



February 11, 2011

[REDACTED]
District of Columbia Public Schools
[REDACTED]

Re: State Complaint: #008-009

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 violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter “student,” while transitioning to IDEA Part B Services through the District of Columbia Public Schools (DCPS) [REDACTED].

The complainant alleged that the school violated certain provisions of the Individuals with Disabilities Education Act (IDEA: 20 U.S.C. §1400 et seq.; 34 CFR Part 300); specifically, failure to appropriately determine the student’s eligibility; failure to consider the concerns of the parent for enhancing the education of the child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child; and failure to include on the IEP a statement of the special education and related services and supplementary aids and services that would be provided to enable the child to advance appropriately toward attaining the annual goals and make progress in the general education curriculum.

The State Complaint Office for 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 allegations raised in the complaint and/or further clarified by a review of documents and interviews, raised the following issues under the jurisdiction of the State Complaint Office:

1. Whether the initial Individualized Education Program (IEP) was developed within the appropriate timeframe, as required by 34 CFR §300.124(b)?
2. Whether DCPS failed to appropriately determine the student's eligibility, as required by 34 CFR §300.306(c)(1)?
3. Whether DCPS failed to include on the IEP a statement of the special education and related services and supplementary aids and services that would be provided to enable the child to advance appropriately toward attaining the annual goals and make progress in the general education curriculum, as required by 34 CFR §300.320(a)(4)?
4. Whether in developing the child's IEP, DCPS failed to consider the concerns of the parent for enhancing the education of the child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child, as required by 34 CFR §300.324(a)?

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Parent
2. Former DCPS Early Child Care Director
3. DCPS Project Coordinator Resolution Team Member
4. OSSE Early Intervention Specialist
5. Public Charter School Board Program Manager
6. [REDACTED] Public Charter School Special Program Coordinator

The investigation also included review of the following documents which were either submitted by DCPS, the parent or were accessible via the Special Education Data System (SEDS):



[REDACTED]

FINDINGS OF FACT

General Findings

1. The student is a child with a disability as defined by 34 CFR §300.8.
2. The student's disability category is other health impairment.
3. The student was born on [REDACTED].
4. The student's [REDACTED] IFSP and [REDACTED] IEP were in effect during the investigation.

Failure to Timely Develop Initial IEP

5. An Individualized Family Service Plan (IFSP) was completed on [REDACTED] at the [REDACTED].
6. The [REDACTED] IFSP did not contain required educational components.
7. The [REDACTED] IFSP was signed by the grandparent.
8. The parent signed the DC Early Intervention Program Transition Planning Meeting Consent to Release Information on [REDACTED].
9. The grandparent signed the [REDACTED] IFSP consenting to proceed with the student's transition.
10. The parent registered the student in DCPS on [REDACTED].
11. The student's Transition Planning Conference occurred on [REDACTED].
12. DCPS held an enrollment meeting for the child on [REDACTED].
13. The parent signed the DCPS Consent for Evaluation and the DCPS Consent for Screening Assessment on [REDACTED].
14. The student turned three (3) years old on [REDACTED].
15. The [REDACTED] DCPS school year commenced on [REDACTED].
16. The student was still enrolled in DCPS on [REDACTED].
17. At some point between [REDACTED] and [REDACTED], the parent submitted an application for enrollment at [REDACTED] Public Charter School (PCS).
18. The [REDACTED] school year for [REDACTED] PCS commenced on [REDACTED].
19. The student was enrolled at [REDACTED] PCS on [REDACTED].
20. The [REDACTED] letter from the DCPS [REDACTED] to the parent stated that prior to completion of the evaluations ordered at the [REDACTED] Transition Planning Conference and MDT meeting, DCPS discovered that the student was enrolled at [REDACTED] PCS, that [REDACTED] PCS would complete the evaluation and eligibility process, and noted that the parent had given DCPS permission to forward a copy of the student's file to [REDACTED] PCS.
21. DCPS developed the initial IEP on [REDACTED].

Failure to Appropriately Determine the Student's Eligibility

22. At the [REDACTED] meeting, the Multidisciplinary Team requested psychological, speech-language, educational and occupational therapy evaluations.

23. The [REDACTED] DCPS Eligibility Meeting Report shows that the MDT Team found the student eligible for special education services and classified the student's disability as Speech or Language Impairment.
24. The speech-language evaluation was completed on [REDACTED].
25. The occupational therapy evaluation was completed on [REDACTED].
26. The developmental evaluation was completed on [REDACTED].
27. The Battelle Developmental Inventory, 2nd Edition completed as a part of the developmental evaluation served as the educational evaluation.
28. The physical therapy evaluation was completed on [REDACTED].
29. The psychological evaluation was completed on [REDACTED].
30. The [REDACTED] IEP Meeting Notes indicated that one purpose of the meeting was to review current assessments and determine eligibility for special education and related services.
31. The [REDACTED] Speech or Language Impairment Eligibility Determination Form concluded that based on the educational, psychological, speech-language, occupational therapy and physical therapy evaluations, the student was eligible for special education and related services and had a speech or language impairment.
32. The [REDACTED] IEP available in the Special Education Data System (SEDS) lists a [REDACTED] eligibility date.

Failure to Include Necessary Services on the IEP

33. The [REDACTED] IFSP provided for 30 minutes of speech-language therapy per week, 30 minutes of occupational therapy biweekly, and 30 minutes of nursing services five days per week.
34. The [REDACTED] IEP classified the student's primary disability as speech or language impairment.
35. The [REDACTED] IEP did not specify behavioral goals or services.

Failure to Consider the Concerns of the Parent, Results of Evaluations and Child's Needs

36. The [REDACTED] Family History noted that the student had poor pencil control, mostly unintelligible speech, occasionally exhibited a high activity level and recommended a psychological evaluation for behavior management.
37. The [REDACTED] IFSP noted concerns with the student's social emotional development and indicated that the student was on medication for behavior problems.
38. The [REDACTED] Speech and Language Evaluation Review concluded that the student met the DCPS Speech and Language Eligibility Criteria Standards for speech-language impairments and recommended speech-language services for the student.
39. The [REDACTED] Comprehensive Developmental Evaluation concluded that the student exhibited average developmental functions.
40. The [REDACTED] Physical Therapy Evaluation Report concluded that the student presented the gross motor foundations that would allow [REDACTED] to effectively participate in an academic program.
41. The [REDACTED] Confidential Report of Psychological Evaluation concluded that the student's cognitive assessment performance fell in the average range.
42. The [REDACTED] Confidential Report of Psychological Evaluation indicated that the student did not exhibit clinically significant behavior problems.

43. The [REDACTED] Medical Record recommended testing of the student's lead and thyroid levels as well as referral to a child psychologist.
44. The [REDACTED] Speech or Language Impairment Eligibility Determination Form noted that the student had a speech-language impairment in the area of articulation.
45. The [REDACTED] IEP included reading and speech-language goals.
46. The [REDACTED] IEP provided for 3 hours per week of specialized instruction within the general education setting and 30 minutes per week of speech-language services.

DISCUSSION/CONCLUSION

The investigation of this complaint revealed a fundamental issue with regard to DCPS' jurisdiction and responsibility under the IDEA and District of Columbia law and regulation for the development of the student's IEP during the time period addressed in the complaint. This jurisdictional issue must be addressed as a preliminary matter before reaching the allegations raised by the complainant.

The IDEA at 34 CFR §300.301(d)(2) states that the timeframe for completing an initial evaluation does not apply to a public agency if a child enrolls in a school of another public agency after the relevant timeframe has begun and prior to a determination by the child's previous public agency as to whether the child is a child with a disability. However, this exception only applies if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation and the parent and subsequent public agency agree to a specific time when the evaluation will be completed. (34 CFR §300.301(e)) The student was enrolled in DCPS on [REDACTED], the first day of the [REDACTED] school year. At some point between the first day of the DCPS school year and the first day of the [REDACTED] PCS school year on [REDACTED], the student enrolled at [REDACTED] PCS. The student was still enrolled at DCPS on [REDACTED] third birthday, [REDACTED]. DCPS did not begin to evaluate the student until [REDACTED]. Therefore, DCPS retained responsibility for conducting the initial evaluation and completing the initial IEP.

DCPS is out of compliance with 34 CFR §300.124(b).

The IDEA at 34 CFR §300.124(b) requires that an IEP be developed and implemented by the third birthday of a child who is participating in Part C early intervention programs and who will participate in Part B preschool programs. The student turned three (3) years old on [REDACTED], at which time [REDACTED] was still enrolled at DCPS. DCPS developed an initial IEP for the student on [REDACTED], 200 days after the student's third birthday. Therefore, DCPS is out of compliance with 34 CFR §300.124(b) for failing to develop an IEP by the student's third birthday.

DCPS is out of compliance with 34 CFR §300.306(c)(1).

Pursuant to IDEA at 34 CFR §300.306(c)(1), in interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, each public agency must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and ensure that information obtained from all of these sources is documented and carefully considered. The Multidisciplinary Team requested psychological, speech-language, educational and occupational

therapy evaluations on [REDACTED]. The DCPS Eligibility Meeting Report which records the Multidisciplinary Team's finding that the student was eligible for special education services and classified the student's disability as speech or language impairment was completed on [REDACTED]. The speech-language, occupational therapy and psychological evaluations were completed on [REDACTED], [REDACTED] and [REDACTED], respectively. A developmental evaluation, which served as the student's educational evaluation, was completed on [REDACTED]. A physical therapy evaluation was completed on [REDACTED]. Meeting notes from the [REDACTED] IEP meeting indicated that the meeting was held to review current assessments and determine the student's eligibility for special education and related services. The Eligibility Meeting Report used at the [REDACTED] IEP meeting was the report dated [REDACTED]. The Speech or Language Impairment Eligibility Determination Form dated [REDACTED], which was also associated with the notes from the [REDACTED] IEP meeting, indicated that the IEP Team concluded that the student was determined eligible for special education and related services based on the completed evaluations. However, the [REDACTED] IEP indicated that the student's eligibility determination was made on [REDACTED]. A public agency must base their eligibility determination on evaluation data. An eligibility determination made prior to the completion of evaluations cannot be based on the information detailed in 34 CFR §300.306(c)(1).

Therefore, DCPS is out of compliance with 34 CFR §300.306(c)(1) in that it failed to appropriately determine the student's eligibility by making an eligibility and disability category determination prior to conducting any evaluations.

DCPS is in compliance with 34 CFR §300.320(a)(4).

Pursuant to IDEA at 34 CFR §300.320(a)(4), an IEP must include a statement of the special education and related services and supplementary aids and services to be provided to the child to enable the child to be involved in and make progress in the general education curriculum. As noted above, the evaluations that were completed between November [REDACTED] and February [REDACTED] indicated that the student did not have a behavior problem and only required speech-language services. The complainant contests the lack of nursing and behavioral services on the [REDACTED] IEP based on the inclusion of nursing services and concerns about the student's social emotional development on the [REDACTED] IFSP and multiple notes about the student's behavior in medical records. The [REDACTED] IFSP was based on data gathered from the family almost a full year prior to the development of the IEP. Most of the medical records provided by the parent were almost two years old when the [REDACTED] IEP was developed. While the student was referred to a child psychologist during a [REDACTED] medical visit, this referral does not constitute a conclusion that the child required behavioral services. The IEP Team based their conclusion that the student required only specialized instruction and speech-language services on the most recent evaluations available to them. OSSE cannot conclude that, in developing an IEP for a three-year-old student, it was improper to rely more on evaluations conducted in the previous three months than on medical histories and reports that were more than one year old.

Therefore, DCPS is in compliance with 34 CFR §300.320(a)(4).

DCPS is in compliance with 34 CFR §300.324(a).

Pursuant to 34 CFR §300.324(a), in developing each child's IEP, the IEP Team must consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluations of the child; and the academic, developmental, and functional needs of the child. The complainant maintains that the IEP Team did not consider [REDACTED] concerns or [REDACTED] request to provide nursing services to [REDACTED] child. The notes from the [REDACTED] IEP meeting indicate that the Team reviewed the results of the student's psychological, developmental, speech-language, occupational therapy and physical therapy evaluations. These evaluations concluded that the student's development, gross motor skills, and cognitive abilities fell within the average range; indicated that the student did not exhibit significant behavior problems; and recommended only speech-language services for the student. The evaluation summaries included in the meeting notes for the [REDACTED] IEP noted that the student was able to respond to redirection and focus on tasks, ambulate independently, and did not exhibit physical limitations that could negatively impact [REDACTED] ability to move around in the school environment. The Team's decision to include only reading goals, speech-language goals, specialized instruction and speech-language services on the IEP is supported by these evaluations. There is nothing to indicate that the IEP Team acted contrary to the results of the student's medical records; rather, the Team based their decision on the recent evaluations rather than the medical records that were almost two years old at the time of the meeting. OSSE also finds credible interviews with the former DCPS Early Child Care Director and OSSE Early Intervention Specialist that indicated that the IEP Team did discuss the [REDACTED] request for nursing services but concluded based on the student's evaluation results that nursing services were not required. OSSE cannot conclude that the IEP Team improperly developed the student's IEP.

Therefore, DCPS is in compliance with 34 CFR §300.324(a).

CORRECTIVE ACTION

In order to correct noncompliance with the provisions in 34 CFR §§300.124(b) and 300.306(c)(1), DCPS is required to take the following actions:

1. In order to correct the noncompliance with 34 CFR §300.124(b), on a monthly basis, DCPS must review the records of students with third birthdays in the previous calendar month and report the percentage of students who had IEPs developed by their third birthday to OSSE. DCPS must report 100% compliance with the requirement to develop an IEP by a child's third birthday in one of these monthly reviews no later than [REDACTED]. This corrective action will close once DCPS is able to report 100% compliance.
2. In order to correct the noncompliance with 34 CFR §300.306(b), for the next 60 calendar days from the date of this report, DCPS must ensure that all initial eligibility determinations for students transitioning from Part C to Part B are made based on completed evaluations. By [REDACTED], DCPS must submit to OSSE a report of student identification numbers, the dates of initial IEP meetings, dates of initial eligibility determinations and dates of completed evaluations; DCPS must also either provide OSSE with copies of the initial IEPs, eligibility determinations and completed evaluations or take steps to ensure that the documentation is available via SEDS.

If you have any questions regarding this report, please contact Mary Boatright, State Complaints Manager, at mary.boatright@dc.gov or 202-741-0264.

Sincerely,

Tameria J. Lewis
Assistant Superintendent of Special Education

cc: [REDACTED], Parent
[REDACTED], DCPS [REDACTED]