



Office of the
State Superintendent of Education

June 27, 2011

[REDACTED]

District of Columbia Public Schools

[REDACTED]

[REDACTED]

Public Charter School

[REDACTED]

RE: State Complaint No. 010-014

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 "complainants," on [REDACTED] alleging violations in the special education program of their son, [REDACTED] (Student ID # [REDACTED] hereinafter "student," while attending [REDACTED] Public Charter School (PCS). [REDACTED] PCS is a charter school which has elected the District of Columbia Public Schools (DCPS) as its local educational agency (LEA) for special education purposes.

The complainants 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 annually review the student's IEP; and failure to advise the parents of the procedural safeguards available to them, including the option to file a State Complaint.

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 DCPS and [REDACTED] PCS failed to provide appropriate special education services in accordance with the child’s IEP, as required by 34 CFR §300.323(c)(2)?
2. Whether DCPS and [REDACTED] PCS failed to annually review the student’s IEP, as required by 34 CFR §300.324(b)(1)(i)?
3. Whether DCPS and [REDACTED] PCS failed to adopt an IEP from a previous public agency or develop, adopt and implement a new IEP for a child with a disability who transfers to a new public agency in the same State, as required by 34 CFR §300.323(e)?
4. Whether DCPS and [REDACTED] PCS failed to advise the parents of the procedural safeguards available to them, including the option to file a State complaint, as required by 34 CFR §300.504?

INVESTIGATIVE PROCEDURE

This investigation included interviews with the following individuals:

1. Complainant [REDACTED]
2. Complainant’s Advocate
3. [REDACTED]
4. [REDACTED]

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

[REDACTED]

GENERAL FINDINGS OF FACT

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 attended [REDACTED] Public Charter School ([REDACTED] PCS) during the entire [REDACTED] school year.
4. The student transferred to [REDACTED] PCS during the [REDACTED] summer break and attended [REDACTED] PCS beginning on [REDACTED], the first day of the 2 [REDACTED] school year.
5. The student has remained enrolled at [REDACTED] PCS during the entire [REDACTED] school year.

ISSUE ONE: PROVISION OF SPECIAL EDUCATION SERVICES

Findings of Fact

1. The [REDACTED] IEP developed at [REDACTED] PCS provided for 10 hours per week of specialized instruction delivered outside of the general education setting and 60 minutes per week of behavioral support services delivered outside of the general education setting.
2. The [REDACTED] IEP developed at [REDACTED] PCS provided for 10 hours per week of specialized instruction delivered outside of the general education setting and 60 minutes per week of behavioral support services delivered outside of the general education setting.
3. From the beginning of the [REDACTED] school year through the final date of OSSE's investigation on [REDACTED], the student received 10 hours per week of specialized instruction from a co-teacher within the general education setting during English and Algebra classes.
4. From the beginning of the [REDACTED] school year through the final date of OSSE's investigation on [REDACTED], the student received sixteen 45-minute sessions of behavioral support services and one 60-minute session of behavioral support services.

Discussion/Conclusion

DCPS and [REDACTED] PCS are out of compliance with 34 CFR §300.323(c)(2) and 5 DCMR §E-3019.8(a).

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 student's [REDACTED] and [REDACTED] IEPs specified delivery of 10 hours per week of specialized instruction delivered *outside* of the general education environment and 60 minutes per week of behavioral support services. [REDACTED] PCS provided the student with 10 hours per week of specialized instruction delivered *within* the general education environment. In addition, during 16 of the 17 weeks in which the student's behavioral support services were provided, [REDACTED] PCS delivered only 45 minutes of services rather than the 60 minutes of services specified on the student's IEPs.

DCPS notes in its response that it informed the complainants at the [REDACTED] meeting that [REDACTED] PCS could not implement the student's IEP as written because they operate an inclusion program and do not provide specialized instruction outside of the general education environment. DCPS further avers that following the IEP Team's review of the student's IEP and decision that the student required specialized instruction delivered outside of the general education environment in order to receive a free appropriate public education (FAPE), the parent's refusal to agree to a placement at a school where the IEP could be implemented amounts to a waiver of FAPE. The comments to the federal regulations acknowledge that a parent may revoke consent for the continued provision of special education and related services to their child in their entirety at any time. (73 Federal Register 73006:73011 (1 December 2008)) The comments go on to state that if the parent disagrees with the provision of a particular service but the parent and the public agency agree that the child would be provided with FAPE if the child did not receive that service, the public agency should remove the service from the child's IEP. The complainants did not agree to remove the 10 hours of pull-out specialized instruction from the student's IEP. OSSE concludes that where a parent has not revoked consent for all services, the appropriateness of those services must still be based on the provision of FAPE, which cannot be waived.

Therefore, DCPS and [REDACTED] PCS are 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.

Pursuant to 34 CFR §300.115(a), each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must include the alternative placements listed in the definition of special education (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and make provision for supplementary services (such as a resource room or itinerant instruction) to be provided in conjunction with regular class placement. (34 CFR §300.115(b)) Public agencies include the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. (34 CFR §300.33) Public agencies must not make placement decisions based on the agency's needs or available resources. (71 Federal Register 46540:46587 (14 August 2006))

In the District of Columbia, a public charter school may elect to have DCPS serve as its LEA for purposes of the IDEA. (D.C. Code §38-1802.10(c) and 5 DCMR §E-3019.2) If a charter school that has elected DCPS as its LEA for special education purposes anticipates that it may be unable to meet its obligation to provide a free appropriate public education to a child with a disability currently enrolled in its program, it shall make an appeal to DCPS consistent with the policies, procedures, and guidelines established by DCPS. (5 DCMR §E-3019.8(a)) [REDACTED] PCS admits that it only offers an inclusion program for students at its [REDACTED] campus. Only offering an inclusion program is soundly contrary to the spirit of the IDEA even if [REDACTED] PCS has elected DCPS as its LEA for special education purposes. Such action fails to afford parents with the opportunity to have their child receive necessary special education services in the school of the parents' choice. OSSE strongly encourages [REDACTED] PCS to work with DCPS to make available a continuum of alternative placements at [REDACTED] PCS. Further, giving the parent the option

of going through the DCPS placement process to find a different school does not constitute making an appeal to DCPS. While the District regulations are silent on the particular content of the appeal, OSSE contemplates that, at a minimum, the public charter school could request additional resources from DCPS, request professional development and training from DCPS or collaborate with DCPS regarding other options within the charter school building that could be developed to meet the needs of the child. Therefore, [REDACTED] PCS is out of compliance with 5 DCMR §E-3019.8(a).

ISSUE TWO: ANNUAL IEP RENEWAL

Findings of Fact

1. The student's previous IEP was developed on [REDACTED] at [REDACTED] and was due for renewal at [REDACTED] PCS by [REDACTED].
2. The student's current IEP was developed on [REDACTED] at [REDACTED] PCS.

Discussion/Conclusion

DCPS and [REDACTED] PCS are out of compliance with 34 CFR §300.324(b)(1)(i).

The IDEA at 34 CFR §300.324(b)(1)(i) requires that each public agency 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. The student's previous IEP was developed on [REDACTED] and was due for annual review by [REDACTED]. The IEP Team met to review the student's IEP on [REDACTED], 16 days after the annual review deadline.

DCPS argues in its response that because the IEP Team did not change the prescribed hours of instructional or related services and the [REDACTED] IEP Progress Report showed that the student continued to make academic progress, it is unlikely that the child experienced any educational deficit due to this delay. While the IDEA at 34 CFR §300.513(a)(2) specifies that hearing officers may find that a child did not receive a free appropriate public education (FAPE) based on procedural grounds only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child, or caused a deprivation of educational benefit, the State Complaint process detailed in 34 CFR §§300.151 through 300.153 contains no such limitation. A state need not determine that a child was deprived of educational benefit to make a finding that an LEA has violated a procedural requirement of the IDEA.

Therefore, DCPS and [REDACTED] PCS are out of compliance with 34 CFR §300.324(b)(1)(i) for failing to ensure that the IEP Team reviewed the child's IEP periodically, but not less than annually.

ISSUE THREE: ADOPTION OR DEVELOPMENT OF IEP FOR A TRANSFER STUDENT

Findings of Fact

1. The student transferred from [REDACTED] to [REDACTED] PCS during the [REDACTED] summer break.
2. The student attended classes at [REDACTED] PCS beginning on [REDACTED], the first day of the [REDACTED] school year.

3. The student has remained at [REDACTED] PCS during the entire [REDACTED] school year.

Discussion/Conclusion

DCPS and [REDACTED] PCS are in compliance with 34 CFR §300.323(e).

Pursuant to 34 CFR §300.323(e), if a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either adopts the child's IEP from the previous public agency; or develops, adopts and implements a new IEP that meets the applicable requirements set forth in the IDEA. The complainant alleged that DCPS and [REDACTED] PCS failed to hold a meeting and conduct a review of the student's IEP within 30 days of [REDACTED] enrollment. However, the terms of 34 CFR §300.323(e) do not apply to this student because [REDACTED] did not transfer to a new school within the same school year. The IDEA at 34 CFR §300.323(c)(1) does require a 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, but this regulation only applies to the development of an *initial* IEP.

Therefore, DCPS and [REDACTED] PCS are in compliance with 34 CFR §300.323(e).

ISSUE FOUR: PROCEDURAL SAFEGUARDS

Findings of Fact

1. The parent was provided with a copy of the procedural safeguards available to the parents of a child with a disability at the [REDACTED] IEP Meeting.
2. The procedural safeguards provided to the parent included a description of the dispute resolution processes available to parents of students with disabilities.

Discussion/Conclusion

DCPS and [REDACTED] PCS are in compliance with 34 CFR §300.504.

Pursuant to 34 CFR §300.504(a), a copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents upon initial referral or parent request for evaluation, upon receipt of the first State complaint and upon receipt of the first due process complaint in a school year, in accordance with the discipline procedures detailed in the IDEA and upon request by a parent. Further, the IDEA at 34 CFR §300.504(c) requires that the procedural safeguards notice include a full explanation of all of the procedural safeguards available, including the right to file a State complaint. By the complainant's own admission, she received a copy of the procedural safeguards at the [REDACTED] meeting.

The complainant argued that neither [REDACTED] PCS nor DCPS provided her with a verbal explanation of the dispute resolution options available to her. Pursuant to 34 CFR §§300.503(c) and 300.504(d), a public agency is only required to take steps to ensure that the parent *understands* the content of the procedural safeguards notice if the native language or other mode of communication of the parent is not a written language. The IDEA does not require that the dispute resolution options or any of the procedural safeguards available to parents be explained verbally as a general rule.

Therefore, DCPS and [REDACTED] PCS are in compliance with 34 CFR §300.504.

CORRECTIVE ACTION

DCPS and [REDACTED] PCS are required to take the following actions:

1. In order to correct the noncompliance with 34 CFR §§300.323 and 300.324(b)(1)(i):
 - a. By [REDACTED], DCPS and [REDACTED] PCS 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 was not delivered in the specified education setting, the behavioral support services that were not delivered, and to address the failure to review the IEP not less than annually. If DCPS, [REDACTED] PCS and the parent cannot agree on the amount of compensatory education hours, DCPS and [REDACTED] PCS shall provide a minimum of 150 hours of specialized instruction as compensatory education and 4 hours of behavioral support services. The parent may opt to waive the hours of behavioral support services. DCPS must forward a copy of the Compensatory Education Plan and any waiver by [REDACTED]. All compensatory education hours must be delivered by [REDACTED]. In order to close this corrective action, DCPS must forward service tracking forms documenting the delivery of all compensatory education hours or make these forms available in SEDS no later than five days following the delivery of services.
2. In order to correct the noncompliance with 5 DCMR §E-3019.8(a):
 - a. DCPS and [REDACTED] PCS must develop a plan to ensure that [REDACTED] PCS assesses whether it is able to meet its obligation to provide a free appropriate public education to children with disabilities who are currently enrolled in its program and if necessary, makes an appeal to DCPS consistent with the requirements of 5 DCMR §E-3019.8(a). The plan must include provisions for prompt review of the IEPs of newly enrolled students, procedures for initially determining whether [REDACTED] PCS is capable of implementing those IEPs and for scheduling IEP Team meetings as necessary to determine whether [REDACTED] PCS is an appropriate placement and a process for making a prompt and effective appeal to DCPS consistent with the requirements of 5 DCMR §E-3019.8(a). DCPS must submit this plan to OSSE by [REDACTED] and provide proof that the plan has been implemented and [REDACTED] PCS staff members have received training on the plan by [REDACTED].

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,

Amy Maisterra, Ed.D., MSW
Interim Assistant Superintendent for Special Education

cc: [REDACTED], Complainants
[REDACTED], DCPS Office of Special Education
[REDACTED], DCPS [REDACTED]