



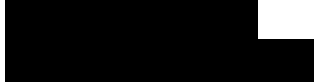
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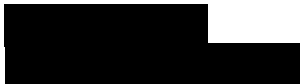
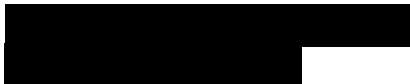
State Superintendent of Education

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August 26, 2011



District of Columbia Public Schools



Public Charter School



RE: State Complaint No. 010-023

## 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] (Student ID # [REDACTED] hereinafter “student” or “child,” while attending [REDACTED] Public Charter School (PCS). [REDACTED] PCS is a charter school which has elected the District of Columbia Public Schools (DCPS) as its local educational agency (LEA) for special education purposes.

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 develop an individualized education program (IEP) within 30 days of a determination that a child needs special education and related services; failure to provide special education and related services with regard to the provision of a dedicated aide, specialized instruction, and homebound instruction; and, failure to afford the parent an opportunity to participate in the student’s IEP meeting.

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 and [REDACTED] failed to develop an IEP within 30 days of a determination that a child needs special education and related services, as required by 34 CFR §300.323(c)(1)?
2. Whether DCPS and [REDACTED] failed to provide special education and related services to the child in accordance with the child’s IEP, specifically with regard to provision of a dedicated aide, as required by 34 CFR §300.323(c)(2)?
3. Whether DCPS and [REDACTED] failed to afford the parent an opportunity to participate in the IEP meeting, as required by 34 CFR §300.501(b)?
4. Whether DCPS and [REDACTED] failed to provide special education and related services to the child in accordance with the child’s IEP, specifically with regard to provision of specialized instruction, as required by 34 CFR §300.323(c)(2)?
5. Whether DCPS and [REDACTED] failed to provide special education and related services to the child in accordance with the child’s IEP, specifically with regard to provision of homebound instruction, as required by 34 CFR §300.323(c)(2)?

**INVESTIGATIVE PROCEDURE**

This investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED]
3. [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 emotional disturbance.
- 3. The student attended [redacted] PCS [redacted] Campus during the [redacted] and [redacted] school years.
- 4. On [redacted], DCPS and [redacted] PCS found the student ineligible for special education and related services.
- 5. On [redacted], DCPS and [redacted] PCS found the student eligible for special education and related services.
- 6. The student’s [redacted] and [redacted] IEPs were in effect during the [redacted] school year.

**ISSUE ONE: IEP DEVELOPED WITHIN 30 DAYS OF ELIGIBILITY DETERMINATION**

**Findings of Fact**

- 1. The student lives with [redacted] mother, stepfather and grandmother.
- 2. On [redacted], an IEP Team met which included the student’s grandmother, who attended as the mother’s representative.
- 3. At the [redacted] meeting, the IEP Team found the student eligible for special education and related services.
- 4. The IEP Team developed the content of the student’s IEP at the [redacted] however the IEP Team did not enter the IEP content into the Special Education Data System (SEDS).
- 5. On [redacted], DCPS and [redacted] PCS entered the student’s IEP content into SEDS based on decisions made in the [redacted] meeting.
- 6. On [redacted], the student’s mother signed the IEP.

**Discussion/Conclusion**

**DCPS and [redacted] PCS are in compliance with 34 CFR §300.323(c)(1) but out of compliance with 34 CFR §§300.300(b)(2) and 300.322(d).**

The IDEA at 34 CFR §300.323(c)(1) requires each public agency to 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. Pursuant to 34 CFR §300.306(a), a group of qualified professionals and the parent of the child determines whether the child is a child with a disability. The IDEA’s definition of a “parent” includes an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare. (34 CFR §300.30(a)(4)) The student’s grandmother

attended the [REDACTED] eligibility meeting. The IEP Team found the student eligible for special education and related services on [REDACTED].

Pursuant to 34 CFR §300.300(b)(1), a public agency that is responsible for making a free appropriate public education available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. Moreover, a public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child. (34 CFR §300.300(b)(2)) To meet the “reasonable efforts” requirement, a public agency should follow the same procedures detailed in 34 CFR §300.322(d), which requires a public agency to maintain a record of its attempts to contact the parent. (See 34 CFR §300.322(d), 71 Federal Register 46540:46633 (14 August 2006).)

IEPs that are generated through the Special Education Data System (SEDS) include a space for a parent to sign and indicate their consent for the provision of special education and related services to the child. Although LEAs are not required to obtain parental consent for the initial provision of special education and related services through the parent’s signature on the IEP, it is a common practice in the District of Columbia. DCPS and [REDACTED] PCS did not create a written IEP for the student during the [REDACTED] meeting and, hence, the grandmother acting as the parent did not provide consent for the initial provision of services at the [REDACTED] meeting. On [REDACTED], DCPS and [REDACTED] PCS created an IEP for the student in SEDS based on the discussions that occurred during the [REDACTED] meeting. The mother did not sign the [REDACTED] IEP until the next time she came to the school, on [REDACTED]. There is no evidence that DCPS or [REDACTED] PCS made reasonable efforts to contact the parent and obtain her signature prior to the more convenient occasion of her visit to the school. While the IEP Team meeting required by the IDEA was held within 30 days and the written IEP was generated six days later, it was 34 days before the parent signed the IEP and consented to the initial provision of services. DCPS and [REDACTED] PCS have not demonstrated that they made reasonable efforts to obtain the parent’s signature for initial consent for services.

Therefore, DCPS and [REDACTED] PCS are in compliance with 34 CFR §300.323(c)(1) but out of compliance with 34 CFR §§300.300(b)(2) and 300.322(d).

## **ISSUE TWO: PROVISION OF A DEDICATED AIDE**

### **Findings of Fact**

1. The student’s [REDACTED] IEP specified that the student required a full time dedicated aide and that the service would be provided from [REDACTED] through [REDACTED].
2. A Justification and Plan for Dedicated Aide form was completed on [REDACTED], but there is no evidence that the form was ever submitted to DCPS Central Office as required by DCPS to begin this service.
3. The Justification and Plan for Dedicated Aide form indicates that the student required a dedicated aide to help the student cope with stress and employ strategies to deal with [REDACTED] anger.
4. The student never received the services of a dedicated aide.

5. The student was suspended multiple times during the [REDACTED] school year for a total of more than ten school days.
6. The [REDACTED] manifestation determination meeting notes indicate that members of the IEP Team concluded that dedicated aides were not intended to manage the student's behavioral concerns and would not be available to the student during the lunch period or at any other time outside of the classroom.
7. The [REDACTED] manifestation determination meeting notes indicated that the majority of IEP Team members concluded that the student did not require a dedicated aide because a dedicated aide could not address the student's behavioral issues.
8. At the [REDACTED] manifestation determination meeting, the IEP Team concluded that the student's behavior was a result of DCPS and [REDACTED] PCS's failure to implement the student's IEP.
9. The [REDACTED] IEP specified that the student did not require a dedicated aide.

### **Discussion/Conclusion**

#### **DCPS and [REDACTED] PCS are out of compliance with 34 CFR §300.323(c)(2) with respect to provision of a dedicated aide.**

The IDEA at 34 CFR §300.323(c)(2) requires each public agency to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. The IEP Team determined at the [REDACTED] meeting that the student required a dedicated aide. A dedicated aide was included in the [REDACTED] IEP. The [REDACTED] special education coordinator completed a form to request a dedicated aide. There is no evidence to indicate whether this request was ever submitted to DCPS, but the student was never provided with a dedicated aide. Therefore, DCPS and [REDACTED] PCS are out of compliance with 34 CFR §300.323(c)(2) for failing to provide the student with a dedicated aide in accordance with the student's [REDACTED] IEP.

In [REDACTED], the IEP Team found that the student required the services of a dedicated aide specifically to address behavioral issues. The dedicated aide was never provided and the student was suspended multiple times for a total of at least ten days. On [REDACTED] the IEP Team determined that the student did not require a dedicated aide. Because there are no notes available for the [REDACTED] meeting, the only documentation of the reason for the removal of this service are the notes from the [REDACTED] manifestation determination meeting. Contrary to the very justification that the [REDACTED] IEP Team used to request the dedicated aide, the manifestation determination meeting notes show that [REDACTED] PCS staff members and the DCPS placement specialist concluded that dedicated aides are not intended to address behavioral problems and that a dedicated aide would be unable to address the student's behavioral issues because those issues occurred primarily outside of the classroom. This conclusion is incorrect. While some students may require a dedicated aide only in certain situations, a dedicated aide may be assigned to a student full-time, including time spent inside and outside of the classroom. In addition, a dedicated aide may address behavioral issues as well as concerns that are related to a student's academic or ambulatory functioning. OSSE has concerns regarding the IEP Team's removal of a service that had never been provided, following a school year in which the student consistently exhibited behavioral problems and was suspended multiple times, especially where the removal of the services seems to be based on a misunderstanding of the function of the service itself.

### **ISSUE THREE: PARENTAL PARTICIPATION**

#### **Findings of Fact**

1. The student's [REDACTED] IEP specified that the student required a full time dedicated aide and that the service would be provided from [REDACTED] through [REDACTED].
2. The [REDACTED] manifestation determination meeting notes show that members of the IEP Team concluded that dedicated aides were not intended to manage student's behavioral concerns and would not be available to the student during the lunch period or at any other time outside of the classroom.
3. The [REDACTED] manifestation determination meeting notes showed that the majority of IEP Team members concluded that the student did not require a dedicated aide because a dedicated aide could not address the student's behavioral issues.
4. The [REDACTED] IEP specified that the student did not require a dedicated aide.
5. The parent did not agree that the student no longer required a dedicated aide.

#### **Discussion/Conclusion**

##### **DCPS and [REDACTED] PCS are in compliance with 34 CFR §300.501(b).**

Pursuant to 34 CFR §300.501(b), the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. The parent alleged that the decision to remove the provision of a dedicated aide from the student's IEP was the sole decision of the DCPS placement specialist who attended the [REDACTED] manifestation determination meeting. The notes from the [REDACTED] manifestation determination meeting revealed that the misconception on the part of the DCPS placement specialist that a dedicated aide could not address the student's behavioral issues was shared by a majority of the IEP Team members. As noted above, OSSE has concerns with the circumstances under which the dedicated aide was removed from the student's IEP and the fact that the removal was based on a fundamental misconception about the utility of a dedicated aide. However, it appears that the decision to remove the dedicated aide from the student's IEP was a decision by the IEP Team and while the parent did not agree with the decision, she was not prevented from participating.

Therefore, DCPS and [REDACTED] PCS are in compliance with 34 CFR §300.501(b).

### **ISSUE FOUR: PROVISION OF SPECIALIZED INSTRUCTION**

#### **Findings of Fact**

1. The [REDACTED] IEP provided for 20 hours per week of specialized instruction to be delivered outside of the general education environment and 45 minutes per week of behavioral support services to be delivered outside of the general education environment.
2. The parent and the school representatives indicated in interviews that following the parent's [REDACTED] signature of the [REDACTED] IEP, the student began to receive pull-out services during [REDACTED] Mathematics Applications and Algebra classes, a total of approximately nine hours per week.

3. The parent and the school representatives indicated in interviews that following the parent's [REDACTED] signature of the [REDACTED] IEP, the student received approximately 4.5 hours per week of specialized instruction within the general education environment via a co-teaching model during reading class.

### **Discussion/Conclusion**

**DCPS and [REDACTED] PCS are out of compliance with 34 CFR §300.323(c)(2) with respect to the provision of specialized instruction.**

The IDEA at 34 CFR §300.323(c)(2) requires each public agency to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. The student's [REDACTED] IEP provided for 20 hours per week of specialized instruction to be delivered *outside* of the general education environment. [REDACTED] PCS provided the student with approximately nine hours of specialized instruction delivered outside the general education environment and 4.5 hours of specialized instruction delivered within the general education environment. In order to comply with the student's IEP, DCPS and [REDACTED] PCS were required to deliver all of the hours of instruction specified on the IEP in the educational setting specified by the IEP. DCPS and [REDACTED] PCS delivered only 13.5 hours per week of specialized instruction and delivered only nine of those hours in the setting that was prescribed by the student's IEP.

Therefore, DCPS and [REDACTED] PCS are out of compliance with 34 CFR §300.323(c)(2).

### **ISSUE FIVE: PROVISION OF HOMEBOUND INSTRUCTION**

#### **Findings of Fact**

1. The [REDACTED] IEP provided for 20 hours per week of specialized instruction to be delivered outside of the general education environment and 45 minutes per week of behavioral support services to be delivered outside of the general education environment.
2. The student was out of school due to an injury from [REDACTED] through [REDACTED].
3. The parent submitted a request to provide the child with instruction through the Visiting Instruction Service (VIS) program on [REDACTED].
4. The student never received instruction through home visits from a staff member in the VIS program or any other DCPS or [REDACTED] PCS staff member.
5. The student's IEP was not revised to indicate placement in homebound instruction.
6. The student was provided with work packets from [REDACTED] teachers while [REDACTED] was absent due to the leg injury.

### **Discussion/Conclusion**

**DCPS and [REDACTED] PCS are out of compliance with 34 CFR §§300.323(c)(2) and 300.324(b)(1)(ii)(D).**

The IDEA at 34 CFR §300.323(c)(2) requires each public agency to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. Pursuant to 34 CFR §300.324(b)(1)(ii)(D), each public agency must ensure that an IEP Team revises a child's IEP, as appropriate, to address the child's anticipated needs. The United States Department of Education's December 2009 *Questions and*

*Answers on Providing Services to Children with Disabilities During an H1N1 Outbreak*, details the steps that must be taken if a school remains open but a child with a disability is absent for an extended period of time. When a child with a disability is classified as needing homebound instruction because of a medical problem, as ordered by a physician, and is home for an extended period of time (generally more than 10 consecutive school days), an IEP meeting is necessary to change the child's placement and the contents of the child's IEP, if warranted. If the IEP goals will remain the same and only the time in special education will change, then the IEP Team may add an amendment to the IEP stating specifically the amount of time to be spent in special education. If a child does not receive services after an extended period of time, a subsequent individualized determination is required to decide whether a child with a disability requires compensatory education to make up for any skills that may have been lost because the child did not receive educational benefit.

The complainant alleged that DCPS and ██████████ PCS failed to provide the student with special education and related services during ██████████ extended absence from school due to an injury. The parent requested that the student receive instruction at home via DCPS's Visiting Instruction Service (VIS) program, a program which is used to provide instruction to general education students as well as students with disabilities when they are unable to attend school for an extended period due to a physical or mental health condition. Although the provision of services to the student through the VIS program would not have constituted the temporary change of placement that the student required, it would have at least constituted the delivery of some of the services due to the student under the ██████████ IEP.

The student was provided with packets of homework materials collected from ██████████ teachers. Following notification of the student's extended absence, the IEP Team did not meet to determine what services would be provided via homebound instruction. Following the student's return to the school, the IEP Team did not meet to determine if the student required compensatory education to make up for what may have been lost during the extended absence. Although the IEP Team was free to decide that the student's needs could be served through a reduced number of hours of specialized instruction, OSSE concludes that DCPS and ██████████ PCS did not comply with their obligation to revise the student's IEP to address the student's anticipated needs during the extended absence, specifically that the student needed a change in placement to receive homebound instruction.

Therefore, DCPS and ██████████ PCS are out of compliance with 34 CFR §300.323(c)(2) for failing to deliver specialized instruction and related services during the student's extended absence and out of compliance with 34 CFR §300.324(b)(1)(ii)(D) for failing to revise the IEP to address the student's anticipated needs.

### **CORRECTIVE ACTION**

DCPS is required to take the following actions:

1. In order to correct the noncompliance with 34 CFR §§300.323(c)(2) and 300.324(b)(1)(ii)(D):
  - a. By ██████████, DCPS and ██████████ PCS 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 for the specialized instruction that was not delivered in



the specified education setting, the failure to revise the student's IEP to address the student's extended absence, the failure to delivery specialized instruction during the student's extended absence, and the failure to provide the student with a dedicated aide. If DCPS, [REDACTED] PCS and the parent cannot agree on the amount of compensatory education hours, DCPS and [REDACTED] PCS shall provide a minimum of 300 hours of specialized instruction as compensatory education. DCPS must forward a copy of the Compensatory Education Plan by [REDACTED]. DCPS must deliver at least 75% of the agreed compensatory education hours by [REDACTED]. In order to close this corrective action, DCPS must forward service tracking forms documenting the delivery of compensatory education hours or make these forms available in SEDS no later than five days following the delivery of services.

2. In order to correct the noncompliance with 34 CFR §§300.300(b)(2) and 300.322(d):
  - a. For the next four months, DCPS and [REDACTED] PCS must ensure that reasonable efforts to obtain a parent's consent for the initial provision of special education and related services are taken. By [REDACTED], DCPS must submit to OSSE a report detailing the initial eligibility determinations made at all [REDACTED] PCS campuses that includes student names, identification numbers, date of eligibility determination, result of eligibility determination, date of initial IEP and the date that the parent signed to consent for the initial provision of special education and related services. DCPS and [REDACTED] PCS must be prepared to produce, upon OSSE's request, documentation showing that reasonable efforts were taken to promptly obtain the parent's consent for the initial provision of services.

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], DCPS [REDACTED]