



Office of the
State Superintendent of Education

October 7, 2011

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 011-001

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 Ms. [REDACTED], hereinafter “complainant” or “parent,” on [REDACTED] alleging violations in the special education program of [REDACTED] [REDACTED] (Student ID # [REDACTED] hereinafter “student” or “child,” while attending [REDACTED] Learning Center (LC), 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 afford the parent an opportunity to participate in the student’s IEP meeting; failure to amend the student’s IEP according to federal regulatory requirements; failure to ensure that the student’s placement decision was made by a group of persons, including the parents; and, failure, in selecting the least restrictive environment, to consider any potential harmful effect on the child or on the quality of services that he or she needs.

According to 34 CFR §300.152(a)(3)(ii), a parent who files a complaint and the public agency against which the complaint is made may voluntarily engage in mediation. The 60-day timeline for a formal decision on this complaint may be extended if the parent and public agency agree to extend the time to engage in mediation. On [REDACTED], the parties informed OSSE that they agreed to mediate and agreed to extend the timeline for the complaint pending mediation. On [REDACTED], OSSE was informed by the complainant that [REDACTED] no longer agreed to mediation in this matter. The 60-day timeline for the complaint resumed on [REDACTED] and pursuant to 34 CFR §300.152(a), OSSE is required to issue a written decision by [REDACTED].

The State Complaints 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 Complaints Office:

1. Whether DCPS failed to afford the parent an opportunity to participate in the IEP meeting, as required by 34 CFR §300.501(b)?
2. Whether DCPS failed to amend the student’s IEP according to the requirements of 34 CFR §300.324(a)(4) and (a)(6)?
3. Whether DCPS failed, in selecting the least restrictive environment, to ensure that the placement decision was made by a group of persons, including the parents, as required by 34 CFR §300.116(a)(1)?
4. Whether DCPS failed, in selecting the least restrictive environment, to consider any potential harmful effect on the child or on the quality of services that he or she needs, as required by 34 CFR §300.116(d) and 5 DCMR §E-3013.3?

INVESTIGATIVE PROCEDURE

This investigation included interviews with the following individuals:

1. [REDACTED] LC [REDACTED]
2. [REDACTED] LC [REDACTED]

OSSE notes that the complainant did not respond to multiple requests for an interview. 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] LC during the [REDACTED] school year.
4. The student's [REDACTED], [REDACTED] and [REDACTED] IEPs were in effect during the [REDACTED] school year.

ISSUE ONE: PARENTAL PARTICIPATION

Findings of Fact

1. The [REDACTED] IEP provided for 25.5 hours per week of specialized instruction outside of the general education setting.
2. An IEP meeting was scheduled on [REDACTED] in order to discuss the student's placement for the following year.
3. The [REDACTED] LC case manager prepared a draft IEP prior to the [REDACTED] IEP meeting which provided for 19 hours per week of specialized instruction outside of the general education setting.
4. At the [REDACTED] IEP meeting, the parent objected to the reduction of hours of specialized instruction.
5. At the [REDACTED] IEP meeting, the parent requested that the student's final placement decision be deferred.
6. The [REDACTED] IEP provided for 26.5 hours per week of specialized instruction outside of the general education setting.
7. The [REDACTED] Prior Written Notice indicated that the team did not finalize the student's placement for the [REDACTED] school year.

Discussion/Conclusion

DCPS is 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 complainant alleged that [REDACTED] was prevented from participating in the determination of the student's placement and hours of specialized instruction and that [REDACTED] was directed to sign the student's IEP at the beginning of the [REDACTED] IEP meeting. In interviews, the [REDACTED] LC special education teacher and case manager indicated that the parent was not asked to sign the IEP at the beginning of the IEP meeting. The complainant did not respond to OSSE's request for an interview. OSSE was unable to determine whether the complainant was asked to sign the IEP at the beginning of the [REDACTED] meeting; whether the complainant was asked to sign some other document, such as the IEP roster, at the beginning of the [REDACTED] meeting; or whether the complainant was not asked to sign any document at the beginning of the [REDACTED] meeting. The student's hours of specialized instruction were not reduced at the [REDACTED] meeting and the IEP Team did not finalize a placement decision at the [REDACTED] meeting. It is apparent from the [REDACTED] meeting notes and the [REDACTED] prior written notice that these decisions were made as a result of the parent's input. OSSE finds that the parent's concerns were considered by the IEP Team at the [REDACTED] meeting.

Therefore, DCPS is in compliance with 34 CFR §300.501(b).

ISSUE TWO: AMENDMENT OF THE IEP

Findings of Fact

1. The [REDACTED] IEP provided for 25.5 hours per week of specialized instruction outside of the general education setting.
2. The [REDACTED] LC case manager prepared a draft IEP prior to the [REDACTED] IEP meeting which provided for 19 hours per week of specialized instruction outside of the general education setting.
3. At the [REDACTED] IEP meeting, the parent objected to the reduction of hours of specialized instruction.
4. The [REDACTED] IEP provided for 26.5 hours per week of specialized instruction outside of the general education setting.

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.324(a)(4) and (6).

Pursuant to 34 CFR §300.324(a)(4), in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or by amending the IEP rather than by redrafting the entire IEP. (34 CFR §300.324(a)(6)) OSSE's [REDACTED] IEP Amendment Guidance states that an LEA must document agreed amendments using the standard IEP amendment form and provide a prior written notice to the parent which describes the proposed changes to the current IEP. The complainant alleged that DCPS improperly amended the student's IEP without her input or consent. The [REDACTED] LC case manager admitted that she brought a draft IEP that included 19 hours per week of specialized instruction outside of the general education setting to the [REDACTED] meeting. However, the draft IEP reviewed at the [REDACTED] IEP meeting does not constitute an IEP amendment. In addition, this draft IEP was never implemented. OSSE cannot conclude that DCPS either intended to revise the student's IEP by amendment and without a meeting, or implemented an IEP amendment.

Therefore, DCPS is in compliance with 34 CFR §300.324(a)(4) and (6).

ISSUE THREE: PLACEMENT DECISION BY A GROUP OF PERSONS, INCLUDING THE PARENTS

Findings of Fact

1. An IEP meeting was scheduled on [REDACTED] in order to discuss the student's placement for the following year.
2. At the [REDACTED] IEP meeting, the parent requested that the student's final placement decision be deferred so that [REDACTED] could visit the neighborhood school and consider the student's other options.
3. The [REDACTED] Prior Written Notice indicated that the team did not finalize the student's placement for the [REDACTED] school year.

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.116(a)(1).

The IDEA at 34 CFR §300.116(a)(1) requires each public agency to ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The [REDACTED] IEP meeting was called to discuss the student's placement for the following year. However, at the [REDACTED] IEP meeting, the parent requested that [REDACTED] be allowed to visit the neighborhood school and consider other options prior to finalizing the student's placement for the [REDACTED] school year. The IEP Team did not finalize the student's [REDACTED] placement at the [REDACTED] IEP meeting. OSSE cannot conclude that a placement decision was inappropriate when no placement decision was made.

Therefore, DCPS is in compliance with 34 CFR §300.116(a)(1).

ISSUE FOUR: CONSIDERATION OF POTENTIAL HARMFUL EFFECTS

Findings of Fact

1. An IEP meeting was scheduled on [REDACTED] in order to discuss the student's placement for the following year.
2. At the [REDACTED] IEP meeting, the team reviewed information from the student's teachers that indicated that [REDACTED] was making academic progress and was most successful when [REDACTED] was being challenged.
3. At the [REDACTED] IEP meeting, the IEP Team suggested that the student attend [REDACTED] neighborhood high school during the [REDACTED] school year.
4. At the [REDACTED] IEP meeting, the parent requested that the student's final placement decision be deferred so that [REDACTED] could visit the neighborhood school and consider the student's other options.
5. The [REDACTED] Prior Written Notice indicated that the team did not finalize the student's placement for the [REDACTED] school year.

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.116(d) and 5 DCMR §E-3013.3.

The IDEA at 34 CFR §300.116(d) and the District of Columbia Municipal Regulations at 5 DCMR §E-3013.3 require that in determining the educational placement of a child with a disability, each public agency must ensure that in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs. Although the student's placement was discussed and the other IEP Team members proposed the student's neighborhood school as an appropriate location, the IEP Team did not finalize the student's placement at the [REDACTED] meeting. Absent a placement decision, OSSE cannot require a demonstration that DCPS considered the potential harmful effect of placing the student in an environment or at a location that did not meet [REDACTED] individualized needs. Further, the IEP Team's examination of the observations from teachers that the student performed most successfully when challenged does indicate consideration of the potential harmful effects of a more restrictive setting.

Therefore, DCPS is in compliance with 34 CFR §300.116(d) and 5 DCMR §E-3013.3.

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]