the complaint was filed, the student resided in another public school district in North Carolina. During the 2018-2019, and 2019-2020 school year, the student resided in Vance County. The last date of attendance was September 16, 2018, at which time the student was a ninth grader, attending a high school in Vance County. At that time, the student was identified as a student with a disability in the area of Other Health Impairment (OHI).

The State Education Agency (SEA) may accept and resolve alleged continuous violations outside the one-year time limit when extraordinary circumstances exist. Therefore, in a limited scope, the EC Division reviewed documents outside of the one-year timeline beginning January 5, 2019, to determine whether the violations were ongoing and if so, corrective actions may be warranted to cover the extended one-year timeline.

The complainant alleges the following regarding the individual student:

- The student was detained in Vance County Jail or a detention center beginning in September 2018, through December 2018, then again from January 6, 2019, through April 23, 2019. At the beginning of the 2019-2020, school year, the student was again detained in the Vance County jail. While detained, the student did not receive any educational services.
- The student has not been evaluated since 2015, though the parent requested a comprehensive evaluation; and

- In January 2019, the student's IEP Team, was unprepared to develop an IEP based on the student's current and unique needs. The student's IEP lacked appropriate goals and specially designed instruction, did not address the student's behavioral needs, and the team did not consider any related services.

The complainant alleges the following regarding the systemic issue:

- Due to the alleged violation of not providing a FAPE for the named student while detained, there is a systemic issue related to the provision of FAPE for students with disabilities who are detained in the local jail and detention center(s).

Issue One: Whether VCS followed the *Policies* regarding FAPE, specifically when the student was detained in jail or detention center.

Finding of Fact

1. A *Release of Education Records* form dated January 16, 2019, was faxed to VCS from North Carolina Department of Public Safety-Juvenile Educational Services. The form requested the student's cumulative records, including the student's exceptional children's records.
2. The *North Carolina Juvenile Justice Online Information* form noted the following:
 - January 7, 2019: Student was detained in Wake County Detention Center;
 - January 27, 2019: The student was transferred to Pitt County Detention Center;
 - January 30, 2019: The student was transferred back to Wake County Detention Center; and
 - April 5, 2019: The student was released to parents.
3. Wake County and Pitt County detention centers are state-operated programs under the Department of Public Safety-Division of Juvenile Justice (DPS-DJJ). Each state-operated detention center provides educational services, including special education. When a student is or will be detained in one of the state-operated detention centers for over ten days, the student is withdrawn from their public-school agency, and enrolled in the DPS-DJJ. Therefore, DPS-DJJ is considered a Local Educational Agency (LEA).
4. The *Vance County Booking Reports* noted the following:
 - April 23, 2019: Student was detained in the Vance County jail;
 - April 27, 2019: Student was released;
 - September 19, 2019: Student was detained in the Vance County jail;
 - November 25, 2019: Student was released;
 - January 24, 2020: Student was detained in the Vance County jail.
5. VCS did not provide any procedures related to students with disabilities detained in the local jail.
6. The complainant informed the complaint investigator that the parent moved to a different public-school district in NC on or around June 1, 2020.

NC Policies related to the Issue One (excerpts)

NC 1501-1.1(a)(d) Free Appropriate Public Education (FAPE)

General. A free appropriate public education must be available to all children residing in the State between the ages of three through 21, including children with disabilities who have been suspended or expelled from school, as provided for in NC 1504-2.1(d). Any child with a disability who requires special

education and related services and who has not graduated from high school is eligible to continue to receive a free appropriate public education until the end of the school year in which that child reaches the age of 22. (d) FAPE for children incarcerated in local jail. Each LEA must ensure that FAPE is available to students with disabilities incarcerated in local jail who were eligible prior to their incarceration.

NC 1503-4.4(e) When IEPs must be in effect. IEPs for children who transfer public agencies in the same State.

If a child with a disability (who has a current IEP that was in effect in a previous LEA in the State) transfers to a new LEA in the State, and enrolls in a new school, the new LEA, in consultation with the parents, must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous LEA), until the new LEA either—Adopts the child's IEP from the previous LEA; or develops, adopts, and implements a new IEP that meets the applicable requirements in NC 1503-4.1 through NC 1503.5.1.

Analysis and Conclusion

Policies require that when a student transfers from a LEA in the same state to another, *and* enrolls in the new LEA, the new LEA must make a FAPE available to the student. In this case, the student was placed in a state operated detention center beginning January 7, 2019, and released on April 5, 2019. DPS-DJJ is responsible for educational services in state operated detention centers therefore, VCS was not responsible for a FAPE during this time period.

When the student was released from the detention center and prior to being detained in the local jail, there was no evidence that the student reenrolled or attempted to reenroll in VCS. A public-school district is not required to implement a student's IEP if the student does not enroll. Without reenrollment confirmation, VCS was not obligated to provide services to the student during this time period.

At the point the student was detained in the local jail, VCS had an obligation to make a FAPE available to the student. Though the student had not reenrolled in VCS, this did not relieve VCS of their obligation to ensure a FAPE was available while the student was detained. It is reasonable to expect each LEA to have procedures in place to identify students with disabilities who are detained in their local jail(s), to provide services as noted on the student's IEP, and as appropriate or needed, review and revise the student's IEP. This action requires the LEA to collaborate with the local jail staff to develop procedures to identify students and to provide educational services.

The evidence supports that VCS does not have procedures in place to identify students with disabilities detained in jail, and to ensure a FAPE is available to the identified students. Due to a lack of procedures, VCS failed to provide services to the student while detained in jail.

VCS is in violation of *Policies* regarding a FAPE for students with disabilities detained in the local jail.

Systemic Issue: Based the Facts, Analysis and Conclusion of Issue One, VCS is found in violation of *Policies* regarding a FAPE, specifically for students who are detained in the local jail.

Issue Two: Whether VCS followed the *Policies* regarding the re-evaluation process.

Finding of Facts

1. The *Eligibility Determination* form from another public-school district in North Carolina dated November 20, 2016, stated that the IEP Team determined the student continued to be eligible for special education and related services in the area of OHI. The purpose of this fact is to set the reevaluation time period.
2. The *North Carolina Juvenile Justice Online Information* form noted the student was detained on January 7, 2019, in a state operated detention center, Wake County Detention Center.
3. A *Consent for Evaluation* form- page 1, dated January 9, 2019, addressed to the parent stated *the IEP Team has recognized the need to gather additional information on your child*. The following evaluations were requested: Physical health, educational psychological (including Intellectual Achievement), Adaptive, Vocational and Other. It was noted that the form was in draft status, and there was no parent signature on the page.
4. A *Release of Education Records* form dated January 16, 2019, was provided to VCS from North Carolina Department of Public Safety, Juvenile Educational Services. The form requested the student's cumulative records, including the student's exceptional children's records.
5. The student was released from the detention center on April 5, 2019, then detained in the local jail on April 27, 2019.

NC Policies related to the Issue Two (excerpts)

NC 1503-2.4 Reevaluations

General. A public agency must ensure that the timely reevaluation for each child with a disability is conducted in accordance with NC 1503-2.5 through NC 1503-3.5. If the LEA determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant additional evaluation data; or If the child's parent or teacher requests additional evaluation data. Limitation. The reevaluation conducted in paragraph (a) of this section—may occur not more than once a year, unless the parent and the LEA agree otherwise; and must occur at least once every three years.

NC 1503-2.6 Additional Requirements for Evaluations and Reevaluations.

Review of existing evaluation data. As part of an initial evaluation and as part of any reevaluation process under these Policies, the IEP Team and other qualified professionals, as appropriate, must-- (1) Review existing evaluation data on the child, including-- (i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers; and (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine-- (i) (A) Whether the child is a child with a disability, as defined in NC 1500-2.4 and the educational needs of the child; or (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child; (ii) The present levels of academic achievement and related developmental needs of the child; (iii) (A) Whether the child needs special education and related services; or (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related

services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. (b) Conduct of review.

NC 1504-1.4 Prior Notice by the LEA; Content of Notice (a) Notice.

Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the LEA-- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (b) Content of notice. The notice required under paragraph (a) of this section must include-- (1) A description of the action proposed or refused by the LEA; (2) An explanation of why the LEA proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the LEA used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the LEA's proposal or refusal.

Analysis and Conclusion

The reevaluation process requires that the IEP Team reviews existing data, to determine whether additional data is needed to determine continued eligibility and the student's educational needs. This action must occur at least once every three years, or anytime a parent or teacher request additional data. During the January 9, 2019, IEP meeting, the evidence suggests that the team decided evaluations were needed based on the draft of the *Consent for Evaluation* form. However, there was no evidence that the IEP Team reviewed existing data to make this decision. Without any evidence to support the Team review of existing data, the IEP Team could not reasonably determine what evaluations were needed.

Further, there was no PWN to indicate the IEP Team's decision regarding the need for additional evaluations. A PWN must be provided to a parent when an IEP Team decides to initiate evaluations. The notice must include the decisions made, and information used to make the decisions. Without this notice, the parent was not informed of the decisions made by the IEP Team.

It should be noted that the lack of finalized special education documents regarding the January 9, 2019, IEP meeting, VCS failed to initiate or conduct the reevaluation determination as required by *Policies*.

VCS is in violation of *Policies* regarding reevaluations.

Issue Three: Whether VCS followed the *Policies* regarding development of the student's Individualized Education Program (IEP) based on the student's unique needs.

Finding of Fact

1. The *North Carolina Juvenile Justice Online Information* form noted the following (The purpose of this fact is limited to establishing the student's physical location during the first semester of the 2018-2019 school year):
 - September 18, 2018: Student detained in Durham County Detention Center;
 - December 4, 2018: Student released to parents;
 - January 7, 2019: Student detained in Wake County Detention Center.

2. On January 9, 2019, the VCS student's IEP Team, including the parent, convened to review the IEP: The IEP dated January 14, 2019, through November 19, 2019, noted the following:
 - **Summary of assessment information:** *Using data from 2015, the student's Full-Scale Intellectual Quotient (FSIQ) is 78. Additional testing revealed that his Verbal Comprehension skills is 71; Perceptual reasoning is 92; Working Memory is 97; and Processing Speed is 75. Overall, his broad reading is equivalent of third grade, broad math is equivalent of mid-fourth grade, and broad written language is late third grade.*
 - **Consideration for transition:** *Student is transitioning from a very restricted environment (incarceration) to a traditional high school setting.*
 - **Does the student have behavior(s) that impede his/her learning or that of others?** Yes. *[Student] has been diagnosed with Oppositional Defiant Disorder (ODD), Disruptive Mood Dysregulation Disorder, and Attention Deficit Hyperactivity Disorder. He has a history of chronic impulsivity, poor judgement, increasing irritability, and numerous behavior problems at school.*
 - **Present Level of Academic Achievement and Functional Performance:**
 - **Behavior:** *[Student] has displayed the ability to control himself. He has refrained from choosing negative behaviors when he had an opportunity to do so. However, often, the student will get involved in or instigate fights. He will disrupt the learning environment with profanity or another inappropriate outburst when he is not allowed to do what he wants. His aggressive behaviors (physically and verbally) are often directed towards students and adults, creating a hostile learning environment. The previous stated behaviors negatively impact his ability to access the general education environment and the general curriculum offered in such settings.*
 - **Goal:** *[Student] will engage appropriately in the classroom setting 1-by using appropriate language to express himself 2-by waiting his turn to speak, and 3-by avoiding situations that may become physically or verbally aggressive in 2 out of 5, increasing to 3 out of 5, then 4 out of 5 by the end of the 2018-2019 school year. (It should be noted that handwritten note stated that this goal was from last school year).*
 - Is the goal integrated with related services? Yes, counseling services.
 - Accommodations and Modifications in all classes.
 - **Service Delivery:**
 - Social/Emotional Skills: 3 sessions a week, 15 minutes each session, Removed from all peers; and
 - Content Support: 5 sessions a week, 30 minutes each session, General Education Classroom.
 - Related Services: (handwritten)-The IEP Team has determined related services are required to assist the student to benefit from special education. Four sessions a reporting period, Total School Environment.
 - The following IEP Team members were present and participated in the development and writing of the addendum to the IEP: Parent, Student, Regular Education Teacher, LEA Representative, Counselor, EC Teacher, Principal, EC Director, Compliance Specialist, VCS's attorney and the parent's attorney.
 - The IEP was in "Meeting" Status. This type of status means that the IEP was never finalized.
3. The PWN related to the January 9, 2019, IEP meeting was not provided.
4. The data management system that maintains special education documents, did not include any documents related to the January 9, 2019, IEP meeting.

NC Policies related to Issue Three (excerpts)

NC 1503-5.1 Development, Review, and Revision of IEP (a) Development of IEP.

General. In developing each child's IEP, the IEP Team must consider-- (i) The strengths of the child; (ii) The concerns of the parents for enhancing the education of their child; (iii) The results of the initial or most recent evaluation of the child; and (iv) The academic, developmental, and functional needs of the child.

Refer to **NC 1504-4.1 Prior Notice** noted in Issue Two.

Analysis and Conclusion

Policies require that a student's IEP is developed based on current data and information from each IEP Team member. During the January 2019, IEP meeting, the team did not review or discuss current academic or behavioral data. The only information related to the student's academic abilities and needs, was from a 2015 evaluation which noted the student was performing below grade level. Additionally, the behavior information used to develop the present level, was not current as the student was detained in a detention center since the beginning of the 2018-2019 school year. Without current information related to the student's academic and functional abilities, the team could not reasonably develop an IEP based on the student's unique needs.

Further, a PWN was not developed nor provided to the student's parent. Absent the PWN, the parent was not informed of the decisions made regarding the offer of a FAPE, and a description of the information used by the IEP Team to make IEP decisions. A PWN is required when an IEP Team changes the provision of a FAPE for the student.

VCS is in violation of the *Policies* regarding the development of the student's IEP.

The NC DPI's final decision is that VCS is in violation of the *Policies* regarding: Issue One, the provision of a FAPE, specifically for student detained in the local jail and for all students with disabilities detained in the local jail (systemic); Issue Two, reevaluation; and Issue Three; development of the student's IEP. Based on said violations, corrective action is warranted.

CORRECTIVE ACTION

The investigation is concluded. When allegations of noncompliance are substantiated by an investigation, corrective action is required. The LEA is directed to take the following corrective action to remedy the violation identified. The dates for each action *may* be revised by the complaint investigator or Corrective Action Coordinator at the request of either or both parties.

- **By August 10, 2020**, the EC Director and Compliance Specialist(s) will attend a virtual debriefing with the complaint investigator, Leigh Mobley. Within five days, of the debriefing, Leigh Mobley will submit confirmation of the debriefing to the Corrective Action Coordinator, Teresa King.
- **By August 30, 2020**, the IEP Team members from the January 9, 2019, IEP meeting, who are currently employed by VCS, will complete the NC DPI Canvas courses for Re-evaluation, IEP Development and PWN. Within five days of completion, the EC Director will provide confirmation of completion for each IEP Team member to Teresa King.
- **By August 30, 2020**, the EC Director and any other VCS staff deemed necessary by the EC Director, in collaboration with the local jail staff, will develop procedures to address the following:
 1. Identification of students who are detained in the local jail;
 2. Access to the students with disabilities for purpose of a certified special education teacher to provide educational services to students with disabilities who are detained in the jail.
 3. **(EC DIRECTOR only)** Service logs, including dates, times, detail of services provided, including the goals address, and teacher's signature.
Within five days after it is written and agreed to, a copy of the procedures will be submitted to Teresa King.
- **By September 10, 2020**, the EC Director and parent will develop a compensatory education plan to address the following time period: April 27, 2019, until June 1, 2020. The compensatory education plan must determine services based on informal assessments and the most recent IEP. Additionally, the plan must include the following:
 - The services must be provided outside of the student's school day;
 - The LEA must monitor progress by collecting measurable data during implementation and provide the parent with progress reports;
 - Transportation, if necessary, must be provided;
 - Specially designed instruction must be provided by a certified special education teacher; and
 - The compensatory services must be completed no later than **July 28, 2021**.
 - **Within five days of the completion of services**, the EC Director will submit a copy of the compensatory education services logs, including dates, times, total hours provided, teacher's name and signature to the corrective action coordinator, Teresa King.

Systemic Issue:

- **By August 31, 2020**, the EC Director will submit a draft of a memorandum to all middle and high school administrators, EC Teachers, EC Department Chairs, and EC Central Office staff, explaining the *Policies* and procedures related to a FAPE for students who are detained in the local jail, to Leigh Mobley. Within five days of approval, the EC Director will distribute the memorandum to Middle and High School Administrators, EC Department Chairs, EC Teachers, and EC Central Office staff and submit written confirmation of distribution and to whom, to Teresa King.

- **By September 30, 2020**, the EC Director and/or designee will work with the local jail officials to identify students who resides or resided in VCS and were detained in jail between April 27, 2019, through June 1, 2020. Once identified, the EC Director and/or designee will complete the following activities. Using the list of incarcerated youth who resided or continue to reside in Vance County between April 27, 2019, and June 1, 2020, the EC Director shall:
 1. Identify the students with disabilities that were eligible to receive services during this time period.
 2. Of the students with disabilities; determine which students graduated from high school with a high school diploma.
 3. Submit the list of students, including their name and contact information, with the information noted in items #1 and #2 to the complaint investigator to confirm the student list is inclusive of the students with disabilities that will require a compensatory education plan.
 4. Once the list is confirmed by the complaint investigator, the EC Director must contact the parent/guardian/student with a disability to offer a compensatory education plan.
 - a. The EC Director shall use and document a minimum of five contacts, if initial attempts at contacting the individual are unsuccessful, using a combination of phone calls, mail and/or certified mail. Documentation should include the name, dates, times, contact method, results of contact, and signed receipt or returned mail.
 - b. The offer of compensatory education shall be documented using a template provided by the complaint investigator and shall include whether or not the offer was accepted or rejected by the student or on behalf of the student.
 - i. The compensatory education plan must be based on the student's most recent IEP and may include specially designed instruction to support the student with obtaining a high school diploma, or equivalent, and other post-secondary transition activities.
 - ii. The offer of compensatory education should be calculated according to the time the student was incarcerated with consideration given to the frequency, intensity and duration of special education and related services that were not provided by the IEP in effect at the time of incarceration.
 - iii. If the student is attending school or is employed, the services must be provided outside of the student's school day or work schedule.
 - iv. The LEA must monitor progress by collecting measurable data during implementation and provide the parent/student with progress reports.
 - v. Transportation, if necessary, must be provided.
 - vi. Specially designed instruction must be provided by a certified special education teacher.
 - vii. The compensatory services must be completed no later than **July 28, 2021**.
- **By September 30, 2020**, and at the end of each month through May 31, 2021, the EC Director will submit service logs noted in Bullet #3 and for the identified individual student in this complaint, to Teresa King.
- **By July 28, 2021**, the EC Director will submit a service log, including teacher's name, student's name, date, time and a description of the services provided, for each identified student entitled to compensatory education plan and that agreed to the plan, noted in Bullet #4, to Teresa King.

It should be noted that due to extenuating circumstances regarding the current state of emergency, if any of the timelines above are unable to be met, VCS will contact Leigh Mobley and revisions may be made upon approval.

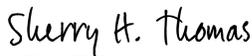
Vance County Schools
Complaint Report 19-107
Page 10

As each item is completed, the documentation that supports the completion of that item must be submitted on or before the date noted to Teresa King. If additional time is needed to achieve the action on the date noted, the EC Director will seek approval for an extension on the date from Teresa King or Leigh Mobley.

Documentation of all corrective action, including any approved extensions to the individual dates, must be submitted by July 28, 2021, to:

**Teresa King, Dispute Resolution Consultant/Corrective Action Coordinator
NCDPI, Exceptional Children Division,
6356 Mail Service Center
Raleigh, NC 27699-6356
Fax Number: (984) 236-2693
Email: Teresa.king@dpi.nc.gov**

This complaint shall remain open pending the submission and approval of all elements of the corrective action plan. Failure to implement the corrective action will result in sanctions in accordance with General Statute §115C-107.4.

DocuSigned by:

BB01677BD24A424...

Sherry H. Thomas, Director
Exceptional Children Division