



LETTER OF DECISION

Re: Formal State Complaint

Student Names:

Date of Birth:

Attending School:

Neighborhood School:

INTRODUCTION

The District of Columbia State Complaint Office for the Office of the State Superintendent of Education (OSSE) has completed the investigation of the complaint filed by an advocate alleging that the District of Columbia Public Schools (DCPS) failed to provide a free and appropriate public education (FAPE) because DCPS failed to timely implement a Due Process Hearing Officer's Decision (HOD), issued pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA).

ISSUE

Whether DCPS failed to implement in a timely manner an HOD, issued on [REDACTED], pursuant to the IDEA and 34 C.F.R. §300.514(a).

SCOPE OF INVESTIGATION

The OSSE Investigator did the following to gather facts for the present complaint:

[REDACTED]

FINDINGS OF FACT

- A. The State Complaint Office received a formal written complaint from advocate [REDACTED], on [REDACTED].¹
- B. On [REDACTED] an Independent Hearing Officer (IHO) heard and decided on a matter filed by advocate [REDACTED], alleging that DCPS failed to provide his client with social service skills and keyboarding services as required by the student's IEP. He further alleged that DCPS failed to address the severity of the student's disability through goals and objectives on the IEP with present levels of modifications and accommodations to assist the student with academic and functional needs. The advocate additionally argued that the [REDACTED], a private school with a full-time special education program, is the appropriate placement to accommodate the student's specific learning disability challenges of dyslexia and dysgraphia.²
- C. The IHO ultimately determined on [REDACTED], that DCPS failed to conduct an occupational therapy assessment; that DCPS failed to propose an IEP to provide the student with the educational benefit as required in the form of a FAPE, but reasoned that the student did not suffer

¹ The following documents were received from the advocate:

[REDACTED]

² See HOD issued [REDACTED].

educational harm warranting a placement in a segregated, private special education school at public expense.³

3. The IHO ordered DCPS to complete an occupational therapy assessment no later than [REDACTED]. He additionally ordered DCPS to revise the IEP to reflect the findings and conclusions of the HOD.⁴ The HOD dated [REDACTED], specifically addressed what should be included in the content of the IEP to include related services, and ordered timelines for DCPS to be in compliance with the HOD. DCPS was ordered to have related services and supplementary aids in place at the start of the [REDACTED] school year. The HOD allowed a DCPS Multidisciplinary Team (MDT)/IEP team to determine and document the appropriate educational setting;⁵ moreover, allows a DCPS MDT/IEP team to determine if additional items are warranted on the IEP to include discussion of a more restrictive educational placement.⁶
4. If the HOD is not timely implemented, the advocate's redress in part included filing a complaint with the Office of the State Superintendent and furthermore mentions that the HOD is not intended to restrict the IEP team from making other changes to the program and placement as necessary to provide FAPE. The HOD concludes by mentioning that the advocate must provide DCPS with at least three alternative times to meet and should DCPS fail to select a proposed date, the IEP meeting must occur no later than [REDACTED]. Finally, when the revised IEP is proposed it must include as part of the written notice, the school the student will be attending at the start of the [REDACTED] school year.⁷
5. In July of [REDACTED] DCPS put in place a new computer system, referred to as the *Blackman/Jones* Version 2 Computer System, to identify untimely HOD complaints within DCPS.

³ See HOD issued [REDACTED].

⁴ The HOD ordered that DCPS' IEP/Multidisciplinary Team (MDT) include on the IEP: 1) Measurable annual academic goal(s) including short term objectives or benchmarks in spelling and any other core academic content standards where the student is directly not achieving proficiently; 2) Measurable annual functional goals, including short term objectives or benchmarks designed to the students functioning needs that affect progress in the general education curriculum because of the disability with a focus on strategies and techniques to assist in overcoming functioning challenges that impact learning and socialization; 3) special education services must include a multimodal approach in the classroom incorporating visuals in each lesson repetitively with hands on experience when possible with a balance between cooperative learning and independent work. A paraprofessional should check frequently to ensure that the information is disseminated to the student in small "chunks"; and 4) incorporate related services as necessary to effectuate the implementation of the IEP.

⁵ The HOD defines the educational setting as the level of segregation from non-disabled peers (least restrictive setting), not the location of services (See HOD issued [REDACTED]).

⁶ See HOD, issued [REDACTED].

⁷ See HOD, issued [REDACTED].

6. In August of [REDACTED] in line with the new system, DCPS started school assignments of untimely HODs to compliance case managers. The case manager assigned to [REDACTED] realized that current HOD issued in the [REDACTED] matter was out of compliance and sent an email on [REDACTED] [REDACTED] to the related service provider to inquire about the status of the occupational therapy assessment and subsequently sent an email to the program manager on [REDACTED] [REDACTED], to inquire about the status of the assessment.⁸
7. The program coordinator informed the case manager that the occupational therapy assessment would not be done in time because the related service provider assigned to the case had accepted a new job.⁹
8. The DCPS case manager then sent a letter to the advocate, dated [REDACTED] [REDACTED], authorizing the advocate to obtain an independent evaluation to expedite the occupational assessment and indicating that DCPS would reimburse reasonable and documented fees for the evaluation.¹⁰
9. On [REDACTED] [REDACTED], the advocate emailed the DCPS case manager and agreed to the [REDACTED] conducting the occupational therapy assessment and then convening an IEP meeting.¹¹
10. On [REDACTED] [REDACTED], the case manager received correspondence from the advocate stating that an IEP meeting will be held once the occupational therapy evaluation is completed.¹²
11. On [REDACTED] [REDACTED], the DCPS case manager phoned the [REDACTED] to inquire about the status of the occupational therapy evaluation.¹³
12. The DCPS case manager sent a letter of invitation to the advocate offering: [REDACTED] [REDACTED] [REDACTED] [REDACTED], and [REDACTED], as proposed dates to reconvene the IEP meeting.¹⁴
13. An IEP meeting took place on [REDACTED]. The [REDACTED] proposed a draft IEP that reflects 34.5 hours, instead of the 7.5 hours recommended by DCPS. DCPS decided to reconvene on [REDACTED] [REDACTED] to discuss placement and propose an appropriate IEP.¹⁵

⁸ See Quick Base Notes, dated [REDACTED]

⁹ See Quick Base Notes, dated [REDACTED]

¹⁰ See Quick Base IEE Letter, dated [REDACTED]

¹¹ See Quick Base Notes, dated [REDACTED]

¹² See Quick Base Notes, dated [REDACTED]

¹³ See Quick Base Notes, dated [REDACTED]

¹⁴ See Quick Base Notes, dated [REDACTED]

¹⁵ See Quick Base Notes, dated [REDACTED]

14. The advocate then made a request that a speech and language evaluation be conducted by the [REDACTED] at the [REDACTED], meeting, and DCPS agreed (the HOD did not order a speech language evaluation). On [REDACTED], an IEP meeting was reconvened. DCPS was presented with the speech and language evaluation at the meeting; however, DCPS was not prepared to discuss the speech and language evaluation because DCPS had not had the opportunity to review the evaluation prior to the meeting. Thus, DCPS recommended that the IEP meeting move forward, but that the parties reconvene to discuss the speech and language evaluation at a later date. The advocate was not in agreement with the suggestion that the meeting move forward, so the team dispersed.¹⁶
15. DCPS proposed to the advocate [REDACTED], as the date to complete the IEP and to discuss any and all evaluations. To date, DCPS has not received confirmation regarding this date from the advocate to reconvene and complete the IEP.¹⁷

CONCLUSIONS OF LAW AND REASONS

Under 20 U.S.C. §1415(i)(1)(A) and 34 C.F.R. §300.514(a), a decision made in a hearing based on the provision of FAPE is final, except where a party involved in the hearing appeals the decision. DCPS has not appealed the HOD at issue in this case, and therefore, must implement the HOD timely.

DCPS is out of compliance with the HOD, pursuant to §300.514(a), because:

- An occupational therapy assessment was not conducted by DCPS by [REDACTED];
- Related Services and Supplementary Aids were not in place at the start of the [REDACTED] school year;
- An IEP/MDT meeting was not convened before [REDACTED], to review and revise the student's IEP; and

¹⁶ Interview of DCPS OGC Attorney

¹⁷ Interview of DCPS case manager

- DCPS failed to recommend at the start of the school year a placement for the student.

CORRECTIVE ACTION

In order to become compliant, the State Complaint Office requests that the following actions be taken:

- ✓ 1) DCPS, in conjunction with the advocate, reconvene as soon as possible to implement the HOD;
- ✓ 2) DCPS, in conjunction with the advocate, review and revise the student's IEP to include all considerations outlined in the [REDACTED], HOD;
- ✓ 3) DCPS review any and all evaluations and assessments at the scheduled IEP/MDT meeting and discuss placement;
- ✓ 4) DCPS and the team consider whether the student suffered any educational deficits as a result of DCPS' delay in implementing the HOD, and determine whether or not the student needs compensatory education to make up for any such educational deficits;
- ✓ 5) If the student needs compensatory education, DCPS and the team develop a Compensatory Education Plan;
- ✓ 6) DCPS issue a notice of placement to an appropriate school where the revised IEP can be implemented;
- ✓ 7) DCPS provide the OSSE Monitoring Office with a copy of procedures used to implement HODs, once issued;
- 8) DCPS provide the OSSE Monitoring Office with a copy of the form circulated to parents or advocates to obtain independent evaluations; and
- 9) DCPS provide the OSSE Monitoring Office with a copy of procedures of how HODs are distributed to case managers.

Sincerely,



Tamera Lewis
Assistant Superintendent for Special Education
Office of the State Superintendent of Education

Date: [REDACTED]

cc: [REDACTED] District of Columbia Public Schools (DCPS)
[REDACTED], Office of the State Superintendent of
Education
[REDACTED] Office Of Special Education, DCPS
[REDACTED], Advocate
[REDACTED], Parents
