




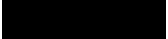
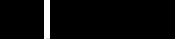
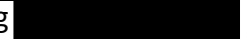
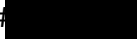
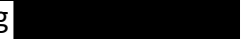
May 10, 2011


District of Columbia Public Schools

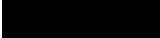
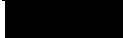


Re: State Complaint: #008-010

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 , hereinafter “complainant” or “parent,” on  alleging violations in the special education program of   SHS, (Student ID #  hereinafter “student”, while attending  SHS, a school within the District of Columbia Public Schools (DCPS).

The complainant alleged that DCPS violated certain provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. and regulations promulgated pursuant to the IDEA, 34 CFR Part 300, specifically, failure to develop an Individualized Education Program (IEP) that included all required elements; and failure to provide home instruction.

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 . The complainant also alleged that DCPS failed, upon the student’s transfer into DCPS from  County Public Schools in September  to provide the student with services comparable to those in the previous IEP until a new IEP was developed. This alleged violation occurred more than one year prior to the date of this complaint and therefore was not investigated.

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

1. Whether DCPS failed to include in the student’s IEP a statement of the child’s present levels of academic achievement and functional performance; a statement of measurable annual goals; and a description of how the child’s progress toward meeting the annual goals will be measured, as required by 34 CFR §300.320(a)?
2. Whether DCPS failed to include in the student’s IEP a statement of the special education and related services, based on peer-reviewed research to the extent practicable, to be provided to the child or on behalf of the child, specifically with regard to counseling services, as required by 34 CFR §300.320(a)(4)?
3. Whether DCPS had placed the student in the least restrictive environment such that removal from the regular education environment was required because the nature or severity of [REDACTED] disability was such that education in regular classes with the use of supplementary aids and services could not be satisfactorily achieved, specifically with regard to placement in homebound instruction, as required by 34 CFR §300.114?
4. Whether in developing the child’s IEP, DCPS failed to consider the use of positive behavioral interventions and supports and other strategies to address behavior which impedes the child’s learning, specifically with regard to the student’s repeated absences, as required by 34 CFR §300.324(a)(2)(i)?
5. Whether DCPS failed to revise the IEP to address the child’s anticipated needs, as required by 34 CFR §300.324(b)(1)(ii)(D)?

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Parent
2. [REDACTED]

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

[REDACTED]



FINDING OF FACTS

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 specific learning disability.
3. The student attended ██████████ SHS during the ██████████, and ██████████ school years.
4. The student graduated from ██████████ SHS in June ██████████
5. The student’s IEPs dated ██████████ and ██████████ were in effect during the period of investigation.
6. On ██████████, the parent was invited to the ██████████ IEP meeting but did not attend the meeting.
7. There is a blank ██████████ IEP available in the Special Education Data System, indicating that ██████████ SHS may have initiated revisions to the ██████████ IEP but there is no record that the IEP was completed or implemented on or about ██████████.

Including Required Elements on the IEP

8. The ██████████ IEP did not include present levels of academic achievement and functional performance for either the social-emotional or written expression goals listed on the IEP.
9. The social-emotional goal listed on the ██████████ IEP indicated that the student would “adjust to the new school setting with 80% mastery” and “demonstrate confidence in ability to perform academic skills.”

Counseling Services

10. The ██████████ IEP meeting notes indicated that DCPS, not the student’s IEP Team, had scheduled the student to receive forty-five (45) minutes of counseling services per week prior to ██████████ meeting, based on the parent’s request to DCPS. The student received counseling services as scheduled by DCPS, prior to the April 30 meeting. The parent did not attend the ██████████ IEP meeting.
11. The IEP Team decided against including forty-five (45) minutes of counseling services in the student’s ██████████ IEP. Consequently, counseling services were not provided to the student after the ██████████ IEP meeting.
12. The IEP Team did not include counseling services in the ██████████ IEP even though that IEP contained social-emotional goals.

Homebound Instruction and Positive Behavioral Supports

13. The ██████████ Student Progress Report indicated that the student was failing five of seven classes and had between two and 18 absences per class period.
14. The ██████████ Student Progress Report included notes from four of the student’s teachers that the student had excessive absences.

15. The [REDACTED] DCPS Attendance Summary showed that the student had a total of 95 class absences, of which 12 were excused for illness or a medical appointment.
16. The only reference to the student's general state of health in the [REDACTED] or [REDACTED] [REDACTED] IEPs is a note from the clinical psychologist in the [REDACTED] IEP meeting notes that the student missed some counseling sessions due to illness.
17. The notes from both the [REDACTED] and [REDACTED] IEPs do not indicate that the student had an ongoing medical condition that would prevent [REDACTED] from attending school.
18. The [REDACTED] email from the parent to [REDACTED] SHS requested that the student be excused for [REDACTED] absences on [REDACTED] through [REDACTED] and attached medical records which indicated that the student was treated for chest pains and diagnosed with a muscle sprain.
19. The [REDACTED] IEP meeting notes included four teacher evaluations, all of which indicated that the student was consistently absent but these notes did not indicate that the absences were due to a medical condition of the student.
20. There is no indication that the student's [REDACTED] DCPS Attendance Summary or any other attendance records were reviewed at the [REDACTED] IEP meeting.
21. The parent was unable to demonstrate that [REDACTED] provided any additional medical records to the school prior to the development of the [REDACTED] IEP, the [REDACTED] IEP or the filing of this complaint.
22. The [REDACTED] IEP meeting notes do not contain a discussion of how the student's absences related to the student's disabilities, of evaluating this behavior, or of implementing positive behavioral supports to address the behavior.
23. The [REDACTED] DCPS Attendance Summary showed that in the school year prior to the [REDACTED] IEP meeting the student had 267 total class absences, 110 of which were excused for illness, a medical appointment or unspecified reasons.

Revise the IEP to Address the Child's Anticipated Needs

24. The [REDACTED] IEP meeting notes indicated that the student had difficulty with reading.
25. The [REDACTED] IEP only included a statement of the present level of academic performance and a statement of annual goals in the area of written expression.

DISCUSSION/CONCLUSION

DCPS is out of compliance with 34 CFR §300.320(a).

Pursuant to 34 CFR §300.320(a)(1) an IEP must include a statement of the child's present levels of academic achievement and functional performance, including a description of how the child's disability affects the child's involvement and progress in the general education curriculum. The IDEA at 34 CFR §300.320(a)(2)(i) also requires that an IEP include a statement of measurable annual goals, including academic and functional goals. Further, 34 CFR §300.320(a)(3)(i) requires the IEP to include a statement of how the child's progress toward meeting the annual goals will be measured. The student's [REDACTED] [REDACTED] IEP did not contain any information on the student's present level of performance in either of the areas of concern addressed in the goals and objectives section of the IEP. The [REDACTED] IEP also did not contain *measurable* annual social-emotional goals. The social-emotional goal listed on the IEP required the student to "demonstrate confidence in performing academic tasks, and satisfactory adjustment to a new school." The short-term objectives listed for this goal merely divided the goal into its two constituent elements. Even though one of these two objectives included a target success rate of

80%, it is unclear in what way progress toward either of the objectives would be measured. No specific problem, response, behavior or setting was provided to further contextualize or describe this goal or the short-term objectives. The absence of a statement of present performance, a measurable annual goal and a description of how progress toward the goal would be measured prevents teachers, coordinators and subsequent IEP Teams from accurately and reliably assessing whether the specified instruction and related services are sufficient to allow the student to make progress.

Therefore, DCPS is out of compliance with 34 CFR §300.320(a) for failing to include all necessary elements on the [REDACTED] IEP.

DCPS is in compliance with 34 CFR §300.320(a)(4) with respect to counseling services.

The IDEA at 34 CFR §300.320(a)(4) requires an IEP to include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child. Further, the Act requires that services be provided to enable the child to advance appropriately toward attaining the annual goals set forth in the IEP. (34 CFR §300.320(a)(4)(i)) Prior to the [REDACTED] IEP meeting, DCPS scheduled the student to receive 45 minutes of counseling each week in response to a request from the parent. The student's IEP from the previous LEA in Virginia, however, did not include counseling services. At the [REDACTED] IEP Team meeting, the IEP Team decided against including counseling services in the student's IEP, thereby eliminating the regular counseling sessions scheduled by DCPS, and instead shifted the responsibility to the student to seek out that service "as-needed." Because the student was receiving counseling services at the request of the parent and not in accordance with any IEP or as a result of a decision by an IEP Team, OSSE finds nothing improper in the IEP Team's decision not to include counseling services on the student's [REDACTED] IEP.

In addition, OSSE acknowledges that while the provision of a particular behavioral service to meet social-emotional goals is a best practice, the IDEA does not require that social-emotional goals be matched one-to-one with counseling services or other service provision by a psychologist or social worker. Every instructor or provider should be familiar with and address each goal listed on a student's IEP, regardless of the area that is affected by the child's disability. The IEP Team was not bound to include counseling services on the IEP by virtue of including a social-emotional goal for the student.

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

DCPS is in compliance with 34 CFR §300.114 with respect to homebound instruction, but out of compliance with 34 CFR §300.324(a)(2)(i) with respect to positive behavioral interventions and supports.

Pursuant to 34 CFR §300.114, a public agency must ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and, special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The parent asserts that [REDACTED] provided the school with notice of the student's medical conditions that should have prompted the IEP Team to specify that the student receive homebound instruction. The [REDACTED] Student Progress Report reviewed at the [REDACTED]

■■■■ IEP meeting indicated that the student was failing five out of seven classes and four teachers indicated that the student had excessive absences. A year later, at the ■■■■ meeting, there is no evidence to suggest that the IEP Team reviewed the student's attendance records from which the IEP Team would have found that the student's total absences had more than doubled from the previous year. Every teacher evaluation included in the ■■■■ IEP meeting notes, however, indicated that the student was consistently absent. Although DCPS and the IEP Team had notice of the student's frequent absences through attendance records and progress reports, there is no documentation of a *medical condition* that would necessitate the inclusion of homebound instruction on the student's IEP. In addition, OSSE finds that the parent's ■■■■ email requesting excusal of the student from ■■■■ through ■■■■ because of chest pains and a muscle sprain and attaching medical records was insufficient evidence that DCPS and the IEP Team were on notice of the student's chronic medical condition.

The IDEA at 34 CFR §300.324(a)(2)(i) requires that in developing an IEP, the IEP Team must, in the case of a child whose behavior impedes the child's learning, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. As noted above, there is ample notice of the student's frequent absences in the student's record. There is no evidence in the notes of either the April ■■■■ or April ■■■■ IEPs that the Team considered whether the student's excessive absences were related to the child's disability and could be addressed through the use of positive behavioral interventions and supports. OSSE finds that where an IEP Team fails to consider the use of positive behavioral intervention and supports to address a behavior that impedes the child's learning, or fails to consider whether a behavior that is impeding a child's learning is related to the child's disability, an IEP has not been developed in accordance with the IDEA.

Therefore, DCPS is in compliance with 34 CFR §300.114 with respect to homebound instruction, but out of compliance with 34 CFR §300.324(a)(2)(i) in that it failed to consider the use of positive behavioral supports to address the student's repeated absences.

DCPS is out of compliance with 34 CFR §300.324(b)(1)(ii)(D).

As noted above, the IDEA at 34 CFR §§300.320(a)(1) and 300.320(a)(2)(i) requires that an IEP include a statement of the child's present levels of academic achievement and functional performance and a statement of measurable annual goals. Further, the IDEA at 34 CFR §300.324(b)(1)(ii)(D) requires the IEP Team to address the child's anticipated needs when revising an IEP. The meeting notes for the ■■■■ IEP identify academic concerns in the area of reading. However, the IEP Team did not include a statement of the student's present performance or a statement of annual goals in the area of reading. The Team did not revise the IEP to include services to address the student's anticipated needs in the area of reading.

Therefore, DCPS is out of compliance with 34 CFR §300.324(b)(1)(ii)(D) for failing to address the student's needs in revising the IEP.

CORRECTIVE ACTION

DCPS is required to take the following actions:

1. In order to correct the noncompliance with 34 CFR §§300.320(a) and 300.324(b)(1)(ii)(D), by [REDACTED], DCPS must convene a meeting, at a time and place determined in consultation with the student, to create a Compensatory Education Plan to compensate the student for the failure to revise the IEP to address the student’s needs in the area of reading. If DCPS and the student cannot agree on the amount of compensatory education hours, DCPS shall provide a minimum of 20 hours of specialized instruction as compensatory education which must be completed by [REDACTED]. Since the student has subsequently graduated from DCPS, the student may agree to waive the compensatory education hours required by this corrective action; if so, DCPS must submit signed documentation of this agreement to OSSE by [REDACTED].
2. In order to correct the noncompliance with 34 CFR §300.324(a)(2)(i), by [REDACTED] DCPS must ensure that at least two [REDACTED] SHS staff members, including the special education coordinator, attend, with the prior approval of the OSSE Director of Compliance & Monitoring, a nationally or locally recognized program on the development of positive behavioral interventions and supports for special education students. Documentation of attendance must be forwarded to OSSE by [REDACTED].
3. In order to correct the noncompliance with 34 CFR §300.324(b)(1)(ii)(D), DCPS must ensure that at least two [REDACTED] SHS staff members, including the special education coordinator, attend the OSSE training SP-1: Individualized Education Program Process the first time it is offered in the [REDACTED] school year, and in no case later than [REDACTED]. Alternatively, by [REDACTED], DCPS may ensure that these staff members attend, with the prior approval of the OSSE Director of Compliance & Monitoring, a nationally or locally recognized program on the IEP process. Documentation of attendance must be forwarded to OSSE no later than one month after the course date.

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

Sincerely,

Tameria Lewis
Assistant Superintendent for Special Education

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