

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

**Complaint Investigation Final Report  
Case No. 20-056  
December 18, 2020**

The Exceptional Children (EC) Division, Department of Public Instruction (DPI), has completed the investigation of the complaint filed on October 19, 2020, against the Wake County Public School System (WCPSS). Based upon statements in the complaint, the EC Division identified the following issue to be investigated:

- Whether WCPSS has a policy, practice, or procedure that delays Child Find.

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**

The systemic complaint was filed on behalf of the students attending Wake County Public Schools.

**Description of the Complaint**

According to the complainant, the district has failed to effectively supervise and monitor the implementation of a Multi-Tiered System of Support (MTSS) for struggling students. Specifically, the complainant states the following areas of MTSS implementation as problematic:

- District websites indicate that all tiers of MTSS must be completed prior to referral for special education;
- District websites indicate that a child must meet entry requirements to enter Tier 3 and before a disability may be suspected by an LEA;
- District websites do not notify teachers that parents have a right to request a special education evaluation at any time; and
- District websites do not fully explain a parent's right to request a special education evaluation at any time.

**Issue: Whether WCPSS has a policy, practice, or procedure that delays Child Find.**

**Findings of Fact**

1. Cedar Fork Elementary School in the district includes the following information on their website under the heading *Academics and Programs -> Multi-Tiered System of Support (MTSS)*:
  - Tab #4 of 4, Special Education Services (IEP) - Special education services (an IEP) might be considered for students who continue to struggle and show a slow rate of response to Tier 3

interventions and strategies, as this might indicate the presence of an educational disability. However, students who are referred for consideration of special education are required to meet additional criteria in order to qualify for this level of service. Parents sometimes request for their student to be “tested” for suspected learning or behavioral disabilities. The school will always formally respond to these requests by scheduling a referral meeting with the Individualized Education Program (IEP) team. However, a referral for special education testing requires the team to determine the appropriateness of the request in consideration of previous intervention support, present performance, and learning history. It is our experience that sometimes parent requests for testing are made in an effort to solicit help for a struggling student. All parents are strongly encouraged to first communicate their concerns to their child’s teacher and to discuss the appropriateness of a referral for additional support at Tier 2 or 3 of the MTSS process.

2. Durant Middle School in the district includes the following information on their website under the search term *MTSS*, which then leads to a WCPSS resource:
  - As you can see in the image above, your core instruction should be sufficient for the majority of students. We then identify students for whom this is not true and move them onto Tier II where we add an extra layer of interventions to give them a chance to succeed. This is what we're doing with your remediation groups during Gear Up. This should then be sufficient for the majority of these Tier II students. As the year goes on, we then identify the select students for whom these interventions are still not enough to allow them to remain on grade level and move them to Tier III, which is individualized interventions. If these interventions are insufficient, then students are referred to Special Education so that they can receive the support they require. By following MTSS, we are able to provide each student with the interventions they need to be successful. Send any MTSS questions or comments to the "DurantRdMs MTSS" email group.
  
3. Mills Park Elementary School in the district includes the following information on their website under the heading *Academics and Programs -> Academic Support-> Multi-Tiered System of Supports*:
  - **What is Multi-Tiered System of Supports?** Multi-Tiered System of Supports is an approach used to increase the opportunity for all students to meet academic achievement standards through early identification of students whose academic and/or behavioral needs place them at risk. Multi-Tiered System of Supports ensures that resources and interventions are appropriately targeted to serve all struggling learners as early as possible through high-quality instruction.
  - **What Does MTSS Look Like?** The MTSS process has tiers that build upon one another. Each tier provides more intensive levels of support:
    - **Tier 1 Core Instruction.** The school provides all students with access to high quality curriculum, instruction, and behavior supports in the general education classroom.
    - **Tier II includes supplemental small group strategic instruction/intervention in addition to Core Instruction.** The school provides interventions to small groups of students who need more support than they are receiving through Tier I.
    - **Tier III includes intensive instruction/intervention and ongoing assessments.** The MTSS Team engages in a problem-solving process and by continually monitoring and modifying (as needed) each student’s plan, the team is able to design an effective, individualized instructional program. Your child’s progress is monitored and results are used to make decisions about additional instruction and prevention.

- **How Can Parents Make the Difference?** Communicate with your child's teacher(s), Encourage your child to do well in school, Collaborate with your child's school, Ensure that your child attends school regularly, Understand assessments your child takes, Ask how you can help your child at home.
  - **What Do Parents Do If They Believe Their Child Is Struggling?** Parents play a critical role in supporting what their children are learning in school. The more parents are involved in student learning, the higher the student achievement. Ask questions to learn more about this process:
    - Talk with your child's teacher. Ask questions about teacher expectations and how you can help at home with your student.
    - Review and assist with homework assignments. Does my child need a tutor?
    - Celebrate your child's successes!
    - Ask for regular progress monitoring reports.
    - Learn more about the curriculum (courses the school offers), assessments (documentation), and interventions (strategies for success), being used in your child's school.
    - Participate in conferences and other meetings about your child.
    - Make a list of specific questions to ask during conferences (e.g., what is working or what additional supports may be needed?).
  - For further information contact your School's Principal or your Central Office Staff. Contact information can be found at [www.wcpss.net](http://www.wcpss.net).
4. Leesville Road Elementary School in the district includes the following information on their website under the heading *Our School -> LES Family Handbook 2019-2020*:
- **SPECIAL EDUCATION SERVICES:** A referral to the Special Education Program (SpEd) may be initiated by a parent or staff member through the Multi-Tiered System of Support (MTSS) process. The MTSS committee provides a team framework for evaluating data and strategies used for recommending the most appropriate next steps. If the team feels that a SpEd referral is the most appropriate next step, then a review will be requested. The SpEd team is responsible for receiving referrals, obtaining parental permission for assessment, initiating evaluation procedures, evaluating information, and seeing that an individualized education plan (IEP) is developed and reevaluated annually, if a placement is made.
5. In a written response to the complaint, WCPSS included information regarding where the following resources are found on the district website:
- Under the *Services -> Special Education* heading, a section regarding *Parent's Rights*, includes the North Carolina Department of Public Instruction publications entitled *Procedural Safeguards: Parent's Rights Handbook* (July 2016) and *NC Policies Governing Services for Children with Disabilities* (March 2018), which articulate Child Find and referral process obligations for districts.
  - Under the *Parents -> Student/Parent Handbook* heading, the *2020-21 Parent-Student Handbook*, information regarding Child Find obligations on page 3 states:
    - **Child Find for Students with Disabilities:** We are required to identify, locate and evaluate young people with disabilities who may be in need of special education and related services. Parents of children aged two years old or younger who may be in need of such services should contact the Children's Development Services Agency at 919-662-4600. Parents of children aged three or older who are not yet eligible to enter

- kindergarten should call the WCPSS Child Find Office at 919-431-7700. Parents of children in kindergarten through 12th grade should contact their child's school.
6. Cedar Folk Elementary School, Durant Middle School, and Mills Park Elementary School websites have links to the WCPSS Parent-Student Handbook documented in Fact 5.
  7. WCPSS provided a sample yearly memo, dated October 23, 2020, addressed to elementary and secondary principals regarding prominent display of provided Child Find informational posters and brochures.
  8. The WCPSS *Special Education Services Process Guide* includes the following information for WCPSS teachers and Administrators:
    - Initial Referral Process, Page 77:
      - *Please remember that referrals for special education may come from multiple sources including parents/guardians, school staff, Tier III teams, and 504 teams. A referral made by any of those sources starts the DEC 1 process immediately.*
      - *Upon Tier III decision, the Tier III Team must immediately notify the IEP team with the written referral. This starts the 90 day timeline.*
      - *Upon referral from the 504 team, a special education case manager will receive an email notice of a message in EasyIEP regarding the 504 referral. The date of this message is the considered the date of the referral. The 90 day timeline begins upon receipt of this message.*
      - *If a parent makes a request for an initial evaluation in writing, the 90 day timeline begins upon receipt of the written request.*
      - *If a parent(s) makes a request for an initial evaluation verbally, the school is responsible for immediately providing assistance to the parent(s) to put the request for evaluation in writing. The 90 day timeline begins upon receipt of the written request.*
    - Notification Made by a Person Other Than Parent or LEA, Page 110: *Within 30 days of written notification of concerns regarding a child by a person other than the parent or someone from the LEA, the school shall issue a response letter to the child's parent. (If the person provides a notification verbally, the school must ask the person to put their concerns in writing.).*
    - Private Evaluations Submitted by Parent for Students NOT Currently Identified, Page 83: *If a parent provides a private evaluation report with the intent for initial referral for special education services, the school is responsible for immediately providing assistance to the parents to put the request for a referral for special education services in writing. The 90 day timeline begins upon receipt of the written request.*
  9. Within "recent training modules" according to the written response to the complaint, materials from the 2017-2018 training materials for WCPSS teachers and administrators titled *The Special Education Evaluation/Reevaluation Process* include the following information:
    - Referral for evaluation: When a person in the LEA or a parent suspects that a child may be a child with a disability, he/she must provide in writing the reasons for the referral, addressing the specific concerns and the child's current strengths and needs. NC 1503-2.1. This begins the 90-day timeline for Referral to Placement.
    - Who can make a referral?: A parent, LEA personnel, MTSS Team, Persons other than parent or LEA may provide written notification.

- Procedures for Out of State Transfer
  - Procedures for receipt of outside evaluation
10. Within “recent training modules” according to the written response to the complaint, materials from the 2018-2019 training materials titled *AMP Up Your Compliance Knowledge* include the following information:
- Child Find: Each year schools receive Child Find posters and brochures that MUST be posted and displayed prominently in the school building.
  - Child Find is: Used to identify students suspected of a disability and in need of specially designed instruction, Includes children advancing from grade to grade/highly mobile (migrant) children, Meets requirement to determine whether or not to refer the student to special education.
11. Materials from the 2020-2021 training materials titled *The Audit Process* include the following information:
- Key Points in Child Find Process: Used to identify students suspected of a disability and in need of specially designed instruction, Includes children advancing from grade to grade/highly mobile (migrant) children, Meets requirement to determine whether or not to refer the student to special education.
12. Materials from the training materials titled *LEA Child Find Obligations* include the following information:
- IEP teams or special education teachers may be made aware that a student is suspected of having a disability from various sources: Intervention Team, Parents, Day Care Providers, Doctors, Social Workers, Teachers, Individuals who work with or are knowledgeable of the student. Notification may be made without going through the Intervention Team.
  - A response to notification is required within 30 days.
  - This process is used to identify students suspected of having a disability and are in need of special education and related services.
  - This includes children advancing from grade to grade/highly mobile (migrant) children.
  - The Child Find process meets requirements to determine whether or not to refer the student to special education.
  - Caution: Do not allow the absence of interventions be the determining factor for whether evaluations are requested. The IEP team can put interventions in place while evaluations are being conducted.
  - Caution: If the team doesn’t have enough information to make a decision, the team will likely want to request evaluations to gather more data.
13. In the WCPSS Special Education Services newsletter *The Exceptional Educator*, dated December 2017, the following information is included:
- Initial Referral Process Reminder: Please remember that referrals for special education may come from multiple sources including parents/guardians, school staff, Tier III teams, and 504 teams. A referral made by any of those sources starts the Referral for Exceptional Children (DEC 1) process. Upon Tier III decision, the Tier III Team must immediately notify the IEP team of the written referral. The date of this notification is considered the date of the referral. This starts the 90 day timeline. Upon referral from the 504 Team, a special education case manager will receive an email notice of a message in EasyIEP regarding the 504

referral. The date of this message is the referral date. This starts the 90 day timeline. If a parent makes a request for an initial evaluation in writing, the 90 day timeline begins upon receipt or date of the written request. If a parent makes a request for an initial evaluation verbally, the school is responsible for immediately providing assistance to the parent to put the request for evaluation in writing. The 90 Day timeline begins upon receipt or date of the written referral.

- **Request for Initial Referrals without Documentation of Interventions:** A school team may receive a written request for an initial referral for a student who does not have any interventions documented. When this happens, the team is required to hold an Initial Referral Meeting (DEC 1). At this meeting, the team will determine whether or not evaluations will be conducted. Lack of documented intervention(s) should not be the determining factor for deciding whether or not to evaluate. Interventions and evaluations can be done concurrently if there is a suspicion of a disability. Lack of intervention(s) should not impede the referral process. Regardless of the team decision, if there has been a request for an Initial Referral, the IEP team **MUST** always meet to address the request. The IEP team should not ask the parent to withdraw their referral just because no interventions have been put in place and to avoid holding a meeting. Any time a request for referral to special education is made, an Initial Referral (DEC 1) must be conducted. The decision to evaluate or not is up to the IEP team.

### **Relevant Federal Regulations and Guidance (excerpts)**

**34 CFR §300.111 Child find** (a) General. (1) The State must have in effect policies and procedures to ensure that— (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services. (c) Other children in child find. Child find also must include— (1) Children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade; and (2) Highly mobile children, including migrant children.

**34 CFR §300.309 Determining the existence of a specific learning disability** (c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services. . . (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction; and (2) Whenever a child is referred for an evaluation.

**34 CFR §300.311 Specific documentation for the eligibility determination** (a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in §300.306(a)(2), must contain. . . (7) If the child has participated in a process that assesses the child’s response to scientific, research-based intervention- (i) The instructional strategies used and the student-centered data collected; and (ii) The documentation that the child’s parents were notified about – (A) The State’s policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; (B) Strategies for increasing the child’s rate of learning; and (C) The parents’ right to request an evaluation.

**OSEP memo** titled *A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny and Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)*, dated January 21, 2011. (<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>)

### **Relevant NC Policies for the Issue (excerpts)**

**NC 1501-2.9 Child Find** (a) General. (1) The LEA must have in effect policies and procedures that ensure that-- (i) All children with disabilities three through 21 residing in the LEA, including children who are homeless children or are wards of the State, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; (c) Other children in child find. Child find must also include-- (1) Children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade; and (2) Highly mobile children, including migrant children.

**NC 1503-3.3 Determining the Existence of a Specific Learning Disability** Following a referral from school personnel or a parent, if additional data is sought for determining a child's eligibility, parental consent must be obtained and the public agency must adhere to the timeframes described in NC 1503-2.1 and NC 1503-2.3 unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in NC 1503- 2.6(a)(1) – (1) If, prior to a referral, the child has not made adequate progress after an appropriate period of time, when provided instruction as described in paragraphs (b)(1) and (b)(2) of this section; and (2) Whenever a child is referred for evaluation.

### **Analysis and Conclusion**

The complainant alleges that, “more likely than not”, various written MTSS information posted on the WCPSS website and school websites within WCPSS create barriers to the timely identification of students, specifically students with learning disabilities, in need of special education and related services. Upon review of WCPSS policies, procedures and practices, there is evidence to support that Child Find procedures are reviewed often across the district and information regarding Child Find is made available to parents and caregivers through a variety of methods.

There is no WCPSS policy that requires all tiers of intervention to be implemented prior to a referral to special education and local training material indicates that interventions may occur concurrently with an initial evaluation when a disability is suspected. However, in the examples of special education referral sources, listed in the WCPSS *Special Education Services Process Guide*, Tier III Teams are listed as an example. While true, and other Child Find materials support that WCPSS does not limit referrals to just Tier III teams, there is a potential risk that stating it as such may inadvertently contribute to inconsistent application of the initial referral process.

Public information available to parents on some Wake County individual school websites contains language that is inconsistent with Federal regulations and North Carolina *Policies*. Specifically, MTSS information available on some WCPSS individual school websites contains inconsistent messaging about when a student can or should be referred for evaluation. Information on one website indicates that special education *might* be considered after a child does not make progress in

Tier 3 of MTSS interventions, and that the appropriateness of a referral must be discussed. Another school website also indicates that a referral for special education will occur after Tier 3 interventions strategies prove unsuccessful. This information indicates the presence of a practice or procedure that could potentially delay a referral and does not make clear to parents that they may make a referral at any time, nor that the school has an obligation to make a referral if the child does not make appropriate progress after an appropriate period of time.

The MTSS information posted on the district and school website do not include information that the LEA may initiate a request for an initial evaluation or the parent's right to request an evaluation at any time. While the LEA must have Child Find procedures in place to identify and locate children suspected with a disability, the absence of this information in the local MTSS information does not mean that there was or is a failure of WCPSS to conduct its Child Find obligations. There is evidence to support that WCPSS provided training regarding its obligation for school personnel to refer students suspected of having a disability.

While the MTSS procedures are not required to include information regarding the parent's right to request an evaluation or that the public agency may initiate a request for an initial evaluation, the SEA has determined in its own systemic complaint (20-043) that there are potential risks for not including this information in these materials. Therefore, statewide technical assistance activities and professional development have been initiated. WCPSS's participation in the upcoming statewide technical assistance activities is sufficient to address this concern; therefore, no further corrective action is warranted for this area.

In conclusion, the examples of referral sources in the WCPSS *Special Education Process Guide* and inconsistency of posted information across WCPSS individual school websites of when a referral can be made for students participating in a MTSS and suspected of a specific learning disability have been identified as areas of risk for WCPSS and its implementation of Child Find requirements across its district. For these reasons only, WCPSS has a finding of noncompliance with its Child Find procedures.

**WCPSS is found to have a policy, practice, or procedure that delays Child Find. Given said violation, Corrective Action is warranted.**



## CORRECTIVE ACTIONS

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.

- **On or before, January 15, 2021**, the WCPSS MTSS website page, located [here](#), shall be revised to include the following footnote with hyperlinks as appropriate:

“\* Please note: If at any time, a parent, caregiver or school staff member suspects that your child may have a disability, a referral to special education will be made. The IEP Team, which includes the parent, will determine if an evaluation will be conducted. This process is generally referred to as Child Find. For more information, please review the Special Education Process located under WCPSS Services > Special Education.” (WCPSS may provide a hyperlink to the Special Education information rather than describing the location.)

- **On or before, January 30, 2021**, WCPSS shall direct its schools, through a written memorandum, to remove MTSS procedures from its school website and replace the information with a link to the district’s webpage regarding a MTSS (as revised above).

Upon email notification from the EC Director documenting that the website revision(s) have been completed, the Corrective Action Coordinator will review the amended posting from the WCPSS website and conduct a random sampling of school websites within the district and verify that this corrective action has been completed.

WCPSS shall forward a copy of the district-wide email to the Corrective Action Coordinator that provides the memorandum to its staff and a written assurance that all WCPSS school websites have been revised as evidence of completed corrective action.

*Please note: The SEA is required to provide all LEAs a statewide communication regarding the findings of SEA Complaint Number 20-043 on or before January 15, 2021. Therefore, WCPSS may elect to incorporate information from this statewide communication in its local communication for this corrective action item.*

- **On or before January 30, 2021**, WCPSS will revise its *Special Education Process Guide*, as indicated below, and notify all EC personnel, via email, of this revision. (*Strikethroughs indicate information that shall be removed and underlines indicate new information that shall be used as replacement language.*)

Initial Referral Process, Page 77:

- Please remember that referrals for special education may come from multiple sources including parents/guardians, school staff, problem-solving teams (Intervention/MTSS/Behavior) Tier III teams, and 504 teams. A referral made by any of those sources starts the ~~DEC~~ process immediately.
- Upon a problem-solving team (Intervention/MTSS/Behavior) decision, Tier III decision, the Tier III Team must immediately notify the IEP team must be notified with the written referral. This starts the 90 day timeline.

WCPSS shall forward a copy of the revised process guidance and the district-wide email notifying EC Staff of the revision to the Corrective Action Coordinator as evidence of completed corrective action.

*(Please note: At this time, this requirement is limited to the electronic version of the Special Education Process Guide. WCPSS is not required to re-print and re-distribute hard copies of this guide as a result of this revision; however, it is required to ensure all staff are made aware of and have an amended electronic copy and any public-facing electronic copy is updated. Further, a delay in the distribution of hard copies is recommended until WCPSS participates in the statewide MTSS technical assistance activities in order to make a local determination if further revisions are necessary.)*

- **On or before July 1, 2021**, WCPSS shall provide the written assurance that affirms its completion of the required technical assistance activities specific to the SEA State Complaint 20-043.

Evidence of completion shall be determined according to the due dates established. Any request to deviate from the required due dates shall be communicated, by either the LEA or the parent, via email to the Corrective Action Coordinator with a courtesy copy to the other party.

**All documentation must be submitted to:**

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

*Sherry H. Thomas*

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Sherry H. Thomas, Director  
Exceptional Children Division