

COMPLAINT INVESTIGATION REPORT

COMPLAINT NUMBER: CP-079-2015
COMPLAINT INVESTIGATOR: Traci Tetrick
DATE COMPLAINT FILED: April 7, 2015

COMPLAINT ISSUES:

1. Did the 21st Century Charter School at Gary (“the School”) establish, maintain, and implement written procedures that ensure the location, identification, and evaluation of all students attending the charter school who are in need of special education and related services, regardless of the severity of their disabilities? 511 IAC 7-40-1(b)
2. Within ten (10) instructional days of receipt of a request to conduct an educational evaluation of the Student, did the School provide the parent with adequate written notice, including a statement that the School was proposing or refusing to conduct the evaluation? 511 IAC 7-40-4(c) through(f)
3. Did the School obtain parental consent prior to conducting an educational evaluation of the Student? 511 IAC 7-40-4(c)(2)

FINDINGS OF FACT:

1. The Student has not yet been determined eligible for special education and related services.
2. The School administers Northwest Evaluation Association (“NWEA”) assessments and Dynamic Indicators of Basic Early Literacy Skills (“DIBELS”) assessments, an organized system of procedures and measures for assessing and monitoring the development of early literacy and reading skills, to all kindergarten students throughout the year.
3. The School’s student population includes a large number of kindergarten students who enroll with no prior preschool experience. DIBELS data for students with no preschool experience shows that these students often move from below grade level to on grade level, with the use of targeted informal interventions.
4. The School implements an informal policy for providing additional assistance to kindergarten students whose beginning-of-year (“BOY”) DIBELS data indicates they are working below grade level. The School first provides small group and individual tutoring targeting those skills on which the students scored below grade level. The small tutoring/remediation groups are flexible, with students moving in and out of the groups. The School notifies parents of students who are working in these groups in the fall; however, no formal consent is required for participation.
5. For those students whose middle-of-year (“MOY”) and end-of-year (“EOY”) DIBELS results remain below grade level, the School next engages in a more formal Response to Intervention (“Rtl”) program. Parents of these students are notified by letter of the interventions to be used and the data to be collected.
6. The School has developed a detailed informational document it provides to parents of students participating in Rtl. This document explains the Rtl process and identifies the procedures used in Tier I, II, and III. This letter outlines parent involvement and explains that an official special education referral will be “initiated in the Indiana IEP program” if results are unsuccessful.
7. While the School utilizes DIBELS and Rtl data as tools to ensure the identification and evaluation of

students who may be in need of special education and related services, the School is cognizant of the parental right to request an educational evaluation at any time. It is the School's policy to "immediately halt our tutoring and Rtl procedures and begin the evaluation" when a parental request is received. This policy is generally understood by all staff; however, it is not included in the written policies and procedures.

8. The School's written policies and procedures do not include a process for referral for educational evaluations by staff members who suspect a student may have a disability that requires the provision of special education and related services, other than the referral that occurs at the end of an "unsuccessful" Rtl process.
9. BOY DIBELS data shows that the Student was working below grade level. Based on this data, the School determined that the Student would benefit from tutoring and Title I interventions. The Complainant was notified of the School's decision to place the Student in small group tutoring in the fall. When a parental inquiry was made about paperwork and consent for these interventions, the School explained that no consent was necessary.
10. Title I logs show that the Student participated in this program throughout kindergarten until the Complainant withdrew the Student.
11. MOY DIBELS data for the Student, as well as in-class progress monitoring, indicated that the Student was still below grade level but demonstrating adequate growth in response to the tutoring and Title I interventions. The School was in the process of initiating the Rtl process for the Student in April; however, this process was halted when the Complainant withdrew the Student from school.
12. The Complainant did not provide any evidence showing that a parental request to conduct an initial educational evaluation was made to the School.
13. The only tests or other evaluations administered to the Student during the 2014-15 school year were DIBELS and the NWEA, both of which are standard academic assessments given to all kindergarten students.

CONCLUSIONS:

1. Article 7 requires that charter schools "establish, maintain, and implement written procedures that ensure the location, identification, and evaluation of all students attending the charter school who are in need of special education and related services, regardless of the severity of their disabilities." 511 IAC 7-40-1(b). Findings of Fact #2-7 show that the School has developed informal policies and procedures that rely heavily on data-driven remediation and tutoring, as well as the Rtl process, in order to identify, locate, and evaluate students who may be in need of special education and related services. However, these Findings also show that only some of these informal policies have been reduced to writing. Moreover, Finding of Fact # 8 shows that the School's written policies do not include a process for staff referrals for Students whose suspected disability warrant referral prior to, or outside of, engagement in the Rtl process. Thus, a violation of 511 IAC 7-40-1(b) is found.
2. Finding of Fact #12 shows that there is no evidence of a parental request for evaluation. Findings of Fact #9-11 show that the School was in the process of using data-driven instructional interventions with the Student, and that the Student's data did not indicate a lack of adequate progress or other basis to initiate a school referral prior to the Student's withdrawing from the school. Because the School did not receive a request to conduct an educational evaluation, the School had no duty to provide written notice that it was proposing or refusing to evaluate the Student, and no violation of 511 IAC 7-40-4(c) through (f) is found.

3. Schools must obtain written parental consent prior to conducting an initial educational evaluation. 511 IAC 7-40-4(c)(2). Findings of Fact #2 and 13 show that the School administered only NWEA and DIBELS assessments to the Student during the 2014-15 school year, and that these standardized assessments were administered to all kindergarten Students. Parental consent to evaluate a student is not required where a school “administer[s] a test or other evaluation that is administered to all students.” 511 IAC 7-40-4(i). Thus, no violation of 511 IAC 7-40-4(c)(2) is found.

The Department of Education, Office of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above:

The 21st Century Charter School at Gary shall review and revise the written policies and procedures with regards to the School’s child find obligation, pursuant to 511 IAC 7-40-1(b). A copy of the revised policies and procedures shall be submitted to the Complaint Investigator **no later than August 15, 2015.**

DATE REPORT COMPLETED: May 13, 2015