

REPORT OF FINDINGS

DIVISION OF LEARNING SERVICES MANAGEMENT AUDIT REPORT BREATHITT COUNTY SCHOOL DISTRICT

INTRODUCTION AND PURPOSE OF THE REVIEW:

In November 2017, a special education management audit was conducted in Breathitt County. The audit was initiated due to the three-year review timeline for districts under state management.

The Division of Learning Services (DLS) was added to the KDE audit team because of its expertise with positive behavior supports, discipline strategies and requirements for students with IEPs.

A review of district-level data pulled by the Division of Learning Services (DLS) prior to the onsite visit showed possible incongruence in evaluation and eligibility for IDEA services in the area of Mild Mental Disability (MMD). Additionally, Safe Schools removal data triggered concerns regarding suspensions and PBIS. The purpose of this visit was to review the district's implementation of the:

- Individuals with Disabilities Education Act (IDEA)
- Positive Behavior Interventions and Supports (PBIS)

EVIDENCE CONSIDERED:

DLS staff conducted on-site visits to the Breathitt County central office and elementary, middle and high schools. The following investigative activities were conducted:

- Formal interviews with Breathitt County Staff consisting of:
 - school employees
 - school administrators
 - the director of special education
 - parents
- additional informal discussions with school staff and students
- classroom walkthroughs
- a review of the following data conducted prior to the visit:
 - master schedule for each school
 - district special education policies and procedures
 - district's website
 - 2015-16 and 2016-17 district calendars (including days missed and days in session)
 - 2015-16 IDEA Child Count Data
 - 2015-16 removal data for students with disabilities
- record reviews for 20 individual students with IEPs including:
 - due process files

- student behavior records
- evaluation information

Student records were randomly chosen for review. Additional records were chosen based upon the number of out-of-school removals of the student.

EXECUTIVE SUMMARY:

Based on an analysis of data reviewed by the DLS, the DLS has substantiated systemic findings of noncompliance under the IDEA. The data included a review of all requested information, a study of trends in the school district's specific categories of student discipline, including out-of-school removals and the evaluation and identification of students with disabilities.

Just as the KDE has general supervision responsibility under the IDEA to ensure all school districts within the state comply with the IDEA, so does Breathitt County have the responsibility to require its schools to fulfill the requirements of the IDEA. Special education administrators were found by the DLS to be supportive of school staff and the requirements for students with disabilities. However, the data and information studied by the DLS revealed the district as a whole does not discharge its responsibility for its schools. Instead, the Breathitt County organizational structure impedes the district's ability to model and deliver an appropriate, districtwide approach to its most significant need--that of behavior supports and student discipline. The results are significant violations of the IDEA.

Because KDE discovered numerous IDEA violations, an IDEA Corrective Action Plan (CAP) is required. The district and the DLS will work together to develop a CAP to set out activities that address the root causes of the noncompliance at the systems level.

FINDINGS OF FACT

ISSUES	CITATION
<u>Issue #1:</u> Positive Behavior Interventions and Supports (PBIS)	707 KAR 1:320, Section 5 (2) (a)
<u>Issue #2:</u> Disciplinary Procedures	707 KAR 1:340, Section 14
<u>Issue #3:</u> Individual Education Program (IEP)	707 KAR 1:340, Section 5 707 KAR 1:350, Section 1 (1)
<u>Issue #4:</u> Eligibility Under the IDEA	707 KAR 1:340, Section 5 707 KAR 1:300, Section 4

FINDINGS ISSUE #1: Positive Behavior Interventions and Supports (PBIS)

1. PBIS is the sole approach to addressing student behavior that is specifically addressed in the IDEA.
2. Congress' reasons for encouraging the use of PBIS stem from:
 - the historic exclusion of students with disabilities based on unaddressed behavioral needs, and

- the strong evidence base supporting the use of PBIS.
3. District staff reported a lack of commitment to PBIS district-wide.
 4. Implementation of PBIS has been discussed by the district but has yet to be implemented district-wide.
 5. Interviews with school staff indicate PBIS support is not provided at the district level.
 6. Multiple school staff reported that PBIS “didn’t stick” when tried at their schools.
 7. District administrators pointed out pockets of PBIS implementation at the district including one elementary school and the high school.
 8. The principal at the middle school indicated the school was in its first year of PBIS implementation.
 9. In contrast, interviews with staff at every school visited revealed a lack of understanding of PBIS as a whole.
 10. District staff spoke of PBIS as a specific program, instead of a framework to support student behavior.
 11. The Building Assets (BAR) program, a structure provided to help freshman transition from high school, showed promise. Staff members working with freshman intentionally check on students and provided positive supports during the student’s transitional year.
 12. Staff members reported interest in rolling out BAR to other grade levels. However, this support is dropped entirely once students progress to the next grade level.
 13. The universal level (Tier 1) of behavior instruction for all students was observed by the DLS to be fragmented and the delivery of services did not meet the needs of the majority of students.
 14. School visits also demonstrated staff’s lack of knowledge and understanding for development and supports for Tiers 2 and 3.
 15. Interventions provided to students were universal instead of individualized.
 16. Interventions did not appear to be research based and often lacked positive, proactive instructional support. Some were punitive in nature.
 17. District staff and administrators reported several school administrators do not understand or believe in PBIS which makes it challenging to get schools engaged in the work.
 18. Implementation of evidence-based positive behavior supports was lacking in the schools visited during the review.

CONCLUSIONS (ISSUE #1): Positive Behavior Interventions and Supports (PBIS)

- A. The district lacks an evidence-based structure for positive behavior interventions and lacks the support from the district level to address student behavioral issues.
- B. Breathitt county staff lacks sufficient training to support students with behavioral needs.
- C. Without a district-wide structure for behavior in place, the district is unable to consistently implement, evaluate and support student behavior.

FINDINGS (ISSUE #2): Disciplinary Procedures

19. All the above Findings are incorporated by reference
20. The DLS requested 11 folders of frequently suspended students with disabilities.
21. During the visit, DLS staff was provided only four of the 11 requested folders for review.
22. In one school, staff reported out-of-school suspensions increased when the principal was out of the building.

23. The district was reviewed for Indicator 4 (out-of-school removals greater than 10 days for students with disabilities) using 2015-16 data. The report for this indicator is currently pending.
24. During the 2015-16 school year, three students with disabilities had out-of-school removals for greater than 10 days.
25. During the 2016-17 school year, three students with disabilities had out-of-school removals for greater than 10 days.
26. The above number included one student who received 63.5 days of out-of-school suspension.
27. District staff reported, “if the student doesn’t come in the building it’s a day of suspension.”
28. Student files showed evidence of parents being called to pick up their student from school following behavior events. This practice is considered an out-of-school removal since the student is asked to leave school grounds.
29. Removals of this sort are currently coded by the district as absences instead of suspensions on attendance reports, causing concerns with data quality.
30. DLS staff witnessed a meeting concerning the behavior of a particular student. During this meeting, the parent of the student asked if she was suspended. The administrator explained the student would be out of school for three days and replied: “instead of suspension, I’m willing to look at it as a medical excuse.” The administrator then required the student to attend a counseling session that afternoon in order to not count the removal as a suspension.
31. This practice is considered an out-of-school removal since the student was asked to leave the school grounds. Again, data quality is a concern since it is evident this was not coded as a suspension.
32. Upon return from out-of-school suspensions, students at some schools are placed into in-school suspension (ISS) as a transition.
33. School administrators have developed a behavior matrix to address student discipline.
34. One school principal reported discipline was typically the same for students with disabilities as it is for all students.
35. District administrators reported principals lack understanding of discipline for students with disabilities and utilize “automatic suspensions”.
36. On August 15, 2007, guidance regarding in-school suspensions (ISS) was provided to districts via the *E ‘Specially’ DECS* newsletter. The following guidance was provided:
 - “The Office of Special Education Programs (OSEP) has stated that in-school suspension days are not counted toward the ten-day suspension threshold that may constitute a disciplinary change in placement, **as long as certain conditions are met.** These conditions are:
 - The student is given the opportunity to continue to appropriately participate in the general education curriculum,
 - The student continues to receive the services on his or her IEP, and
 - The student continues to participate with nondisabled peers to the extent the student would have in the current educational placement.
 - If the three conditions set forth above are not met, in-school suspension is considered to be an exclusion from school. The amount of time the student spends in in-school suspension would count toward the 10-day suspension threshold and would result in a change in placement after 10 consecutive days. After ten cumulative days, a decision must be made as to whether the 10 days is a

disciplinary change in placement. If it is, relevant procedural safeguards are required. This would include a manifestation determination meeting.

- If IEP services, such as specially designed instruction from a special education teacher, are not provided to the student during in-school suspension, the in-school suspension would fail to meet the OSEP criteria. The student's time in ISS would, therefore, count toward the ten-day threshold. (Note: The third OSEP condition requires providing the student with participation with nondisabled peers.)”
37. When asked about practices for ISS for students with disabilities, district staff reported teachers sent work for students to complete and practices are the same for all students, including those with disabilities.
 38. Special education teachers “drop-in” on students at some point during the day, typically during the teacher’s planning.
 39. District staff lacked understanding of how to implement student IEPs during days when students were given ISS.
 40. A manifestation determination meeting must be held for students with IEPs after a “change in placement,” to determine whether the behavior at issue is a manifestation of the student’s disability. See 707 KAR 1:340 Section 14 for manifestation determination requirements.
 41. While interviews with staff who conduct the reviews showed understanding of the manifestation determination process, documentation found during the DLS review of student due process folders demonstrated either a lack of understanding of manifestation determinations or a lack of attention to the process.
 42. Due process folders did not show consideration of all relevant information required by law.
 43. When an ARC determines the student’s conduct which has caused the change in placement is a manifestation of the student’s disability, IDEA requires a Functional Behavior Assessment (FBA) be conducted if the student does not have a Behavior Intervention Plan (BIP). See 707 KAR 1:340 Section 14 (4).
 44. If the student has an existing FBA and BIP, the regulation requires the ARC must review the BIP and modify it as necessary to address the behavior.
 45. Manifestation reviews in student folders revealed FBAs and BIPs lacked the necessary revisions or were missing altogether.
 46. In two separate cases, manifestation determination meetings were not held at all for out-of-school removals greater than 10 days.
 47. District administrators reported that they do not count ISS towards the 10-day requirement for manifestation determination meetings.
 48. Eight students with disabilities received ISS for greater than 10 days during the 2016-17 school year. Of those eight students, two attended ISS in excess of 20 school days and one attended ISS in excess of 30 school days.

CONCLUSIONS (ISSUE #2): Disciplinary Procedures

- A. The district utilizes ISS as a means to prevent needing to conduct a manifestation determination meeting. As a result, students with disabilities are subjected to ISS days in excess of 20-30 school days.
- B. Sending work to ISS and random special ed teacher drop-ins do not meet the requirements set forth by OSEP to allow ISS to not be counted towards the 10-day suspension threshold.
- C. As a result of the findings, Breathitt County is in violation of [707 KAR 1:340, Section 14](#).

FINDINGS (ISSUE #3): Individual Education Program (IEP)

50. All the above Findings are incorporated by reference.
51. Tables outlining all student-specific findings from the Compliance Record Review Document are included in Appendix A at the end of this report. Due process files revealed the following systemic noncompliance:
 - a. Overall, annual measurable goals were a strength for the district. However, three student files lacked one or more components.
 - b. Student due process folders as a whole lacked evidence of progress monitoring for students. Progress reports provided to parents lacked analysis of data.
 - c. Specially-designed instruction did not change from year to year based on the student's needs. Two files were copied and pasted from the previous year.
 - d. Documentation regarding least restrictive environment for students did not include sufficient statements for the **reason** services cannot be provided in the regular educational environment.

CONCLUSIONS (ISSUE #3): Individual Education Program (IEP)

- A. Annual goals were not measurable as required by [707 KAR 1:320, Section 5 \(7\) \(b\)](#).
- B. The district lacked evidence of progress data collection and analysis for each annual goal to show how the child's progress toward meeting the annual goals was measured, as required by [707 KAR 1:320, Section 5 \(13\)](#).
- C. The district did not ensure specially-designed instruction was based on the student's current needs, as required by [707 KAR 1:320, Section 5 \(8\)](#).
- D. The district failed to document why special classes, separate schooling, or other removals of children with disabilities from the regular education environment were necessary based on the severity of the disability, as required by [707 KAR 1:350, Section 1 \(1\)](#).

FINDINGS (ISSUE #4): Eligibility under the IDEA

52. All the above Findings are incorporated by reference.
53. DLS was unable to find evaluation consent forms in two folders.
54. Documentation reviewed by the DLS did not reveal additional concerns with student eligibility under the IDEA.

CONCLUSIONS (ISSUE #4): Eligibility under the IDEA

- E. The district failed to follow procedures to obtain parental consent for evaluations, as required by [707 KAR 1:340, Section 5](#).
- F. The district is found to be in compliance with eligibility requirements under [707 KAR 1:300, Section 4](#).

CORRECTIVE ACTION PLAN (CAP):

Deficiencies specified in this report shall be the basis for the district and the KDE to jointly develop a corrective action plan (CAP) for review and approval by the KDE. Prior to the development of the CAP, the district shall have the opportunity to submit additional information to verify or clarify issues related to this report. Each CAP shall be monitored and enforced by the KDE.

A CAP shall be submitted to the KDE no later than thirty (30) business days after the district receives the report of noncompliance. The CAP shall include:

- a) A statement of the matter to be corrected; and
- b) The steps the district shall take to correct the problem and document compliance.

Within thirty (30) business days of receiving the CAP, the KDE shall notify the district of the status of the CAP. If the KDE rejects the CAP, the district shall have fifteen (15) business days to submit a new CAP.

A CAP approved by the KDE shall be monitored and shall be an official document requiring the district to meet the specified activities set forth therein. The KDE shall not initiate further sanctions for non-compliance addressed in the CAP during the time period specified in the CAP unless requested by the district.

Any noncompliance verified by monitoring shall be corrected within twelve (12) months from the date of the notification to the district of the noncompliance.