



April 22, 2011

[REDACTED] Public Charter School

Re: State Complaint: #010-010

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 program of [REDACTED] (Student ID # [REDACTED] hereinafter "student," while attending [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 ensure that special education and related services were made available to the student in accordance with the student's Individualized Education Programs (IEPs); failure 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 attend; failure to include on the IEP a statement of the special education and related services and supplementary aids and services that would be provided to enable the child to advance appropriately toward attaining the annual goals and make progress in the general education curriculum; and failure to comply with the disciplinary procedures outlined in the IDEA. The complainant also alleged that [REDACTED] fraudulently altered the student's IEP and other documents in the student's record. However, this issue was not accepted for investigation as it did not allege a violation of Part B of the IDEA.

In accordance with the IDEA regulations at 34 CFR §300.153(c), a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. Therefore, this complaint investigation did not include any allegations concerning events that occurred before [REDACTED].

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 ensure that special education and related services were made available to the student in accordance with the student’s IEPs, as required by 34 CFR §300.323(c)(2)?
2. 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 attend, as required by 34 CFR §300.322(a)?
3. Whether [REDACTED] failed to include in the IEP a statement of the special education and related services and supplementary aids and services that would be provided to enable the child to advance appropriately toward attaining the annual goals and make progress in the general education curriculum, as required by 34 CFR §300.320(a)(4)?
4. Whether [REDACTED] failed to comply with the disciplinary procedures outlined in 34 CFR §300.530?

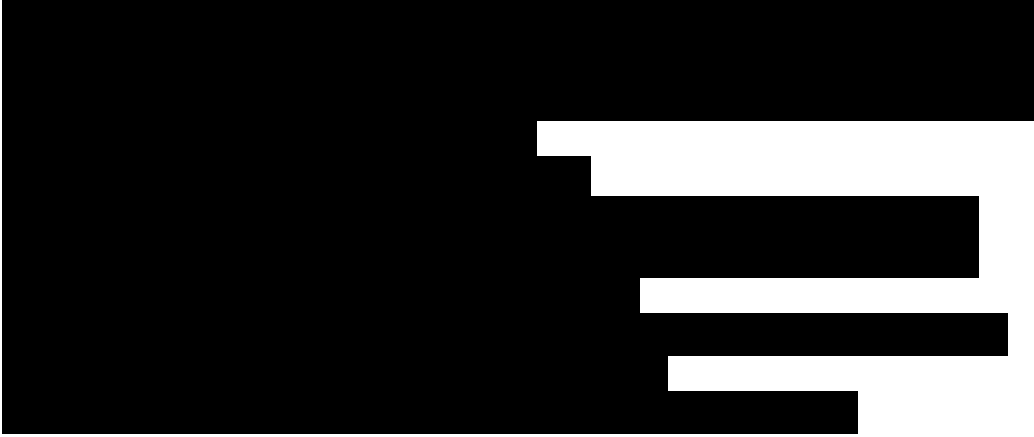
INVESTIGATIVE PROCEDURE

This investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [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. The student is a child with a disability as defined by 34 CFR §300.8.
2. The student's disability category is other health impairment.
3. The student was born on [REDACTED] and was [REDACTED] years old during the period of investigation.
4. The student attended [REDACTED] Public Charter School ([REDACTED]) during the [REDACTED] school year.
5. The student currently attends [REDACTED] and has attended [REDACTED] since [REDACTED].
6. The student's triennial evaluation was due on [REDACTED]. [REDACTED] reviewed and updated the student's IEP on [REDACTED] but did not complete the reevaluation process at that time.
7. [REDACTED] held a meeting to renew the student's eligibility determination on [REDACTED].
8. [REDACTED] generated an IEP for the student as part of the eligibility determination meeting on [REDACTED].
9. The services listed on the [REDACTED] IEP are identical to those listed on the [REDACTED] IEP.
10. The [REDACTED] fax cover sheet from the [REDACTED] special education coordinator to the [REDACTED] [REDACTED] indicated that on [REDACTED], [REDACTED] sent the parent a copy of the IEP that resulted from the [REDACTED] meeting.
11. The complainant provided a copy of the [REDACTED] IEP to [REDACTED] when the student enrolled.
12. [REDACTED] received a copy of the [REDACTED] IEP from [REDACTED] in November [REDACTED].
13. An IEP meeting was held on [REDACTED]. The [REDACTED] indicated that the [REDACTED] IEP was intended as an "interim" IEP to be in effect until additional evaluations could be completed in order to determine appropriate services for the student.

14. The student's behavior impedes [REDACTED] ability to learn in the general education environment.

Provision of Special Education Services

15. The [REDACTED] IEP provided for 15 hours per week of specialized instruction delivered in the general education setting.
16. The [REDACTED] IEP provided for 15 hours per week of specialized instruction delivered in the general education setting.
17. [REDACTED] admitted in its response to the complaint, that following an informal meeting of IEP Team members, including the complainant, on [REDACTED], the student's hours of specialized instruction were reduced from 15 hours per week to four hours per week.
18. [REDACTED] acknowledged that it did not amend the student's IEP following the [REDACTED] meeting.
19. The complainant maintains that [REDACTED] did not ask for or agree to a change in the student's IEP at the [REDACTED] meeting.
20. The [REDACTED] reported that after the [REDACTED] meeting, the student received services in the resource room during [REDACTED] advisory period for 90 minutes per day, three days per week for a total of 4.5 hours per week.
21. In addition, the student attended general education classes and went to the resource room for a portion of classes where targeted instruction was needed. Specifically, the student received instruction in the resource room during the first 30 minutes of [REDACTED] algebra class, two or three times per week for an average of 75 minutes per week.

Parental Participation

22. The complainant admitted that most of [REDACTED] meetings with [REDACTED] staff members were not prearranged but occurred when [REDACTED] went to the school and asked for the special education coordinator, counselor or one of the student's teachers.
23. By letter dated [REDACTED], [REDACTED] invited the complainant to an IEP meeting and proposed two possible dates and times. The [REDACTED] letter was not uploaded into SEDS.
24. The complainant agreed that [REDACTED] gave [REDACTED] multiple dates to choose from for the IEP meeting and that [REDACTED] and [REDACTED] agreed on [REDACTED] as the meeting date.
25. In a [REDACTED] email to the special education coordinator, the complainant confirmed that the complainant received the [REDACTED] letter and agreed to meet on [REDACTED].
26. The [REDACTED] and [REDACTED] all reported that the parent made frequent requests for specific services in order to implement the student's IEP which [REDACTED] would later withdraw.

Special Education and Related Services Sufficient to Enable Progress

27. Between [REDACTED] and [REDACTED], the student was absent for 94 class periods and tardy 53 times.
28. The [REDACTED] Achieve 3000 Reading Comprehension Report showed that the student's reading comprehension level improved from a 4th grade level to a 6th grade level between September [REDACTED] and March [REDACTED].
29. The [REDACTED] reported that the student did not turn in homework during the first quarter ([REDACTED] – [REDACTED]) or third quarter ([REDACTED]).

████ – ████████) and stopped making progress on █████ mathematics goals during the third quarter.

30. The ████████ indicated that █████ received numerous written and verbal referrals from █████ staff regarding the student's behavior.
31. The ████████ ████████ indicated that the student makes offensive comments to █████ peers and creates emotional turmoil in the classroom.
32. The complainant reported that █████ is not aware that the student demonstrates any problem behaviors.
33. The notes from the ████████ IEP indicate that the student's ████████ ████████ reported that the student demonstrated problem behaviors.
34. The ████████ IEP provided for 50 minutes per week of behavioral support services delivered within the general education setting, but only for a two week period from ████████ through ████████.
35. On ████████, the complainant wrote a note to the school requesting that the dedicated aide and organizational skills training listed on the ████████ IEP be discontinued.
36. On ████████ the complainant wrote a note to the school rescinding █████ ████████ request.

Disciplinary Procedures

37. The ████████ letter from the vice principal to the complainant indicated that the student was suspended for three days.
38. The student's attendance record shows that █████ had not received any other suspensions during the school year.
39. The student did not receive any instruction or services during the suspension.
40. The ████████ indicated that █████ provides instruction to students during a suspension only if the suspension is for five days or more.

DISCUSSION/CONCLUSION

This complaint involves ████████ implementation of IEPs developed while the student was enrolled at ████████. The student's triennial evaluations were due on ████████. ████████ reviewed the student's IEP on ████████ but did not complete a reevaluation of the student. ████████ gave a copy of the ████████ IEP to the complainant. On ████████ ████████ convened an eligibility meeting for the student and found that █████ continued to be eligible for special education and related services. The services listed on the ████████ IEP are identical to the services listed on the ████████ IEP. ████████ maintained that they sent a copy of the ████████ IEP to the complainant on ████████, but OSSE could find no record that the IEP was sent or that the complainant received a copy of this IEP. When the complainant enrolled the student at ████████ █████ provided the LEA with a copy of the ████████ IEP. ████████ maintained that it implemented the ████████ IEP from the time of the student's enrollment until ████████ when it received and began to implement the ████████ IEP.

OSSE also notes that on ████████, the day after this complaint was filed, █████ and the complainant met and developed what █████ termed an "interim" IEP for the student. The IDEA

does not prevent an IEP Team from specifying a shorter time frame for the achievement of goals or provision of services or reviewing an IEP less than one year after the prior review. See 34 CFR §300.320(a)(7). OSSE can make no distinction based on the LEA's insistence that this was an "interim" IEP and OSSE reminds ██████ that a shorter time frame does not alter the nature of the IEP or the responsibilities of the IEP Team to develop the document in accordance with the requirements of the IDEA. The IEP Team is required to identify the services necessary to provide the student with a free appropriate public education, based on available data, without regard to their intent to quickly schedule the next IEP Team meeting.

██████ is out of compliance with 34 CFR §300.323.

The IDEA at 34 CFR §300.323(c)(2) requires each public agency to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. The ██████ and ██████ IEPs provided for 15 hours per week of specialized instruction delivered in the general education setting. ██████ indicated that the student's hours of specialized instruction were reduced from 15 hours per week to four hours per week following an informal meeting of IEP Team members on ██████. However, the complainant reported that ██████ did not agree to a reduction in the student's service hours at the ██████ meeting. OSSE was unable to obtain any written record of the ██████ meeting and ██████ acknowledged that it did not complete a written amendment to the IEP as required by 34 CFR §300.324(a)(4) and OSSE's ██████ Individualized Education Program Amendment Guidance. ██████ was therefore obligated to provide 15 hours of specialized instruction per week in the general education environment in accordance with the student's IEP.

Since ██████, the student has received specialized instruction during ██████ advisory period for 90 minutes per day, three days per week. In addition, the student received instruction in the resource room for the first 30 minutes of ██████ algebra class two or three days per week. OSSE finds that the student did not receive any specialized instruction in the general education environment after ██████. The student has received an average of 5.5 hours per week of specialized instruction outside of the general education setting since ██████, but the student's IEP required that services be rendered within the general education setting.

Therefore, ██████ is out of compliance with 34 CFR §300.323(c)(2) for failing to make special education and related services available in accordance with the student's IEP.

██████ is in compliance with 34 CFR §300.322(a) with respect to parental participation but out of compliance with 34 CFR §§300.211, 300.600(d) and 300.601(b).

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 notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. By the complainant's admission, ██████ meetings with ██████ staff members prior to the filing of this complaint were not scheduled, but occurred after ██████ went to the school and asked to speak with the special education coordinator, teachers or counselor. The only scheduled IEP Team meeting occurred on ██████. Letters and email

correspondence between the special education coordinator and the complainant confirmed that the complainant was consulted regarding the [REDACTED] meeting time and that the complainant and public agency scheduled the meeting at a mutually agreeable time and place. OSSE cannot conclude that [REDACTED] did not fulfill its responsibility to ensure parental participation by ensuring that the parent was present or afforded the opportunity to participate.

OSSE notes that no record of invitation or confirmation of meeting times for the [REDACTED] meeting has been uploaded into SEDS. 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. [REDACTED] failure to upload the letter of invitation to the [REDACTED] meeting constitutes noncompliance with 34 CFR §§300.211, 300.600(d) and 300.601(b).

Therefore, [REDACTED] is in compliance with 34 CFR §300.322(a) with respect to ensuring parental participation, but out of compliance with 34 CFR §§300.211, 300.600(d) and 300.601(b) with respect to the maintenance of valid and reliable data.

[REDACTED] is in compliance with 34 CFR §300.320(a)(4) but out of compliance with 34 CFR §300.324(b)(1) with respect to revision of the student's IEP.

Pursuant to 34 CFR §300.320(a)(4), an IEP must include a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals and be involved in and make progress in the general education curriculum. Further, the IDEA at 34 CFR §300.324(b)(1) requires each public agency to ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved and revises the IEP, as appropriate, to address any lack of expected progress, the results of any reevaluation, information about the child provided to, or by, the parents, the child's anticipated needs or other matters. OSSE interprets these "other matters" to include the "special factors" referenced in 34 CFR §300.324(a)(2), which obligated the IEP Team to consider the use of positive behavioral interventions and supports and other strategies to address behavior which impedes the child's learning or that of others. Between [REDACTED] and [REDACTED], the student was absent from 94 class periods and late to class 53 times. The [REDACTED] and [REDACTED] instructor all indicated that the student had displayed problem behaviors. A report of the student's reading skills showed that [REDACTED] reading comprehension improved from a 4th grade level to a 6th grade level over the same time period, but the [REDACTED] indicated that the student did not turn in homework and had stopped making progress on [REDACTED] mathematics goals during the third quarter. At all times during the period of investigation, [REDACTED] was implementing the December [REDACTED] IEP developed by [REDACTED], which [REDACTED] adopted in its entirety on [REDACTED]. While [REDACTED] was not responsible for drafting the December [REDACTED] IEPs, [REDACTED] was obligated to revise the IEP if the student was not making progress on annual goals or in the general education curriculum or to address behavior that impeded the child's learning or that of others. Because the student stopped

making progress on [REDACTED] mathematics goals and there was some indication that the student's absences and other behavior interfered with [REDACTED] ability to make progress, [REDACTED] should have moved to convene a meeting with all IEP Team members even though the annual revision of the student's IEP was not due until [REDACTED]. Although the IEP Team did meet on [REDACTED] and order additional evaluations based on the student's lack of progress, OSSE finds that [REDACTED] had sufficient information about the student's behavioral and academic challenges to convene a meeting prior to [REDACTED].

Therefore, [REDACTED] is in compliance with 34 CFR §300.320(a)(4) with respect to inclusion of special education and related services on the IEP, but out of compliance with 34 CFR §300.324(b)(1) for failing to revise the student's IEP to address any lack of expected progress.

[REDACTED] is in compliance with 34 CFR §300.530.

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. 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. (34 CFR §300.530(h)) A change of placement occurs if the removal is for more than 10 consecutive school days or the child has been subjected to a series of removals that constitute a pattern. (34 CFR §300.536(a)) The student was suspended for three school days and had not previously received a suspension during this school year. Therefore, the student's suspension did not constitute a change of placement and the provisions of the IDEA at 34 CFR §300.530(d) and (e) requiring the LEA to provide educational services during a change of placement and determine whether the conduct in question was a manifestation of the child's disability are not implicated here.

A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed. Because it is [REDACTED] policy to send work home to students only during suspensions of five days or more, they were not obligated under the IDEA to send work home for the student during a three-day suspension.

Therefore, [REDACTED] is in compliance with the disciplinary procedures outlined in 34 CFR §300.530.

Parental Agreement and Consent for Services

OSSE notes that during the course of the investigation, the complainant raised other issues regarding [REDACTED] participation as a parent. Specifically, the complainant indicated and the school confirmed that the complainant disagreed with the other members of the IEP Team regarding the characterization of the student's behavior, the student's need for behavioral services and the provision of specific services as part of the student's IEP. The comments to the federal regulations indicate that if a parent disagrees with the provision of a particular service and the parent and the public agency agree that the child would be provided with a free appropriate public education

(FAPE) if the child did not receive that service, the public agency should remove the service from the child's IEP. (73 Federal Register 73006:73011 (1 December 2008)) By contrast, if the parent and public agency disagree about whether the child would be provided with FAPE if the particular service was not delivered, the parent may request mediation, file a State complaint or request a due process hearing. Even if the complainant disagrees the IEP Team may conclude, based on sufficient data, that the student's behavior must be addressed through behavioral services or a behavioral intervention plan (BIP) in order to provide the child with FAPE. If this is their conclusion, the IEP Team must include the behavioral services or BIP in the student's IEP and the complainant is then free to file a due process hearing request challenging the appropriateness of the team's decision. As the parent, the complainant is free to determine whether the student will receive special education and related services in their entirety, but the complainant may not pick and choose services where the IEP Team has determined that withholding a service would result in the failure to provide the student with FAPE.

Further, the comments to the federal regulations emphasize the necessity of addressing the behavior of children with disabilities that is interfering with their education or that of others, even when that behavior will not or does not result in a change in placement. (73 Federal Register 46540:46721 (14 August 2006)) OSSE finds that the student is receiving educational benefit from the specialized instruction delivered in the resource room and that the student exhibits behaviors which impede [REDACTED] ability to learn in the general education environment. However, in spite of the complainant's request and assertion that the student requires a nonpublic placement, OSSE does not conclude that the student requires a nonpublic placement. [REDACTED] must consider the use of positive behavioral interventions and supports, and other strategies to address the student's behavior, as required by 34 CFR §300.324(a)(2)(i), and provide him a free appropriate public education in the least restrictive environment.

CORRECTIVE ACTION

[REDACTED] is required to take the following actions:

1. In order to correct the noncompliance with 34 CFR §§300.323 and 300.324(b)(1):
 - a. By [REDACTED], [REDACTED] must convene a meeting of the IEP Team, at a time and place determined in consultation with the parent, to create a Compensatory Education Plan for the specialized instruction that has not been delivered, and to address the failure to revise the IEP to address the lack of progress. If [REDACTED] and the parent cannot agree on the amount of compensatory education hours, [REDACTED] shall provide a minimum of 50 hours of specialized instruction as compensatory education. [REDACTED] must forward a copy of the Compensatory Education Plan by [REDACTED]. All compensatory education hours must be delivered by [REDACTED]. In order to close this corrective action, [REDACTED] must forward service tracking forms documenting the delivery of all compensatory education hours or make these forms available in SEDS within five business days.

2. In order to correct the noncompliance with 34 CFR §§300.211, 300.600(d) and 300.601(b):
 - a. The [REDACTED] special education coordinator must attend OSSE SEDS training. This training must be scheduled and completed no later than [REDACTED]. Documentation of attendance must be forwarded to OSSE by [REDACTED]. If the special education coordinator has already attended SEDS training, she must attend again.
 - b. By [REDACTED], [REDACTED] must ensure that all required documents, including the letter of invitation to the [REDACTED] IEP meeting, are uploaded into SEDS.

If you have any questions regarding this report, please contact Mary Boatright, State Complaints Manager, at mary.boatright@dc.gov or 202-741-0264.

Sincerely,

Tameria Lewis
Assistant Superintendent for Special Education

cc: [REDACTED], Complainant
[REDACTED], Advocate