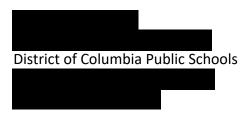
July 19, 2011



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	n received a S	tate Comp	laint from			, herein	after
"complainant," on		alleging violations in the special education program				rogram of	1	
		(Stu	udent ID#		hereinafter	"student," v	while attendin	ıg
Elementar	v School.	a school with	nin the Dist	rict of Col	umbia Public	Schools (D	CPS).	

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. Elementary Schoo

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):



#### **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 school (see during the school years.

# ISSUE ONE: DRAW UPON INFORMATION FROM A VARIETY OF SOURCES Findings of Fact

1. The Psychological Evaluation used at the 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 Psychological Evaluation at the student's eligibility. recalled using the meeting to determine the

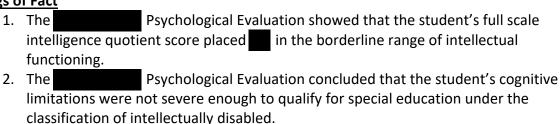
### **Discussion/Conclusion**

## 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 Psychological Evaluation used at the 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 agreed that the psychological evaluation and its contents were used at the meeting to determine whether the student was eligible for special education and related services. The complainant claims that use of the 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 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**



- 3. The 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 previously identified medical condition for which the student was fully recovered from previously identified medical condition for which the student had undergone surgery in 2007.
- 5. The 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 Psychological Evaluation indicated that the student's DC-BAS Fall 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 Psychological Evaluation indicated that the student's report cards showed below grade level achievement in reading and math.
- 8. The Psychological Evaluation concluded that given the student's borderline intelligence reading, mathematics, and written and oral language achievement was not lower than expected and demonstrated no significant underachievement overall in reading, mathematics or written language.
- 9. The 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 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 Disability Worksheet for specific learning disability but did not provide answers to Criterion 1a, 1b or Criterion 2.
- 12. The 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 DCPS	S Report Card showed that the student performed at a below
basic level in reading,	mathematics and science during the first and second advisory
periods (	and
, respectively).	
14. The DCPS	S 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 period	ds ( and
, respectively	′).
15. The	Woodcock-Johnson III showed that the student's performance
was at least two level	s below current grade and was characterized as "very
limited," "limited" or	"limited to average" in all areas except for written expression.
	Disability Worksheet for specific learning disability reflected the
conclusion that the st	udent met the criteria to qualify for special education according
to both the discrepan	cy model and the scientific research-based interventions model;
the Disability Worksho	eet indicated that the student demonstrated a discrepancy
between achievemen	t and measured ability of at least two years and met each of the
criteria for identificati	ion as a child with a specific learning disability under the scientific
research-based interv	entions model.
17. On , th	ne student was found eligible for special education with a
disability classification	n of specific learning disability.
Discussion/Conclusion	
-	FR §300.309 and 34 CFR §300.111.
	children with disabilities residing in the State, including children
	ss children or are wards of the State, and children with disabilities
	lless of the severity of their disability, and who are in need of
•	rvices, must be identified, located, and evaluated. In addition, the
<u>-</u>	hild has a specific learning disability if, among other things, the
	ogress to meet age or State-approved grade-level standards wher
	d's response to scientific, research-based intervention; or the
, ,	ths and weaknesses in performance, achievement, or both,
	rade-level standards, or intellectual development, that is
-	e relevant to the identification of a specific learning disability. 34
CFR §300.309.	
On the IEP Team co	oncluded that the student did not meet the criteria to qualify for
	ith a specific learning disability under the discrepancy model.

Although the IEP Team completed part of the scientific research-based interventions model on the

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

Disability Worksheet for specific learning disability, not all of the questions on that

§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	and gathered
additional data from January through March On , the I	EP Team found the
student eligible for special education and related services as a child with a sp	ecific learning
disability under both the discrepancy model and the scientific research-base	d interventions model.
OSSE finds that the IEP Team's determination that the student	was ineligible for
special education and related services was supported by the completed eval	uations and other data
available at that time. The Disability Worksheet indicated that	the student did not
demonstrate a discrepancy between achievement and measured ability of a	least two years. This
conclusion is supported by the Psychological Evaluation which	noted that the
student's overall achievement level was commensurate with	elligence and
demonstrated no significant underachievement overall in reading, mathema	tics or written
language. In addition, OSSE finds that the IEP Team's determ	nination that the
student was eligible for special education and related services as a child with	
	Woodcock-
Johnson III Score Report and the Evaluation Summary Repor	
The Disability Worksheet showed that the student did demo	
between achievement and measured ability of at least two years. Additiona	
found that the student met each of the criteria for identification as a child w	
disability under the scientific research-based interventions model. These co	
supported by the Woodcock-Johnson III which showed the	•
the student's performance was at least two levels below current grade a	
as "very limited," "limited" or "limited to average" in all areas except for wri	
though the IEP Team later found the student eligible for special education ar	
OSSE cannot conclude that the eligibility determination was im-	•
supported by completed evaluations and other information available in the	tudent'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 <a href="mary.boatright@dc.gov">mary.boatright@dc.gov</a> or 202-741-0264.

Sincerely,

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

cc: , Complainant , DCPS