



August 11, 2011

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 010-020

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" or "child," while attending [REDACTED] Elementary School ([REDACTED]) 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 ensure that special education and related services were made available in accordance with the child's IEP.

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 failed to ensure that special education and related services were made available to the student in accordance with the student's IEP, specifically with regard to

specialized instruction and behavioral support services, as required by 34 CFR §300.323(c)(2)?

INVESTIGATIVE PROCEDURE

This investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED] and [REDACTED]
3. [REDACTED] 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 child is a child with a disability as defined by 34 CFR §300.8.
2. The child's disability category is autism.
3. The child attended [REDACTED] from [REDACTED] through [REDACTED].
4. The child entered [REDACTED] Public Charter School on [REDACTED].

ISSUE ONE: PROVIDE SERVICES ACCORDING TO IEP

Findings of Fact

1. The child was evaluated for IDEA services at the [REDACTED], the DCPS diagnostic center for children three to five years of age. The child was determined eligible for special education and related services by an IEP Team at the [REDACTED] at the [REDACTED] IEP meeting.
2. The [REDACTED] IEP provided for four hours per month of speech-language therapy and four hours per month of occupational therapy beginning on [REDACTED].
3. The child was prescribed a total of 12 hours of speech-language services during his time at [REDACTED] but the [REDACTED] – [REDACTED] Service Trackers showed that the child received a total of six hours of speech-language services while enrolled at [REDACTED].
4. The child was prescribed a total of 12 hours of occupational therapy during his time at [REDACTED] but the [REDACTED] – [REDACTED] Service Trackers showed that the child received a total of 4.5 hours of occupational therapy while enrolled at [REDACTED].

5. The parent reported that the [REDACTED] ES [REDACTED] repeatedly said that he did not have the staff members necessary to provide the child with the services prescribed on the IEP.
6. The [REDACTED] occupational therapist worked part time and the child therefore received services only when the provider was available. A number of students who missed occupational therapy as a result of the staffing shortage were offered compensatory education during the summer of [REDACTED].
7. The school does not have a procedure to schedule make-up sessions when related services are missed. [REDACTED] has a practice of discussing compensatory education for any missed services at the child's next IEP Team meeting.
8. The [REDACTED] Service Trackers contain multiple entries for work done on other student's files or in meetings for other students, for recordkeeping, case management, holidays or other absences. These entries include a value for the duration of the activity, even for those activities that clearly do not involve service to the child.
9. The parent reported that at the [REDACTED] IEP meeting, the IEP Team at Early Stages discussed placement at [REDACTED] Elementary School but did not explain that the child needed to be enrolled in DCPS to begin receiving services or that services could be made available to the child immediately if the child were enrolled in DCPS.
10. The [REDACTED] IEP Meeting Notes showed that the IEP Team was awaiting possible placement options from the DCPS placement specialist and requested 30 days to finalize a placement for the child.
11. While waiting for the child's services to begin in January [REDACTED] the parent hired an independent service provider for the child for the months of November and December [REDACTED]. The parent paid a total of \$750.00 for these services.

Discussion/Conclusion

DCPS is 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 development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. The child's [REDACTED] IEP provided for four hours of speech-language therapy and four hours of occupational therapy per month to begin on [REDACTED].

DCPS maintains in its response that the parent made the decision at the [REDACTED] IEP meeting that service delivery for the child would not begin until after the December holiday break. However, the [REDACTED] IEP Meeting Notes included a note that the IEP Team was waiting to hear about possible placement options from the DCPS placement specialist and required 30 days to finalize a placement for the child. The parent indicated that [REDACTED] Elementary School was discussed at the [REDACTED] meeting as a possible placement for the child, but no one explained that the child needed a finalized placement in order for services to begin. Pursuant to 34 CFR §300.323(c)(1), each public agency must 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. The child's initial eligibility determination was made at the [REDACTED] meeting. DCPS had 30 days from that initial eligibility determination to develop an IEP for the child.

Because DCPS developed an IEP at the [REDACTED] meeting, it was required to determine placement and provide services as soon as possible following the development of the IEP pursuant to 34 CFR §300.323(c)(2). The parent indicated that [REDACTED] was not aware that the child could have received services if [REDACTED] was enrolled at a DCPS school and reported that [REDACTED] spent \$750.00 to provide the child with services in November and December. The fact that the parent paid for independent services negates DCPS's claim that the parent made an informed decision that services should not begin until January. Therefore, DCPS is out of compliance with 34 CFR §300.323(c)(2) for failing to make available related services as soon as possible following the development of the IEP.

The child enrolled in DCPS in January [REDACTED] and was placed in [REDACTED] Elementary School. Between [REDACTED] and the child's exit from DCPS on [REDACTED], the child received a total of six hours of speech-language therapy and a total of 3.5 hours of occupational therapy at [REDACTED]. Therefore, DCPS is also out of compliance with 34 CFR §300.323(c)(2) for failing to make available related services in accordance with the child's IEP.

The investigation of the delivery of these service hours raised additional questions with respect to DCPS's policies and procedures regarding delivery of service hours, rescheduling missed services and documentation of service delivery. The parent reported that [REDACTED] was repeatedly told that [REDACTED] lacked the staff members necessary to provide all of the hours of related services on the child's IEP. The classroom teacher confirmed that [REDACTED] occupational therapist worked only part time and that a number of other students who did not receive occupational therapy as a result of the staffing shortage were offered compensatory education during the summer of [REDACTED]. OSSE finds that DCPS's failure to employ staff members sufficient for the delivery of the services listed on the student's IEP not only contributed to [REDACTED] inability to provide the services as required by the student's IEP but also is contributing to [REDACTED] inability to provide services as required by the IEPs of other students and represents noncompliance with 34 CFR §300.323(c)(2).

The [REDACTED] reported that if a provider misses a related service session, it is the practice at [REDACTED] to schedule a meeting to discuss the provision of compensatory education services. OSSE's January 5, 2010 Related Services Policy requires LEAs to develop a related service policy that explains the procedure for missed services and detail the steps taken by the LEA to ensure that missed sessions are rescheduled in a timely manner. The policy goes on to detail the minimum requirements for rescheduling make-up sessions when they occur due to the provider's absence or the child's absence. The policy does not admit as a possibility the decision on the part of the LEA to address all missed services via a compensatory education decision at the child's next IEP meeting.

OSSE notes that DCPS's failure to provide the services required on students' IEPs and consistently re-schedule sessions for missed services is not limited to [REDACTED] Elementary School. OSSE made findings against DCPS for failure to make services available in accordance with the IEPs of students at other DCPS schools or District Charter Schools in State complaints 010-013, 010-014 and 010-015. OSSE made findings of facts in these complaints that DCPS failed to deliver services and there was no evidence of DCPS attempts to make up missed services.

Finally, the child's [REDACTED] Service Trackers contain multiple entries for work done on reports or meetings that involved other students, case management, recordkeeping, school closures and other absences. OSSE does not find that such a detailed record is problematic on its face; however, OSSE notes that one of the service providers included time for activities that clearly did not involve the delivery of services to the child, including observation of the child. OSSE encourages DCPS to clarify with its providers which activities may be counted as service hours and which may not.

CORRECTIVE ACTION

DCPS is required to take the following actions:

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2):
 - a. DCPS must reimburse the parent for the cost of the services provided to the child in November and December [REDACTED] a total of \$750.00. DCPS must forward proof of payment to the parent by [REDACTED].
 - b. By [REDACTED], DCPS 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 to address the failure to provide services according to the child's IEP. If DCPS and the parent cannot agree on the amount of compensatory education hours, DCPS shall provide a minimum of 6 hours of speech-language therapy and 8 hours of occupational therapy. 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 and notify OSSE that the forms are available in SEDS.
 - c. In lieu of the compensatory education hours agreed to at the meeting detailed in corrective action 1b, above, the parent may choose to accept reimbursement for the cost of the services provided to the child by independent providers during the child's period of enrollment at [REDACTED] Elementary, a total of \$1958.00. DCPS must forward proof that the parent has made this election and proof of payment to the parent by [REDACTED].
 - d. By [REDACTED], DCPS must develop a plan for the prompt re-scheduling and delivery of missed service sessions that conforms to the requirements of OSSE's January 5, 2010 Related Services Policy. This plan must include the identification of the school-level staff member responsible for ensuring that missed services are rescheduled, delivered and documented, and a timeline under which all services will be rescheduled. In addition, DCPS must provide training on the plan to special education coordinators and related service providers.

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]