



July 19, 2011

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 010-018

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] [REDACTED] (Student ID # [REDACTED] hereinafter "student," while attending [REDACTED] Elementary School, a school within the District of Columbia Public Schools (DCPS).

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 draw upon information from a variety of sources in interpreting evaluation data for the purpose of determining if a child is a child with a disability; and failure to identify the student as a child in need of special education. The complainant identified an allegation under 34 CFR §300.307, but that regulation applies to the obligation of States to adopt criteria for the determination of a disability classification based on a specific learning disability. OSSE opted to investigate this claim under 34 CFR §§300.306 & 300.309 as these regulations apply to the local educational agency (LEA) team responsible for making the eligibility determination.

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 in interpreting evaluation data for the purpose of determining if a child is a child with a disability, DCPS failed to draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior, as required by 34 CFR §300.306(c)(1)(i)?
2. Whether DCPS failed to identify the student as a child in need of special education, as required by 34 CFR §§300.309 and 300.111?

INVESTIGATIVE PROCEDURE

This investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED] Elementary School [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]

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] Elementary School ([REDACTED] during the [REDACTED] and [REDACTED] school years.

ISSUE ONE: DRAW UPON INFORMATION FROM A VARIETY OF SOURCES

Findings of Fact

1. The [REDACTED] Psychological Evaluation used at the [REDACTED] eligibility meeting incorporated information from multiple formal assessments, including the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV), the Wechsler Individual Achievement Test, Second Edition (WIAT-II) and the Bender Visual-Motor Gestalt Test, Second Edition, as well as interviews with the parent, student and general education teacher, student work samples and report card, classroom observations, DC Benchmark Assessment System (DC-BAS) and Dynamic Indicators of Basic Early Literacy Skills (DIBELS) scores and the student's medical report.
2. The complainant and the [REDACTED] [REDACTED] recalled using the [REDACTED] Psychological Evaluation at the [REDACTED] meeting to determine the student's eligibility.

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.306(c)(1)(i).

The IDEA at 34 CFR §300.306(c)(1)(i) requires that in interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, each public agency must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. The [REDACTED] Psychological Evaluation used at the [REDACTED] eligibility meeting incorporated information from three formal assessments; the student's class work, report card, performance on classroom assessments and classroom observations; interviews with the student, parent and general education teacher and the student's medical report. The complainant and [REDACTED] [REDACTED] agreed that the psychological evaluation and its contents were used at the [REDACTED] meeting to determine whether the student was eligible for special education and related services. The complainant claims that use of the [REDACTED] Psychological Evaluation as the primary basis for determining that the student was not eligible for special education and related services constitutes the use of a single measure or criterion to determine the student's eligibility. However, OSSE's March 22, 2010 Part B Initial Evaluation/Reevaluation Policy defines an evaluation as "a process consisting of a set of procedures and/or assessments used in accordance with the IDEA and the District of Columbia Municipal Regulations (DCMR) to determine whether a child has a disability, and if so, the nature and extent of the special education and related services that the child needs." A single evaluation may encompass multiple formal and informal assessments and OSSE finds that the student's [REDACTED] Psychological Evaluation does encompass multiple assessments and consists of information from a variety of other sources including interviews with the student, parent and general education teacher and the student's medical report.

Therefore, DCPS is in compliance with 34 CFR §300.306(c)(1)(i).

ISSUE TWO: IDENTIFICATION OF ELIGIBILITY

Findings of Fact

1. The [REDACTED] Psychological Evaluation showed that the student's full scale intelligence quotient score placed [REDACTED] in the borderline range of intellectual functioning.
2. The [REDACTED] Psychological Evaluation concluded that the student's cognitive limitations were not severe enough to qualify for special education under the classification of intellectually disabled.
3. The [REDACTED] Disability Worksheet for intellectual disability reflected the conclusion that the student did not meet the criteria to qualify for special education under this classification.
4. The [REDACTED] Psychological Evaluation noted that the student was fully recovered from [REDACTED] previously identified medical condition for which the student had undergone surgery in 2007.
5. The [REDACTED] Disability Worksheet for other health impairment reflected the conclusion that the student did not meet the criteria to qualify for special education under this classification.
6. The [REDACTED] Psychological Evaluation indicated that the student's DC-BAS Fall [REDACTED] achievement scores showed below basic or basic performance in mathematics skill areas and below basic or proficient performance in reading/language arts skill areas.
7. The [REDACTED] Psychological Evaluation indicated that the student's report cards showed below grade level achievement in reading and math.
8. The [REDACTED] Psychological Evaluation concluded that given the student's borderline intelligence [REDACTED] reading, mathematics, and written and oral language achievement was not lower than expected and [REDACTED] demonstrated no significant underachievement overall in reading, mathematics or written language.
9. The [REDACTED] Disability Worksheet for specific learning disability reflected the conclusion that the student did not meet the criteria to qualify for special education under this classification according to the discrepancy model.
10. The [REDACTED] Disability Worksheet for specific learning disability reflected the conclusion that the student did not meet the criteria to qualify for special education under this classification according to the scientific research-based interventions model.
11. DCPS filled in an answer to Criterion 1c and 1d of the scientific research-based interventions model on the [REDACTED] Disability Worksheet for specific learning disability but did not provide answers to Criterion 1a, 1b or Criterion 2.
12. The [REDACTED] Prior Written Notice of Identification indicated that DCPS refused to identify the student as a student with a disability because the student's cognitive limitations were not severe enough to meet criteria for intellectual disability and the student did not meet the eligibility criteria for specific learning disability or other health impairment.

13. The [REDACTED] DCPS Report Card showed that the student performed at a below basic level in reading, mathematics and science during the first and second advisory periods ([REDACTED] and [REDACTED], respectively).
14. The [REDACTED] DCPS Report Card showed that the student performed at a below basic level in reading and mathematics and at basic level in science during the third and fourth advisory periods ([REDACTED] and [REDACTED], respectively).
15. The [REDACTED] Woodcock-Johnson III showed that the student's performance was at least two levels below [REDACTED] current grade and was characterized as "very limited," "limited" or "limited to average" in all areas except for written expression.
16. The [REDACTED] Disability Worksheet for specific learning disability reflected the conclusion that the student met the criteria to qualify for special education according to both the discrepancy model and the scientific research-based interventions model; the Disability Worksheet indicated that the student demonstrated a discrepancy between achievement and measured ability of at least two years and met each of the criteria for identification as a child with a specific learning disability under the scientific research-based interventions model.
17. On [REDACTED], the student was found eligible for special education with a disability classification of specific learning disability.

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.309 and 34 CFR §300.111.

Pursuant to 34 CFR §300.111, all children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, must be identified, located, and evaluated. In addition, the IEP team may determine that a child has a specific learning disability if, among other things, the child does not make sufficient progress to meet age or State-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the IEP team to be relevant to the identification of a specific learning disability. 34 CFR §300.309.

On [REDACTED], the IEP Team concluded that the student did not meet the criteria to qualify for special education as a student with a specific learning disability under the discrepancy model. Although the IEP Team completed part of the scientific research-based interventions model on the [REDACTED] Disability Worksheet for specific learning disability, not all of the questions on that portion of the worksheet were completed by the IEP Team. The complainant argues that DCPS was required to consider whether the student was a student with a disability under both the discrepancy model and the scientific research-based interventions model. Pursuant to 34 CFR

§300.307(a), the *State must not require* the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability; *must permit* the use of a process based on the child's response to scientific, research-based intervention; and *may permit* the use of other alternative research-based procedures for determining whether a child has a specific learning disability. This regulation prohibits States from requiring the use of a discrepancy model but it does not mandate the use of the scientific research-based intervention model. The IDEA also requires that a public agency use the State criteria adopted pursuant to 34 CFR §300.307(a) in determining whether a child has a specific learning disability. (34 CFR §300.307(b)) OSSE's March 22, 2010 Part B Initial Evaluation/Reevaluation Policy permits but does not require the use of identification procedures that are based on scientific research rather than identification through the use of a discrepancy model. DCPS was not required to utilize both the scientific research-based intervention model and the discrepancy model.

DCPS completed an additional evaluation of the student on [REDACTED] and gathered additional data from January through March [REDACTED]. On [REDACTED], the IEP Team found the student eligible for special education and related services as a child with a specific learning disability under both the discrepancy model and the scientific research-based interventions model. OSSE finds that the IEP Team's [REDACTED] determination that the student was ineligible for special education and related services was supported by the completed evaluations and other data available at that time. The [REDACTED] Disability Worksheet indicated that the student did not demonstrate a discrepancy between achievement and measured ability of at least two years. This conclusion is supported by the [REDACTED] Psychological Evaluation which noted that the student's overall achievement level was commensurate with [REDACTED] general intelligence and [REDACTED] demonstrated no significant underachievement overall in reading, mathematics or written language. In addition, OSSE finds that the IEP Team's [REDACTED] determination that the student was eligible for special education and related services as a child with a specific learning disability was supported by the additional evaluations (including the [REDACTED] Woodcock-Johnson III Score Report and the [REDACTED] Evaluation Summary Report) and updated data. The [REDACTED] Disability Worksheet showed that the student did demonstrate a discrepancy between achievement and measured ability of at least two years. Additionally, the IEP Team found that the student met each of the criteria for identification as a child with a specific learning disability under the scientific research-based interventions model. These conclusions are supported by the [REDACTED] Woodcock-Johnson III which showed that with few exceptions the student's performance was at least two levels below [REDACTED] current grade and was characterized as "very limited," "limited" or "limited to average" in all areas except for written expression. Even though the IEP Team later found the student eligible for special education and related services, OSSE cannot conclude that the [REDACTED] eligibility determination was improper where it is supported by completed evaluations and other information available in the student's record at the time of the determination.

Therefore, DCPS is in compliance with 34 CFR §300.111 and 34 CFR §300.309.

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], Complainant

[REDACTED], DCPS [REDACTED]