



Office of the
State Superintendent of Education

November 15, 2011

[REDACTED]

District of Columbia Public Schools

[REDACTED]

[REDACTED]

Public Charter School

[REDACTED]

RE: State Complaint No. 011-008

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 on [REDACTED] from [REDACTED] (complainant) against [REDACTED] Public Charter School (PCS) alleging systemic violations of the Individuals with Disabilities Education Act (IDEA) and the District of Columbia Municipal Regulations (DCMR). [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 DCPS and [REDACTED] PCS violated certain provisions of the IDEA, 20 U.S.C. §1400 et seq. and regulations promulgated at 34 CFR Part 300, and Title 5, Subtitle E, Chapter 30 of the DCMR, specifically, failure to ensure that [REDACTED] PCS provides a continuum of alternative placements.

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 allegation raised in the complaint, further clarified by a review of documents and interviews or revealed in the course of the investigation, raised the following issue under the jurisdiction of the State Complaint Office:

1. Whether DCPS and [REDACTED] PCS failed to ensure that [REDACTED] PCS’s special education policies and procedures are consistent with state policies and procedures established under federal regulations, specifically policies and procedures that relate to provision of a continuum of alternative placements, as required by 5 DCMR §E-3019.4(b) and 34 CFR §300.115?

INVESTIGATIVE PROCEDURE

This investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED] PCS [REDACTED]

The investigation also included review of the following documents which were either submitted by the complainant, submitted by DCPS, accessible via the Special Education Data System (SEDS), or accessible via the Blackman Jones Database:

[REDACTED]

ISSUE ONE: CONTINUUM OF ALTERNATIVE PLACEMENTS

Findings of Fact

1. The [REDACTED] PCS [REDACTED] described the public charter school as an “inclusive school system.”
2. The [REDACTED] PCS [REDACTED] indicated that while the [REDACTED] [REDACTED] middle school program includes self-contained classrooms, the other school campuses have limited ability to accommodate specialized instruction delivered outside of the general education classroom.
3. The [REDACTED] PCS [REDACTED] reported that if a student requires more than five hours per week of specialized instruction to be delivered outside of the general education environment, the school will notify DCPS of the need to convene to discuss a change of placement or location and re-evaluate the student’s least restrictive environment.
4. As a result of a previous State complaint, DCPS submitted a Corrective Action Plan (CAP) to OSSE detailing its efforts to ensure that any special education student who is admitted to

██████████ PCS receives an IEP meeting within 30 days of their admission in order to ensure that the student's IEP may be implemented at ██████████ PCS.

5. Under the CAP, the ██████████ PCS special education coordinator and the DCPS representative review the IEPs of new students every Monday to determine whether the IEPs may be implemented at ██████████ PCS.
6. The CAP describes a system in which DCPS and ██████████ PCS attempt to schedule IEP meetings within 30 days to discuss the placement and location of services for students whose IEPs cannot be implemented at ██████████ PCS.
7. Depending on the decision of the IEP Team regarding the student's placement, DCPS will identify a new placement or location where the student's IEP may be implemented.

Discussion/Conclusion

DCPS and ██████████ PCS are in compliance with 5 DCMR §E-3019.4(b) and 34 CFR §300.115.

The IDEA at 34 CFR §300.115(a) requires each public agency to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must include the alternative placements listed in the definition of special education (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and make provision for supplementary services (such as a resource room or itinerant instruction) to be provided in conjunction with regular class placement. (34 CFR §300.115(b)) Public agencies include the SEA, LEAs, educational service agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. (34 CFR §300.33)

The ██████████ PCS ██████████ described the public charter school as an "inclusive school system." While the ██████████ middle school program includes self-contained classrooms, the other school campuses have limited ability to accommodate specialized instruction delivered outside of the general education classroom. If a student requires more than five hours per week of specialized instruction delivered outside of the general education environment, the school will notify DCPS of the need to convene to discuss a change of placement or location with respect to the student's least restrictive environment.

In the District of Columbia, a public charter school may elect to have DCPS serve as its LEA for purposes of the IDEA. (D.C. Code §38-1802.10(c) and 5 DCMR §E-3019.2) Such a public charter school is referred to as a "District Charter" or "dependent charter." Alternatively, a public charter school may elect to be an independent local education agency, referred to as an "LEA Charter" or "independent charter." Although both District Charters and LEA Charters are required to ensure that their special education policies and procedures are consistent with state policies and procedures established under federal regulations, the District of Columbia Municipal Regulations establish a different framework of responsibilities for District Charters and LEA Charters. (See 5 DCMR §§E-3019.3 and 3019.4) Pursuant to 5 DCMR §E-3019.3, LEA Charters must comply with all requirements applicable to an LEA under the IDEA, including its implementing regulations (34 C.F.R. Part 300), and local laws, regulations, and policies, including those related to least restrictive environment, evaluation and reevaluation, special education and related services, statewide

assessments, policies and procedures, annual reporting requirements, the Special Education Data System (SEDS), due process complaints, and mediation. By contrast, each District Charter is required to follow the policies, procedures, and guidelines established by DCPS for the referral of individual child needs and IEP matters to DCPS to be addressed consistent with the requirements of IDEA, including referrals related to requests for evaluations, due process complaints, requests for mediation, and implementation of Hearing Officer Determinations. (5 DCMR §E-3019.4) In addition, each District Charter must ensure compliance with requirements related to statewide assessments, policies and procedures, annual reporting, and SEDS. (5 DCMR §E-3019.4(a) – (d))

The DCMR requires an LEA Charter to comply with IDEA requirements related to the least restrictive environment, of which the continuum of alternative placements is one part. However, no parallel provision exists requiring a District Charter to comply with the requirements related to least restrictive environment or the provision of a continuum of alternative placements. Further, the definition of a public agency present in the IDEA only includes nonprofit public charter schools that are *not otherwise included as LEAs*. DCPS, which serves as [REDACTED] PCS's LEA for special education purposes, is required to offer a continuum of alternative placements. [REDACTED] PCS, as a District Charter otherwise included in another LEA for special education purposes, is not required to separately offer placements along every point of the continuum.

As a result of a previous State complaint, DCPS and [REDACTED] PCS were required to develop a Corrective Action Plan designed to ensure that students enrolled at [REDACTED] PCS with IEPs that cannot be implemented at [REDACTED] PCS are identified and the process for changing the child's location of services is begun in a timely manner. As part of this Corrective Action Plan, the [REDACTED] PCS special education coordinator and the DCPS representative review the IEPs of new students every Monday to determine whether the IEPs may be implemented. If a student's IEP cannot be implemented at [REDACTED] PCS, DCPS and the District Charter attempt to schedule an IEP meeting to discuss the student's placement and location of services within 30 days. Depending on the results of the IEP Team's decision regarding the student's placement, DCPS will identify a new placement or location where the student's IEP may be implemented. Through this Corrective Action Plan, DCPS has described a system to ensure that it identifies a location of services that is appropriate for a student's placement along the continuum. Therefore, DCPS and [REDACTED] PCS are in compliance with 5 DCMR §E-3019.4(b) and 34 CFR §300.115.

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
Assistant Superintendent for Special Education

cc: [REDACTED], Complainant
[REDACTED], DCPS [REDACTED]