



Office of the



State Superintendent of Education

April 19, 2011



Public Charter School

Re: State Complaint: #010-009

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,” on [REDACTED] alleging violations in the special education programs of students enrolled at [REDACTED] Public Charter School ([REDACTED]).

The complainant alleged that the school violated certain provisions of the Individuals with Disabilities Education Act (IDEA: 20 U.S.C. §1400 et seq.; and regulations promulgated at 34 CFR Part 300), specifically, failure to timely complete initial evaluations; failure to timely complete reevaluations; and failure to maintain valid and reliable data. The complainant also alleged that [REDACTED] violated the IDEA by not allowing her sufficient time to discharge her duties as the [REDACTED]. However, issues regarding the management of staff members are not within the jurisdiction of the State complaint system and these issues were not accepted for investigation.

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

1. Whether [REDACTED] failed to timely complete initial evaluations, as required by 34 CFR §300.301(c)(1)?
2. Whether [REDACTED] failed to timely complete reevaluations, as required by 34 CFR §300.303(b)(2)?
3. Whether [REDACTED] failed to maintain valid and reliable data, as required by 34 CFR §§300.211, 300.600(d) and 300.601(b)?
4. Whether [REDACTED] failed to 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 notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend, as required by 34 CFR §300.322(a)(1)?
5. Whether [REDACTED] has shared personally identifiable information or student records, without the written consent of a parent or student who has reached the age of majority, as required by 34 CFR §300.622?
6. Whether [REDACTED] failed to ensure that IEP Teams review each child's IEP periodically, but not less than annually, as required by 34 CFR §300.324(b)(1)(i)?
7. Whether [REDACTED] failed to ensure that a meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services, as required by 34 CFR §300.323(c)(1)?

INVESTIGATIVE PROCEDURE

This investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED]
3. [REDACTED]

The investigation also included review of the following documents which were either submitted by the complainant, submitted by [REDACTED] or accessible via the Special Education Data System (SEDS):

[REDACTED]

FINDING OF FACTS

General Findings

1. [REDACTED] currently provides specialized instruction and related services to 27 students.
2. [REDACTED] found four students ineligible for special education and related services during the period of investigation.
3. As of [REDACTED], five students at [REDACTED] have been referred for initial evaluation and are awaiting an eligibility determination.
4. OSSE's Quality Assurance & Monitoring Unit conducts quarterly initial evaluation and reevaluation compliance audits of all students entered into SEDS. These quarterly audits only capture students who have already been determined eligible for special education and related services or whose evaluation referrals have been entered into SEDS.

Timely Completion of Initial Evaluations

5. The [REDACTED] indicated that [REDACTED] does not maintain written policies regarding the completion of initial evaluations.
6. The [REDACTED] reported that [REDACTED] conducts an annual audit of special education student files to ensure compliance with reevaluation deadlines.
7. The [REDACTED] reported that [REDACTED] uses an internal spreadsheet to track deadlines for initial evaluations and reevaluations.
8. The [REDACTED] and [REDACTED] reported that [REDACTED] follows the District of Columbia's 120 day timeframe for initial evaluations and complies with federal requirements mandating the triennial completion of reevaluations.
9. Based on the data available in SEDS, [REDACTED] completed one initial evaluation 42 days past the 120 day deadline.
10. Based on the data available in SEDS, [REDACTED] completed two initial evaluations more than 200 days past the 120 day deadline.
11. Three students who were referred between [REDACTED] and [REDACTED] had initial evaluations that remained incomplete and overdue and two students who were referred after [REDACTED] had initial evaluations that were incomplete but still within the 120 day timeline as of [REDACTED].

Timely Completion of Reevaluations

12. The [REDACTED] indicated that [REDACTED] does not maintain written policies regarding the completion of reevaluations.
13. The reevaluation due dates listed on the March [REDACTED] PCS Evaluation Tracker spreadsheet do not match the reevaluation due dates listed in SEDS.
14. [REDACTED] completed four reevaluations between 15 and 37 days past the triennial deadline.
15. [REDACTED] completed one reevaluation 114 days past the triennial deadline.
16. [REDACTED] completed one reevaluation 671 days past the triennial deadline.

Valid and Reliable Data

17. The [REDACTED] and [REDACTED] reported that all special education staff members have access to SEDS.
18. The [REDACTED] reported that all signed documents are uploaded into SEDS as soon as possible and usually within two days.

19. As of [REDACTED], the SEDS records of 16 students did not contain copies of letters of invitation that were signed by the special education coordinator, include documentation of parental receipt of invitation or otherwise indicate that the invitations were actually sent.
20. As of [REDACTED], the SEDS records of nine students did not include a signed roster documenting the attendance of required IEP Team members.
21. Nine students' SEDS records did not contain documentation of parental referrals when it was evident from the students' records that the parent had made a referral.
22. The SEDS acknowledgement of referral entry and letter allows OSSE to track the initial evaluation and eligibility determination timeline for students.
23. [REDACTED] did not enter an acknowledgement of referral in SEDS for one student who was referred on [REDACTED] until [REDACTED].
24. As of [REDACTED], there was no acknowledgement of referral in SEDS for four students who were referred for initial evaluation between [REDACTED] and [REDACTED].
25. The SEDS record of one student displayed a date of the initial eligibility decision that was 27 days after the development of the initial IEP.

Parental Invitations

26. The [REDACTED] reported that she attempts to communicate with parents regarding invitations to IEP meetings via telephone, home visits, by certified mail or by sending documentation home with the student.
27. Four student files contained letters of invitation issued one day prior to an identified meeting time and there is no evidence that a letter of invitation was sent prior to that date.
28. Eight student files contained letters of invitation issued the same day as an identified meeting time and there is no evidence that a letter of invitation was sent prior to that date.
29. Three student files contained letters of invitation that were dated after the meeting had already occurred and there is no evidence that a letter of invitation was sent prior to that date.
30. Six students had IEPs for which there was no evidence that an invitation was sent.

Privacy and Confidentiality

31. The hard copy files of three students included documents with the names, identification numbers or notes about other students.
32. OSSE found no evidence that personally identifiable information in these files was disclosed to persons other than [REDACTED] staff.

Annual IEP Renewal

33. [REDACTED] reviewed the IEPs of three students between four and 21 days past the annual deadline.
34. [REDACTED] reviewed the IEPs of four students between 40 and 58 days past the annual deadline.

Development of Initial IEP

35. [REDACTED] developed one student's initial IEP 53 days after his initial eligibility determination.

DISCUSSION/CONCLUSION

This complaint raises issues concerning the policies, procedures and practices relating to the initial evaluation and reevaluation of children with disabilities at [REDACTED]. The complainant did not file this complaint on behalf of a particular student but as a challenge to the practices that are employed by [REDACTED]. As part of the investigation of this State complaint, OSSE requested a list of the names of all students receiving special education and related services, as well as those who were awaiting an initial eligibility determination. OSSE reviewed the documents available for these students in the SEDS. OSSE also conducted an on-site visit at [REDACTED] and reviewed 13 student files. Based on the lists of students submitted by the LEA, OSSE finds that as of [REDACTED], 27 students are eligible to receive special education and related services at [REDACTED], four students have been identified as ineligible to receive special education and related services during the period of investigation, and five students have been referred for initial evaluation and are awaiting their initial eligibility determination.

[REDACTED] is out of compliance with 34 CFR §§300.301(c)(1) and 300.303(b)(2).

The IDEA at 34 CFR §300.301(c)(1) requires that an initial evaluation be conducted within 60 days of receiving parental consent for the evaluation, or if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. In the District of Columbia, an LEA must complete an initial evaluation, including the determination of the eligibility of a child suspected of having a disability within 120 calendar days of receiving the written referral. See D.C. Code §38-2561.02; OSSE Part B Initial Evaluation/Reevaluation Policy, March 22, 2010, p. 14. In addition, pursuant to 34 CFR §300.303(b)(2), each public agency must ensure that a reevaluation of each child with a disability occurs at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

The [REDACTED] admitted that [REDACTED] does not have written policies and does not maintain internal deadlines to ensure that initial evaluations and reevaluations are completed timely. The [REDACTED] indicated that [REDACTED] conducts an annual audit of special education student files to ensure compliance with reevaluation deadlines and the [REDACTED] reported that she uses SEDS along with an internal spreadsheet to track due dates of initial evaluations and reevaluations. OSSE's review showed that the reevaluation due dates listed on the [REDACTED] PCS Evaluation Tracker for March [REDACTED] do not match the reevaluation due dates listed in SEDS. Both the [REDACTED] and the [REDACTED] maintained that the LEA follows the District of Columbia's 120 day timeframe for initial evaluations and adheres to federal requirements mandating the completion of reevaluations at least once every three years. OSSE's review showed that during the period of investigation of this complaint, [REDACTED] completed three initial evaluations in more than 120 days. Three other students who were referred for initial evaluation had initial evaluations that remained incomplete and overdue as of [REDACTED]. [REDACTED] completed six reevaluations after the expiration of the triennial deadline.

Therefore, [REDACTED] is out of compliance with 34 CFR §§300.301(c)(1) and 300.303(b)(2) with respect to timely completion of initial evaluations and reevaluations.

██████████ is out of compliance with 34 CFR §§300.211, 300.600(d) and 300.601(b).

The IDEA at 34 CFR §300.211 requires that a local educational agency (LEA) provide the state educational agency (SEA) with information necessary to enable the SEA to carry out its duties under Part B of the IDEA. 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 ██████████ and ██████████ indicated that all ██████████ special education staff members have access to SEDS. The ██████████ maintained that signed documents are uploaded into SEDS as soon as possible, but usually within two days. OSSE's review of student records showed that the LEA is inconsistent in its maintenance and submission of signed rosters confirming attendance at IEP Team meetings, signed copies of letters of invitation documenting that the letters were sent and documentation of parental receipt of invitation. As of ██████████, nine students' SEDS records did not include attendance rosters signed by required IEP Team members and 16 students' SEDS records included letters of invitation that were not signed by a ██████████ representative and did not include any documentation of parental receipt. Completed attendance rosters and letters of invitation that include documentation of parental receipt are used to document and ensure compliance with IDEA requirements related to the composition of the IEP Team and parental participation, detailed at 34 CFR §§300.321 and 300.322, respectively. Absent this documentation, OSSE is unable to determine whether valid IEP Team meetings were held and/or whether parents received a timely invitation to the IEP meeting.

OSSE's review also showed that ██████████ does not promptly enter acknowledgement of referrals for initial evaluation into SEDS or consistently upload documentation of parental referrals. Nine students' SEDS records did not contain documentation of their parental referrals. One student was referred for initial evaluation on ██████████ but ██████████ failed to enter an acknowledgement of the referral into SEDS until ██████████. As of ██████████, the referral acknowledgement section in SEDS had not been completed for four students who had been referred for an initial evaluation between ██████████ and ██████████. Two of these four students have deadlines for eligibility determination that have already passed. This failure to document initial referrals in SEDS on a timely basis prevents OSSE from reporting accurate data in its quarterly reports on the completion of initial evaluations and reevaluations because students will not appear on OSSE's list for review if their acknowledgment of referral is not entered into SEDS. The student who was referred on ██████████ and whose initial evaluation was due on ██████████ should have been included in OSSE's ██████████ report on untimely initial evaluations and reevaluations for the period from ██████████ through ██████████. Because the student's referral was not entered until ██████████, he was not included in OSSE's report of untimely initial evaluations and OSSE was therefore unable to accurately report ██████████ noncompliance, provide the LEA with valuable information regarding their performance and protect the student's right to a timely evaluation and a free appropriate public education.

Therefore, ██████████ is out of compliance with 34 CFR §§300.211, 300.600(d) and 300.601(b) with respect to the maintenance of complete and accurate student records.

██████████ is out of compliance with 34 CFR §300.322(a)(1).

Pursuant to 34 CFR §300.322(a)(1), 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 notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend. The ██████████ reported that she attempts to reach parents via telephone, through a visit to the home, by certified mail, or by sending documentation home with the student. OSSE's review of student records showed that four letters of invitation were dated one day prior to an identified meeting time, eight letters of invitation were dated the same day as an identified meeting time and three letters of invitation were dated after the meeting had already occurred. Six students had IEPs for which there was no evidence that an invitation was sent. There was no evidence that letters of invitation for these students were sent on an earlier date. OSSE finds that letters of invitation issued with only one day's notice, issued the same day, or issued after the meeting has already occurred do not satisfy the notice requirements contemplated in the IDEA.

Therefore, ██████████ is out of compliance with 34 CFR §300.322(a)(1) with respect to notifying parents of meetings early enough to ensure that they have the opportunity to attend.

██████████ is in compliance with 34 CFR §300.622.

Pursuant to 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 information" includes but is not limited to the name of the child, the child's parent, or other family member. 34 CFR §300.32. During the on-site visit, OSSE monitors found that the hard copy files of three students contained other students' personally identifiable information. While there is no evidence that personally identifiable information was actually disclosed to unauthorized individuals, OSSE notes that a parent's right to inspect and review their child's education records, detailed at 34 CFR §300.613, would, if exercised by the parents of these students, result in such disclosure. OSSE advises ██████████ to thoroughly review its paper files and consider developing and implementing policies sufficient to prevent the unauthorized disclosure of personally identifiable information.

Therefore, ██████████ is in compliance with 34 CFR §300.622 with respect to the unauthorized disclosure of personally identifiable information.

██████████ is out of compliance with 34 CFR §300.324(b)(1)(i) regarding annual IEP renewal and 34 CFR §300.323(c)(1) regarding the development of an initial IEP.

The IDEA at 34 CFR §300.324(b)(1)(i) requires each public agency to ensure that the IEP Team reviews the child's IEP periodically, but not less than annually. In addition, the IDEA at 34 CFR §300.323(c)(1) requires each public agency to ensure that a meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services. While the complainant did not raise the periodic review of students' IEPs or the timely development of initial IEPs as issues in the complaint, OSSE found that ██████████ failed to review the IEPs of seven students within the one-year timeline and failed to develop an initial IEP for one student within 30 days of the eligibility determination.

Therefore, [REDACTED] is out of compliance with 34 CFR §300.324(b)(1)(i) with respect to the review of all students' IEPs periodically, but not less than annually and with 34 CFR §300.323(c)(1) with respect to the development of an initial IEP within 30 days.

CORRECTIVE ACTION

[REDACTED] is required to take the following actions:

1. In order to correct the noncompliance with 34 CFR §§300.301(c)(1), 300.303(b)(2) and 300.323(c)(1):
 - a. [REDACTED] must develop a written policy and procedures to ensure a compliant process of initial evaluation and reevaluation. This policy must at minimum address classroom-based identification, written staff referrals, the transition of students from the Student Support Team (SST) process to the evaluation process, a process for collaboration with the DC Early Intervention Program and for attending transition conferences for enrolled children who received Part C services, receipt of written parental referrals, receipt of parental consent, prior written notice, distribution of the procedural safeguards, parental invitations and scheduling meetings at mutually agreeable times, appropriate evaluation tools, identification and involvement of IEP Team members, the eligibility meeting and development of the initial IEP. The policy must include internal timelines for each step in the initial and reevaluation process and requirements for documenting the required steps and uploading completed documentation into SEDS. The policy must be submitted by [REDACTED] and is subject to the review of OSSE's Director of Compliance & Monitoring. [REDACTED] must submit documentation that all staff members have received a copy of and training on this policy by [REDACTED].
 - b. At least three [REDACTED] staff members, including the principal and the special education coordinator, must attend OSSE Training SP-9: Initial Evaluation and Reevaluation on [REDACTED]. Documentation of attendance for this course must be submitted to OSSE by [REDACTED].
 - c. [REDACTED] must report 100% compliance with initial evaluation and reevaluation deadlines before [REDACTED]. This requirement will be reported out by OSSE as part of its quarterly review of LEA performance of initial evaluations and reevaluations.
2. In order to correct the noncompliance with 34 CFR §§300.322(a)(1), 300.324(b)(1)(i) and 300.323(c)(1):
 - a. [REDACTED] must develop a written policy and procedures to ensure a compliant process for the development and review of IEPs. This policy must at minimum address letters of invitation and the scheduling of meetings at mutually agreeable times, confirmation of meeting notices, extended school year determinations, transportation forms, identification of supplemental aids and services, completion of the IEP signature page, and completion of the IEP meeting roster indicating team member attendance. The policy must include internal timelines for each step in the IEP development and review process and requirements for documenting the required steps and uploading completed documentation into SEDS. The policy must be submitted by [REDACTED] and is subject to the review of OSSE's Director of Compliance & Monitoring. [REDACTED]

- ██████ must submit documentation that all staff members have received a copy of and training on this policy by ██████████.
- b. At least two ██████████ staff members, including the special education coordinator, must attend OSSE Training SP-1: Individualized Education Program (IEP) Process on ██████████. Documentation of attendance for this course must be submitted to OSSE by ██████████.
 - c. ██████████ must review the records of students whose previous IEPs expired within the previous four calendar months and report the percentage of students who had their IEPs reviewed prior to expiration. ██████████ must also review the records of students who required an initial IEP within the previous four calendar months and report the percentage of students whose initial IEPs were developed within 30 days of a determination that they required special education and related services. ██████████ must report 100% compliance with the requirements to review IEPs periodically, but not less than annually, and to develop an initial IEP within 30 days of a determination that a child requires special education and related services within a rolling four-calendar-month period before ██████████. To constitute a valid reporting period, at least four students must have required annual review of their IEPs or development of an initial IEP during the reporting period.
3. In order to correct the noncompliance with 34 CFR §§300.211, 300.600(d) and 300.601(b):
- a. ██████████ must develop a written policy to ensure that it maintains valid and reliable data. This policy must address the maintenance of paper files as well as the upload of required documentation into SEDS, identify individuals responsible for the maintenance of documents and include internal timelines for the upload of documents into SEDS. The policy must be submitted by ██████████ and is subject to the review of OSSE's Director of Compliance & Monitoring. ██████████ must submit documentation that all staff members have received a copy of and training on this policy by ██████████.
 - b. The ██████████ special education coordinator must attend SEDS training. This training must be scheduled and completed no later than ██████████. Documentation of attendance must be forwarded to OSSE by ██████████. If the special education coordinator has already attended SEDS training, she must attend again.

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 Lewis
Assistant Superintendent for Special Education

cc: ██████████, Complainant