



Office of the



State Superintendent of Education

November 18, 2011



Public Charter School

RE: State Complaint No. 011-010

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 September 21, 2011 alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter “student” or “child,” while enrolled at [REDACTED] Public Charter School (PCS).

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 determine the child’s educational placement; failure to consider the use of positive behavioral interventions and supports and other strategies to address behavior which impedes the child’s learning; and, failure to provide special education and related services in accordance with the child’s IEP, specifically with regard to provision of a dedicated aide. The complainant also raised concerns relating to the student’s safety and disrespectful actions toward the parent. OSSE did not investigate these concerns as they did not allege a violation of Part B of the IDEA.

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 [REDACTED] PCS failed to conform to the requirements of 34 CFR §300.116 to determine the child’s educational placement?
2. Whether [REDACTED] PCS failed to consider the use of positive behavioral interventions and supports and other strategies to address behavior which impedes the child’s learning, as required by 34 CFR §300.324(a)(2)?
3. Whether [REDACTED] failed to provide special education and related services to the child in accordance with the child’s IEP, specifically with regard to the provision of a dedicated aide, as required by 34 CFR §300.323(c)(2)?

INVESTIGATIVE PROCEDURE

This investigation included interviews with the following individuals:

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

The investigation also included review of the following documents which were either submitted by the complainant, submitted by [REDACTED] PCS, 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 other health impairment.
3. The student's [REDACTED] IEP was in effect during the period of investigation of the complaint.
4. The student was enrolled at [REDACTED] PCS from [REDACTED] – [REDACTED].

ISSUE ONE: DETERMINE CHILD'S EDUCATIONAL PLACEMENT

Findings of Fact

1. The student's [REDACTED] IEP provided for 7.5 hours per week of specialized instruction in the general education environment, 7.5 hours per week of specialized instruction outside the general education environment, 30 minutes per week of speech-language pathology, 60 minutes per week of occupational therapy, 30 minutes per week of behavioral support services, 30 minutes per month of speech-language pathology consultation, 30 minutes per month of behavioral support services consultation, and a dedicated aide.
2. The student's [REDACTED] IEP required all services to be provided from [REDACTED] through [REDACTED].
3. The complainant and advocate requested a more restrictive environment at the [REDACTED] MDT meeting.
4. The [REDACTED] MDT participants agreed to begin the Change in Placement (CIP) process for the student by attempting additional supports and gathering additional student data.
5. The [REDACTED] MDT participants agreed to discuss the student's progress after attempting additional supports and gathering additional student data, and to continue the CIP-related discussion at an IEP Meeting to be held on [REDACTED].
6. On [REDACTED], [REDACTED] PCS completed a Suspension Notification removing the student from school for the remainder of the day on Tuesday, [REDACTED] through Thursday, [REDACTED].
7. The parent did not attend a scheduled post-suspension readmittance meeting on [REDACTED] and the student did not return to school until Monday, [REDACTED].
8. The student's [REDACTED] through [REDACTED] enrollment at [REDACTED] encompassed 26 school days.
9. The student attended class at [REDACTED] for five full days from [REDACTED] through [REDACTED], a partial day on [REDACTED], and three partial days from [REDACTED] through [REDACTED].
10. The student was suspended for part of the day on [REDACTED] through [REDACTED], a total of two full and one partial school day.
11. The student was absent for the entire day on Friday, [REDACTED] and from Thursday, [REDACTED] through Tuesday, [REDACTED], a total of 15 school days.

12. The parent unenrolled the student from [REDACTED] PCS on [REDACTED].
13. OSSE's Placement Oversight Unit did not receive a CIP Request or other communication regarding the student's placement during the time of her enrollment at [REDACTED] PCS from [REDACTED] – [REDACTED].

[REDACTED] PCS is in compliance with 34 CFR §300.116.

Discussion/Conclusion

The IDEA at 34 CFR §300.116(b) requires that a child's placement be determined at least annually. The IDEA at 34 CFR §300.115 requires public agencies to ensure that a continuum of alternative placements is available, and specifies that this continuum includes instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. On [REDACTED] the student's IEP team determined that from [REDACTED] through [REDACTED], the student would be provided with 7.5 hours per week of specialized instruction in the general education environment, 7.5 hours per week of specialized instruction outside the general education environment, 30 minutes per week of speech-language pathology, 60 minutes per week of occupational therapy, 30 minutes per week of behavioral support services, 30 minutes per month of speech-language pathology consultation, 30 minutes per month of behavioral support services consultation, and a dedicated aide. The student's placement was determined at the [REDACTED] IEP meeting and is not required to be determined again until [REDACTED].

The student began attending [REDACTED] PCS on [REDACTED] and an MDT meeting was held on [REDACTED]. The MDT team meeting notes reflect the complainant's request for placement in a more restrictive environment. The MDT team reviewed the services required by the student's [REDACTED] IEP and determined that [REDACTED] PCS could provide all required services in multiple placements along the continuum, including instruction in the regular classroom, special classrooms, and through one-on-one services. The MDT team discussed additional supports and strategies available to address the student's behavior concerns.

The MDT team concluded that all services would be attempted in the available placements at [REDACTED] PCS prior to IEP team consideration of alternative placements and location. The [REDACTED] meeting notes indicate the team intended to reconvene to conduct an IEP meeting on [REDACTED]. On [REDACTED] PCS completed a Suspension Notification removing the student from school from [REDACTED] through [REDACTED]. The parent did not attend the readmittance meeting scheduled for [REDACTED] and the student did not return to school until [REDACTED].

OSSE's January 5, 2010 Policies and Procedures for Placement Review specifically require that the LEA must document specific strategies, supports and services attempted to allow the student to experience success in the classroom, prior to holding an IEP meeting to discuss Change in Placement (CIP). Additionally, LEAs must submit a Justification for Removal Statement (JRS) with a description of the services and strategies attempted by the team prior to initiating the CIP process. A JRS was not submitted by [REDACTED] PCS to OSSE for this student prior to the filing of this complaint.

Following the parent's request for a change in placement to a more restrictive environment at the [REDACTED] meeting, the student was suspended for all or a portion of three school days, attended only three partial school days and was absent for a total of fifteen (15) school days. Although there is no evidence that [REDACTED] initiated the CIP process by submitting a JRS to OSSE, the LEA was unable to gather the required student data on attempted services and strategies due to the student's absences. Where the student's placement was determined within the last year and, in initiating OSSE's CIP process, the MDT team attempted to document support and student progress data prior to requesting removal from the student's age-appropriate regular classroom, OSSE does not find that the LEA failed to take steps to determine an appropriate placement.

Therefore, [REDACTED] PCS is in compliance with 34 CFR §300.116.

ISSUE TWO: POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS

Findings of Fact

1. The IEP Team met and developed a Behavioral Intervention Plan (BIP), referred to by [REDACTED] PCS as a Behavior Management Plan, on [REDACTED].
2. The IEP Team discussed positive behavioral interventions and supports and other strategies suggested by the complainant, parent's advocate, and behavior specialist.
3. The MDT meeting included planning to conduct a functional behavioral assessment (FBA) and develop an initial BIP.
4. An FBA was not conducted.
5. The student's Behavior Management Plan includes target behaviors, positive intervention strategies for each target behavior, and positive behavior rewards and incentives.
6. The [REDACTED] Morning Transition Plan includes target behaviors and parent responsibilities for transition between breakfast and the classroom.
7. [REDACTED] Incident Reports document the first behavioral incident on [REDACTED].
8. On [REDACTED] PCS completed a Suspension Notification removing the student from school from [REDACTED] through [REDACTED].
9. The [REDACTED] Suspension Notification indicated additional actions including a behavior chart and behavior management policy.
10. The parent did not attend a scheduled post-suspension readmittance meeting on [REDACTED] and the student did not return to school until [REDACTED].
11. The student was in attendance for only part of the school day on Monday, [REDACTED] through Wednesday, [REDACTED].
12. The student was absent for the entire day on Friday, [REDACTED] and from Thursday, [REDACTED] through Tuesday, [REDACTED], a total of 15 school days.
13. [REDACTED] Incident Reports indicate a behavior incident on [REDACTED].

Discussion/Conclusion

██████████ PCS is in compliance with 34 CFR §300.324(a)(2).

Pursuant to 34 CFR §300.324(a)(2) and 5 DCMR §E-3007.3, the IEP Team must in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavior interventions and supports, and other strategies, to address that behavior. The complaint alleged that ██████████ PCS failed to consider the use of positive behavioral interventions and supports and other strategies to address student behavior. The complaint further alleged that the student's behavior impedes the child's learning.

The student began attending ██████████ PCS on ██████████ and an MDT meeting was held on ██████████. A Behavioral Intervention Plan (BIP), referred to by ██████████ PCS as a Behavior Management Plan, was developed during the ██████████ MDT meeting. This plan was developed at the MDT meeting in response to the complainant's and school staff members' concerns about the student's behavior and its impact on the student's academic progress. The team discussed positive behavior supports and strategies and included these strategies, rewards, and incentives in the plan executed on ██████████. The plan lists positive actions and intervention strategies intended for teachers and staff to implement when the student experiences targeted behaviors. The plan further lists five (5) positive rewards or incentives for student compliance with intervention strategies.

The MDT Team identified student behaviors experienced during morning transition that require additional strategies to transition the student to the learning environment. A Morning Transition Plan dated ██████████ was developed with strategies based on the input of the complainant, advocate, and other school staff at the ██████████ MDT meeting. While ██████████ did not develop the Behavior Management Plan or Morning Transition Plan based on a functional behavioral assessment (FBA), the student's ██████████ Neuropsychological Evaluation and ██████████ Psychoeducational Evaluation Reports were available for review by the complainant and school staff prior to the ██████████ MDT Meeting.

On ██████████ the first behavior incident at ██████████ PCS was documented by an incident report and subsequent suspension notification. The student was suspended for two days and a readmittance meeting was scheduled for ██████████. The parent did not attend the readmittance meeting and the student did not return to school until ██████████.

Following the ██████████ meeting and the ██████████ suspension, the student was suspended for one partial and two full school days, attended only three partial school days and was absent for a total of fifteen (15) school days. Although ██████████ developed a Behavior Management Plan and Morning Transition Plan, the LEA was unable to determine if these interventions were sufficient to address the student's behavior due to the student's absences. OSSE concludes that ██████████ PCS attempted to address the student's behavioral concerns through the use of positive behavioral interventions and supports.

Therefore, ██████████ PCS is in compliance with 34 CFR §300.324(a)(2).

ISSUE THREE: 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. The student's [REDACTED] IEP was available in SEDS on [REDACTED].
3. A Memorandum was completed on [REDACTED] assigning a dedicated aide to a first grade class for a new student, but did not specifically identify the student by name.
4. The [REDACTED] memorandum assigning the dedicated aide identified three additional adults in the classroom, including the general education teacher, special education teacher, and teacher assistant.
5. The [REDACTED] MDT meeting notes indicated that the team took note of the dedicated aide service required by the [REDACTED] IEP and included discussion of the student receiving dedicated aide services beginning the same day.
6. The student never received the services of a dedicated aide.
7. The student did not attend the full school day on [REDACTED] due to a behavior incident.
8. The student did not attend school on [REDACTED] – [REDACTED] due to suspension.
9. The parent did not attend a scheduled post-suspension readmittance meeting on [REDACTED] and the student did not return to school until [REDACTED].
10. The student attended class at [REDACTED] for five full days from [REDACTED] through [REDACTED], a partial day on [REDACTED], and three partial days from [REDACTED] through [REDACTED].
11. The student was absent for the entire day on Friday, [REDACTED] and from Thursday, [REDACTED] through Tuesday, [REDACTED], a total of 15 school days.
12. The student's [REDACTED] through [REDACTED] enrollment at [REDACTED] encompassed 26 school days.

Discussion/Conclusion

[REDACTED] PCS is 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 complaint alleged that [REDACTED] failed to provide the dedicated aide services as soon as possible after the student began attending the school on [REDACTED].

The student's [REDACTED] IEP was available in SEDS on [REDACTED] and a dedicated aide was included in the [REDACTED] IEP. The student's IEP required provision of the dedicated aide service

from [REDACTED] through [REDACTED]. The complainant requested provision of the dedicated aide service on the first day of school and school staff communicated that this service would be assigned to the student. On [REDACTED] issued a Memorandum identifying a dedicated aide for a new student in grade [REDACTED] but failed to specifically identify the student by name.

The student attended five (5) full school days from [REDACTED] – [REDACTED]. On [REDACTED] the MDT Team determined the student would receive the dedicated aide service beginning the same day. The student was suspended [REDACTED] – [REDACTED] and a readmittance meeting was scheduled for [REDACTED]. The parent did not attend the remittance meeting and the student did not return to school until [REDACTED]. The student attended school for partial days on [REDACTED] through [REDACTED], and was absent [REDACTED] through the last day of the student’s enrollment on [REDACTED]. There is no evidence that the student was provided with a dedicated aide for the five full days or four partial days of attendance. Therefore, [REDACTED] PCS is 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 on the days the student was not absent.

OSSE acknowledges that the parent also raised concerns related to the student’s safety, including that the student ran unattended from the classroom. This issue was not accepted for investigation because issues related to student safety do not, standing alone, violate the IDEA. OSSE notes, however, that this particular incident could have been avoided if the LEA provided the dedicated aide as required by the IEP.

CORRECTIVE ACTION

[REDACTED] PCS is required to take the following actions:

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2):
 - a. By [REDACTED], [REDACTED] PCS must submit to OSSE a report of all students enrolled, as of the date of this letter, who are required by their IEPs to receive the dedicated aide service.
 - b. By [REDACTED] PCS must provide OSSE with a signed statement from each student’s dedicated aide certifying that they are available to the student according to their IEPs.

If you have any questions regarding this decision, 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