



Office of the State Superintendent of Education

DISTRICT OF COLUMBIA
MAYOR ADRIAN M. FENTY

July 20, 2010

District of Columbia Public Schools

Re: State Complaint #: 09-004
Student Name:
Date of Birth:

LETTER OF DECISION

PROCEDURAL BACKGROUND

The State Complaint Office for the Office of the State Superintendent of Education (OSSE) received a State Complaint from [REDACTED], hereinafter "the complainant," on [REDACTED], and an amended complaint on [REDACTED]. Both complaints are addressed in this Letter of Decision and allege violations in the special education program of [REDACTED], hereinafter "the student," while attending [REDACTED]. [REDACTED] is a charter school which has elected the District of Columbia Public Schools (DCPS) as its local education agency (LEA) for special education purposes.

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 C.F.R. Part 300), specifically failure to convene an Individualized Education Program (IEP) meeting to discuss a behavioral incident which occurred on [REDACTED]; failure to obtain parental consent with regard to disclosure of the student's personally identifiable information at another student's IEP meeting; and failure to properly consider the complainant's information regarding Attention Deficit Hyperactivity Disorder (ADHD) during a manifestation determination meeting.

The complainant also raised additional concerns regarding [REDACTED] and [REDACTED] incidents at [REDACTED]. OSSE will not be investigating these concerns as they do not allege a violation of Part B of the IDEA. Issues raised in the complaint that are not associated with special education requirements and were not investigated include: the failure of [REDACTED] to provide the complainant with an incident report on [REDACTED]; the complainant's disagreement with the student's first suspension of the school year, which was out-of-school suspension for six days after the [REDACTED] incident; the "excessive response" of school administrators in contacting the police after the [REDACTED] incident; the failure of [REDACTED] to contact the complainant prior to contacting the police on [REDACTED]; the physical detention of the student on [REDACTED]; and the

labeling of the student's behavior as "criminal" in a letter expelling the student from [REDACTED]

COMPLAINT ISSUES

In [REDACTED] state complaint, and as amended on [REDACTED], the complainant alleged that DCPS violated certain provisions of the IDEA. The allegations of noncompliance filed by the complainant and further clarified by a review of documents and in interviews, raised the following issues:

1. Whether [REDACTED]/DCPS failed to convene an IEP meeting after the request of the parent as required under 34 C.F.R. §300.324(b).
2. Whether the student's personally identifiable information was disclosed at another student's IEP meeting without the complainant's consent as required under 34 C.F.R. §300.622(a).
3. Whether [REDACTED]/DCPS failed to timely conduct a manifestation determination meeting and consider the complainant's information regarding ADHD as required under 34 C.F.R. §300.530(e).

INVESTIGATIVE PROCEDURE

[REDACTED]

BACKGROUND

The student was enrolled in [REDACTED] as an [REDACTED] grader for the [REDACTED] school year. The student's classified disabilities for special education services for the [REDACTED] school year were Learning Disability (LD) and Other Health Impaired (OHI).

ISSUE #1

Whether [REDACTED]/DCPS failed to convene an IEP meeting after the request of the parent as required under 34 C.F.R. §300.324(b).

FINDING OF FACTS

1. On or about [REDACTED], the student was involved in a physical altercation with another student at [REDACTED].
2. On [REDACTED], the student was suspended from [REDACTED] for six (6) school days related to the physical altercation.
3. [REDACTED] did not conduct a manifestation determination regarding the student's behavior and the physical altercation.

4. The complainant asserts that [REDACTED] asked for an IEP meeting to discuss the outcome of the [REDACTED] incident.
5. [REDACTED] asserts that the complainant did not ask for an IEP meeting following the [REDACTED] incident.
6. There is no written documentation from the complainant requesting an IEP meeting to discuss the outcome of the [REDACTED] incident.

DISCUSSION/CONCLUSION

DCPS is not out of compliance with the provisions of IDEA at 34 C.F.R. §300.324(b)

On or about [REDACTED], the student and another student were involved in a physical altercation. As a result of the physical altercation, the student was suspended for six (6) school days.

Pursuant to IDEA, 34 C.F.R. §300.324(b), each public agency must ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general curriculum, if appropriate; the results of any reevaluation conducted under §300.303; information about the child provided to, or by, the parents, as described under §300.305(a)(2); the child's anticipated needs; or other matters. Pursuant to IDEA, 34 C.F.R. §300.530(e), the parent, and relevant members of the child's IEP team must review all relevant information in the student's file, including the student's IEP, any other teacher observations and any relevant information provided, within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of a student code of conduct. A disciplinary change of placement is defined as a removal for more than ten (10) consecutive school days; or the child has been subjected to a series of removals in a school year. (34 C.F.R. §300.536(a)) In this case, the disciplinary removal was for six (6) school days and it was the first disciplinary removal in the school year. Therefore, a disciplinary change of placement did not occur. Although an LEA should convene an IEP meeting, at any time, when requested by a parent, there is no written documentation that the parent requested an IEP meeting to discuss the [REDACTED] incident.

ISSUE #2

Whether the student's personally identifiable information was disclosed at another student's IEP meeting without the complainant's consent as required under 34 C.F.R. §300.622(a).

FINDING OF FACTS

1. The student is a child with a disability as defined by 34 C.F.R. §300.8 and entitled to all of the rights and protections provided by the IDEA.
2. During the course of the incident prompting the complaint, an IEP meeting for another student of [REDACTED] was held regarding the [REDACTED] incident.
3. During the course of the other student's IEP meeting, a teacher assistant (TA) mentioned the student's name and other confidential information regarding the student. Specifically the TA stated that the student (whose IEP meeting was being held) and the student (subject of this state complaint) should not be around each other in school because both students influence each other badly.
4. Participants at the IEP Team meeting for the other student included persons other than school personnel.

DISCUSSION/CONCLUSION

DCPS is out of compliance with provisions of the IDEA at 34 C.F.R. §300.622(a)

The TA, while at another student's IEP meeting, mentioned the student's name without the parent's consent. The TA stated that the student and another student should not be around each other in school because both students influence each other badly.

Pursuant to IDEA, 34 C.F.R. §300.622(a), parental consent must be obtained before personally identifiable information is disclosed to unauthorized individuals, unless the disclosure is authorized without parental consent under 34 C.F.R. §99. The definition of 'personally identifiable' includes information that contains the name of the child, the child's parent, or other family member. (34 C.F.R. §300.32) Therefore, DCPS is out of compliance because information containing the student's name was mentioned at another student's IEP meeting without the complainant's consent and the disclosure was not otherwise authorized under the IDEA.

ISSUE #3

Whether [REDACTED]/DCPS failed to timely conduct a manifestation determination meeting and consider the complainant's information regarding ADHD as required under 34 C.F.R. §300.530(e).

FINDING OF FACTS

1. On [REDACTED], the student was suspended from [REDACTED] for six (6) school days related to a physical altercation.
2. On or about [REDACTED], the last day of the school year, the student was accused of vandalizing a classroom. The student was alleged to have written curse words on the wall and lockers and in the classroom. Within the classroom, tables were overturned and books were pushed onto the floor.
3. After the act of vandalism, an administrator called law enforcement officers with the intent to press charges against the person(s) responsible for the vandalism. When law enforcement officers arrived, they issued a citation to the student and other students alleged to be involved in the vandalism.
4. On [REDACTED], [REDACTED] held a manifestation determination meeting to determine whether the student's vandalism was a manifestation of [REDACTED] disability.
5. [REDACTED] convened the manifestation determination meeting for the purpose of determining if the student could return to [REDACTED] for the [REDACTED] school year.
6. At the manifestation determination meeting [REDACTED] did not propose any additional days of suspension for the student.
7. At the manifestation determination meeting, [REDACTED] did not propose any changes to the special education and related services to be provided to the student.
8. The last day of school for the [REDACTED] regular school year for DCPS was [REDACTED].
9. The first day of the DCPS summer school session for students with and without disabilities started [REDACTED].
10. At the time of the [REDACTED] incident, the complainant was seeking to enroll the student in a research study for ADHD at the University of Maryland, Department of Psychology. The complainant provided the IEP team a letter acknowledging that [REDACTED] was

seeking to enroll the student in a treatment study at the University of Maryland's Department of Psychology for ADHD.

11. The parent participated in the [REDACTED] manifestation determination review.
12. The meeting notes reveal that the IEP team took into consideration the student's diagnosis of ADHD.
13. At the [REDACTED] manifestation meeting, the IEP team, except for the parent, agreed that the misconduct was not a manifestation of the students' disability.
14. On [REDACTED], the complainant received a letter explaining that the student would not be permitted to enroll in [REDACTED] for the [REDACTED] school year.
15. The student was referred to [REDACTED] DCPS neighborhood school.

DISCUSSION/CONCLUSION

DCPS is not out of compliance with provisions of IDEA at 34 C.F.R. §300.530(e)

Pursuant to IDEA, 34 C.F.R. §300.530(e), the LEA and relevant members of the student's IEP team, within ten (10) school days of any decision to change placement of a student with a disability because of a violation of a school code, must review all relevant information in the student's file; to include any teacher observations, and any relevant information provided by the parent. The IEP Team did consider the student's diagnosis of ADHD at the manifestation meeting. DCPS is in compliance with considering relevant information at the manifestation determination meeting.

DCPS did fail to conduct the manifestation determination within ten (10) school days. A school day is defined as any day or partial day that students are in attendance at the school for instructional purposes; school day has the same meaning for all students in school, including students with and without disabilities. (34 C.F.R. §300.11(c)(1) and (2)) In this case, the last day of school was [REDACTED]; the first day of the summer school session for students with and without disabilities started [REDACTED]; the manifestation meeting did not occur until [REDACTED], which is outside of the required time period of ten (10) school days. However, a manifestation determination meeting is required when an LEA is proposing a disciplinary change in placement if the removal is for more than 10 consecutive school days; or the child has been subjected to a series of removals that constitute a pattern. (34 CFR §300.536(a)) In this case, the student was not removed for more than 10 consecutive school days. Nor did [REDACTED] propose a change in the student's special education or related services. Therefore, DCPS is not out of compliance with 34 CFR §300.530(e) because although [REDACTED] held the manifestation determination meeting beyond the required timeline, a manifestation determination meeting was not required because a disciplinary change of placement did not occur based on the [REDACTED] incident.

CORRECTIVE ACTION

In order to become compliant, OSSE requires DCPS to ensure that the following actions be taken:

1. Within sixty (60) calendar days of the date of this letter, DCPS must develop and conduct a training for DCPS schools, including district charter schools, specifically [REDACTED], regarding the disclosure of personally identifiable information to unauthorized individuals. Documentation of the content and attendance of the training session must be forwarded to OSSE by [REDACTED].

2. Within five (5) business days of the date of this letter, DCPS must redact any mention of the student's (subject of this state complaint) name in the other student's (as described in Issue #2) file, should it exist.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tamera J. Lewis', with a long horizontal flourish extending to the right.

Tamera J. Lewis
Assistant Superintendent of Special Education

cc: Parent
Neela Rathinasamy, DCPS
