



August 12, 2011

[REDACTED]  
District of Columbia Public Schools  
[REDACTED]

RE: State Complaint No. 010-021

### 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” or [REDACTED] on [REDACTED] alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter “student,” while attending [REDACTED] School, a private residential day and boarding school in [REDACTED]. The District of Columbia Public Schools (DCPS) is the geographical local educational agency (LEA) for students who are residents of the District of Columbia.

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 provide the student with a free appropriate public education; failure to review the child’s IEP at least annually; and failure to provide special education and related services to a parentally placed private school child with a disability.

In accordance with the IDEA regulations at 34 CFR §300.153(c), a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. While this Letter of Decision will detail the student’s placement more than one year prior to the filing of the complaint, any findings or corrective actions may address only noncompliance that occurred between [REDACTED] and [REDACTED].

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 provide the student with a free appropriate public education, as required by 34 CFR §300.101?
2. Whether DCPS failed to review the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved, as required by 34 CFR §300.324(b)(1)(i)?
3. Whether DCPS failed to provide special education and related services to a parentally-placed private school child with a disability, as required by 34 CFR §§300.132(a) and 300.137?

**INVESTIGATIVE PROCEDURE**

This investigation included interviews with the following individuals:

1. Complainant
2. Former DCPS [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):



**PRELIMINARY ANALYSIS: IS THE CHILD A PARENTALLY-PLACED PRIVATE SCHOOL CHILD?**

**Findings of Fact**

1. The student is a child with a disability as defined by 34 CFR §300.8.

2. The student was placed by DCPS at [REDACTED] School, a private special education school located in [REDACTED], during the [REDACTED] and [REDACTED] school years.
3. On [REDACTED] issued a Prior Notice of Placement changing the student's placement from [REDACTED] School to [REDACTED] School, a private special education school located in [REDACTED].
4. From [REDACTED] through March [REDACTED] the student received Lindamood Bell services as part of a previous compensatory education award on weekday mornings and attended [REDACTED] School in the afternoons.
5. Sometime during March [REDACTED] the student stopped attending [REDACTED] School.
6. The student did not complete all compensatory education service hours at the Lindamood Bell program.
7. In late spring [REDACTED] the [REDACTED] reported to DCPS that the student would be living with [REDACTED] in [REDACTED] during the summer of [REDACTED] and identified [REDACTED] School ([REDACTED]), a private school located near [REDACTED], as a possible placement for the student during the summer.
8. Although the student's IEP did not prescribe extended school year services, DCPS agreed to fund the student's enrollment at [REDACTED] during the summer of [REDACTED] in order to deliver services in satisfaction of a previous compensatory education award.
9. DCPS did not issue a Prior Notice of Placement for [REDACTED].
10. The [REDACTED] Prior Notice of Placement changed the student's placement from [REDACTED] School to [REDACTED] Academy, a private school located in [REDACTED], [REDACTED].
11. On [REDACTED], the mother filed a due process hearing request seeking funding for the student's placement at [REDACTED] for the [REDACTED] school year.
12. The [REDACTED] Hearing Officer's Decision found that while DCPS agreed to fund the student's enrollment in [REDACTED] during the summer of [REDACTED] DCPS did not place the student at [REDACTED].
13. The student attended [REDACTED] Academy following the issuance of the [REDACTED] [REDACTED] Hearing Officer's Decision until [REDACTED].
14. The student was withdrawn from [REDACTED] placement at [REDACTED] Academy on [REDACTED] and placed at [REDACTED] by [REDACTED].
15. The student resided in [REDACTED] beginning in February [REDACTED].
16. The student attended [REDACTED] during the summer of [REDACTED] from February [REDACTED] until the end of the [REDACTED] school year; during the summer of [REDACTED] and for the entire [REDACTED] and [REDACTED] school years.
17. DCPS submitted payment directly to [REDACTED] for the student's enrollment in the summers of [REDACTED] and [REDACTED].
18. DCPS provided the student with services through a Lindamood Bell program during the summer of [REDACTED].
19. DCPS authorized services for the student through a Lindamood Bell program during the summer of [REDACTED] but the student did not attend.
20. DCPS paid for the summer program at [REDACTED] and the summer services through a Lindamood Bell program in order to satisfy a prior compensatory education award.

21. DCPS required the [REDACTED] to complete residency verification forms in June [REDACTED] and June [REDACTED] to verify that the [REDACTED] was a resident of the District of Columbia.
22. The [REDACTED] did not enroll the student in DCPS at any time after the spring of [REDACTED]
23. The [REDACTED] filed a due process hearing request on [REDACTED] seeking placement of the student in [REDACTED]; this due process complaint was withdrawn by the [REDACTED] on [REDACTED].

### Discussion/Conclusion

#### **The student is a parentally-placed private school child.**

The IDEA sets out a different framework for the delivery of services for students with disabilities who are publicly placed in private schools and those who are parentally placed in private schools. Pursuant to 34 CFR §300.132(a), to the extent consistent with the number and location of children with disabilities who are *enrolled by their parents* in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. (34 CFR §300.137) By contrast, the IDEA at 34 CFR §300.146 requires each state educational agency (SEA) to ensure that a child with a disability who is placed in or referred to a private school or facility *by a public agency* is provided special education and related services in conformance with an IEP, at no cost to the parents, that meets the standards that apply to education provided by the SEA and LEAs, and has all of the rights of a child with a disability who is served by a public agency. As a preliminary issue, OSSE must determine whether the student is a parentally-placed private school child or was placed in the private school by a public agency.

During the [REDACTED] and [REDACTED] school years, the student was placed by DCPS at [REDACTED] School, a private special education school located in [REDACTED]. On [REDACTED], DCPS issued a prior notice of placement changing the student's placement from [REDACTED] School to [REDACTED] School, another private special education school located in [REDACTED]. The student received Lindamood-Bell services during the morning and attended [REDACTED] School in the afternoons until March [REDACTED]. In late spring [REDACTED] the mother indicated to DCPS that the student would be living with [REDACTED] in [REDACTED] during the summer of [REDACTED] the [REDACTED] identified [REDACTED] School ([REDACTED]), a private school located near [REDACTED], as a possible placement for the student during the summer. Although the student's IEP did not prescribe extended school year services, DCPS agreed to fund the student's summer enrollment at [REDACTED]. DCPS did not issue a prior notice of placement for the student to attend [REDACTED], but it did reimburse the mother for the cost of the student's attendance at [REDACTED] in the summer of [REDACTED].

On [REDACTED], DCPS sent a prior notice of placement changing the student's placement from [REDACTED] School to [REDACTED] Academy, a private school located in [REDACTED]. On [REDACTED], the mother filed a due process hearing request which included a demand that DCPS fund the student's placement at [REDACTED] for the [REDACTED] school year. On [REDACTED], the hearing officer found that DCPS only agreed to fund the summer program at [REDACTED] and did not agree to change the student's placement to [REDACTED]. Following the [REDACTED]

[REDACTED] Hearing Officer's Decision, the student attended [REDACTED] Academy for a portion of the [REDACTED] school year. On [REDACTED], the [REDACTED] withdrew the student from [REDACTED] Academy and enrolled [REDACTED] in [REDACTED]. DCPS required the [REDACTED] to complete residency verification forms in June [REDACTED] and June [REDACTED] in order to secure funding for the student's summer enrollment at [REDACTED] in [REDACTED] and for the Lindamood Bell program during the summers of [REDACTED] and [REDACTED]. DCPS funded the student's summer services at [REDACTED] and through a Lindamood Bell program in order to satisfy a prior compensatory education award. The [REDACTED] has not enrolled the student in DCPS since [REDACTED]. OSSE makes no conclusion on whether District of Columbia residency was necessary in order for DCPS to satisfy a prior compensatory education award.

Pursuant to 34 CFR §300.148(c), if the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. The [REDACTED] filed a due process hearing request on [REDACTED], approximately six weeks after [REDACTED] withdrew the student from [REDACTED] Academy and enrolled [REDACTED] in [REDACTED]. In the due process complaint, the [REDACTED] sought funding for placement of the student in [REDACTED]. However, the mother withdrew this complaint less than three weeks later. No court or hearing officer has made a finding that DCPS failed to make FAPE available to the student. Pursuant to 34 CFR §300.153(c), which limits the jurisdiction of State complaints to violations that occurred not more than one year prior to the date that the complaint is received, OSSE cannot consider whether the [REDACTED] initial enrollment of the student in [REDACTED] was due to the failure of DCPS to make FAPE available in [REDACTED]. Because the parent has not enrolled the child in a DCPS school since [REDACTED] the student has attended [REDACTED] since [REDACTED]. [REDACTED] enrolled [REDACTED] there in February [REDACTED] and no court or hearing officer has ever determined that DCPS failed to provide FAPE, OSSE concludes that the student is a parentally-placed private school child.

## **ISSUE ONE: FREE APPROPRIATE PUBLIC EDUCATION**

### **Findings of Fact**

1. The [REDACTED] withdrew the child from DCPS and placed the child in [REDACTED] in February [REDACTED].
2. The [REDACTED] provided notice to DCPS that the child was residing with [REDACTED] in [REDACTED] beginning in February [REDACTED].
3. The student is a parentally-placed private school child.

### **Discussion/Conclusion**

#### **DCPS is in compliance with 34 CFR §300.101.**

Pursuant to 34 CFR §300.101, a free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school. The IDEA at 34 CFR §300.145 requires each

State educational agency (SEA) to ensure that a child with a disability who is placed in or referred to a private school or facility *by a public agency* is provided special education and related services in conformance with an IEP, at no cost to the parents, that meets the standards that apply to education provided by the SEA and LEAs, and has all of the rights of a child with a disability who is served by a public agency. However, if a parent enrolls a child in a private elementary school or secondary school located in the geographic area of another LEA, the LEA where the private school is located must make FAPE available to the child. (See 71 Federal Register 46540: 46593 (14 August 2006)) OSSE makes no determination of whether the student is a District of Columbia resident by virtue of [REDACTED] residency. Such a determination is not relevant because the student attends a private school located in another LEA. [REDACTED] is located near [REDACTED], [REDACTED] within the [REDACTED] School District ([REDACTED] SD); therefore, [REDACTED] SD is responsible for making FAPE available. The student was not placed in the private school by DCPS and no court or Hearing Officer determined that DCPS failed to provide FAPE. The student is a parentally-placed private school child. DCPS was not obligated to provide FAPE to the child.

Therefore, DCPS is in compliance with 34 CFR §300.101.

## **ISSUE TWO: ANNUAL IEP REVIEW**

### **Findings of Fact**

1. DCPS developed and implemented an IEP for the student for the [REDACTED] school year.
2. The [REDACTED] withdrew the student from DCPS in February [REDACTED]
3. DCPS has not drafted an IEP for the child since the [REDACTED] school year.
4. The child has attended [REDACTED] since February [REDACTED]
5. [REDACTED] is located near [REDACTED].
6. The student is a parentally-placed private school child.

### **Discussion/Conclusion**

#### **DCPS is in compliance with 34 CFR §300.324(b)(1)(i).**

The IDEA at 34 CFR §300.324(b)(1)(i) requires each public agency to 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. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. (34 CFR §300.137) Pursuant to 34 CFR §300.132(b), a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.

The student is a parentally-placed private school child. The LEA where the child's private school is located is responsible for developing and implementing a services plan for the student. The LEA of the child's residence is not responsible for developing and implementing a services plan if the child's private school is located in another LEA. As discussed above, whether the student is a District of Columbia resident is not relevant because the private school in the LEA where the student attends school is responsible for developing and implementing a services plan for the

student. [REDACTED] SD is responsible for developing and implementing a services plan for the student.

Therefore, DCPS is in compliance with 34 CFR §300.324(b)(1)(i).

**ISSUE THREE: PROVIDE SERVICES TO PARENTALLY-PLACED PRIVATE SCHOOL CHILD**

**Findings of Fact**

1. The student is a parentally-placed private school child.
2. The student attends a private school in [REDACTED].

**Discussion/Conclusion**

**DCPS is in compliance with 34 CFR §§300.132(a) and 300.137.**

Pursuant to 34 CFR §300.132(a), to the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools *located in the school district served by the LEA*, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services. Further, no parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. (34 CFR §300.137) The student is a parentally-placed private school child who attends a private school in [REDACTED]. DCPS only has an obligation to provide equitable services to parentally-placed students with disabilities who attend private schools located in the District of Columbia.

Therefore, DCPS is in compliance with 34 CFR §§300.132(a) and 300.137.

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 [REDACTED]