



Office of the State Superintendent of Education

DISTRICT OF COLUMBIA
MAYOR ADRIAN M. FENTY

October 14, 2010

[REDACTED]
[REDACTED]
District of Columbia Public Schools
[REDACTED]
[REDACTED]

Re: State Complaint: #08-006
Student Name:
Date of Birth:

LETTER OF DECISION

PROCEDURAL BACKGROUND

The State Complaint Office of the Office of the State Superintendent of Education (OSSE), Division of Special Education received a State Complaint from [REDACTED] hereinafter "complainant" or "parent," on [REDACTED] alleging that the District of Columbia Public Schools (DCPS) failed to evaluate [REDACTED] hereinafter "student," to determine whether [REDACTED] was eligible for special education and related services.

The complainant alleged that DCPS violated certain provisions of the Individuals with Disabilities Education Act (IDEA: 20 U.S.C. §1400 et seq.; 34 CFR Part 300), specifically, that [REDACTED] Education Campus failed to evaluate the student for possible special education intervention after the parent's oral requests for more than four years.

In accordance with the IDEA regulations at 34 CFR §300.153(c), a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. Therefore, this complaint investigation is limited to the period commencing [REDACTED].

The State Complaint Office for the OSSE has completed its investigation of the State Complaint. This Letter of Decision is the report of the final results of OSSE's investigation.

COMPLAINT ISSUES

The allegation raised in the complaint, and further clarified by a review of documents and interviews, raised the following issue under the jurisdiction of the State Complaint Office:

1. Whether DCPS was required to identify, locate and evaluate the student as a student with a disability in need of special education after the parent's referral for a student evaluation in the [REDACTED] school year?

INVESTIGATIVE PROCEDURE

The investigation included the review of documents provided by the parent and DCPS, and interviews of the following individuals:

1. Parent
2. [REDACTED] Education Campus [REDACTED]
3. [REDACTED] Education Campus [REDACTED]

FINDING OF FACTS

- [illegible]

[REDACTED]

DISCUSSION/CONCLUSION

DCPS is out of compliance with 34 CFR §300.301(c), 300.111 and DC ST §38-2561.02.

Staff at [REDACTED] Education Campus did not believe that the student displayed signs that warrant special education services or a referral for an evaluation to determine if the student was a student in need of special education and related services. The [REDACTED] stated that the student understood the class work, however, the student would benefit from additional help.

With respect to the complainant's allegation that DCPS failed to identify, locate and evaluate the student in accordance with 34 CFR §300.111, OSSE finds that DCPS is not out of compliance because it concluded that the student's academic challenges did not warrant special education services but rather that the student would benefit from additional help in the [REDACTED] school year. Additionally, the investigation did not reveal sufficient evidence that the parent requested that the student be evaluated and that DCPS refused to evaluate the student prior to the [REDACTED] school year.

While there was insufficient evidence to determine whether the parent orally referred [REDACTED] child for an evaluation prior to the receipt of the State Complaint, it is uncontested that on [REDACTED], DCPS did receive a referral from the student's parent for evaluation to determine whether the child was a student with a disability in need of special education. Pursuant to IDEA regulations at 34 CFR §300.301(c), an initial evaluation of a student suspected of being a student with a disability must be conducted within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. The District of Columbia Statutes, §38-2561.02, set forth the timeframe to conduct the evaluation in the District of Columbia. In accordance with this State timeframe, DCPS is required to evaluate a student suspected of being a student with a disability within 120 days from the date that the student was referred for an initial evaluation. Based on the referral on [REDACTED], the timeline of 120 days for the evaluation to be completed ended on [REDACTED]. The student's evaluation was completed [REDACTED].

In accordance with IDEA regulations at 34 CFR §300.111, all children with disabilities residing in the State who are in need of special education and related services must be identified, located and evaluated. The United States Department of Education's discussion of the time period for determining eligibility

relative to child find in the discussion of the IDEA regulations is pertinent to this case: "... the Department believes that eligibility decisions should be made within a reasonable period of time following the completion of an evaluation." (Federal Register /Vol. 71, No. 156 /Monday, August 14, 2006 /Rules and Regulations, Page 46637)

OSSE's current Part B Initial Evaluation/Reevaluation Policy, effective on March 22, 2010, establishes a timeline for determining eligibility of a student suspected of being a student with a disability. This policy interprets the 120 day evaluation timeline set forth in District of Columbia law to include the determination of eligibility. The student was determined to be eligible as a student with a disability in need of special education on [REDACTED]. This also exceeded the [REDACTED] deadline for the evaluation and eligibility determination.

The IDEA regulations at 34 CFR §300.301(d) has exceptions to the State established timeframe for evaluation, including if the parent of a child repeatedly fails or refuses to produce the child for the evaluation. In this case, DCPS contends that there were difficulties in contacting the parent for the evaluation as well as the eligibility determination meeting. However, there is no documentation of DCPS' multiple and reasonable efforts to obtain consent for evaluation; any assertions of an exception to the evaluation timeline; or multiple efforts to obtain parental participation in the IEP meeting to determine eligibility. Consequently, no exceptions under the IDEA apply with regard to the time period for the initial evaluation of the student or the eligibility determination as a student with a disability.

Therefore, DCPS failed to comply with the timelines under the IDEA and District of Columbia law to conduct an initial evaluation of a student suspected of being a student with a disability and to timely determine the student's eligibility as a student with a disability. Based on the student's reports of academic progress during the completion of the initial evaluation and determination of eligibility, the OSSE also concludes that these violations substantively impeded [REDACTED] timely receipt of a free appropriate public education in the [REDACTED] school year.

CORRECTIVE ACTION

In order to correct noncompliance with the provisions in 34 CFR §300.301(c), within 30 days of the date of this letter, DCPS must conduct a root cause analysis to determine causes of noncompliance with evaluation timelines and steps to address discovered causes. In its [REDACTED] letter to DCPS regarding OSSE's May [REDACTED] on-site monitoring visit to DCPS and in its [REDACTED] Determination letter to DCPS, OSSE required DCPS to submit a plan describing how DCPS will ensure the elimination of the backlog of the overdue evaluations. The required action outlined in this letter may be completed in conjunction with activities required in OSSE's [REDACTED] and [REDACTED] letters to DCPS.

Additionally, within 20 calendar days of the date of this letter, DCPS must work collaboratively with [REDACTED] Public Charter School to convene the student's IEP Team to consider the frequency, duration and type of specialized instruction required to compensate the student for DCPS' failure to timely evaluate and determine eligibility of the student. If the IEP Team cannot agree on the type and amount of compensatory education in an individualized compensatory education plan, DCPS shall provide for a minimum of 50 hours of specialized instruction as compensatory education to the student to commence no later than [REDACTED].

If you have any questions regarding this report, please contact Melanie Byrd, Director of Compliance & Monitoring, at melanie.byrd@dc.gov or 202-741-0270.

Sincerely,

A handwritten signature in black ink, appearing to read "Tamera Lewis".

Tamera Lewis
Assistant Superintendent for Special Education

cc [REDACTED], Complainant/Parent

[REDACTED] Executive Director
[REDACTED] Special Education Coordinator
[REDACTED], DCPS [REDACTED]