



Office of the



State Superintendent of Education

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February 21, 2012



District of Columbia Public Schools



RE: State Complaint No. 011-017

### 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] High School ([REDACTED] HS), a school within the District of Columbia Public Schools (DCPS). The complainant has provided OSSE with evidence that she may receive personally identifiable information about the named student.

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 student with a free appropriate public education (FAPE); failure to permit a parent or representative of a parent to inspect and review any education records relating to the child that are collected, maintained, or used by the agency without unnecessary delay; failure to ensure that the IEP Team for each child with a disability included all appropriate members; failure to conform to the procedural requirements to determine a student'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 in developing the IEP; and failure to ensure the special education and related services were made available to the child in accordance with the student's IEPs, specifically with regard to provision of positive behavioral interventions and supports and other strategies. The complainant additionally alleged, in implementing the School Observation Policy and Confidentiality Agreement, failure to ensure that the parent was a member of any group that made decisions on

the educational placement of the child; failure to allow the parent to file a due process complaint relating to the provision of FAPE to the child; and failure to allow the parent to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the disability of the student.

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 failed to permit a parent or representative of a parent to inspect and review any education records relating to the child that are collected, maintained, or used by the agency without unnecessary delay, as required by 34 CFR §300.613?
2. Whether DCPS failed to ensure that the IEP Team for each child with a disability included all appropriate members, as required by 34 CFR §300.321(a)?
3. Whether DCPS failed to conform to the requirements of 34 CFR §300.116(a)(1) to determine the student's educational placement?
4. Whether in developing the child's IEP, DCPS 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)(i)?
5. Whether DCPS failed to ensure that special education and related services were made available to the child in accordance with the student's IEPs, specifically with regard to provision of positive behavioral interventions and supports and other strategies, as required by 34 CFR §300.323(c)(2)?
6. Whether DCPS, in implementing the School Observation Policy and Confidentiality Agreement, failed to ensure that the parent was a member of any group that made decisions on the educational placement of the child, as required by 34 CFR §300.327?
7. Whether DCPS, in implementing the [REDACTED] High School Observation Policy and Confidentiality Agreement, failed to allow the parent to file a due process complaint relating to the provision of FAPE to the child, as required by 34 CFR §300.507(a)?
8. Whether DCPS, in implementing the [REDACTED] High School Observation Policy and Confidentiality Agreement failed to allow the parent to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the disability of the student, as required by 34 CFR §300.512(a)(1)?

### **INVESTIGATIVE PROCEDURE**

This investigation included interviews with the following individuals:

1. Complainant
2. Parent

3. [REDACTED] HS [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 (ED).
3. The student attended a school within the [REDACTED] County Public Schools ([REDACTED]) during the [REDACTED] school year.
4. The student enrolled at [REDACTED] HS on or about [REDACTED].
5. The complainant was appointed by Court Order of the Superior Court for the District of Columbia as the special education attorney for the parent on [REDACTED].

**ISSUE ONE: INSPECTION OF RECORDS**

**Findings of Fact**

1. On [REDACTED], the student’s cellular phone was confiscated by school staff members after the student was found using the phone in the hallway.
2. Either at the end of the school day or just prior to the end of the school day on [REDACTED], the student went to the dean’s office to claim [REDACTED] phone.
3. The student was told that [REDACTED] parent would be required to claim the phone.
4. The student began to threaten staff members and turn over furniture in the room.

5. According to the CAASS Student Incident History, the student pushed a staff member with both hands.
6. The CAASS Student Incident History report completed by the dean of students indicated that the student was “immediately put into a therapeutic restraint to ensure the safety of all staff and students that were present.”
7. The [REDACTED] handwritten incident report completed by another [REDACTED] HS staff member indicated that a “two-man escort was used to escort the student out of the building.”
8. The staff members who completed the CAASS and handwritten reports were the same staff members who applied the intervention.
9. In preparation for the [REDACTED] manifestation determination meeting, the complainant requested copies of any records related to the use of a restraint beginning on [REDACTED].
10. The complainant agreed that she was provided copies of both the CAASS Student Incident History report and the [REDACTED] handwritten incident report on [REDACTED].
11. DCPS provided the complainant with copies of all documents that it actually generated related to the [REDACTED] intervention.
12. A Manifestation Determination Meeting was held on [REDACTED] regarding the [REDACTED] incident.
13. The meeting notes from the [REDACTED] manifestation determination meeting stated that the student “was escorted with a 2 man hold out of the building.”
14. The August 2011 DCPS Guidelines for Physical Restraint and Seclusion define a physical restraint as, “any method of one or more persons restricting another person’s freedom of movement, physical activity or normal access to his/her body.”
15. The August 2011 DCPS Guidelines for Physical Restraint and Seclusion, Procedures for Documenting and Reporting the Use of Physical Restraint or Seclusion require individuals involved with an incident to complete a written report and document all use of physical restraint procedures within one school day.

### **Discussion/Conclusion**

**DCPS is in compliance with 34 CFR §300.613 but out of compliance with 34 CFR §§300.211, 300.600(d) and 300.601(b).**

Pursuant to 34 CFR §300.613 each participating agency must permit parents to inspect and review any education records relating to their children and must do so without unnecessary delay. The right to inspect and review records includes the right to have a representative of the parent inspect and review the records. On [REDACTED], the student’s cellular phone was confiscated by school staff members after the student was found using the phone in the hallway. Either at the end of the school day or just prior to the end of the school day, the student went to the dean’s office to claim [REDACTED] phone. The student was told that [REDACTED] parent would be required to claim the phone. The student then began to threaten staff members and turn over furniture in the room. According to the CAASS Student Incident History, the student pushed a staff member with both hands.

In response to the student's behavior, [REDACTED] HS staff members employed some form of intervention with the student, although DCPS and the complainant disagree as to the nature of that intervention. However, regardless of the ultimate characterization of that intervention, the [REDACTED] HS dean of students created a record of the student's behavior in the tracking system it uses for disciplinary actions (CAASS Student Incident History) and the other [REDACTED] HS staff member involved in the intervention completed a hand-written incident report. The complainant requested copies of any records related to the use of a restraint beginning on [REDACTED]. The complainant agreed that she was provided copies of both the CAASS Student Incident History and the hand-written incident report on [REDACTED]. OSSE's investigation has shown that DCPS provided the complainant with copies of all documents that it actually generated related to the [REDACTED] intervention. Therefore, DCPS is in compliance with 34 CFR §300.613.

The August 2011 DCPS Guidelines for Physical Restraint and Seclusion (DCPS Restraint Guidelines) define a physical restraint as, "any method of one or more persons restricting another person's freedom of movement, physical activity or normal access to his/her body." The DCPS Restraint Guidelines require individuals involved with the administration of a physical restraint to complete a written report and document all use of physical restraint procedures within one school day. The complainant contends that the student was placed into a physical restraint and that therefore DCPS must have completed some additional documentation aside from that which was provided to her. DCPS maintains in its response to this complaint and in email correspondence with the complainant that the student was "redirected physically through a two man escort and was not restrained" and that no additional documentation was generated. The CAASS Student Incident History report completed by the dean of students indicated that the student was "immediately put into a therapeutic restraint to ensure the safety of all staff and students that were present." The meeting notes from the [REDACTED] manifestation determination meeting stated that the student "was escorted with a 2 man hold out of the building." The [REDACTED] incident report completed by another [REDACTED] HS staff member indicated that a "two-man escort was used to escort the student out of the building." The staff members who completed these reports were the same staff members who applied the intervention. Whether the intervention employed on [REDACTED] is labeled a "restraint," "hold," or "escort," a comparison of the written reports and DCPS's email correspondence with the complainant shows that the LEA's information is not internally consistent.

The IDEA at 34 CFR §300.211 requires that a local educational agency (LEA) provide the state educational agency (SEA) with information necessary to enable the SEA to carry out its duties under Part B of the IDEA. Pursuant to 34 CFR §§300.600(d) and 300.601(b), the State must monitor the LEAs located in the State using quantifiable indicators including collecting valid and reliable data. The inconsistencies in these reports represent noncompliance with the requirement to provide valid and reliable data. Therefore, DCPS is out of compliance with 34 CFR §§300.211, 300.600(d) and 300.601(b).

## **ISSUE TWO: IEP TEAM MEMBERS – PARENT PARTICIPATION**

### **Findings of Fact**

1. A Manifestation Determination meeting was held on [REDACTED] regarding the [REDACTED] incident.
2. The parent attended the [REDACTED] manifestation determination meeting.
3. At the [REDACTED] manifestation determination meeting, the IEP Team determined that the student's behavior was the result of a failure to implement the student's IEP.
4. OSSE found no evidence that DCPS's failure to complete additional reports detailing the use of the restraint interfered with the parent's right to participate as a member of the IEP Team.

### **Discussion/Conclusion**

#### **DCPS is in compliance with 34 CFR §300.321(a).**

Pursuant to 34 CFR §300.321(a)(1) the public agency must ensure that the IEP Team for each child with a disability includes the parents of the child. The complainant contends that DCPS failed to provide the parent with sufficient notice of the physical restraint to allow her to effectively participate in the [REDACTED] manifestation determination meeting. The parent attended the [REDACTED] manifestation determination meeting. At the [REDACTED] manifestation determination meeting, the IEP Team determined that the student's behavior was the result of a failure to implement the student's IEP. OSSE found no evidence that the data inaccuracies noted above or DCPS's failure to complete additional reports detailing the use of the restraint interfered with the parent's right to participate as a member of the IEP Team. Therefore, DCPS is in compliance with 34 CFR §300.321(a).

## **ISSUE THREE: PLACEMENT**

### **Findings of Fact**

1. The student enrolled in DCPS and registered at [REDACTED] HS on or about [REDACTED].
2. The student's most recent IEP was from [REDACTED], and was developed at a school within the [REDACTED] County Public Schools ([REDACTED]).
3. The student's [REDACTED] IEP required 12.5 hours per week of specialized instruction in the general education environment, 8 hours and 20 minutes per week of specialized instruction outside the general education environment, 15 minutes per week of counseling services in the general education environment, and 10 minutes per week of assistive technology services outside the general education environment.
4. A Manifestation Determination meeting was held on [REDACTED] regarding the [REDACTED] incident.
5. At the [REDACTED] manifestation determination meeting, the team determined that the student's behavior was the result of a failure to implement the student's IEP.
6. DCPS generated the [REDACTED] Transfer IEP Letter to serve as a statement of the student's required special education and related services until additional information could be gathered, either directly or from [REDACTED] to develop a new IEP.
7. The [REDACTED] Transfer IEP Letter provided for the receipt of 18 hours per week of specialized instruction and 1.5 hours per week of behavioral support services.

8. The [REDACTED] Transfer IEP Letter specified that 60 percent of the student's time would be spent outside of the general education environment.

### Discussion/Conclusion

#### **DCPS is in compliance with 34 CFR §300.116.**

The IDEA at 34 CFR §300.116(a)(1) requires each public agency to ensure that in determining the educational placement of a child with a disability, the placement decision must be 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 IDEA at 34 CFR §300.327 requires each public agency to ensure that the parents of each child with a disability are members of any group that makes decisions on the education placement of their child.

The student enrolled in DCPS and registered at [REDACTED] HS on or about [REDACTED]. At that time, the student's most recent IEP was from [REDACTED], and was developed at a school within the [REDACTED] County Public Schools ([REDACTED]). The student's [REDACTED] IEP provided for 12.5 hours per week of specialized instruction in the general education environment, 8 hours and 20 minutes per week of specialized instruction outside the general education environment, 15 minutes per week of counseling services in the general education environment, and 10 minutes per week of assistive technology services outside the general education environment.

At the [REDACTED] manifestation determination meeting, the team determined that the student's behavior was the result of a failure to implement the student's IEP. As a result, DCPS generated the [REDACTED] Transfer IEP Letter to serve as a statement of the student's required special education and related services until additional information could be gathered, either directly or from [REDACTED] to develop a new IEP. The [REDACTED] Transfer IEP Letter provided for the receipt of 18 hours per week of specialized instruction and 1.5 hours per week of behavioral support services. The [REDACTED] Transfer IEP Letter specified that 60 percent of the student's time would be spent outside of the general education environment. Although the percentage of time spent outside the general education environment on the [REDACTED] Transfer IEP Letter was not identical to the percentage allocated to instruction in this setting on the [REDACTED] IEP, given the student's behavior and DCPS's failure to implement the IEP since the student's enrollment at [REDACTED] HS, the IEP Team could have reasonably concluded that the student required more time outside the general education environment.

The parent attended the [REDACTED] meeting, and as noted above, OSSE found no evidence that DCPS's failure to complete additional reports detailing the use of the restraint interfered with the parent's right to participate as a member of the IEP Team. OSSE found no evidence that this failure interfered with the parent's right to participate in a placement decision. Therefore, DCPS is in compliance with 34 CFR §300.116.

## **ISSUE FOUR: IEP DEVELOPMENT - POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS AND OTHER STRATEGIES**

### **Findings of Fact**

1. The student's [REDACTED] IEP identified behavior goals to develop coping skills and increase availability for learning.
2. The [REDACTED] IEP additionally required social/behavioral support services including support of a special education classroom teacher.
3. At the [REDACTED] manifestation determination meeting, the IEP Team determined that the student's conduct was a manifestation of [REDACTED] disability and a result of a failure to implement the [REDACTED] IEP.
4. DCPS generated the [REDACTED] Transfer IEP Letter to serve as a statement of the student's required special education and related services until additional information could be gathered, either directly or from [REDACTED] to develop a new IEP.
5. The [REDACTED] Transfer IEP Letter provided for the receipt of 18 hours per week of specialized instruction and 1.5 hours per week of behavioral support services.
6. The [REDACTED] Transfer IEP Letter did not identify positive behavioral interventions and supports or other strategies to address the student's behavior.
7. There is no evidence that the IEP Team discussed the use of positive behavioral interventions and supports or other strategies to address the student's behavior at the [REDACTED] meeting.

### **Discussion/Conclusion**

#### **DCPS is out of compliance with 34 CFR §300.324(a)(2)(i).**

The IDEA at 34 CFR §300.324(a)(2)(i) requires that in developing an IEP, the IEP Team must, in the case of a child whose behavior impedes the child's learning, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. The student's [REDACTED] IEP identified behavior goals to develop coping skills and increase availability for learning. The [REDACTED] IEP additionally required social/behavioral support services including support of a special education classroom teacher. At the [REDACTED] manifestation determination meeting, the IEP Team determined that the student's conduct was a manifestation of [REDACTED] disability and a result of a failure to implement the [REDACTED] IEP. As a result, DCPS generated the [REDACTED] Transfer IEP Letter to serve as a statement of the student's required special education and related services until additional information could be gathered, either directly or from [REDACTED] to develop a new IEP. The [REDACTED] Transfer IEP Letter provided for the receipt of 18 hours per week of specialized instruction and 1.5 hours per week of behavioral support services. The Transfer IEP Letter did not identify positive behavioral interventions and supports or other strategies to address the student's behavior. There is no evidence that the IEP Team discussed the use of positive behavioral interventions and supports or other strategies to address the student's behavior at the [REDACTED] meeting. Therefore, DCPS is out of compliance with 34 CFR §300.324(a)(2)(i).

**ISSUE FIVE: SERVICES – POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS AND OTHER STRATEGIES**

**Findings of Fact**

1. The student's [REDACTED] IEP required 15 minutes per week of counseling services in the general education environment.
2. The [REDACTED] IEP identified behavior goals to develop coping skills and increase availability for learning through social/behavioral supports services provided by a special education teacher.
3. The [REDACTED] Manifestation Determination meeting notes acknowledged that the services required by the [REDACTED] IEP were not implemented at [REDACTED] HS prior to the [REDACTED] incident.

**Discussion/Conclusion**

**DCPS is out of compliance with 34 CFR §300.323(c)(2) with respect to the provision of positive behavioral interventions and supports and other strategies .**

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 required 15 minutes per week of counseling services in the general education environment and there is no evidence that the student received counseling services prior to the [REDACTED] use of restraint procedures. Additionally, the [REDACTED] IEP identified behavior goals to develop coping skills and increase availability for learning through social/behavioral supports services provided by a special education teacher. The [REDACTED] Manifestation Determination meeting notes acknowledged that the services required by the [REDACTED] IEP were not implemented at [REDACTED] prior to the [REDACTED] incident. DCPS' acknowledged failure to implement the [REDACTED] IEP, specifically with regard to the social/behavioral support services, constitutes a failure to ensure that the student received special education services in accordance with the student's previous IEP. Therefore, DCPS is out of compliance with 34 CFR §300.323(c)(2).

**PRELIMINARY ANALYSIS: CONFIDENTIALITY AGREEMENT AND OBSERVATION POLICY**

**Findings of Fact**

1. The October 29, 1984 Superintendent's Office Procedures for School Visitors provides school principals the authority to regulate visitor admission and conduct while in the school or on school property, and requires decisions made by principals to be reasonable and consistent with the right of the public to visit the school.
2. DCPS Central Office reported that the principal of [REDACTED] HS, under the authority of the October 29, 1984 Superintendent's Office Procedures for School Visitors, requires any person requesting student observation to sign the [REDACTED] High School Confidentiality Agreement (Confidentiality Agreement) and Guidelines for School Observation (Observation Policy).
3. The Confidentiality Agreement states that the observer may not disclose information obtained during the observation under any circumstances and limits the use of student information to providing information to the parents/guardians to assist with the provision of education services.

4. The Observation Policy states that student observation will not exceed fifteen (15) minutes.

#### **Discussion/Conclusion**

The IDEA sets out a framework of requirements to ensure parents participate in decision making related to the provision of special education to their child, specifically requiring that the parent is a member of any group making decisions on the educational placement of the student, granting the right to file a due process complaint when in disagreement with public agency decisions, and allowing the parent to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the disability of the student in due process hearings. 34 CFR §§300.327, 300.507(a) and 300.512(a)(1). DCPS Central Office granted principals the authority to regulate visitor admission and conduct while in the school or on school property under the October 29, 1984 Superintendent's Office Procedures for School Visitors. These procedures additionally require decisions made by principals to be reasonable and consistent with the right of the public to visit the school. DCPS Central Office reported that the principal of ██████ HS, under the authority of the October 29, 1984 Superintendent's Office Procedures for School Visitors, requires any person requesting student observation to sign the ██████ High School Confidentiality Agreement (Confidentiality Agreement) and Guidelines for School Observation (Observation Policy). The Confidentiality Agreement states that the observer may not disclose information obtained during the observation under any circumstances and limits the use of student information to providing information to the parents/guardians to assist with the provision of education services. The Observation Policy states that student observation will not exceed fifteen (15) minutes.

The United States Department of Education, Office of Special Education Programs (OSEP) has provided additional commentary related to the opportunity of parents and their representatives to conduct classroom observation. In *Letter to Mamas*, 42 IDELR 10 (OSEP May 26, 2004), OSEP indicated that there is no "general entitlement for parents of children with disabilities, or their professional representatives, to observe their children in any current classroom or proposed educational placement." The determination of access to classrooms may be addressed by State or local policy. OSEP went on to encourage schools and parents to work together "in ways that meet the needs of both the parents and the school, including providing opportunities for parents to observe their children's classrooms and proposed placement options." OSEP also indicated that there may be circumstances in which access may need to be provided. However, OSEP has provided no additional input regarding the effect of access to school observations on a parent's due process or participation rights. OSSE notes that letters issued prior to December 3, 2004 may not be consistent with the IDEA, as revised by Public Law 108-446, and letters issued prior to August 14, 2006 may not be consistent with the final regulations for Part B published on that date. OSSE identified no significant change with respect to the regulations at issue here, and in absence of State or local policy, will use OSEP's observations in *Letter to Mamas* to inform this decision.

## **ISSUE SIX: PARENT AS MEMBER OF PLACEMENT DECISION GROUP**

### **Findings of Fact**

1. On [REDACTED] the complainant emailed the [REDACTED] HS Special education Coordinator to request observation of the student by an expert appointed by the DC Superior Court.
2. The complainant requested observation in part to gather information to be provided at IEP/MDT meetings.
3. [REDACTED] HS staff members required the expert to sign the Confidentiality Agreement and Observation Policy prior to conducting any student observation.
4. The Confidentiality Agreement limits the use of data gathered as part of any observation to assistance with the provision of educational services to the student.

### **Discussion/Conclusion**

#### **DCPS is in compliance with 34 CFR §300.327.**

Pursuant to 34 CFR §300.327, each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child. The complainant contends that the Confidentiality Agreement and Observation Policy, as written, interfere with the parent's right to participate in decisions on the educational placement of their children.

The complainant requested student observation by a court appointed psychological expert in part to gather information to be provided at IEP/MDT meetings. [REDACTED] HS staff members required the expert to sign the Confidentiality Agreement and Observation Policy prior to conducting any student observation. As noted above, the Confidentiality Agreement limits the use of data gathered as part of any observation to assistance with the provision of educational services to the student. The language of the Confidentiality Agreement does not prevent a parent from using information obtained as part of an observation to inform a placement decision or participate in a placement decision.

Therefore, the Confidentiality Agreement and Observation Policy do not violate 34 CFR §300.327.

## **ISSUE SEVEN: FILING A DUE PROCESS COMPLAINT**

### **Findings of Fact**

1. The complainant requested student observation by a court appointed psychological expert in part to determine if there was a basis for a due process complaint and if so, to serve as the basis for testimony in a due process hearing.
2. [REDACTED] HS staff provided the Confidentiality Agreement and Observation Policy to the complainant and required the expert to sign in agreement prior to conducting the student observation.
3. The Confidentiality Agreement limits the use of data gathered as part of any observation to assistance with the provision of educational services to the student.
4. The Confidentiality Agreement further states that failure to abide by its terms may result in a prohibition against the observer conducting any future observations of any student on DCPS property.

5. An expert who testified at a due process hearing based on their observation would appear to be in breach of the Confidentiality Agreement.
6. The complainant raised the issue of this limitation in a [REDACTED] email to [REDACTED] HS and DCPS Central Office staff members.
7. DCPS did not respond to the complainant's concerns on this point, but moved forward with efforts to schedule the observation, including extending the observation time from 15 to 45 minutes, on [REDACTED].
8. The [REDACTED] HS [REDACTED] reported that no observer had refused to sign the Confidentiality Agreement, but that if such refusal occurred the observation would not be permitted.
9. When asked about the effect of the Confidentiality Agreement's limitation on the use of student information, the [REDACTED] HS special education coordinator would only comment that the terms of the Agreement were negotiable.

### **Discussion/Conclusion**

#### **DCPS is in compliance with 34 CFR §300.507(a).**

Pursuant to 34 CFR §507(a), a parent or public agency may file a due process complaint on any of the matters relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child. The complainant requested student observation by a court appointed psychological expert in part to determine if there was a basis for a due process complaint and if so, to serve as the basis for testimony in a due process hearing. [REDACTED] HS staff provided the Confidentiality Agreement and Observation Policy to the complainant and required the expert to sign the agreement prior to conducting the student observation. The [REDACTED] HS [REDACTED] reported that no observer had refused to sign the Confidentiality Agreement, but that if such refusal occurred the observation would not be permitted. As noted above, the Confidentiality Agreement limits the use of data gathered as part of any observation to assistance with the provision of educational services to the student. The Confidentiality Agreement further states that failure to abide by its terms may result in a prohibition against the observer conducting any future observations of any student on DCPS property. When asked about the effect of the Confidentiality Agreement's limitation on the use of student information, the [REDACTED] HS special education coordinator would only comment that the terms of the Agreement were negotiable. DCPS has offered no other comment on the effect of this clause except to assert that [REDACTED] HS's policy in no way impedes a parent's rights under the IDEA.

The complainant raised the issue of this limitation in a [REDACTED] email to [REDACTED] HS and DCPS Central Office staff members. DCPS did not respond to the complainant's concerns on this point, but moved forward with efforts to schedule the observation, including extending the observation time from 15 to 45 minutes, on [REDACTED]. It is therefore unclear that DCPS applies this policy in a way that interferes with a parent's right to file a due process complaint. Given the absence of evidence that the policy infringes on a parent's right to file a due process complaint, OSSE declines to make a finding of non-compliance.

**ISSUE EIGHT: ACCOMPANIED BY INDIVIDUALS WITH SPECIAL KNOWLEDGE AT A DUE PROCESS HEARING**

**Findings of Fact**

1. The complainant requested student observation by a court appointed psychological expert in part to determine if there was a basis for a due process complaint and if so, to serve as the basis for testimony in a due process hearing.
2. [REDACTED] HS staff provided the Confidentiality Agreement and Observation Policy to the complainant and required the expert to sign in agreement prior to conducting the student observation.
3. The Confidentiality Agreement limits the use of data gathered as part of any observation to assistance with the provision of educational services to the student.
4. The Confidentiality Agreement further states that failure to abide by its terms may result in a prohibition against the observer conducting any future observations of any student on DCPS property.
5. An expert who testified at a due process hearing based on their observation would appear to be in breach of the Confidentiality Agreement.
6. The complainant raised the issue of this limitation in a [REDACTED] email to [REDACTED] HS and DCPS Central Office staff members.
7. DCPS did not respond to the complainant's concerns on this point, but moved forward with efforts to schedule the observation, including extending the observation time from 15 to 45 minutes, on [REDACTED].
8. The [REDACTED] HS [REDACTED] reported that no observer had refused to sign the Confidentiality Agreement, but that if such refusal occurred the observation would not be permitted.
9. When asked about the effect of the Confidentiality Agreement's limitation on the use of student information, the [REDACTED] HS special education coordinator would only comment that the terms of the Agreement were negotiable.

**Discussion/Conclusion**

**DCPS is in compliance with 34 CFR §300.512(a).**

Pursuant to 34 CFR §300.512(a)(1), any party to a hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities. The complainant requested student observation by a court appointed psychological expert in part to determine if there was a basis for a due process complaint and if so, to serve as the basis for testimony in a due process hearing. [REDACTED] HS staff provided the Confidentiality Agreement and Observation Policy to the complainant and required the expert to sign in agreement prior to conducting the student observation. The [REDACTED] HS [REDACTED] [REDACTED] reported that no observer had refused to sign the Confidentiality Agreement, but that if such refusal occurred the observation would not be permitted. As noted above, the Confidentiality Agreement limits the use of data gathered as part of any observation to assistance with the provision of educational services to the student. The Confidentiality Agreement further states that failure to abide by its terms may result in a prohibition against the observer conducting any future observations of any student on DCPS property. When asked about the effect of the Confidentiality Agreement's limitation on the use of student information, the [REDACTED] HS [REDACTED] would only comment that the terms of the Agreement

were negotiable. DCPS has offered no other comment on the effect of this clause except to assert that [REDACTED] HS's policy in no way impedes a parent's rights under the IDEA.

The complainant alleges that the above limitation in the Confidentiality Agreement has the effect of preventing a parent from executing their rights under 34 CFR §300.512(a)(1). However, a review of 34 CFR §300.512(a) shows that expert testimony implicates 34 CFR §300.512(a)(2), the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, not the right to be accompanied and advised under 34 CFR §300.512(a)(1). The complainant raised the issue of this limitation in a [REDACTED] email to [REDACTED] HS and DCPS Central Office staff members. DCPS did not respond to the complainant's concerns on this point, but moved forward with efforts to schedule the observation, including extending the observation time from 15 to 45 minutes, on [REDACTED]. It is therefore unclear that DCPS applies this policy in a way that interferes with a parent's right to present evidence and confront, cross-examine, and compel the attendance of witnesses. Given the absence of evidence that the policy infringes on a parents right to present confront, cross-examine, and compel the attendance of witnesses, OSSE declines to make a finding of non-compliance.

### **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(a)(2)(i):
  - a. DCPS must convene an IEP meeting for the student by [REDACTED] and develop a behavioral intervention plan for the student and an IEP that includes positive behavioral interventions and supports, and other strategies to address the student's behaviors. DCPS must upload the completed IEP and BIP into SEDS by [REDACTED]. Alternatively, DCPS may show that prior to the issuance of this Letter of Decision, it has convened an IEP Team meeting, that the parent participated in that meeting, that it has developed a BIP and that the student's IEP now includes positive behavioral interventions and supports, and other strategies to address the student's behaviors.
2. In order to correct the noncompliance with 34 CFR §§300.211, 300.600(d) and 300.601(b):
  - a. DCPS must develop a corrective action plan to ensure that it maintains valid and reliable restraint procedure reports. This plan must address the maintenance of paper files, the upload of required documentation into SEDS, and procedures for resolving any inconsistencies between reports entered into the CAASS Incident Report System, written incident reports completed by other staff members, and accounts of the incident that may be collected as part of a manifestation determination meeting or an appeal of the disciplinary action. The corrective action plan must also include internal timelines for the upload of documents into SEDS which are consistent with OSSE's December 9, 2010 LEA Data Management Policy. The plan must be submitted by [REDACTED] and is subject to the review of OSSE's Director of Monitoring & Compliance. DCPS must submit documentation showing that all steps of the plan have been implemented by [REDACTED].

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

Sincerely,

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

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