



Office of the
State Superintendent of Education

July 6, 2011

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 010-017

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] and [REDACTED], hereinafter “complainants,” on [REDACTED] alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter “student,” while attending [REDACTED] Senior High School ([REDACTED] a school within the District of Columbia Public Schools (DCPS).

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 place the student in the least restrictive environment; failure to include in the Individualized Education Program (IEP) a statement of the special education and related services and supplementary aids and services that would be provided to enable the student to be involved in and make progress in the general education curriculum; failure to ensure that the parent and student understood the proceedings of IEP Team meetings, specifically by arranging for an interpreter; and failure to review and revise the student’s IEP, as appropriate, to address information about the child provided by the parent or other matters.

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 placed the student in the least restrictive environment such that [REDACTED] removal from the regular education environment was required because the nature or severity of [REDACTED] disability was such that education in regular classes with the use of supplementary aids and services could not be satisfactorily achieved, as required by 34 CFR §300.114?
2. Whether DCPS 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 be involved in and make progress in the general education curriculum, as required by 34 CFR §300.320(a)(4)?
3. Whether DCPS failed to ensure that the parent and student understood the proceedings of IEP Team meetings, specifically by arranging for an interpreter, as required by 34 CFR §300.322(e)?
4. Whether DCPS failed to review and revise the student’s IEP, as appropriate, to address information about the child provided by the parent or other matters, as required by 34 CFR §300.324(b)(1)(ii)?
5. Whether DCPS failed to base the transition services listed on the student’s IEP on the student’s preferences and interests, as required by 34 CFR §300.320(b)?

INVESTIGATIVE PROCEDURE

This investigation included interviews with the following individuals:

1. Complainant [REDACTED]
2. [REDACTED]
3. [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 autism spectrum disorder.
3. The student attended [REDACTED] Senior High School ([REDACTED]) during the [REDACTED] and [REDACTED] school years.
4. The student's [REDACTED] and [REDACTED] IEPs were in effect during the time period relevant to the complaint.

ISSUE ONE: PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

Findings of Fact

1. The [REDACTED] Educational Evaluation reported the results of the student's performance on the Woodcock Johnson III Tests of Achievement, specifically, that the student performed in the borderline or extremely low range in mathematics, reading and writing skills.
2. The [REDACTED] Educational Evaluation concluded that the student continued to qualify for special education services; however, the evaluation did not indicate whether the student required instruction outside of the general education environment.
3. The [REDACTED] IEP provided for 1815 minutes (30.25 hours) per week of specialized instruction delivered outside of the general education environment, 45 minutes per week of adapted physical education and 60 minutes per week of speech-language services.
4. OSSE determined that the prescription on the [REDACTED] IEP for no minutes per day of behavioral support services was a typographical error and the IEP Team did not intend for the student to receive behavioral support.
5. The [REDACTED] IEP provided for 18.5 hours per week of specialized instruction delivered outside of the general education environment, 7.5 hours per week of specialized instruction delivered inside the general education environment, 45 minutes per week of adapted physical education and 60 minutes per week of speech-language services.
6. The [REDACTED] IEP provided for 13 hours per week of specialized instruction delivered outside of the general education environment, 13 hours per week of specialized instruction delivered inside the general education environment, 45 minutes per week of adapted physical education and 240 minutes per month of speech-language services.
7. The [REDACTED] reported that the student's teachers collected "applied behavioral analysis" (ABA) data on the student and provided a report on the data at the [REDACTED] meeting.

8. The [REDACTED] indicated that the ABA data showed that the student's interactions with students in the general education environment allowed [REDACTED] to mimic and learn new social skills.
9. The [REDACTED] DCPS Transcript showed that the student passed all of [REDACTED] classes in the [REDACTED] school year.

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.114.

Pursuant to 34 CFR §300.114, each public agency must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are non-disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Further, the IDEA at 34 CFR §300.320(a)(4) requires that an IEP include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to enable the child to be involved in and make progress in the general education curriculum and be educated and participate with other children with disabilities and nondisabled children.

Over the last two years, the student has transitioned from receiving all specialized instruction outside of the general education environment to receiving specialized instruction both inside and outside of the general education environment. The [REDACTED] IEP provided that all specialized instruction would be delivered outside of the general education environment. The [REDACTED] IEP provided for 18.5 hours per week outside of the general education environment and 7.5 hours per week inside of the general education environment. The [REDACTED] IEP reduced the hours outside of the general education environment to 13 and increased the hours inside of the general education environment to 13. The student's most recent evaluation, the [REDACTED] Educational Evaluation, did not specify that the student required instruction outside or inside the general education environment. The "ABA¹ data" collected by the student's teachers demonstrated that [REDACTED] interactions with students in the general education environment allowed [REDACTED] to learn new social skills. In addition, the student earned passing grades in all classes during the [REDACTED] school year. OSSE finds that where the student's placement was made consistent with peer-reviewed research, specifically the recommendations of existing evaluations and other collected data, furthered the objective of allowing the student to be educated and participate with nondisabled children and is not clearly contraindicated by the student's educational record, the IEP Team's placement decision should not be deemed unreasonable.

Therefore, DCPS is in compliance with 34 CFR §300.114.

OSSE notes that while the [REDACTED] [REDACTED] indicated that [REDACTED] used ABA data to make decisions regarding the student's IEP, ABA is a method of instruction. Labeling data as "ABA data" is a misnomer. Additionally, the student's IEP does not contain information that the student is being appropriately instructed using the ABA method.

¹ Applied Behavior Analysis

ISSUE TWO: INCLUSION OF SERVICES TO ENABLE PROGRESS

Findings of Fact

1. The [REDACTED] IEP included mathematics goals in the areas of subtraction of whole numbers, subtraction word problems and rounding of whole numbers.
2. The IEP Progress Reports that covered the goals in the [REDACTED] IEP indicated that the student mastered the subtraction of whole numbers, but the goals related to subtraction word problems and rounding of whole numbers were never introduced.
3. The [REDACTED] IEP included mathematics goals in the areas of multiplication of whole numbers, multiplication word problems and rounding of whole numbers.
4. The [REDACTED] IEP retained two of the three reading goals from the [REDACTED] IEP and deleted one reading goal on which the student made progress but did not master.
5. The [REDACTED] IEP retained two of the three written expression goals from the [REDACTED] IEP and deleted one written expression goal that had been introduced to the student but not mastered by the student.
6. The communication goal did not change from the [REDACTED] IEP to the [REDACTED] IEP.
7. The only change to the adaptive physical education goal from the [REDACTED] IEP to the [REDACTED] IEP was to require successful performance in four out of five trials instead of three out of five trials.
8. Neither the [REDACTED] IEP nor the [REDACTED] IEP included social-emotional goals.
9. The special education coordinator and the parent agreed that the student did not make consistent academic progress and [REDACTED] IEP goals remained at a third grade level.
10. The [REDACTED] DCPS Transcript showed that the student passed all of [REDACTED] classes in the [REDACTED] school year.
11. The [REDACTED] indicated that the student was being transitioned into the general education environment in order to improve [REDACTED] social skills.
12. The special education coordinator and the parent agreed that the student has improved [REDACTED] social skills as a result of [REDACTED] integration into the general education environment.

Discussion/Conclusion

DCPS is out of compliance with 34 CFR §300.320(a)(4).

Pursuant to IDEA at 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 to enable the child to advance appropriately toward attaining the annual goals and be involved in and make progress in the general education curriculum.

DCPS notes in its response that the [REDACTED] IEP was updated to reflect progress made toward the annual goals listed on the [REDACTED] IEP. The DCPS "Discrete Trial Data Sheets" from the [REDACTED] school year showed that the student was making progress on some of [REDACTED] mathematics and written expression goals; however, OSSE's comparison of the [REDACTED] IEP, [REDACTED] IEP and the progress data available in the student's SEDS file showed that

some goals were changed or deleted without being mastered or even introduced. The student's communication goal did not change between the [REDACTED] IEP and the [REDACTED] IEP and the student's physical goal was only modified to require successful performance in four out of five trials instead of three out of five trials. In addition, although the student received passing grades in all classes during the [REDACTED] school year, the special education coordinator and the parent agreed that the student did not make consistent academic progress and [REDACTED] goals remained at a third grade level. OSSE finds that the student did not make adequate academic progress and minimal changes to the student's goals, or changes that are made without an indication that the student mastered previous goals, do not demonstrate academic progress.

The [REDACTED] indicated that the student was being transitioned into the general education environment in order to improve [REDACTED] social skills. The parent and the special education coordinator agreed that the student's social skills have improved since the student has spent time in the general education environment. OSSE acknowledges that it is proper to target social-emotional goals for students with social skills deficits. However, neither the [REDACTED] nor the [REDACTED] IEPs included social-emotional goals for the student.

While the [REDACTED] IEP included a statement of special education and related services, the statement of special education and related services did not enable the child to advance appropriately toward attaining the annual goals and make progress in the general curriculum. Therefore, DCPS is out of compliance with 34 CFR §300.320(a)(4).

OSSE notes that the DCPS "Discrete Trial Data Sheets" do not conform to standard ABA discrete trial practice. First, the data sheets list more than one objective, which precludes the instructor from appropriately administering a discrete trial and appropriately tracking data for each trial. Second, the data sheets indicate that the trials are being administered one time per day, rather than multiple times per day, as standard ABA practice would dictate. Finally, [REDACTED] indicated on the data sheets that goals were mastered; however, the data recorded on the data sheets clearly indicate that goals were not mastered. OSSE suggests that DCPS provide direct ABA training for teachers responsible for instructing students using the ABA method.

ISSUE THREE: ARRANGING FOR AN INTERPRETER

Findings of Fact

1. The native language of the parent is [REDACTED].
2. A [REDACTED] instructional aide whose native language was [REDACTED] signed the attendance roster for the [REDACTED] IEP meeting.
3. The [REDACTED] and [REDACTED] indicated that the instructional aide attended the [REDACTED] IEP meeting for the purpose of serving as an interpreter.
4. The parent indicated that the instructional aide attended the [REDACTED] IEP meeting but was not presented to [REDACTED] as an interpreter and did not act as an interpreter.

Discussion/Conclusion

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

The IDEA at 34 CFR §300.322(e) requires a public agency to take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. The native language of the parent is [REDACTED]. The [REDACTED] and [REDACTED] reported that an instructional aide whose native language was [REDACTED] attended the [REDACTED] IEP meeting for the purpose of serving as an interpreter. Although the parent confirmed that the instructional aide attended the [REDACTED] IEP meeting, [REDACTED] indicated that she was not introduced as an interpreter and did not act in that capacity. The focus of this regulation is not to mandate the mere *presence* of an interpreter, but to ensure that the parent *understands* the proceedings of the IEP Team meeting. OSSE finds that where an interpreter has attended but failed to translate to ensure that the parent understands the proceedings, an LEA has not complied with the intention of the regulation.

Therefore, DCPS is out of compliance with 34 CFR §300.322(e) for failing to ensure that the parent understood the proceedings of the IEP Team meeting.

ISSUE FOUR: REVISION OF IEP TO ADDRESS PARENTAL INFORMATION OR OTHER MATTERS

Findings of Fact

1. The student's [REDACTED] and [REDACTED] IEPs specified that the student is on track to receive a certificate prior to age 21.
2. The parent wanted the student to be prepared for vocational school or to earn a diploma in order to attend college.
3. The parent indicated that [REDACTED] only was made aware that the student was on a certificate track at the [REDACTED] IEP meeting.
4. The parent indicated that school staff members did not explain the difference between the diploma track and the certificate track or how the choice between the diploma and certificate track related to the student's postsecondary goals.
5. The parent's advocate requested a meeting to discuss the choice between a diploma and certificate track on [REDACTED] but no meeting has been held.
6. The [REDACTED] admitted that the parent's advocate made a request for a meeting during the last few weeks of the school year to discuss putting the student on a diploma track but that she was unable to schedule a meeting.
7. The student's SEDS file does not include any letters of invitation dated [REDACTED] or later.

Discussion/Conclusion

DCPS is out of 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 information about the child provided to, or by, the parents, or other matters. The parent reported that although the student has been on a certificate track since as early as the [REDACTED] IEP, [REDACTED] was not aware that the student would not receive a diploma prior to the [REDACTED] IEP meeting. At the [REDACTED] IEP meeting, the parent maintained

that [REDACTED] asked for information about how the designation of a certificate track would affect the student's goals to be employed in a vocation or attend college after graduation. The parent indicated that the other IEP Team members did not explain the difference between the diploma and certificate track and how that would affect the student's postsecondary goals. The parent's advocate requested a meeting on [REDACTED] specifically to discuss putting the student on a diploma track. Although the [REDACTED] reported that she attempted unsuccessfully to schedule the requested meeting, there are no letters of invitation in the student's SEDS record to substantiate these attempts. As of the date of this decision, 88 days after the request by the parent's advocate, DCPS has not scheduled an IEP meeting to address the parent's concerns about the student's exit category and postsecondary goals. OSSE finds that in these circumstances, 88 days is an unreasonable amount of time to schedule an IEP meeting.

Therefore, DCPS is out of compliance with 34 CFR §300.324(b)(1)(ii) for failing to revise the IEP to address information about the child provided by the parent.

ISSUE FIVE: TRANSITION SERVICES BASED ON STUDENT'S PREFERENCES AND INTERESTS

Findings of Fact

1. The student was born on [REDACTED] and was [REDACTED] and [REDACTED] years old during the time period relevant to the complaint.
2. The student is labeled as an English Language Learner (ELL) student.
3. The student attended the [REDACTED] IEP Team meeting.
4. The post-secondary goals on the [REDACTED] IEP focused on the student's future employment in retail.
5. There is no evidence that the student understood the discussion at the IEP Team meeting regarding postsecondary transition.
6. The post-secondary transition plan in the [REDACTED] IEP was based solely on the student's results on the Brigance Employability Skills Inventory completed on [REDACTED].

Discussion/Conclusion

DCPS is out of compliance with 34 CFR §300.320(b).

The IDEA at 34 CFR §300.320(b) requires that beginning not later than the first IEP to be in effect when the child turns 16, the IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services (including courses of study) needed to assist the child in reaching those goals. Pursuant to 34 CFR §300.43, "transition services" are defined as a coordinated set of activities for a child with a disability that is based on the individual child's needs, taking into account the child's strengths, preferences, and interests. The postsecondary transition goals on the student's [REDACTED] IEP focus on the student's future employment in retail. The only assessment listed in the postsecondary transition plan is the Brigance Employability Skills Inventory completed on [REDACTED]. While the postsecondary transition plan did incorporate the child's skills as assessed by the Brigance evaluation, there is no indication that the postsecondary transition plan is based on the student's preferences or interests. DCPS's

failure to base the student's postsecondary transition goals and services on the student's preferences and interests represents noncompliance with 34 CFR §300.320(b).

Therefore, DCPS is out of compliance with 34 CFR §300.320(b) for failing to base the transition services listed on the student's IEP on the student's preferences and interests.

CORRECTIVE ACTION

DCPS is required to take the following actions:

1. In order to correct the noncompliance with 34 CFR §300.322(e):
 - a. By [REDACTED], DCPS must convene an IEP Team meeting, with an interpreter present, to fully explain the topics and issues discussed at the [REDACTED] IEP meeting. By [REDACTED], DCPS must submit proof of this discussion in the form of meeting notes and a signed meeting roster.
 - b. DCPS must ensure that an interpreter is present and engaged in the IEP Team meetings described in Corrective Actions #1a, above, and 2a and 2b, below. The interpreter's name and signature must appear on the meeting roster and DCPS must either submit to OSSE a signed declaration that the interpreter provided interpretation at the meeting, or make such a declaration available in SEDS and notify OSSE when the declaration is available. This declaration must be made available no later than five business days following the IEP Team meeting.
 - c. DCPS must develop a plan to ensure that parents with deafness or whose native language is other than English are provided with an interpreter at IEP Team meetings. DCPS must submit this plan to OSSE by [REDACTED] and provide proof that the plan has been implemented and staff members have received training on the plan by [REDACTED].
2. In order to correct the noncompliance with 34 CFR §§300.320(a)(4) and 300.324(b)(1)(ii):
 - a. DCPS must ensure that no later than the IEP Team meeting described in Corrective Action #1a, the parent and student are given complete explanations, by an interpreter, of the student's option to choose between a diploma track and certificate track and how that will affect [REDACTED] postsecondary goals. By [REDACTED], DCPS must submit proof of this discussion in the form of meeting notes.
 - b. By [REDACTED], DCPS must convene a meeting of the IEP Team, with an interpreter present, at a time and place determined in consultation with the parent, to create a Compensatory Education Plan to address the failure to include in the IEP a statement of services to enable progress and to revise the IEP to address information about the child provided by the parent. If DCPS, the parent and the student cannot agree on the amount of compensatory education hours, DCPS shall provide a minimum of 270 hours of specialized instruction as compensatory education. DCPS 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, 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.

3. In order to correct the noncompliance with 34 CFR §300.320(b):
 - a. By [REDACTED], DCPS must administer age appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills to determine the student's preferences and interests relating to [REDACTED] postsecondary goals as well as the student's strengths given [REDACTED] improved social skills. At the IEP Team meeting described in Corrective Action #1a, above, DCPS must update the student's postsecondary transition plan according to the student's preferences, interests, strengths and goals. DCPS must upload the assessments and updated postsecondary transition plan into SEDS 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], Student/Complainant
[REDACTED], Complainant
[REDACTED], DCPS [REDACTED]