



Office of the State Superintendent of Education

DISTRICT OF COLUMBIA  
MAYOR ADRIAN M. FENTY

July 27, 2010

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

RE: State Complaint # 009-14

Student Name

Date of Birth

### LETTER OF DECISION

#### Procedural Background

The Office of the State Superintendent of Education (OSSE) received a State Complaint from hereinafter "complainant," that met the requirements of the Individuals with Disabilities Education Act (IDEA: 20 U.S.C. §1400 et seq; 34 CFR Part 300; 34 CFR §300.153) on [REDACTED]. The complaint alleged violations in the special education program at [REDACTED], regarding hereinafter "student." The complainant filed a previous complaint on [REDACTED] that did not meet the requirements of 34 CFR §300.153 in that the complaint was unsigned. The complainant was notified on [REDACTED], that the complaint would not be investigated and must be re-filed with the complainant's signature. The re-filed sufficient complaint was signed by the complainant on [REDACTED]; however, it was not filed until [REDACTED].

The [REDACTED] complaint alleged that the District of Columbia Public Schools (DCPS) failed to fulfill its responsibility with regard to the student; specifically the parent was not afforded the opportunity to participate in the student's annual Individualized Education Program (IEP) meeting; the meeting to discuss the student's reevaluation results, or the meeting to determine the student's continued eligibility. In addition, the complaint alleged the student was not receiving appropriate special education and related services, including an appropriate behavior intervention plan and the parent was not provided a copy of the student's IEP and the opportunity to examine the student's educational records.

The complainant also alleged violations that occurred outside of the jurisdiction of the OSSE to investigate because they had occurred more than a year prior to the date of the receipt of the complaint. Pursuant to 34 CFR §300.151(c), OSSE has authority to investigate complaints that have been filed not more than one year after the date on which the alleged violation(s) have occurred.

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 OSSE, State Complaint Office for the period of [REDACTED] to [REDACTED]:

1. Whether DCPS provided the complainant the opportunity to participate in the student's last annual IEP meeting as required by 34 CFR §300.322(a).
2. Whether the complainant was given the opportunity to discuss the student's reevaluation results as required by 34 CFR §300.501(b)(1).
3. Whether the complainant was given the opportunity to discuss the student's continued eligibility as required by 34 CFR §300.306(a) and §300.501(b)(1).
4. Whether the complainant received a complete copy of the student's current IEP as required by 34 CFR §300.322(f).
5. Whether an appropriate behavior intervention plan (BIP) was developed for the student as required by 34 CFR §300.324(a)(2)(i).
6. Whether the student was receiving appropriate special education and related services as required by 34 CFR §300.101.
7. Whether DCPS provided student records to the complainant as required by 34 CFR §300.501(a).

### **Investigative Procedure**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **Findings of Fact**

1. The student has been identified as a student with disabilities with the identified disability of specific learning disabilities.
2. The prior written notice for the identification of the student is dated [REDACTED].
3. The student is a seventh grade student.
4. The student's current IEP is dated [REDACTED].
5. There is no evidence that the complainant is not a parent of the student as defined under 34 CFR §300.30.
6. The complainant did not attend the [REDACTED] IEP Team meeting ("March [REDACTED] IEP Team meeting").
7. The student's father may have participated in the March [REDACTED] IEP Team meeting and eligibility determination.
8. The complainant was not notified of the March [REDACTED] IEP Team meeting early enough to ensure that she had the opportunity to attend.
9. The complainant was not notified of the March [REDACTED] IEP Team meeting to discuss the student's evaluation results or the continued eligibility of the student as a student with disabilities.
10. In November [REDACTED] the complainant requested a copy of the student's IEP and was not provided a complete IEP.



11. Prior to January [REDACTED] the complainant requested the student's school records and was not provided a copy.
12. In November [REDACTED] the complainant was told that she would have to go to DCPS headquarters to receive a full copy of her child's IEP.
13. In November [REDACTED] the complainant met with the student's Multidisciplinary Team and comments were made regarding the student's behavior.
14. The student's [REDACTED] IEP does not identify behavior as an area of concern and there is no documentation in the IEP that the IEP Team considered whether the student's behavior impacts the student's learning or the learning of others. There is no other available documentation that the IEP Team considered the special factor of behavior.

## **Discussion/Conclusion**

### **Parental Participation Generally**

It is undisputed that the complainant is the parent of the student as defined in 34 CFR §300.30 and that DCPS was aware of the complainant's desire to actively participate in decision-making regarding her [REDACTED] educational program. Although the student's father may have participated in the IEP meeting and eligibility determination, the complainant retained her right under the IDEA to participate in educational decision making for her [REDACTED] (54 IDELR 60 (OSEP, 2009))

### **DCPS is out of compliance with the provisions of IDEA at 34 CFR §300.322(a).**

The IDEA regulations at 34 CFR §300.322(a) require that each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including (1) notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) scheduling the meeting at a mutually agreed on time and place. In this case, the complainant was not notified of the IEP meeting early enough to ensure that she had the opportunity to attend and the complainant did not attend the IEP meeting. Therefore, DCPS violated the requirements of 34 CFR §300.322(a) by denying the complainant her right to be present at the student's March [REDACTED] IEP meeting and have the opportunity to participate.

### **DCPS is out of compliance with the provisions of IDEA at 34 CFR §300.501(b)(1).**

The IDEA regulations at 34 CFR §300.501(b)(1) require that the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to (i) the identification, evaluation, and educational placement of the child; and (ii) the provision of free appropriate public education (FAPE) to the child. In this case, the complainant was not notified of the meeting to discuss the student's evaluation results and did not attend the meeting. Therefore, DCPS violated the requirements of 34 CFR §300.501(b)(1) by denying the complainant her right to be present at the March [REDACTED] IEP Team meeting and have the opportunity to participate in the discussion of her [REDACTED] evaluation results.

### **DCPS is out of compliance with the provisions of IDEA at 34 CFR §300.306(a) and §300.501(b)(1).**

The IDEA regulations at 34 CFR §300.306(a) require that upon completion of the administration of assessments and other evaluation measures (1) a group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; and (2) the public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. An eligibility determination



meeting for the student was conducted prior to [REDACTED]. The complainant was not notified of the meeting to discuss the student's continued eligibility under the IDEA and did not attend the meeting. Therefore, DCPS violated the requirements of 34 CFR §300.306(a) and §300.501(b)(1) by denying the complainant her right to be present at the March [REDACTED] IEP Team meeting to determine the eligibility and have the opportunity to participate in the eligibility determination.

**DCPS is out of compliance with the provisions of IDEA at 34 CFR §300.322(f).**

The IDEA regulations at 34 CFR §300.322(f) require that the public agency must give a parent a copy of the child's IEP at no cost to the parent. In November [REDACTED] the complainant requested a copy of the student's IEP and was not provided a complete IEP. Therefore, DCPS violated the requirements of 34 CFR §300.322(f) by denying the complainant her right to receive a copy of the student's IEP.

**DCPS is out of compliance with the provisions of IDEA at 34 CFR §300.324(a)(2).**

The IDEA regulations at 34 CFR §300.324(a)(2)(i) require that the IEP Team must, in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies to address that behavior. Although behavioral concerns were discussed at the November [REDACTED] Multidisciplinary Team meeting with the complainant, there was insufficient evidence to determine that the student's behavior impeded [REDACTED] learning or the learning of others. However, because the complainant raised concerns in November [REDACTED] regarding the student's behavior and was denied the opportunity to participate in the IEP Team meeting in order to raise these concerns, DCPS violated the requirements of 34 CFR §300.324(a)(2) by failing to consider the concerns of the complainant for enhancing the education of her child in accordance with 34 CFR §300.324(a)(2).

**DCPS is out of compliance with the provisions of IDEA at 34 CFR §300.101.**

The IDEA regulations at 34 CFR §300.101 require that a free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school. Fundamental to the provision of a free appropriate public education is the requirement that parents of a student with disabilities are members of the IEP Team and must be afforded the opportunity to participate in educational decisions regarding their child. (34 C.F.R. §§300.321 and 300.322) As described above, DCPS failed to provide the complainant an opportunity to participate in the student's March [REDACTED] IEP meeting. This failure to comply with the procedures set forth in the IDEA significantly impeded the parent's opportunity to participate in the decision-making process and, as such, denied the student a free appropriate public education. (Board of Education of the Hendrick Hudson Central School District v. Rowley, 102 S.Ct. 3034; 458 U.S. 176 (U.S. 1982))

**DCPS is out of compliance with the provisions of IDEA at 34 CFR §300.501(a).**

The IDEA regulations at 34 CFR §300.501(a) require that the parents of a child with a disability must be afforded, in accordance with the procedures in §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to (1) the identification, evaluation, and educational placement of the child; and (2) the provision of FAPE to the child. In this case, prior to January [REDACTED] the complainant requested the student's school records and was not provided a copy or otherwise provided an opportunity to inspect and review the records. Therefore, DCPS violated the requirements of 34 CFR §300.501 to provide the complainant an opportunity to inspect and review all education records of the child in accordance with the procedures in 34 CFR §§300.613 through 300.621.

### Corrective Action

Based on the above determinations of noncompliance, DCPS is required to:

1. On or before [REDACTED], provide the student's parents an opportunity to meet and discuss the evaluation results for the student and to participate in a determination of the student's continued eligibility as a student with disabilities. The opportunity to participate must comply with the requirements of 34 CFR §300.322, including timely notification.
2. On or before [REDACTED], schedule an IEP meeting with the student's parents at a mutually agreed on time and place to discuss (a) matters raised at the March [REDACTED] IEP meeting, (b) the parent's concerns with the student's behavior, and (c) any other concerns of the parent. The notification to the parents must comply with the requirements of 34 CFR §300.322, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend. The student must also be invited to attend the IEP meeting, if appropriate. (Assuming the requirements of the IDEA are met, the meetings required under Corrective Action #1 and #2 may be combined at the discretion of the IEP Team members, including the parents.)
3. Within ten (10) business days and before the IEP meeting, provide the complainant a copy of the student's current IEP and provide the complainant an opportunity to inspect and review any education records relating to her [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,



Tamera J. Lewis  
Assistant Superintendent of Special Education

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