



Office of the  
State Superintendent of Education

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June 27, 2011

[REDACTED]

District of Columbia Public Schools

[REDACTED]

[REDACTED]

Public Charter School

[REDACTED]

RE: State Complaint No. 010-015

### 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 (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 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 revise the student's IEP to address any lack of expected progress toward the annual goals and in the general education curriculum or to address information about the child provided by the parent; 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?
2. Whether DCPS and [REDACTED] PCS failed to revise the student’s IEP to address any lack of expected progress toward the annual goals and in the general education curriculum or to address information about the child provided by the parent, as required by 34 CFR §300.324(b)(1)(ii)?
3. Whether DCPS and [REDACTED] PCS failed to annually review the student’s IEP, as required by 34 CFR §300.324(b)(1)(i)?
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
2. Complainant’s Advocate
3. [REDACTED]
4. [REDACTED]

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

[REDACTED]

[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 multiple disabilities.
3. The student attended [REDACTED]: [REDACTED] ([REDACTED]) 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 [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] provided for nine hours per week of specialized instruction delivered within the general education setting, seven hours per week of specialized instruction delivered outside of the general education setting, one hour per week of behavioral support services and one hour per week of speech-language services.
2. The [REDACTED] IEP developed at [REDACTED] PCS provided for nine hours per week of specialized instruction delivered within the general education setting, seven hours per week of specialized instruction delivered outside of the general education setting, one hour per week of behavioral support services and one hour per week of speech-language services.
3. Prior to the [REDACTED] IEP Team meeting, the student received approximately five hours per week of specialized instruction within the general education environment during part of [REDACTED] English and Algebra classes.
4. After the [REDACTED] IEP Team meeting, the student received approximately 18 hours per week of specialized instruction from a co-teacher within the general education environment during English, Algebra, and history classes.
5. [REDACTED] PCS documented that the student received thirteen 60-minute sessions of speech-language services from the beginning of the [REDACTED] school year through the final date of OSSE's investigation on [REDACTED].
6. [REDACTED] PCS documented that the student received one 60-minute session of behavioral support services from the beginning of the [REDACTED] school year through the final date of OSSE's investigation on [REDACTED].

**Discussion/Conclusion**

DCPS and [REDACTED] PCS are out of compliance with 34 CFR §300.323(c)(2).

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 nine hours per week of specialized instruction delivered within the general education environment, seven hours per week of specialized instruction delivered outside of the general education environment, one hour per week of behavioral support services and one hour per week of speech-language services. Prior to the [REDACTED] IEP Team meeting, [REDACTED] PCS provided the student with five hours per week of specialized instruction delivered within the general education environment. After the [REDACTED] IEP Team meeting, [REDACTED] PCS provided the student with 18 hours per week of specialized instruction delivered within the general education environment. At no time did [REDACTED] PCS deliver the hours of specialized instruction according to the child's IEP. In addition, [REDACTED] PCS has only provided documentation of the delivery of 13 sessions of speech-language services and one session of behavioral support services.

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 7 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, public charter schools 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: IEP REVISION TO REFLECT LACK OF PROGRESS**

### **Findings of Fact**

1. The IEP Team met on [REDACTED] and reviewed the student's IEP but did not make changes to it or renew it.
2. Prior to the [REDACTED] IEP Team meeting, the student received approximately five hours per week of specialized instruction within the general education environment during part of [REDACTED] English and Algebra classes.
3. Following the [REDACTED] MDT meeting, [REDACTED] PCS changed the student's class schedule to permit delivery of additional hours of instructional services within the general education environment.
4. After the [REDACTED] IEP Team meeting, the student received approximately 18 hours per week of specialized instruction from a co-teacher within the general education environment during English, Algebra, and history classes.
5. The student's [REDACTED] Grade Report showed that the student failed six out of seven graded classes during the first and second quarters of the [REDACTED] school year.
6. The [REDACTED] Teacher Surveys completed by [REDACTED] Algebra I and World History I teachers indicated that the student was performing at below average levels in all areas.
7. The IEP Team changed the student's mathematics and reading goals and added a new communication goal on the [REDACTED] IEP.
8. The IEP Team made no changes to the remaining communication goals or to any of the goals in the areas of written expression and emotional, social and behavioral development on the [REDACTED] IEP.
9. The IEP Team made no changes to the student's hours of specialized instruction and related services, classroom accommodations and statewide assessment accommodations on the [REDACTED] IEP.

10. The parent and the [REDACTED] special education program director agreed that the student still required the hours of specialized instruction and related services listed on [REDACTED] [REDACTED] and [REDACTED] IEPs and that this was the consensus of the IEP Team at the [REDACTED] IEP Team meeting.

### **Discussion/Conclusion**

**DCPS and [REDACTED] PCS are in compliance with 34 CFR §300.324(b)(1)(ii).**

Pursuant to 34 CFR §300.324(b)(1)(ii), each public agency must ensure that the IEP Team revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum or information about the child provided to, or by, the parents. The IEP Team met on [REDACTED] but they did not make any changes to the student's [REDACTED] IEP. Following the [REDACTED] meeting, [REDACTED] PCS changed the student's class schedule to allow [REDACTED] to receive additional hours of instructional services, although [REDACTED] never received the hours of instruction as prescribed by [REDACTED] IEP because [REDACTED] continued to receive all specialized instruction *inside* the general education environment. [REDACTED] did not receive the pull-out instruction required by [REDACTED] IEP. The student did not make progress toward [REDACTED] annual goals or in the general education curriculum at [REDACTED] PCS. The student's [REDACTED] Grade Report showed that the student failed all but one of [REDACTED] classes during the first semester of the school year and [REDACTED] mathematics and history teachers rated [REDACTED] performance as below average. At the [REDACTED] meeting, the IEP Team updated the student's mathematics, reading and communication goals but in spite of the student's failure to make progress, the IEP Team did not change the prescribed hours of specialized instruction and related services or provide for any additional classroom accommodations. The IEP Team made no changes to the student's service hours on the [REDACTED] IEP because the Team agreed at the meeting that the student continued to require the hours of specialized instruction and related services listed on [REDACTED] [REDACTED] IEP. OSSE finds that the student's lack of progress was due to the failure of DCPS and [REDACTED] PCS to implement the services that were already listed on [REDACTED] IEP and not due to a failure to revise the student's IEP to provide additional services.

Therefore, DCPS and [REDACTED] PCS are in compliance with 34 CFR §300.324(b)(1)(ii).

### **ISSUE THREE: 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 IEP Team met on [REDACTED] and reviewed the student's IEP but did not renew it.
3. The student's current IEP was developed on [REDACTED] at [REDACTED] PCS.

### **Discussion/Conclusion**

**DCPS and ██████████ 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 ██████████ and was due for annual review by ██████████. The IEP Team met on ██████████ but neither made changes to nor renewed the student's ██████████ IEP. The ██████████ IEP therefore remained in effect and was due for renewal by the ██████████ annual review deadline. The IEP Team met to review the student's IEP on ██████████, 6 days after the annual review deadline.

Therefore, DCPS and ██████████ 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 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 ██████████ IEP Meeting.
2. The parent was provided with a copy of the procedural safeguards available to the parents of a child with a disability at the ██████████ IEP Meeting.
3. 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 ██████████ 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, ██████████ received a copy of the procedural safeguards at the ██████████ meeting and the ██████████ meeting.

The complainant argued that neither ██████████ PCS nor DCPS provided ██████████ with a verbal explanation of the dispute resolution options available to ██████████. 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 ██████████ 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 and speech-language 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 shall provide a minimum of 138 hours of specialized instruction as compensatory education, 7 hours of behavioral support services and 5 hours of speech-language services. The parent may opt to waive the hours of behavioral support and/or speech-language 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](mailto:mary.boatright@dc.gov) or 202-741-0264.

Sincerely,

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

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