



December 30, 2010

[REDACTED]
District of Columbia Public Schools
[REDACTED]

Re: State Complaint: #010-005

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] alleging violations in the special education program of [REDACTED] [REDACTED] (Student ID # [REDACTED] hereinafter “student,” while attending [REDACTED] Educational Campus at [REDACTED] ([REDACTED] EC), 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, improperly removing the student from [REDACTED] current placement; failure to provide educational services upon the student’s removal for more than 10 days from the current placement; failure to provide the parent with an opportunity to determine, along with the Local Educational Agency (LEA), the relevant members of the Individualized Education Program (IEP) Team for a manifestation determination; failure to properly determine whether the conduct that prompted the suspension was caused by or had a direct and substantial relationship to, the child’s disability, or was the direct result of the LEA’s failure to implement the IEP; failure to ensure that one or both parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, specifically scheduling the meeting at a mutually agreed on time and place; and, failure to permit a parent or representative of a parent to inspect and review any education records relating to their children that are collected, maintained, or used by the agency without unnecessary delay.

The complainant also raised concerns regarding violations of 5 DCMR §§B2504 and B2505, as well as an allegation that DCPS fraudulently amended a document that was used in a manifestation determination.

OSSE will not be investigating these concerns as they do not allege a violation of Part B of the IDEA or the District of Columbia Municipal Regulations promulgated by OSSE.

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

1. Whether DCPS improperly removed the student from [REDACTED] current placement, as prohibited by 34 CFR §300.530(b)?
2. Whether DCPS failed to provide educational services upon the student's removal for more than 10 consecutive days from the current placement, as required by 34 CFR §300.530(d)?
3. Whether DCPS failed to provide the parent with an opportunity to determine along with the LEA, the relevant members of the IEP Team for a manifestation determination, as required by 34 CFR §300.530(e)?
4. Whether DCPS failed to properly determine if the conduct that prompted the suspension was caused by or had a direct and substantial relationship to, the child's disability, or was the direct result of the LEA's failure to implement the IEP, as required by 34 CFR §300.530(e)?
5. Whether DCPS failed 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, specifically scheduling the meeting at a mutually agreed on time and place, as required by 34 CFR §300.322(a)(2)?
6. Whether DCPS failed to permit a parent or representative of a parent to inspect and review any education records relating to their children that are collected, maintained, or used by the agency without unnecessary delay, as required by 34 CFR §300.613?

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Parent
2. [REDACTED] EC [REDACTED]
3. [REDACTED] EC [REDACTED]
4. [REDACTED] EC [REDACTED]
5. [REDACTED] EC [REDACTED]
6. [REDACTED] EC [REDACTED]

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

[REDACTED]

[REDACTED]

OSSE notes that DCPS was unable to provide a letter of invitation to the parent for the [REDACTED] Manifestation Determination Meeting.

FINDINGS OF FACT

General Findings

1. The student is a child with a disability as defined by 34 CFR §300.8.
2. The student’s disability category is specific learning disability.
3. The student was born on [REDACTED] and was [REDACTED] years of age when the conduct at issue in this investigation occurred.
4. The student attended [REDACTED] Educational Campus at [REDACTED] ([REDACTED] EC) during the [REDACTED] school year.
5. The student was found eligible for special education services and an initial IEP went into effect on [REDACTED].
6. On [REDACTED], the student was accused of sexual misconduct.
7. On [REDACTED], the [REDACTED] EC principal recommended that the student be expelled.
8. On the afternoon of [REDACTED], the principal informed the parent by phone that the student could not return to school pending the hearing to review the suspension before the Instructional Superintendent.

9. The student's suspension effectively began on [REDACTED] when the [REDACTED] EC principal submitted the Suspension/Expulsion Form to the Instructional Superintendent for approval and gave the student written notice of the suspension and recommendation to expel the student.
10. On [REDACTED], the DCPS Instructional Superintendent for Cluster III suspended the student for the remainder of the school year.
11. The student did not attend school from [REDACTED].
12. The student missed a total of nineteen (19) consecutive school days as a result of the suspension.

Removal from Current Placement

13. When the parent brought the student to school on the morning of [REDACTED], the [REDACTED] EC principal told the parent that the student could not attend school that day unless the student was kept isolated from the rest of the student body.
14. On [REDACTED], the student attended school but was kept isolated from the student body, outside of the general education setting.
15. On [REDACTED], the principal gave the student a copy of the DCPS Suspension/Expulsion Form which proposed that the student be expelled.
16. The [REDACTED] stated that the parent was provided with a copy of the procedural safeguards along with a copy of the DCPS Suspension/Expulsion Form on [REDACTED].
17. The parent reported that [REDACTED] did not receive a copy of the procedural safeguards available to [REDACTED] with the DCPS Suspension/Expulsion Form.
18. On the afternoon of [REDACTED], the principal informed the parent by phone that the student could not return to school pending the hearing to review the suspension before the Instructional Superintendent.
19. At the [REDACTED] manifestation determination meeting, the principal informed the parent that the student's suspension would continue through the end of the school year.
20. The DCPS Suspension/Expulsion Form dated [REDACTED] indicated that the student was not removed for emergency conditions in the school.
21. The [REDACTED] reported that the student's safety was in jeopardy because [REDACTED] told other students about [REDACTED] conduct and the other students threatened [REDACTED].

Provision of Special Education Services

22. The [REDACTED] IEP provided for "15 hours per *day*" (emphasis added) of specialized instruction delivered in the general education environment.
23. OSSE determined that there was a typographical error on the [REDACTED] IEP and the intent was to provide for 15 hours per *week* of specialized instruction delivered in the general education environment.
24. The [REDACTED] Manifestation Determination Meeting Notes indicated that the student would be provided with work packets "to continue [REDACTED] specialized services."
25. The principal and [REDACTED] stated that it was part of the school's regular practice to supply students who missed school for prolonged periods of time with work packets.
26. The parent and principal agreed at the conclusion of the manifestation determination that the parent would pick up and drop off work packets for the student on a weekly basis during the suspension.

27. The parent reported that despite efforts to pick up weekly work packets, the work packets were frequently late or not available at all.
28. The [REDACTED] EC Packet Pick-Up Sign-In Sheet shows that one packet was picked up for the student on [REDACTED].
29. The [REDACTED] stated that giving the student a functional behavioral assessment was not discussed at the manifestation determination meeting.
30. The student did not receive a functional behavioral assessment at any time after the suspension.
31. At the [REDACTED] Instructional Superintendent Hearing, DCPS offered to place the student at CHOICE Academy through the end of the school year.
32. The parent declined the placement at CHOICE Academy and opted to continue to receive work packets for the student.
33. The [REDACTED] stated that work packets were provided to the student for the full term of the suspension despite her understanding that once the parent declined an alternative placement at CHOICE Academy, the school was no longer required to provide work packets or any sort of specialized instruction.

Determination of the Relevant Members of the IEP Team

34. The [REDACTED] stated that the parent was issued a letter of invitation to the manifestation determination which explained the purpose of the meeting.
35. DCPS was unable to produce a copy of a letter of invitation to the manifestation determination meeting and no such letter exists in the Special Education Data System (SEDS).
36. The [REDACTED] reported that she did not have prior notice of the manifestation determination meeting, she did not issue a letter of invitation of the meeting to the parent and she was called into the manifestation determination meeting after it had already begun.

Determination of Conduct as a Manifestation of Disability

37. The student was one of three students accused of participating in the misconduct that formed the basis for the suspension.
38. All parties agree that to the extent the student participated in the misconduct, [REDACTED] was either following the example of or being forced to participate by another student.
39. The [REDACTED] Social Work Assessment Report recommended community-based counseling for the student.
40. The [REDACTED] Evaluation Summary Report indicated that the student had previously been enrolled at the [REDACTED] School in Maryland for behavior concerns but that the student's current teacher did not report any behavior problems.
41. The [REDACTED] Evaluation Summary Report indicated in the description of behavioral concerns that the student "copies and follows what classmates do in order to [sic] be accepted and to gain attention."
42. The [REDACTED] Evaluation Summary Report concluded that the student demonstrated academic weaknesses but did not display concerns in emotional, social or behavioral development.
43. The [REDACTED] New Eligibility Determination Form indicated that the student did not exhibit any behaviors relevant to the disability.
44. The [REDACTED] IEP does not list any behavioral goals or services.

45. The [REDACTED] reported that the student had a difficult time getting along with [REDACTED] peers, did a lot of things to fit in and followed [REDACTED] peers.
46. The [REDACTED] reported that the student frequently added false details or made up stories in order to impress [REDACTED] peers.
47. The [REDACTED] reported that she was not present at the manifestation determination meeting, nor was she asked to provide input on the student's behavior or disability at any time following the incident.
48. The [REDACTED] reported that the student had prior behavior concerns which included trouble adjusting to the school and difficulty fitting in with [REDACTED] peers, but that the student did not have a behavior problem and there were no current concerns about the student's behavior.
49. The [REDACTED] services reported that there were ongoing concerns about the student's behavior and the student had been involved in both physical and verbal fights with other students.
50. The [REDACTED] DCPS Discipline Referral Form shows that the student received an "informal" one-day suspension for fighting another student.
51. The IEP Team for the [REDACTED] IEP Meeting included the parent, two regular education teachers, the special education coordinator, a psychologist, two social workers and the school counselor.
52. The student, mother, special education coordinator, principal and dean of students signed on the attendance sheet for the [REDACTED] Manifestation Determination Meeting.
53. The parent and [REDACTED] both stated that the focus of the manifestation determination meeting was on the alleged conduct and not on the content of the student's IEP or the relevance of the student's disability.
54. The [REDACTED] Manifestation Determination Meeting Notes do not include any evidence of the process or reasoning used to conclude that the conduct in question was not a manifestation of the student's disability.
55. The [REDACTED] reported that the special education coordinator reviewed the student's IEP at the manifestation determination meeting.
56. The special education coordinator did not recall reviewing the student's IEP at the manifestation determination meeting.
57. The [REDACTED] reported that the Team reviewed information provided by the parent at the manifestation determination meeting that the student was prone to lying.
58. The [REDACTED] reported that in order to determine if the student's conduct was a manifestation of [REDACTED] disability, the Team asked the student to answer the questions on the manifestation determination form, that is, whether the conduct was directly and substantially related to the student's disability, or whether the conduct was a direct result of failure to implement the student's IEP.
59. The [REDACTED] stated that the student's ability to answer the questions on the manifestation determination form demonstrated that the student knew that [REDACTED] could have chosen not to participate in the inappropriate conduct.
60. The [REDACTED] admitted that no discussion regarding the implementation of the student's IEP took place at the manifestation determination meeting.

Mutually Agreeable Time and Place for Meeting

61. The parent reported that the principal gave the student written notice of expulsion on [REDACTED] [REDACTED] which listed one possible meeting date for the manifestation determination.

62. The DCPS Suspension/Expulsion Form dated [REDACTED] indicated that the manifestation determination meeting had been scheduled for [REDACTED] at 10:00 a.m.
63. The manifestation determination meeting was held on [REDACTED] at an undetermined time.
64. The principal understood the requirement of a mutually agreeable time and place to mean that if the parent did not object to a single meeting time, it was mutually agreeable.

Review of Education Records

65. The principal and [REDACTED] both stated that they were the only staff members who were able to retrieve special education records.
66. The [REDACTED] stated that [REDACTED] EC's school policy requires parents to call in advance to request copies of records or schedule an appointment to review records.
67. The [REDACTED] stated that she is always able to accommodate a request for copies of records with 24-hours notice.
68. The principal indicated that any party, whether a parent or representative of a parent, is required to sign a receipt for copies of records.
69. On [REDACTED], the parent's attorney went to [REDACTED] EC to retrieve records related to the student's involvement in the incident for review prior to the Instructional Superintendent Hearing on [REDACTED].
70. The parent's attorney did not call ahead to schedule an appointment to review records or request copies.
71. The parent's attorney requested certain documents related to the incident and the student's education, some of which had been forwarded to the Instructional Superintendent and were no longer available at the school.
72. After some delay, the parent's attorney was provided with copies of some records pertaining to the incident, but was not provided with copies or access to inspect all documents which were later used by school staff at the Instructional Superintendent Hearing.

Accuracy of Data

73. The DCPS Attendance Summary shows that the student served a one-day suspension on [REDACTED].
74. There are no incident reports or discipline referral forms related to a suspension on [REDACTED].
75. The parent reported that [REDACTED] did not receive notice of a suspension on [REDACTED] and has no reason to believe that the student was suspended on [REDACTED].
76. The DCPS Suspension/Expulsion Form dated [REDACTED] that reported the [REDACTED] incident indicated that the student had not been previously suspended during the spring semester.
77. The DCPS Suspension/Expulsion Form indicated that the student did not have an IEP.
78. The DCPS Attendance Summary indicates that the student had unexcused absences on [REDACTED] and [REDACTED].
79. The DCPS Attendance Summary did not properly indicate the student's attendance from [REDACTED].
80. No attendance records for the student are available after [REDACTED].
81. The student was absent as a result of the suspension on [REDACTED] through [REDACTED].

DISCUSSION/CONCLUSION

DCPS is out of compliance with 34 CFR §300.530(b).

Pursuant to IDEA at 34 CFR §300.530(b), school personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except with respect to the provision of educational services. (34 CFR §300.530(c)) The IDEA at 34 CFR §300.530(h) requires that on the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents with notice of the procedural safeguards available to them. A change of placement occurs if the removal is for more than 10 consecutive school days. (34 CFR §300.536(a)(1))

The student's suspension from [REDACTED] through the end of the school year on [REDACTED] encompassed nineteen (19) consecutive school days. Under the IDEA, this constitutes a change of placement. When school personnel made the decision to suspend the student for more than ten (10) consecutive school days, DCPS was required to provide the parent with notice of the suspension and of the procedural safeguards available under the IDEA. Although the principal and parent agree that a copy of the DCPS Suspension/Expulsion Form was sent home with the student on [REDACTED], there is no evidence that the parent was provided with a copy of the procedural safeguards notice as required by 34 CFR §§300.530(h) and 300.504(a).

While OSSE declined to investigate the complainant's allegations regarding 5 DCMR §§B2504 and B2505, which are regulations that were promulgated by DCPS and not OSSE, DCPS averred in its response to the complaint that the student was removed pursuant to an emergency situation. Therefore, OSSE reviewed information regarding 5 DCMR §§B2504 and B2505 in order to determine whether there was any information relevant to removal for emergency situations under IDEA regulations, 34 CFR §300.530(b) & (g). The District of Columbia Municipal Regulations at 5 DCMR §B2504.4 state that a student may be suspended prior to a conference with the school official responsible for proposing the disciplinary action if the student is contributing to an emergency situation in a school. The [REDACTED] similarly reported in interviews with OSSE that the student's safety was in jeopardy following the incident. However, the DCPS Suspension/Expulsion Form that was completed by the principal on [REDACTED] indicates that the student was not removed for emergency conditions in the school. Based on the facts of this incident, OSSE concludes that the student's involvement in the incident did not rise to the level of an emergency defined in 34 CFR §300.530(g). There is no evidence that the conduct that formed the basis of the student's suspension created a general condition of emergency or that the student's behavior posed a real and immediate threat to the health and safety of other members of the school community or to the ability of the school to continue normal operations. Further, even if the student was removed pending a conference with a school official, at the point the suspension constituted a change in placement, DCPS was required to provide a copy of the procedural safeguards to the parent.

Therefore, DCPS is out of compliance with 34 CFR §§300.530(b) and 530(h) in that it removed the student from [REDACTED] current placement for more than ten (10) consecutive school days without providing proper notice of the disciplinary action and the procedural safeguards.

DCPS is out of compliance with 34 CFR §300.530(d).

Pursuant to IDEA at 34 CFR §300.530(d), a child with a disability who is removed from the child's current placement for a violation of the school code that is determined not to be a manifestation of the child's disability must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. Further, if the removal is a change of placement, the child's IEP Team determines what services are appropriate.

The IEP Team concluded at the manifestation determination meeting that the student's conduct was not a manifestation of the student's disability. Therefore, DCPS was obligated to continue to deliver educational services. As noted above, the student's suspension constituted a change of placement, therefore the IEP Team was required to determine what services were appropriate. The [REDACTED] IEP provided for 15 hours per week of specialized instruction delivered in the general education environment. Although the [REDACTED] Manifestation Determination Meeting Notes indicate that the student would receive work packets "to continue [REDACTED] specialized services," the principal and special education coordinator reported that it was the school's regular practice to supply such work packets to students who were absent for extended periods of time. Assuming, without concluding, that such work packets were sufficient substitutes for the fifteen (15) hours per week of specialized instruction listed on the student's IEP, there is no indication in the meeting notes that the IEP Team members who were present at the manifestation determination meeting either discussed or decided what would constitute appropriate services for the student during the term of the suspension. Rather, there is every indication that work packets were provided as part of the school's standard approach to students with extended absences, not as part of an individualized examination of the student's needs. In addition, even if work packets would have adequately provided the student with the specialized instruction outlined on the [REDACTED] IEP, DCPS was not able to document these packets were made available for the entire four-week suspension period.

Further, even comprehensive work packets made available and reviewed on a regular and timely basis do not constitute special education services. These work packets serve as substitute instruction for general education students, but special education students must receive the special education and related services that enable them to advance appropriately toward attaining the annual goals described on their IEP and to be involved in and make progress in the general education curriculum. (See 34 CFR §§300.320(a)(4) and 300.323(c)(2)) Where, as here, work packets are provided as part of a general practice of delivering instruction to *any* student who is absent from school for an extended period, they cannot be deemed to constitute specialized instruction.

The IEP Team was also obligated to consider whether a functional behavioral assessment (FBA) and behavioral intervention services and modifications were appropriate for the student. The [REDACTED] reported that the provision of an FBA for the student was not considered at the manifestation

determination meeting and the student did not receive an FBA at any time during or after the suspension. Whether the student should have actually received an FBA is irrelevant; that the IEP Team present at the manifestation determination did not even contemplate the administration of an FBA constitutes failure to determine necessary services.

At the Instructional Superintendent Hearing on [REDACTED], DCPS offered to educate the student at CHOICE Academy for the term of the suspension. The parent declined this offer. The principal understood that once the parent declined the alternative placement at CHOICE Academy, DCPS was no longer required to provide work packets or specialized instruction. As noted above, if a removal is a change of placement, the child's IEP Team determines what services are appropriate. (34 CFR §300.530(d)(5)) The identification of CHOICE Academy as an appropriate alternative placement was not made by the IEP Team; DCPS offered to send the child to CHOICE Academy. Therefore, the offer to educate the student at CHOICE Academy for the remainder of the suspension did not eliminate DCPS's obligation to provide educational services.

Therefore, DCPS is out of compliance with 34 CFR §300.530(d) for failing to provide educational services during the disciplinary removal.

DCPS is out of compliance with 34 CFR §300.530(e) with respect to the parent's opportunity to determine the relevant members of the IEP Team.

The IDEA at 34 CFR §300.530(e) states that within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the LEA's failure to implement the IEP.

Although the principal maintained that the parent was issued a formal letter of invitation explaining the purpose of the manifestation determination meeting, the parent denied that she received such a letter. DCPS could not produce a copy of a letter of invitation to the manifestation determination and there is no record in the Special Education Data System (SEDS) that such a letter was ever created or sent. The [REDACTED] stated that she was not aware of the manifestation determination meeting until she was called to attend after it had already begun. Except for the note on the date and time scheduled for the manifestation determination meeting on the DCPS Suspension/Expulsion Form, which was delivered without any mention of the procedural safeguards available to the parent, there is no evidence that DCPS communicated with the parent to determine the relevant members of the IEP Team to invite to the meeting, a protection described within the procedural safeguards. Without proper notice of the meeting itself, the parent could not have had an opportunity to determine, along with DCPS, the relevant members of the IEP Team.

Therefore, DCPS is out of compliance with 34 CFR §300.530(e) with respect to the parent's opportunity to determine the relevant members of the IEP Team.

DCPS is out of compliance with 34 CFR §300.530(e) with respect to determination of the conduct as a manifestation of the child's disability.

Pursuant to IDEA at 34 CFR §300.530(e), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the LEA's failure to implement the IEP.

The conduct that formed the basis for the student's suspension related to a number of observations made by both the psychologist and the social worker who completed evaluations of the student only a few months prior to the suspension. All parties agree that to the extent the student participated in the misconduct, [REDACTED] was either following the example of or being forced to participate by another student. This relates directly to the behavioral concern noted by the psychologist in the [REDACTED] Evaluation Summary Report that the student copied and followed classmates in order to gain acceptance and attention as well as to an observation by the general education teacher that the student struggled to impress and fit in with [REDACTED] peers. Although two general education teachers, a psychologist, the school counselor and two social workers attended the student's initial IEP Meeting, none of these individuals attended the manifestation determination meeting. There is no evidence that the content of the evaluations or teacher observations were considered at the manifestation determination meeting and the [REDACTED] stated positively that her impressions of the student's behavior or disability were not solicited either before or after the meeting.

The principal asserted that the student did not have any behavioral concerns at the time of the manifestation determination meeting and there were no behavioral goals or services on the student's IEP. However, less than three months before the suspension at issue in this complaint, the principal signed off on an "informal" one-day suspension for the student for fighting. The director of student services noted recurring conflicts with other students. The general education teacher noted that the student had a propensity for making up stories or adding false details to existing events in order to impress [REDACTED] peers. While none of this evidence demands the conclusion that the student's conduct was a manifestation of the disability, it calls into question any decision that did not at least consider these observations.

The parent and [REDACTED] both stated that the focus of the manifestation determination meeting was on the alleged conduct and not on the content of the student's IEP or the relevance of the student's disability. While the [REDACTED] reported that the special education coordinator reviewed the student's IEP during the meeting, the special education coordinator did not recall reviewing the IEP. The [REDACTED] Manifestation Determination Meeting Notes do not include any evidence of the information that was reviewed or the reasoning that was employed to reach the conclusion that the conduct was not a manifestation of the student's disability. The [REDACTED] reported that the IEP Team's method for determining whether the conduct was a manifestation of the student's disability was to ask the student the questions listed on the manifestation determination form. The principal indicated that the student's ability to answer the questions on the form showed that the student could have chosen not to participate in the inappropriate conduct and therefore the conduct

was not a manifestation of the disability. The IDEA does not prescribe that the IEP Team ask the student whether conduct was directly and substantially related to the disability or whether conduct was a direct result of a failure to implement the IEP. Rather, the IDEA requires the IEP Team to answer those questions based on the student's record, including the IEP, teacher observations and any relevant information provided by the parent. There is no evidence that the IEP Team based its decision on the student's record as required by the IDEA.

Therefore, DCPS is out of compliance with 34 CFR §530(e) for failing to review all relevant information in the student's file, specifically the student's evaluations, social history, behavioral concerns and teacher observations.

DCPS is out of compliance with 34 CFR §300.322(a)(2).

The IDEA at 34 CFR §300.322(a)(2) provides 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 scheduling the meeting at a mutually agreed on time and place. The notice required must indicate the purpose, time, and location of the meeting and who will be in attendance. (34 CFR §300.322(b)(1)) The only written notice of the manifestation determination provided to the parent was the date and time listed for the meeting on the DCPS Suspension/Expulsion Form. DCPS was unable to show that it provided the parent with proper notice of the purpose of the manifestation determination meeting. By failing to make the parent aware of the function and importance of the meeting, DCPS failed to provide the parent with proper and meaningful notice of the manifestation determination.

Further, OSSE interprets notice requirements in 34 CFR §300.322(b)(1) to conform with notice requirements in 34 CFR §300.503. Thus, notice of the manifestation meeting should have been in writing, been given to the parent a reasonable time before the public agency effectively changed the placement of the student, included a description and an explanation of the action proposed by the agency and included a statement that the parent had protections under the procedural safeguards of the IDEA. The notice of the manifestation determination meeting provided to the parent in the DCPS Suspension/Expulsion Form does not constitute proper notice of a manifestation determination meeting.

Therefore, DCPS is out of compliance with 34 CFR §300.322(a)(2) by virtue of its failure to provide proper notification of the manifestation meeting to the parent.

DCPS is in compliance with 34 CFR §300.613.

Pursuant to 34 CFR §300.613(a), each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under the IDEA. The agency must comply with a request without unnecessary delay and before any meeting regarding the IEP, or any due process or disciplinary hearing or resolution session, and in no case more than 45 days after the request has been made. The right to inspect and review education records under this section includes the right to have a representative of the parent inspect and review the records. (34 CFR §300.613(b)(3))

The [REDACTED] and [REDACTED] both stated that it was their practice to require parents to call ahead with a request for copies or schedule an appointment to review student records, as the special education coordinator and principal were the only ones who could access special education records and were not always available to take immediate requests. The parent's attorney arrived at the school on [REDACTED] to request records and did not call ahead with her request. However, despite the fact that the attorney did not call ahead, after some delay the attorney was provided with copies of some of the documents related to the incident and the proposed disciplinary action against the student.

The parent asserted in [REDACTED] complaint that at the Instructional Superintendent Hearing the principal read from emails which were not included in the documents that were provided to the parent's attorney. OSSE's investigation did not reveal whether these emails were deliberately withheld by the principal or were not covered by the attorney's request for records. However, the fact that school staff members made an exception to the normal practice of requiring prior notice to provide copies to the attorney is persuasive. Generally requiring parents or representatives of parents to follow established procedures which include calling ahead to make an appointment to review records or request copies is reasonable. There is no evidence to suggest that DCPS did not respond to a request for records without unnecessary delay.

Therefore, DCPS is in compliance with 34 CFR §300.613.

Pursuant to IDEA, 34 CFR §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 CFR §99. The definition of 'personally identifiable' includes information that contains the name of the child, the child's parent, or other family member. (34 CFR §300.32) In this case, there is no evidence that the parent provided authorization for the school to disclose information to the parent's attorney. OSSE reminds DCPS that proper authorization must be obtained before releasing personally identifiable information to unauthorized individuals.

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. The [REDACTED] DCPS Discipline Referral Form indicates that the student was given an "informal" one-day suspension following a physical altercation with another student. This "informal" suspension was not tracked in the DCPS Attendance Summary which would preclude DCPS from properly determining whether further suspensions of the student constitute a pattern of removal which would qualify as a change in placement. IDEA regulations at 34 CFR §300.536(a)(2) states that a change in placement occurs if the child has been subjected to a series of removals that constitute a pattern because the series of removals total more than 10 school days in a school year; because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. While the "informal" one-day suspension does not indicate a pattern of removals in this case, the issuance of "informal" suspensions to students with disabilities and/or students suspected of having a disability blatantly disregards the protections provided in 34 CFR §§300.530 – 300.537.

OSSE also has concerns regarding the accuracy of the data listed on the DCPS Attendance Summary and the DCPS Suspension/Expulsion Form. Although there are no incident reports or discipline referral forms related to a suspension on [REDACTED], the DCPS Attendance Summary indicates that the student served a one-day suspension on that date. OSSE could not confirm that a suspension was actually enforced against the student on that date. As noted above, the student had previously received an “informal” suspension as documented on the [REDACTED] Discipline Referral Form. Despite this previous suspension, the DCPS Suspension/Expulsion Form that was sent home with the student on [REDACTED] indicated that the student had not been previously suspended during the spring semester of [REDACTED]. The DCPS Suspension/Expulsion Form also indicated that the student did not have an IEP. In addition, based on information gathered during the investigation of this complaint, OSSE determined that the student was absent as a result of a suspension from [REDACTED] through [REDACTED], however the DCPS Attendance Summary does not reflect that the student was absent as a result of suspension during that time, and no attendance data is available after [REDACTED]. 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 proper attendance and discipline data constitutes noncompliance with 34 CFR §§300.601(b).

CORRECTIVE ACTION

In order to correct noncompliance with the provisions in 34 CFR §§300.530(b), 300.530(d), 300.530(e) and 300.322(a)(2), DCPS is required to take the following actions:

1. By [REDACTED], DCPS must convene a meeting of the IEP Team, at a time and place determined in consultation with the parent to
 - a. Create a Compensatory Education Plan for the specialized instruction that was not delivered during the student’s suspension. In the event that the parent and DCPS cannot agree on the amount of compensatory education hours, DCPS shall provide a minimum of 20 hours of specialized instruction as compensatory education;
 - b. Determine whether the student requires a functional behavioral assessment or behavior intervention services or modifications;
 - c. Determine whether the student requires behavioral goals or counseling services.
2. By [REDACTED], DCPS must provide a copy of the results of the IEP meeting described above, including the Compensatory Education Plan, to OSSE.
3. By [REDACTED], the [REDACTED] EC principal, special education coordinator, and director of student services must attend training regarding disciplinary removals of special education students. Proof of attendance for this course must be submitted to OSSE by [REDACTED].
4. DCPS, in coordination with the [REDACTED] EC administrative staff, must develop a plan for improving parental participation at IEP Team meetings. The plan must address proper notice and invitation, scheduling meetings, parental discretion to invite other individuals who have knowledge or special expertise regarding the child, parental involvement in placement decisions, and communication of the purpose of manifestation determinations. DCPS must submit this plan to OSSE by [REDACTED] and submit documentation which establishes that the plan has been implemented by [REDACTED].
5. DCPS must immediately cease the practice of using “informal” suspension. By [REDACTED], DCPS must provide documentation to OSSE that DCPS has informed all schools within its jurisdiction that suspensions must be properly tracked in the DCPS Attendance Summary.

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 J. Lewis
Assistant Superintendent for Special Education

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