



Office of the State Superintendent of Education

DISTRICT OF COLUMBIA  
MAYOR ADRIAN M. FENTY

September 10, 2010

[REDACTED]  
[REDACTED]  
District of Columbia Public Schools  
[REDACTED]  
[REDACTED]

RE: State Complaint # 009-13  
Student Name:  
Date of Birth

**LETTER OF DECISION**

**Procedural Background**

The Office of the State Superintendent of Education (OSSE) received a State Complaint on [REDACTED] from [REDACTED], hereinafter "complainant." The complainant alleged that the District of Columbia Public Schools (DCPS) violated the Individual with Disabilities Education Act (IDEA: 20 U.S.C. §1400 et seq; 34 CFR Part 300) by not including the related service of transportation in [REDACTED] hereinafter "student," [REDACTED] Individualized Education Program (IEP).

The complainant and DCPS agreed to extend the time limit for the issuance of the written decision to engage in mediation. On [REDACTED], the mediator informed OSSE that the mediation was unsuccessful, and the timeline for the issuance of the decision began again on [REDACTED]. (34 CFR §300.152(b))

Pursuant to 34 CFR §300.153(c), a State Complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. The complainant requested a waiver of the time limit because [REDACTED] was not previously informed of the right of her child to receive transportation services at public expense. OSSE declines to waive the time limit consistent with the discussion in the IDEA regulations: "We do not believe it is appropriate to change the timeline to begin when a parent first learns about the violation... because such a provision could lead to some complaints being filed well beyond one year from the time the violation actually occurred. This also would make the issue of the complaint so stale that the SEA would not be able to reasonably resolve the complaint and recommend an appropriate corrective action." (Federal Register / Vol. 71, No. 156 / Monday, August 14, 2006 / Rules and Regulations, Pg. 46606)

The complaint was received on [REDACTED]. Therefore, this Letter of Decision addresses the allegation regarding transportation from [REDACTED] to the date the service was provided in January [REDACTED]

This Letter of Decision is the report of the final results of OSSE's investigation.

### **Complaint Issue**

The allegation raised in the complaint, and further clarified by a review of documents and interviews, raised the following issue under the jurisdiction of the OSSE, State Complaint Office:

Did DCPS follow required procedures, apply required standards and reach a determination that is reasonably supported by the student-specific data in the determination in the [REDACTED] IEP that transportation was not required in order for the student to benefit from special education?

### **Investigative Procedure**

1. Interviewed Parent/Complainant
2. Interviewed [REDACTED] Special Education Coordinator
3. Reviewed student's [REDACTED] and [REDACTED] IEPs and related documentation
4. Reviewed documentation regarding the student in SEDs

### **Findings of Fact**

1. Student is a [REDACTED] student with disabilities identified as having a specific learning disability and receiving special education at [REDACTED], a school within DCPS.
2. The student has attended a DCPS middle school since September [REDACTED]. [REDACTED] is not the student's neighborhood school and [REDACTED] uses the metro for transportation.
3. Student's present levels of educational performance and annual goals for the [REDACTED] and the [REDACTED] IEPs were in the area of academics for mathematics, reading and written expression.
4. Student's [REDACTED] IEP includes a statement that, "Student does not require special transportation services."
5. The student's IEP Team did not discuss whether student required transportation at the [REDACTED] IEP meeting.
6. The transportation section of the [REDACTED] IEP was unilaterally revised by DCPS to indicate no transportation was necessary because DCPS assumed that, from lack of discussion at the IEP meeting, the current transportation arrangement (metro travel without reimbursement) was adequate.
7. The complainant participated in the development of the [REDACTED] by telephone. The complainant was provided a copy of the IEP form, including the page for transportation services, in advance of the meeting.
8. Complainant did not raise a concern with regard to transportation services before or at the [REDACTED] IEP meeting.
9. The complainant signed the [REDACTED] IEP and indicated that [REDACTED] received a copy of the procedural safeguards and parent rights pertaining to special education.
10. The complainant participated in the development of student's [REDACTED] IEP and requested transportation services.
11. The [REDACTED] IEP includes a statement that, "student requires transportation services." The designated mode of transportation is "Metro" to commence on [REDACTED].



12. The reasons for the inclusion of transportation in the [REDACTED] IEP were due to the parent requesting the service and the commencement of a new school year.
13. The District of Columbia Student Ten trip fare card for June [REDACTED] through January [REDACTED] was \$8.80 a week with a cost of \$35.20 a month.
14. Complainant provided transportation at private expense for student to attend school from [REDACTED] through [REDACTED]. Complainant's private expense for this time period was \$26.00 a month.
15. The last day of school for the [REDACTED] school year was [REDACTED] and the first day of school for the [REDACTED] school year was [REDACTED]. There were eight school days from [REDACTED]; eight school days in [REDACTED]; ten school days in the month of December [REDACTED] and twelve school days in January [REDACTED] prior to the commencement of the transportation service.
16. Student did not receive extended school year services in the [REDACTED] school year.

#### Discussion/Conclusion

In resolving a complaint challenging the appropriateness of a public agency's determination, the State Education Agency is required to determine whether the public agency has followed the required procedures to reach that determination and, even if compliance with procedures is found, whether the public agency has reached a decision that is consistent with Part B requirements in light of the individual child's abilities and needs. "The SEA may likely find that the public agency has complied with Part B requirements if the agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the student-specific data." (34 IDELR 264 (OSEP 2000)) In this case, it is uncontested that the student's parent was a member of the student's IEP Team and participated in the development of both the [REDACTED] and [REDACTED] IEPs. (34 CFR §§300.321(a)(1) and 300.322)

It is also uncontested that neither the parent nor any other member of the student's IEP Team raised a functional need or other concern regarding the transportation of the student before or at the [REDACTED] IEP meeting and the student-specific data available to the IEP Team did not raise any such concern. (34 CFR 324(a))

The student's parent was provided a copy of the IEP form that included the page on transportation in advance of the [REDACTED] IEP meeting. Therefore, even though the IEP Team did not specifically discuss transportation at the meeting, it can be concluded that the parent was on notice that transportation was an area for consideration and determination.

Notwithstanding these facts, the required threshold issue is whether DCPS followed all required procedures in the development of the [REDACTED] IEP. Pursuant to 34 CFR §§300.320 and 300.324, an IEP must be developed, reviewed, and revised in a meeting in accordance with 34 CFR §§300.320 through 300.324. The determination of whether transportation was required to assist the student to benefit from special education was required to be made by the IEP Team during the IEP meeting. (34 CFR §300.34) DCPS' unilateral determination that transportation was not required to assist the student and its revision of the [REDACTED] IEP in that regard was impermissible and denied the parent meaningful participation in the decision making process in violation of 34 CFR §300.322.

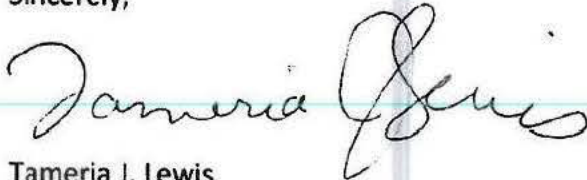
Therefore, DCPS is out of compliance with 34 CFR §§300.320 – 300.222 and 300.324.

**Corrective Action**

Within 30 days of the date of this letter, DCPS must reimburse the parent for the cost of the metro transportation for this time period in the amount of \$148.40. (In the absence of receipts for out-of-pocket costs, this amount represents the number of school weeks in the partial attendance months of June [REDACTED] August [REDACTED] December [REDACTED] and January [REDACTED] at the cost of a weekly fare card and the reported out-of-pocket expense of \$26.00 a month for September through November [REDACTED]

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

Sincerely,

A handwritten signature in black ink, appearing to read "Tamera J. Lewis".

Tamera J. Lewis  
Assistant Superintendent of Special Education

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