



October 24, 2011

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State complaint No. 011-005

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] and [REDACTED], hereinafter “complainants” or “parents”, on [REDACTED] alleging violations in the evaluation and eligibility determinations of their child, [REDACTED] (Student ID # [REDACTED] hereinafter “student,” while attending a private school within the jurisdiction of the District of Columbia Public Schools (DCPS).

The complainant filed a State complaint on [REDACTED] and, upon the settlement of the dispute through mediation, the complainant withdrew the complaint. The instant State complaint included some of the issues raised in the [REDACTED] complaint and additional allegations of noncompliance. The complainant did not raise any issue with regard to the implementation of the mediation agreement in this complaint.

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 parents with a copy of the procedural safeguards available to them; failure to timely complete the student’s initial evaluation; failure to ensure that assessments were used for the purposes for which they were valid and reliable, administered by trained personnel and administered in accordance with instructions provided by the test manufacturer; failure to ensure that the parents were afforded an opportunity to participate in a meeting; failure to ensure that the IEP Team included all necessary members; failure to determine whether the child was a child with a disability; and, use of the mediation process to deny the complainants’ rights.

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 and further clarified by a review of documents 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 parents with a copy of the procedural safeguards available to them, as required by 34 CFR §300.504?
2. Whether DCPS failed to timely complete the student’s initial evaluation, as required by 34 CFR §300.301(c)(1)?
3. Whether DCPS failed to ensure that assessments and other evaluation materials were used for the purposes for which they were valid and reliable; were administered by trained and knowledgeable personnel; and were administered in accordance with any instructions provided by the producer of the assessments as required by 34 CFR §300.304(c)(1), specifically with regard to the test environment for the Woodcock-Johnson?
4. Whether DCPS failed to ensure that the parents of a child with a disability were afforded an opportunity to participate in a meeting with respect to the identification, evaluation and educational placement of the child, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place as required by 34 CFR §§300.322(a) and 300.501(b), specifically with regard to the [REDACTED] notice of meeting?
5. Whether DCPS failed to ensure that the IEP Team included all necessary members, as required by 34 CFR §300.321, specifically with regard to school personnel?
6. Whether DCPS failed to determine whether the child was a child with a disability as required by 34 CFR §300.306 after the conduct of the independent educational evaluation in June [REDACTED]
7. Whether DCPS used the mediation process to deny the complainant’s rights under Part B of the IDEA, as prohibited by 34 CFR §300.506(b)(1)(ii)?

INVESTIGATIVE PROCEDURE

The investigation included the review of all documents forwarded by OSSE and submitted by DCPS and the complainant, including:

[REDACTED]

[REDACTED]

When DCPS was unable to provide requested test protocols for the Woodcock-Johnson III Tests of Achievement, the complaint investigator requested an interview with the DCPS school psychologist toward the end of the investigative process to orally obtain the information. It was not possible to schedule the interview prior to the conclusion of the investigation. In accordance with the communication to DCPS, in the absence of the requested information, the complaint investigator relied on the information provided in DCPS' response and supplemental information. In addition, the investigator researched the publicly available information on the Woodcock-Johnson III Tests of Achievement test protocol.

GENERAL FINDINGS OF FACT

1. The student has been in a private school in general education from age four to eighth grade. (Psychological Evaluation)
2. The student is currently in the ninth grade at a private school in the District of Columbia. (Supplemental response from complainant)

ISSUE ONE: PROCEDURAL SAFEGUARDS

Findings of Fact

1. The parent referred the student for an initial evaluation on [REDACTED]. On [REDACTED], DCPS acknowledged the referral of the student for special education and provided a copy of the Notice of Procedural Safeguards. ([REDACTED] DCPS Acknowledgement of Referral to Special Education Letter)
2. The Prior Written Notice for evaluation was dated [REDACTED] and indicates the Notice of Procedural Safeguards was included. ([REDACTED] Prior Written Notice)
3. Some time prior to [REDACTED], a copy of the Notice of Procedural Safeguards was placed in the family mailbox with a note stating it should be signed and returned. The complainant did not recall the date the Notice was placed in the family mailbox. (complaint; E-mail Correspondence and Supplemental Response from the complainant)
4. An eligibility meeting for the student was held on [REDACTED]. (SEDs Documentation)
5. The complainants signed receipt for the Notice of Procedural Safeguards at the eligibility meeting on [REDACTED]. (Notice)

Discussion/Conclusion

DCPS is out of compliance with 34 CFR §300.504.

The allegation in this complaint related to the manner the Notice of Procedural Safeguards was provided to the parent prior to the [REDACTED] State complaint, specifically that it was placed in the family mailbox with a note stating that it should be signed and returned. There is no

allegation that the parent did not receive the Notice at that time. In accordance with Title 34 CFR §300.504, a copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents at various additional junctions. Relevant to this complaint, the copy of the procedural safeguards must also be given upon the initial referral or parent request for evaluation. (See also DCMR §5-E3020.1)

In this case, the parents referred the student for an initial evaluation on [REDACTED]. On [REDACTED], DCPS acknowledged the referral of the student to special education and provided a copy of the Notice of Procedural Safeguards. (Finding of Fact (FOF) number 2) This is forty-eight days after the parents' referral. DCPS provided the parents a second Notice of Procedural Safeguards with the prior written notice dated [REDACTED] that set forth DCPS' proposal to evaluate the student and indicated the Notice of Procedural Safeguard was included. DCPS provided another Notice to the parents at the eligibility meeting on [REDACTED]. (FOF numbers 3, 6 and 9)

The complainant did not recall the date a Notice of Procedural Safeguards was placed in the family mailbox prior to [REDACTED]. (FOF number 4) Based on the documented provision of the Notice to the parents on [REDACTED] and [REDACTED], DCPS did comply with the requirement to provide the Notice one time a school year and at the junctures of the initial referral of student or parent request for evaluation. In addition, DCPS later provided another Notice of Procedural Safeguards Rights at the eligibility meeting on [REDACTED].

While DCPS did provide the Notice of Procedural Safeguards to the parents, including subsequent to the required junctures of the parents' referral and request for evaluation, it was not "upon" those events as required by the IDEA and DCMR. (Title 34 CFR §300.504 and DCMR §5-E3020.1) DCPS' unreasonable delay of forty-eight days in the provision of the Notice of Procedural Safeguards subsequent to the referral of the student and request for evaluation was not in compliance with 34 CFR §300.504.

Therefore, DCPS is out of compliance with 34 CFR §300.504.

ISSUE TWO: TIMELY COMPLETION OF INITIAL EVALUATION

Findings of Fact

1. DCPS concedes that the initial evaluation and eligibility determination was not done within 120 days. (Response)
2. The determination of eligibility for this student was conducted on [REDACTED]. [REDACTED] would be 120 days from the date of referral. (Eligibility Determination and Calendar)
3. The student was referred for an initial evaluation on [REDACTED]. On [REDACTED], DCPS informed the parent that the next step was for the school staff to review various educational and behavioral data and determine whether to proceed with the evaluation and prepare a Prior Written Notice. This is forty-eight days after the parents' referral. ([REDACTED] DCPS Acknowledgement of Referral to Special Education Letter and Calendar)
4. DCPS reviewed existing data regarding the student provided by a group of qualified personnel, including the parents. On [REDACTED], DCPS sent the Analysis of Existing Data to the parents and attached a Prior Written Notice proposing an evaluation of the student's skills in

- the academic and attention/organization area. [REDACTED] Prior Written Notice and Analysis of Existing Data)
5. The Prior Written Notice proposing to evaluate the student was dated [REDACTED]. [REDACTED] Prior Written Notice)
 6. The parent signed consent to evaluate on [REDACTED] and faxed the consent to DCPS on that same day. (Consent for Initial Evaluation form)
 7. A Social Work Assessment was conducted on [REDACTED] with the student's mother and the Report was issued on [REDACTED]. (Assessment Report)
 8. On [REDACTED], DCPS notified the parent that testing space was not available at the private school and, therefore, the psychological testing would need to take place at the neighborhood school. DCPS notified the parent that the psychological testing was scheduled for [REDACTED] and provided scheduling options for educational testing and a request that the parent respond. (E-mail Correspondence)
 9. On [REDACTED] the parent inquired regarding other dates for psychological testing since the scheduled date was not the most appropriate date/time. The parent acknowledged the tight timelines for testing/evaluation, review of the results and implementation of a plan but also wanted consideration of what worked best for the student. (E-mail Correspondence)
 10. On [REDACTED], the parent inquired regarding the scheduling of the educational assessment. On [REDACTED], the parent contacted DCPS again regarding the scheduling of the educational testing component of the assessment in order to conclude that portion of the evaluation. On that same date, the parent contacted DCPS to confirm the psychological evaluation. (E-mail Correspondence)
 11. On [REDACTED], the parent contacted DCPS to inquire regarding the completion of the evaluation and the scheduling of the meeting. (E-mail Correspondence)
 12. The last assessment report for student was from the school psychologist and it was issued on [REDACTED] for an evaluation conducted on [REDACTED]. (Psychological Evaluation)
 13. DCPS cited scheduling conflicts and intervening circumstances that prevented the completion of the evaluation and eligibility determination in 120 days, including the student's attendance at a private school with no facilities available for assessments. (Response)

Discussion/Conclusion

DCPS is out of compliance with 34 CFR §300.301(c)(1).

In accordance with 34 CFR §300.301, the initial evaluation of a student must be conducted within sixty days of receiving parental consent for the evaluation; or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. The District of Columbia has established a timeframe for the initial evaluation in law, DC ST §38-2561.02, Chapter 25B on the placement of students with disabilities in nonpublic schools. This provision of law requires that DCPS shall assess or evaluate a student who may have a disability and who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment.

In the [REDACTED] policy on initial evaluation and reevaluation issued by the OSSE that was in effect at the time of this complaint, the OSSE clarified that the 120 days applies to the initial evaluation of all students with disabilities by local educational agencies in the District of Columbia and that the initial evaluation includes the determination of eligibility. Consistent with 34 CFR

§300.301(d), there are exceptions to this 120 day timeframe: The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or a child enrolls in a school of another public agency after the relevant timeframe has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under the IDEA. Based on this mandatory timeframe of 120 days, the determination of eligibility in this case should have been by completed by [REDACTED] and was completed on [REDACTED]. DCPS concedes it did not make an eligibility determination within the District of Columbia time frame of 120 days. DCPS does offer several reasons for the delay that involved scheduling conflicts and "intervening circumstances" that were compounded by the student's attendance at a private school with no facilities available for assessments. (FOF numbers 7, 8, and 19) However, none of those exceptions fall within the permissible exceptions under the IDEA or District law.

Once the assessments commenced on [REDACTED], there was some regularity in the conduct of the assessments. (FOF numbers 13-18) However, there were also significant delays at the commencement of the process, notwithstanding the parents' initiation of multiple contacts with DCPS requesting information on the completion of the evaluations and determination of eligibility and immediate return of consent to evaluate. (FOF numbers 9-12) The eighty-one day delay between the date of referral on [REDACTED] to the determination regarding the evaluation of the student and the issuance of the Prior Written Notice on [REDACTED] and the request for parental consent on [REDACTED] was not a reasonable period of time.

"Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed." (See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg., 46540:46637 (August 14, 2006). (56 IDELR 50 (OSEP 2011)) Consistent with the above expectation of reasonable period of time, the OSSE Evaluation Policy provides that upon the referral for an initial evaluation, the local educational agency must provide a written notification of the referral. In this case, the parents' referral of the student for evaluation was not even acknowledged by DCPS for fifty-eight days. (FOF number 10)

Therefore, DCPS is out of compliance with 34 CFR §300.301(c)(1) with regard to the timely conduct of the initial evaluation of the student and determination of eligibility.

ISSUE THREE: ASSESSMENTS AND OTHER EVALUATION MATERIALS

Findings of Fact

1. The Woodcock-Johnson III Tests of Achievement (Woodcock-Johnson) was administered on [REDACTED] by a DCPS special education teacher to assess the student's academic functioning in reading, math, and written language. (Psychological Evaluation and Evaluation Summary Report)
2. The complainant alleged in the complaint that the test administrator left the room a minimum of three times during the testing; other children were present in the room during the testing; the teacher provided instructions for the reading portion of the test and then left noting she would return to ask questions; the teacher did other tasks during the test administration

unrelated to the testing and the test took 2 hours and 49 minutes to administer and although the evaluation was not completed and at the end of that time period, the special education teacher informed the student to stop. (complaint)

3. The special education teacher who administered the Woodcock-Johnson is a licensed teacher with experience in administering educational assessments. (Response and Supplemental response from DCPS)
4. The test protocols for the Woodcock-Johnson, including the testing administration environment, are not publically available. However, Riverside Publishing (the company that publishes the Woodcock-Johnson) provides that: "Any person administering the WJ III ACH needs thorough knowledge of the exact administration and scoring procedures and an understanding of the importance of adhering to these standardized procedures. To become proficient in administering the WJ III ACH, examiners will need to study the administration and scoring procedures carefully and follow the procedures precisely....Because professional titles, roles, and responsibilities vary among states (or provinces), or even from one school district to another, it is impossible to equate competency to professional titles. Consequently, the joint professional standards suggest that it is the responsibility of each school district to be informed by this statement of examiner qualifications and subsequently determine who is qualified to administer and interpret the WJ III ACH."
(<http://www.riversidepublishing.com/products/index.html>)
5. The DCPS School Psychologist trains special education teachers to administer the Woodcock-Johnson in accordance with the testing protocols issued by the testing publishers and provides ongoing technical assistance in that regard. (Supplemental response from DCPS)
6. The School Psychologist was designated as responsible for the administration of the Woodcock-Johnson and interpreted and reported the student's test results in the Psychological Report, including equating the scores to grade level functioning. (Psychological Evaluation and Evaluation Summary Report)
7. The School Psychologist relied on the results of the Woodcock Johnson in the Psychological Evaluation. (Psychological Evaluation)
8. The School Psychologist reviewed the results of the Woodcock-Johnson based on the parents' concerns and determined that the results were consistent with other assessments and any variance attributable to the testing environment would not have been dispositive in the eligibility determination. (DCPS Response)

Discussion/Conclusion

DCPS is out of compliance with 34 CFR §300.304(c)(1).

In accordance with 34 CFR §300.304(c)(1), assessments and other evaluation materials must be used for the purposes for which they were valid and reliable; administered by trained and knowledgeable personnel; and administered in accordance with any instructions provided by the producer of the assessments. The allegation in this complaint was with regard to the administration of the Woodcock-Johnson on [REDACTED] by a DCPS special education teacher. The complainant raised several allegations related to the test administration: the test administrator left the room a minimum of three times during the testing; other children were present in the room during the testing; the teacher provided instructions for the reading portion of the test and then left noting she would return to ask questions; the teacher did other tasks during the test administration unrelated to the testing and the test took 2 hours and 49 minutes to

administer and although the evaluation was not completed and at the end of that time period, the special education teacher informed the student to stop.(FOF number 21)

In accordance with the company that publishes the Woodcock-Johnson “Any person administering the WJ III ACH needs thorough knowledge of the exact administration and scoring procedures and an understanding of the importance of adhering to these standardized procedures. To become proficient in administering the WJ III ACH, examiners will need to study the administration and scoring procedures carefully and follow the procedures precisely.” The joint professional standards suggest that it is the responsibility of each school district to be informed by this statement of examiner qualifications and subsequently determine who is qualified to administer and interpret the Woodcock-Johnson.(FOF number 23) In this case DCPS determined that the special education teacher who administered the Woodcock-Johnson was qualified in that the teacher is a licensed teacher with experience in administering educational assessments and DCPS provided training in the administration of the test.(FOF numbers 22, 24, and 25) Therefore, it is concluded that the special education teacher possessed the basic qualifications for the administration of the Woodcock-Johnson.

The standards for the testing administration environment are not publically available. However, DCPS did not dispute the complainant’s allegations related to deviations in the test administration environment. Rather, DCPS indicated that the school psychologist reviewed the results of the Woodcock-Johnson and that any variance attributable to the testing environment would not have been dispositive in the eligibility determination. (FOF numbers 25-27)

Notwithstanding the school psychologist’s review of the results and determination with regard to a mitigation and/or impact of variances attributable to the testing environment, the IDEA requires that assessments and other evaluation materials must be administered in accordance with any instructions provided by the producer of the assessments. In this case, it is determined that the Woodcock-Johnson was not administrated in accordance with the instructions provided by the producer of the assessments. (34 CFR §300.304(c)(1)(v))

Therefore, DCPS is out of compliance with 34 CFR §300.304(c)(1) with regard to the test administration of the Woodcock-Johnson.

ISSUE FOUR: OPPORTUNITY TO PARTICIPATE

Findings of Fact

1. DCPS notified the parent on Tuesday, [REDACTED] that DCPS had the evaluations/reports completed and was ready to discuss the results with the parent and to determine eligibility. DCPS offered the date of Thursday, [REDACTED]. (E-mail Correspondence)
2. The parent responded on [REDACTED] that the parent was not available on [REDACTED] and indicated that a little more lead time was needed for meeting requests as the parents had work related commitments and both would like to actively participate in the discussion. The parent inquired regarding other options for meeting dates/times. (E-mail Correspondence)
3. DCPS responded on [REDACTED] and offered two alternative dates and times on [REDACTED]. On that same day, DCPS inquired whether the parent wanted the school to be included in the meeting. (E-mail Correspondence)

4. The parent responded to DCPS on [REDACTED] and indicated they were able to meet on [REDACTED]. (E-mail Correspondence)
5. On [REDACTED], DCPS faxed a Letter of Invitation to a Meeting to the parents to be held on [REDACTED] for the purpose of reviewing the results of the evaluation of the student and to determine the student's eligibility. The form included a notice "To prevent further delay in ensuring your child's educational needs are adequately addressed, we intend to proceed with this meeting unless you are unable to attend and indicate an alternate date, time or location. Please contact me if this meeting time, date, and/or location is not convenient for you so we can reschedule or discuss other ways you can participate." ([REDACTED] Letter of Invitation)
6. On [REDACTED], the parent proposed an alternative date of [REDACTED] and times for the eligibility meeting to be held and inquired whether the school had been contacted and invited to the meeting. (E-mail Correspondence)
7. The parents and DCPS agreed upon [REDACTED] for the eligibility meeting. Prior to the meeting on [REDACTED], the meeting was postponed by the parent due to illness of the student's father. The parent requested the school counselor be present at the meeting in this correspondence.(E-mail Correspondence)

Discussion/Conclusion

DCPS is in compliance with 34 CFR §§300.322(a) and 300.501(b).

In accordance with the IDEA, 34 CFR §§300.322(a) and 300.501(b), the parents of a child with a disability must be afforded an opportunity to participate in a meeting with respect to the identification, evaluation and educational placement of the child, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agree on time and place. The only meeting at issue in this complaint is the eligibility meeting scheduling notice on [REDACTED].

DCPS notified the parent on Tuesday, [REDACTED] that DCPS had the evaluations/reports completed and was ready discuss the results with the parent and to determine eligibility. DCPS offered the date of Thursday, [REDACTED]. When the parent responded that the date was not convenient and requested other alternatives, DCPS offered two alternative dates and times on [REDACTED]. The parent responded to DCPS indicating they would be able to meet on [REDACTED] and DCPS issued a Letter of Invitation to a Meeting to be held on [REDACTED]. The Letter included a notice that the parents should contact DCPS if the meeting time, date, and/or location were not convenient to enable rescheduling or alternative modes of participation. On [REDACTED], the parent proposed an alternative date and [REDACTED] was subsequently agreed upon. On [REDACTED], the eligibility meeting was again postponed by the parent prior to the meeting due to illness of the student's father. The eligibility meeting was ultimately held on [REDACTED]. (FOF numbers 8, 28-34)

It is important to note that the IDEA does not require the issuance of a meeting notice a specific number of days in advance of the meeting. Rather, the IDEA requires only that it be "early enough" to ensure the parents will have an opportunity to attend the meeting. (34 CFR §§300.322(a)) Therefore, the determination is a case-by-case determination. In this case, while DCPS initially offered a date for the eligibility meeting only two days after the notice to the parent,

DCPS was willing, and did, provide alternative convenient dates and times, including when the parents indicated on two previously agreed upon dates and times that they would be unable to attend. Importantly, the parents did attend the eligibility meeting held on [REDACTED]. Therefore, DCPS did afford the parents an opportunity to participate in the meeting with respect to the identification of the student in accordance with 34 CFR §§300.322(a) and 300.501(b), including notifying the parents of the meeting early enough to ensure that they would have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place.

ISSUE FIVE: IEP TEAM

Findings of Fact

1. The [REDACTED] Letter of Invitation to the meeting indicated DCPS anticipated the following persons to be in attendance at the eligibility meeting: student's parent, special education teacher(s), general education teacher(s), service provider(s) and special education coordinator. (Letter of Invitation)
2. Both of the student's parents, two DCPS special education teachers, the DCPS school psychologist, the social worker for DCPS, the social worker for the private school and the DCPS special education coordinator attended the eligibility meeting held on [REDACTED]. One of the two sign-in sheets indicates the student attended the [REDACTED] eligibility meeting. There was no general education teacher at the meeting and no excusal of the general education teacher. ([REDACTED] Participant sheet, with purpose; Supplemental response of DCPS)

Discussion/Conclusion

DCPS is out of compliance with 34 CFR §300.321.

In accordance with the IDEA, 34 CFR §300.306, upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child determine whether the child is a child with a disability and the educational needs of the child. However, the District of Columbia permissibly goes beyond the IDEA and requires the determination of eligibility to be done by the child's IEP Team. (DCMR §5-E3006.3. See also §5-E3004.1 and definition of IEP Team in §5-E3001.1) The complainant only raises an allegation of noncompliance with regard to the absence of school personnel at the [REDACTED] eligibility meeting.

The [REDACTED] Letter of Invitation to the eligibility meeting indicated DCPS anticipated the following persons to be in attendance at the meeting: student's parent, special education teacher(s), general education teacher(s), service provider(s) and special education coordinator. With respect to school personnel, two special education teachers of DCPS, the DCPS school psychologist, the social worker for DCPS, the social worker for the private school and the DCPS special education coordinator attended the eligibility meeting held on [REDACTED]. There was no general education teacher at the meeting. (FOF numbers 35-36)

In accordance with 34 CFR §300.321, the following school personnel team members would have been required to be at the [REDACTED] eligibility meeting:

- Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

- Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- A representative of the public agency who: (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) is knowledgeable about the general education curriculum; and (iii) is knowledgeable about the availability of resources of the public agency;
- An individual who can interpret the instructional implications of evaluation results; and
- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child.

As discussed above, two DCPS special education teachers attended the meeting. The DCPS special education coordinator was also present at the meeting. There is no allegation that the special education teachers or the coordinator did not meet the requirements in 34 CFR §300.306. In addition, both the DCPS school psychologist and social worker attended the meeting. Therefore, required individuals who could interpret the instructional implications of the evaluation results were also present at the meeting.

DCPS did inquire whether the parents wanted the private school to be included in the meeting and the parents requested that private school personnel be present at the meeting and specifically mentioned the school counselor. A social worker for the private school did attend the meeting and there is no evidence that DCPS precluded the attendance of the private school counselor.(FOF numbers 30, 33, and34) Therefore, DCPS did allow private school personnel to attend the eligibility meeting at the discretion of the parent.

In this case, the student was in general education in a private school at the time of the eligibility meeting. Neither a DCPS general education teacher nor the private school general education teacher of the child attended the eligibility meeting. “In accordance with 34 CFR §300.321 §300.321(a)(2) and section 614(d)(1)(B)(ii) of the Act, a regular education teacher is a required member of an IEP Team if the child is, or may be, participating in the regular education environment. In such cases, the regular education teacher would be expected to attend each IEP Team meeting, unless the regular education teacher has been excused from attending a meeting, pursuant to § 300.321(e) and section 614(d)(1)(C) of the Act.” (Federal Register /Vol. 71, No. 156 /Monday, August 14, 2006 /Rules and Regulations 46669) In this case, there is no excusal of the general education teacher. DCPS did comply with the mandatory school personnel in 34 CFR §300.321 in most regards, but failed to have a general education teacher at the [REDACTED] eligibility meeting as required by 34 CFR §300.321(a)(2).

Therefore, DCPS is out of compliance with 34 CFR §300.321(a)(2).

ISSUE SIX: ELIGIBILITY DETERMINATION

Findings of Fact

1. DCPS refused to identify the student as a student with disabilities. ([REDACTED] Prior Written Notice)
2. The parents did not sign in agreement with the determination that the student was not eligible for special education. ([REDACTED] Participant sheet, with purpose)

3. On [REDACTED], DCPS and the parent agreed that an independent comprehensive psychological assessment (IEE) of the student would be conducted and DCPS would reconvene an IEP Team within a time certain of receipt of the IEE for purposes of an eligibility determination. (complaint; Response; Mediation Agreement)
4. The IEE was received by the parent on [REDACTED]. The parent telephonically attempted to contact the DCPS special education coordinator on [REDACTED] and the program coordinator on [REDACTED] and [REDACTED]. The parent left voice mail messages requesting a meeting to review the evaluation results and to conduct an eligibility determination. (complaint; Mediation Agreement; and Supplemental information from the complainant)
5. DCPS indicated the parent knew of multiple ways to contact the special education coordinator. DCPS also indicated it was not aware that the parent had left messages to schedule a meeting and explained that the one of the special education coordinator was school based during the summer months and the program coordinator the parent contacted left DCPS [REDACTED]. The program coordinator participated in the mediation process. (Supplemental Response from DCPS and Mediation Agreement)
6. As of [REDACTED], DCPS had not responded to the requests for a meeting and had not received the IEE of the student. (DCPS Response and Supplemental information form the complainant)

Discussion/Conclusion

DCPS is out of compliance with 34 CFR §300.306.

As described above, DCPS did conduct an eligibility determination meeting on [REDACTED] and found the student not eligible as a student with a disability. (FOF numbers 8 and 37) The allegation regarding the eligibility determination in this complaint was with regard to the conduct of an eligibility determination after the completion of the agreed upon IEE. As noted in the procedural history of this complaint, the enforcement of the Mediation Agreement is not an issue in the complaint. Therefore, the following discussion addresses DCPS' compliance with the IDEA and the DCMR after the complainant received the IEE and requested a meeting to review the IEE.

In accordance with 34 CFR § 300.306(a)(1), upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child determine whether the child is a child with a disability and the educational needs of the child. In this case, the conduct of the IEE after the determination of eligibility on [REDACTED] was agreed upon by DCPS and the parent. (FOF number 39) While the complainant did not provide a copy of the IEE to DCPS, the complainant did attempt to contact DCPS on at least six occasions and left voice mail messages requested a meeting to review the IEE and conduct an eligibility determination. DCPS indicated the parent knew of multiple ways to contact the special education coordinator and the parent employed one of the methods of contact. DCPS did not respond to any of the parents' voice mail messages. (FOF numbers 40-42)

DCPS asserts that it was not aware that the parent left messages to schedule a meeting and explained that the one of the special education coordinator was school based during the summer months and the program coordinator left DCPS [REDACTED]. While this may be the case, DCPS is required pursuant to DCMR §5-E 3004.1 to have designated sites for the submission of referrals.

This requirement does not include an exception for the absence of individuals. By analogy, since the individuals the parent contacted had been the designated individuals in the evaluation and identification process and/or mediation process, it was reasonable that the parent attempted to contact these designated individuals.

In addition, DCPS was certainly made aware of the parents' receipt of the IEE and request for a meeting upon the filing of this instant complaint. As of [REDACTED], DCPS had not responded to the requests for a meeting to review the IEE and conduct an eligibility determination. While the parents did not provide the IEE to DCPS, DCPS was put on notice by at least [REDACTED] that the IEE was completed and chose to do nothing. In accordance with 34 CFR § 300.306(a)(1), DCPS had an obligation to conduct an eligibility meeting and did not.

Therefore, DCPS is out of compliance with 34 CFR § 300.306(a)(1).

ISSUE SEVEN: MEDIATION

Findings of Fact

1. State complaint number 010-11 was filed on [REDACTED]. The complainant indicated on the State complaint form that the parents were willing to engage in mediation to resolve the dispute, and the parties agreed to mediate the complaint. A mediation session was held on [REDACTED] and a mediation agreement was reached. The parents withdrew the State complaint. ([REDACTED] complaint, [REDACTED] complaint and Response)

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.506(b)(1)(i).

In accordance with 34 CFR §300.506(b)(1)(ii), mediation procedures must ensure that the mediation process is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the IDEA. In this case, the mediation process was initiated to resolve the [REDACTED] State complaint. The IDEA would prohibit DCPS from using the mediation process to deny or delay the complainant's right to have the complaint resolved pursuant to 34 CFR §§300.151-300.153 or other rights under the Part B of the IDEA.

The complainant indicated on the [REDACTED] State complaint form that the parents were willing to engage in mediation to resolve the dispute. The parties agreed to mediate the complaint and there is no allegation that the process was other than voluntary as required by 34 CFR §300.506(b)(1)(i). The mediation session was timely held on [REDACTED], which allowed for adequate time for the investigation and issuance of a decision if the matter was not resolved through mediation. The complainant and DCPS did resolve the dispute through the mediation process and executed a mediation agreement pursuant to 34 CFR §300.506(b)(6). (FOF number 45) Notwithstanding this instant complaint and findings of noncompliance, there is no evidence that DCPS used the mediation process to deny or delay the complainant's rights under the IDEA, Part B.

Therefore, DCPS is in compliance with §300.506(b)(1)(i).

CORRECTIVE ACTION

DCPS is required to take the following actions:

1. In order to correct noncompliance with the provisions in 34 CFR §§300.301, 300.304, 300.306, 300.322, 300.501, and 300.504:

a. Within three business days of DCPS' receipt of this complaint Decision, DCPS shall contact the parents to arrange for the obtention of the IEE and to schedule an eligibility and IEP meeting in accordance with 34 CFR §§300.322 and 300.501(a) to be held no later than twelve business days after the receipt of this Decision, unless the parents request a postponement of the meeting in writing. The parents are encouraged to provide the IEE to DCPS as soon as possible to ensure the IEE is available to DCPS sufficiently in advance of the eligibility meeting to facilitate its careful consideration at the meeting. DCPS must submit documentation of the meeting and notice to the parents to OSSE by [insert completion date].

b. If the IEP Team agrees the student is a child with a disability under the IDEA, DCPS shall conduct an IEP meeting within [insert time frame] days of the eligibility meeting unless the parents indicate in writing that the parents refuse to provide consent for the initial provision of services in DCPS. (See 34 CFR §300.300(b)(3)(ii) and (iii)) DCPS shall issue a Notice of Invitation to the eligibility and IEP meeting. Within [insert time frame] days of the meeting, DCPS shall submit the notice to the parents and documentation of the meeting to OSSE.

c. If the IEP Team agrees the student is a child with a disability, and the parents indicate the student will return to DCPS for the [redacted] school year, the IEP Team shall include in the IEP an award of compensatory special education for the student from the first day of school in DCPS, [redacted], to the date the services in the student's initial IEP [redacted] IEP are implemented. If DCPS and the parent cannot agree on the compensatory services, such services shall include all of the special education services in the IEP (with variance allowed on the method of instruction such as tutoring) to be calculated for one-half day for each school day on DCPS [redacted] calendar that the student did not receive special education. DCPS shall provide a copy of the IEP including the award of compensatory special education to OSSE within [insert completion timeframe] of the IEP meeting.

d. If the student does not return to DCPS for school year [redacted], the student shall be included as a parentally-placed student with disabilities pursuant to 34 CFR §300.132, with no individual right to special education and related services pursuant to 34 CFR §300.137.

2. In order to correct noncompliance in 34 CFR §§300.301, 300.304, 300.306, 300.322, 300.501, and 300.504:

a. By [redacted], DCPS shall issue a directive to the appropriate DCPS personnel regarding the requirement to provide the Notice of Procedural Safeguards in a timely manner upon the occurrence of the events set forth in 34 CFR §300.504. A copy of the directive shall be submitted to the OSSE by [redacted].

b. By [redacted], DCPS shall review and revise DCPS' referral procedures to provide additional protections to ensure unreasonable delays at the commencement of the timeline to conduct an evaluation and determine eligibility do not occur. DCPS shall also develop a data collection and reporting system to monitor the 120 days for individual students. A copy of the revised procedures and written information on the integrity of the

data collection system and reporting capability shall be provided to the OSSE by [REDACTED].

c. By [REDACTED], DCPS shall issue a directive to DCPS special education teachers on the standards for test administration that they may administer and, if the special education teacher who conducted the Woodcock-Johnson is still an employee of DCPS, DCPS shall provide individualized training to the special education teacher regarding the standards for test administration no later than [REDACTED]. A copy of the directive and documentation of attendance at the individualized training must be forwarded to OSSE by [REDACTED].

d. By [REDACTED], DCPS shall issue a directive to the appropriate DCPS personnel on the procedures to be used if a required member of the IEP Team is unable to attend the meeting. Such directive shall provide redundant procedures to ensure the mandatory members participate in IEP Team meetings, including eligibility meetings, pursuant to 34 CFR §300.321. A copy of the directive shall be submitted to the OSSE by [REDACTED].

If you have any questions regarding this report, please contact Mary Boatright, State Complaints Manager, Director of Compliance & Monitoring, at mary.boatright@dc.gov or (202) 741-0264.

Sincerely,

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

cc: [REDACTED], Complainants
[REDACTED], DCPS [REDACTED]