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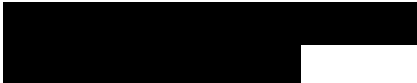


State Superintendent of Education

February 11, 2011



District of Columbia Public Schools



Re: State Complaint: #009-001

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], and an additional complaint on [REDACTED]. Because the two complaints involved the same child and raised the same issues, OSSE combined them into a single complaint which alleges violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter “student,” while attending [REDACTED] High School, a school within the District of Columbia Public Schools (DCPS).

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 provide the student with as required in [REDACTED] Individualized Education Program (IEP), including a dedicated aide; failure to arrange for the student’s transportation during the [REDACTED] extended school year; and failure to provide home instruction during the student’s documented medical absences. The complainant also alleged that DCPS violated the IDEA by giving the student failing grades and retaining the student. However, issues regarding the assignment of grades and decisions to retain a student are not within the jurisdiction of the State complaint system and these issues were not accepted for investigation.

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 from [REDACTED] to [REDACTED].

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, further clarified by a review of documents and interviews or revealed in the course of the investigation, raised the following issues under the jurisdiction of the State Complaint Office:

1. Whether DCPS failed to ensure that special education and related services were made available to the student in accordance with the student’s IEPs, specifically with regard to provision of a dedicated aide during the [REDACTED] school year, as required by 34 CFR §300.323(c)(2)?
2. Whether DCPS failed to ensure that special education and related services were made available to the student in accordance with the student’s IEPs, specifically with regard to transportation during the [REDACTED] extended school year, as required by 34 CFR §300.323(c)(2)?
3. Whether DCPS failed to include in the student’s IEP a statement of the special education and related services and supplementary aids and services necessary to enable the child to advance appropriately toward attaining the annual goals and to be involved in and make progress in the general education curriculum, specifically with regard to providing for homebound instruction and homework packets during documented medical absences, as required by 34 CFR §300.320(a)(4)?

INVESTIGATIVE PROCEDURE

This investigation included interviews with the following individuals:

1. Parent
2. Student
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. [REDACTED]
14. Primary Physician

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



FINDING OF FACTS

General Findings

1. The student is a child with disabilities as defined by 34 CFR §300.8.
2. The student's disability category is multiple disabilities.
3. The student was born on [REDACTED] and was [REDACTED] and [REDACTED] years of age during the period of investigation.
4. The student attended [REDACTED] during the [REDACTED] and [REDACTED] school years.
5. The student's IEPs dated [REDACTED] and [REDACTED] were in effect during the period of investigation.
6. The student graduated from [REDACTED] SHS on [REDACTED].

Provision of a Dedicated Aide

7. The notes from the [REDACTED] IEP meeting indicated that a dedicated aide was requested for the student.
8. The notes from the [REDACTED] IEP meeting indicated that the IEP Team agreed that the student required a dedicated aide.
9. The notes from the [REDACTED] IEP meeting indicated that the special education coordinator would request a dedicated aide for the student.
10. The notes from the [REDACTED] IEP included an acknowledgement that a dedicated aide had not been assigned to the student.
11. The notes from the [REDACTED] IEP indicated that the student required a dedicated aide.
12. The notes from the [REDACTED] IEP indicated that the special education coordinator would submit a request for a dedicated aide on the next business day.
13. There is no evidence that a dedicated aide was requested for or provided to the student during the [REDACTED] school year.
14. The [REDACTED] IEP indicated that the student did not require the support of a dedicated aide.
15. The [REDACTED] DCPS Student Transcript shows that the student failed 2 of 13 classes in the [REDACTED] school year and 6 out of 9 classes in the [REDACTED] school year.

Transportation during the Extended School Year Program for [REDACTED]

16. The student has been receiving transportation services from DCPS since [REDACTED] was determined eligible to receive special education services.
17. Although transportation was not included in the student's IEP for the [REDACTED] extended school year, transportation was deemed a necessary related service by the student's

- IEP Team and provided from September [REDACTED] through the end of the regular school year of June [REDACTED]
18. The IEP Team determined that the student was eligible to receive extended school year services from June [REDACTED] to August [REDACTED] although this was not documented on the IEP.
 19. The student's IEP Team documented that the student needs transportation to receive benefit from education.
 20. DCPS does not dispute that the student required transportation to receive extended school year services.
 21. There was no evidence that a District of Columbia Student Transportation Data Form was completed by the special education coordinator, for transportation services for the student's extended school year program.
 22. The student's extended school year program was 32 school days and the student received [REDACTED] extended school year services for all 32 school days.
 23. The student did not receive transportation from DCPS for the extended school year program for [REDACTED] however, the student attended the extended school year program by utilizing public transportation to and from [REDACTED] SHS for the entire extended school year program.
 24. The [REDACTED] extended school year program ran over the course of six (6) calendar weeks.
 25. The cost of a weekly student pass is \$26.00 and the total cost for six (6) weekly student passes is \$156.00.

Home Instruction

26. The notes from the [REDACTED] IEP meeting indicated that the student struggled to get to school on time because of [REDACTED] doctor's appointments.
27. The notes from the [REDACTED] IEP meeting indicated that the student was physically challenged because [REDACTED] was wheelchair bound and awaiting a [REDACTED].
28. The notes from the [REDACTED] IEP meeting included a report from the student's math teacher that absences caused the student to fall behind in [REDACTED] work.
29. The [REDACTED] and [REDACTED] IEPs did not include home instruction as part of the student's special education and related services, supplementary aids and services or program modifications and supports.
30. The student was absent 35 of 180 days in the school year prior to the development of the [REDACTED] IEP.
31. The student was absent 54 of 180 days in the school year prior to the development of the [REDACTED] IEP.
32. DCPS Visiting Instructional Services first received a request for the student in February [REDACTED].

Accuracy of Data

33. The [REDACTED] IEP indicated that the student was in the [REDACTED] grade.
34. The [REDACTED] IEP indicated that the student was in the [REDACTED] grade.
35. The student's grade level in the Special Education Data System (SEDS) was changed from [REDACTED] to [REDACTED] on [REDACTED].
36. The student's grade level in SEDS was changed from [REDACTED] to [REDACTED] on [REDACTED].
37. The [REDACTED] IEP indicated that the student was in [REDACTED] grade.

38. The [REDACTED] IEP indicated that the student was seeking a certificate, but also indicated that the student would exit with a regular high school diploma.
39. SEDS indicates that the student graduated with a regular diploma on [REDACTED].
40. The student's grade level in SEDS was changed from [REDACTED] to [REDACTED] on [REDACTED].
41. The [REDACTED] DCPS Student Transcript shows that the student completed 11.5 out of 27 credits.

DISCUSSION/CONCLUSION

DCPS is out of compliance with 34 CFR §300.323(c)(2) with respect to the provision of a dedicated aide.

The IDEA at 34 CFR §300.323(c)(2) requires each public agency to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. The IEP Team determined at the [REDACTED] meeting that the student required a dedicated aide during the [REDACTED] school year. The notes from the [REDACTED] IEP meeting indicate that the special education coordinator would request a dedicated aide for the student on the next business day. There is no evidence that a request was filed or that the student received the support of a dedicated aide during the [REDACTED] school year. Therefore, DCPS is out of compliance with 34 CFR §300.323(c)(2) in that it did not provide the student with a dedicated aide in accordance with the student's [REDACTED] IEP.

A dedicated aide was also specified on the student's [REDACTED] and [REDACTED] IEPs. After specifying that the student should receive a dedicated aide on the [REDACTED], [REDACTED], and [REDACTED] IEPs, failing to provide a dedicated aide for that time period, and following a school year in which the student failed six (6) out of nine (9) classes, the IEP Team determined that the student did not require a dedicated aide on the [REDACTED] IEP. While provision of services prior to [REDACTED] and following the filing of the second complaint on [REDACTED] falls outside of the period of investigation under 34 CFR §300.153(c), OSSE has concerns regarding the IEP Team's removal of a service that had never been provided, following a school year in which the student failed the majority of [REDACTED] classes and did not make progress toward annual goals or in the general education curriculum.

DCPS is out of compliance with 34 CFR §300.323(c)(2) with respect to transportation.

The IDEA at 34 CFR §300.323(c)(2) requires each public agency to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. The student's IEP Team determined that transportation was a necessary related service for the student for the [REDACTED] school year. Although transportation was required to be included in the student's IEP for the regular and extended school year program, it did not appear on the student's IEP. There is no dispute that transportation was a required related service for the student to benefit from special education. Although transportation did not appear on the student's IEP, transportation was, nonetheless, requested from the Division of Transportation and provided to the student for the regular [REDACTED] school year, but was not requested or provided during [REDACTED] extended school year program. The student relied on public transportation and attended the entire extended school year

program. Therefore, DCPS is out of compliance with 34 CFR §300.323(c)(2) with regard to the provision of transportation to the student during the [REDACTED] extended school year program.

OSSE notes that this complaint highlighted systemic problems related to ensuring that appropriate transportation services are promptly and effectively requested for students. In response to this complaint, OSSE is working to establish transportation criteria to ensure that students are appropriately evaluated for transportation needs and provided with adequate travel training; transportation forms are filled out at the time that the decision to provide transportation is made by the IEP Team; and the electronic system in which IEPs are entered does not allow the submission of an IEP where transportation is indicated unless the transportation form is completed. Additionally, OSSE drafted a Transportation Services Policy which is currently in the public comment period and can be viewed at http://www.osse.dc.gov/se/frames.asp?doc=/seo/lib/seo/special_education/sped_trans_policy_final11__23_10.pdf.

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

Pursuant to 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, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals and be involved in and make progress in the general education curriculum. The [REDACTED] IEP did not include home instruction as part of the student's special education and related services, supplementary aids and services or program modifications and supports. However, the LEA had longstanding knowledge of the student's medical condition including, the report from the student's math teacher included in the [REDACTED] IEP meeting notes indicated that the student's absences caused [REDACTED] to fall behind in [REDACTED] work; notes from the [REDACTED] and [REDACTED] IEP meetings that show that the IEP Team was aware of the student's medical condition; and in the school year prior to the [REDACTED] IEP meeting, the student was absent 35 out of 180 days. The IEP Team was therefore on notice both of the student's repeated absences for documented medical reasons and of the negative impact on the student's academic progress. This notice is further substantiated by multiple references in interviews with school staff to the negative impact of the student's poor health and repeated medical absences. The parent did not file a request for home instruction with DCPS Visiting Instructional Services until February [REDACTED] but taken cumulatively, these references in the student's record should have prompted the IEP Team to include home instruction during documented medical absences on the student's IEP. Therefore, DCPS is out of compliance with 34 CFR §300.320(a)(4) because the IEP team did not specify home instruction for the student during documented medical absences.

Inaccurate Data

Pursuant to 34 CFR §§300.600(d) and 300.601(b), the State must monitor the LEAs located in the State using quantifiable indicators including collecting valid and reliable data. Review of the student's IEPs and OSSE's Special Education Data System (SEDS) record shows that the student's grade level was changed three times between [REDACTED] and [REDACTED]. One page of the student's final IEP indicated that [REDACTED] was pursuing a certificate of completion while another page indicated that [REDACTED] would graduate with a regular diploma. The [REDACTED] DCPS

Student Transcript shows that the student completed 11.5 out of 27 credits required to graduate. Errors of this nature call into question DCPS's ability to make decisions which are based on accurate information about the student and compliant with the requirements of the IDEA. Additionally, failure to maintain valid and reliable data constitutes noncompliance with 34 CFR §§300.601(b) and 300.211.

CORRECTIVE ACTION

In order to correct the noncompliance with 34 CFR §§300.323(c)(2), 300.320(a)(4), 300.601(b), and 300.211, DCPS is required to take the following actions:

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2) with respect to the provision of a dedicated aide and 34 CFR §300.320(a)(4) with respect to the inclusion of home instruction on the IEP:
 - a. By [REDACTED], DCPS must convene a meeting with the student, at a time and place determined in consultation with the student, to create a Compensatory Education Plan required to compensate the student for failing to provide a dedicated aide in accordance with the [REDACTED] IEP and for failing to specify home instruction on the [REDACTED] IEP. If DCPS and the student cannot agree on the amount of compensatory education hours, DCPS shall provide a minimum of 342 hours of specialized instruction as compensatory education and all compensatory education hours must be delivered by [REDACTED].
 - b. DCPS must provide OSSE with a copy of the Compensatory Education Plan by [REDACTED]. DCPS must provide documentation of the delivery of compensatory education hours by [REDACTED].
 - c. In lieu of the Compensatory Education Plan requirements listed above, with the agreement of the student, DCPS may reimburse the student for the cost of one (1) year of full-time tuition and fees at an area community college. For the purposes of this corrective action, one (1) year of full-time tuition and fees is equal to the cost of two (2) twelve (12) credit hour semesters, not to exceed \$3,000.00. If DCPS and the student agree that this option will be exercised in lieu of a Compensatory Education Plan, by [REDACTED], DCPS must provide OSSE with documentation of that agreement. By [REDACTED], DCPS must submit proof of payment or a pattern of payment.
2. In order to correct the noncompliance with 34 CFR §300.323(c)(2) with respect to the failure to provide transportation:
 - a. By [REDACTED], DCPS must provide reimbursement to the complainant in the amount of \$156.00. By [REDACTED], DCPS must submit proof of payment to OSSE.
 - b. Upon release of OSSE's final Special Education Transportation Services Policy and related documents, DCPS must examine the records of 60 special education high school students whose IEPs were completed in the previous three months and apply the transportation criteria. If a change is required, DCPS may either convene an IEP meeting to amend the IEP or amend the IEP without a meeting subject to the requirements set out in OSSE's [REDACTED] Individualized Education Program

Amendment Guidance. DCPS must report the results of their examination of these files to OSSE, including the identification numbers of students and the method by which those students were selected; any changes to students' transportation services as a result of the review; the date of DCPS's examination and decision; the date of the subsequent IEP amendment; and the date on which new transportation data forms were filed. DCPS must also submit copies of the transportation worksheet, IEPs and meeting notes or IEP amendments, and transportation data forms to OSSE or make these documents available electronically. This report and the corresponding documentation are due to OSSE by [REDACTED].

3. In order to correct the noncompliance with 34 CFR §300.601(b), DCPS must require at least three staff members from [REDACTED] SHS, including the special education coordinator, to attend SEDS training. DCPS must submit proof of attendance by [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,

Tamera Lewis
Assistant Superintendent for Special Education

cc: [REDACTED], Student
[REDACTED], DCPS [REDACTED]