



March 16, 2012

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 011-019

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," on [REDACTED] alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter "student" or "child," while attending [REDACTED] Elementary School ([REDACTED] ES), a school within the District of Columbia Public Schools (DCPS).

The complainant alleged that the school violated certain provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. and regulations promulgated at 34 CFR Part 300, specifically; failure to ensure that special education and related services were made available to the student in accordance with the student's Individualized Education Program (IEP), specifically with regard to the provision of specialized instruction and occupational therapy services; failure to provide written notice to the parents of a child with a disability a reasonable time before the public agency refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; failure to conform to regulatory requirements to determine the student's educational placement; and failure to maintain valid and reliable data.

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 ensure that special education and related services were made available to the student in accordance with the student’s Individualized Education Program (IEP), specifically with regard to the provision of specialized instruction and occupational therapy services, as required by 34 CFR §300.323(c)(2)?
2. Whether DCPS failed to provide written notice to the parents of a child with a disability a reasonable time before the public agency refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, as required by 34 CFR §300.503(a)(2)?
3. Whether DCPS failed to conform to the requirements of 34 CFR §300.116 to determine the student’s educational placement?
4. Whether DCPS failed to maintain valid and reliable data, as required by 34 CFR §§300.211, 300.600(d), and 300.601(b)?

INVESTIGATIVE PROCEDURE

This investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED] ES [REDACTED]
3. [REDACTED]
4. [REDACTED] ES [REDACTED]
5. DCPS [REDACTED]
6. DCPS [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]

[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 Autism Spectrum Disorder.
3. The student attended [REDACTED] ES from the beginning of the [REDACTED] school year through the filing of this complaint on [REDACTED].
4. The student’s [REDACTED] and [REDACTED] IEPs were in effect during the [REDACTED] school year.

ISSUE ONE: PROVIDE SERVICES ACCORDING TO IEP

Findings of Fact

1. On [REDACTED], the IEP Team met to determine whether the student was eligible for special education and related services, and if so, to develop the student’s IEP.
2. The IEP Team found the student eligible and identified [REDACTED] disability category as Autism Spectrum Disorder.
3. The [REDACTED] IEP required 26 hours per week of specialized instruction outside the general education environment, 4 hours per month of occupational therapy services outside the general education environment, 4 hours per month of speech and language services outside the general education environment and 30 minutes per month of physical therapy consultation services.
4. The [REDACTED] IEP required all services to be provided from [REDACTED] through [REDACTED].
5. Extended school year services were not indicated on the student’s [REDACTED] IEP.
6. School was not in session on [REDACTED].
7. On [REDACTED], DCPS issued prior written notice of the student’s identification as eligible for special education services.
8. The parent signed the [REDACTED] IEP on [REDACTED].
9. The parent enrolled the student at [REDACTED] ES on [REDACTED].
10. The student began attending school on [REDACTED].
11. The student began receiving specialized instruction in the self-contained classroom at [REDACTED] ES on [REDACTED] and began receiving occupational therapy services on [REDACTED].
12. Following the student’s enrollment, the IEP Team met on [REDACTED] to review the IEP. The Team modified the student’s hours of specialized instruction outside the

- general education environment from 26 hours per week to 25.5 hours per week beginning on [REDACTED], but did not modify the student's related services hours.
13. The parent signed the IEP on [REDACTED].
 14. The student appears to have been receiving required hours of specialized instruction since [REDACTED] began attending school in the self-contained classroom on [REDACTED].
 15. The parent does not dispute that the student had received the hours of speech-language services and physical therapy consultation services required by the IEP.
 16. Service tracking forms show that from [REDACTED] through the filing date of this complaint, the student was due to receive 18 hours of occupational therapy services but received only 5.25 hours of occupational therapy services.

Discussion/Conclusion

DCPS is out of compliance with 34 CFR §300.323(c)(2).

The IDEA at 34 CFR §300.323(c)(2) requires each public agency to ensure that as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. The complainant alleged the student did not receive specialized instruction and occupational therapy services in accordance with the student's IEP while attending [REDACTED] ES. The parent does not dispute that the student had received the hours of speech-language services and physical therapy consultation services required by the IEP. On [REDACTED], the IEP Team met to determine whether the student was eligible for special education and related services, and if so, to develop the student's first IEP. The IEP Team found the student eligible and identified [REDACTED] disability category as Autism Spectrum Disorder. The [REDACTED] IEP provided for 26 hours per week of specialized instruction, 4 hours per month of occupational therapy, 4 hours per month of speech and language services outside the general education environment and 30 minutes per month of physical therapy consultation services beginning on [REDACTED]. Extended school year services were not indicated on the student's [REDACTED] IEP, and school was not in session at that time; therefore, the student was not due to receive services until [REDACTED] enrolled in school and the [REDACTED] school year began. The parent signed the [REDACTED] IEP on [REDACTED], enrolled the student at [REDACTED] ES on [REDACTED] and the student began attending school on [REDACTED].

The student began receiving specialized instruction in the self-contained classroom at [REDACTED] ES on [REDACTED] and began receiving occupational therapy services on [REDACTED]. The IEP Team met on [REDACTED] and modified the student's hours of specialized instruction from 26 hours per week to 25.5 hours per week beginning on [REDACTED], but did not modify the student's related services hours. The parent signed the IEP on [REDACTED].

The student was placed in the school's self-contained classroom on [REDACTED] and appears to have been receiving the required hours of specialized instruction at all times. However, service tracking forms show that from [REDACTED] through the filing date of this complaint, the student was due to receive 18 hours of occupational therapy services but received only 5.25 hours of occupational therapy services. Therefore, DCPS is out of compliance with 34 CFR §300.323(c)(2) for failing to make available occupational therapy services in accordance with the child's IEP.

ISSUE TWO: PRIOR WRITTEN NOTICE

Findings of Fact

1. On [REDACTED], the IEP Team met to determine whether the student was eligible for special education and related services, and if so, to develop the student's IEP.
2. The IEP Team found the student eligible and identified [REDACTED] disability category as Autism Spectrum Disorder.
3. The IEP Team identified the student's placement as twenty-six (26) hours per week of specialized instruction outside the general education setting and identified the student's location of services as the self-contained autism program at [REDACTED] ES.
4. On [REDACTED], DCPS issued prior written notice of the student's identification as eligible for special education services.
5. The [REDACTED] IEP Team did not issue prior written notice of the student's placement outside the general education setting at [REDACTED] ES.
6. On [REDACTED], DCPS issued prior written notice of the student's placement in an out of general education setting.
7. In [REDACTED], the parent contacted the DCPS Critical Response Team and requested a change in location of student services to [REDACTED] ES, based on the belief that the classroom at [REDACTED] ES lacked appropriate supervision for the number of students it served and the severity of the student's disability.
8. The parent reported that [REDACTED] believed the self-contained classroom at [REDACTED] ES was staffed by a greater number of teachers.
9. The DCPS Critical Response Team concluded that the student was receiving services according to [REDACTED] IEP and a safety transfer was not required.
10. There is no evidence the parent requested a change in placement either verbally or in writing.

Discussion/Conclusion

DCPS is out of compliance with 34 CFR §300.503(a)(2).

The IDEA at 34 CFR §300.503(a)(2) requires that written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. On [REDACTED], the IEP Team met to determine whether the student was eligible for special education and related services, and if so, to develop the student's first IEP. The IEP Team found the student eligible and identified [REDACTED] disability category as Autism Spectrum Disorder. [REDACTED] IEP Team identified the student's placement as twenty-six (26) hours per week of specialized instruction outside the general education setting and identified [REDACTED] ES as the location of services for the student. On [REDACTED], DCPS issued prior written notice of the student's identification as eligible for special education services, however, the LEA did not issue prior written notice of the student's placement at that time. On [REDACTED], DCPS issued prior written notice of the student's placement in an out of general education setting. Prior written notice of the student's placement was not issued until after the student started attending and began receiving services at [REDACTED] ES. The failure to issue written notice a reasonable time before initiating the student's educational placement constitutes noncompliance with 34 CFR §300.503(a)(2).

In [REDACTED], the parent contacted the DCPS Critical Response Team and requested a change in location of student services to [REDACTED] ES. The parent made this request based on the belief that the classroom at [REDACTED] ES lacked appropriate supervision for the number of students it served and the severity of the student's disability. The parent reported that [REDACTED] believed the self-contained classroom at [REDACTED] ES was staffed by a greater number of teachers. The DCPS Critical Response Team concluded that the student was receiving services according to [REDACTED] IEP and a safety transfer was not required. DCPS denied the parent's request for a change in location of services. There is no evidence the parent requested a change in placement either verbally or in writing. Further, OSSE finds that the decision by the DCPS Critical Response Team that the student did not require a safety transfer does not constitute a refusal to change the student's placement. DCPS was not required to issue a prior written notice because it did not refuse to change the student's identification, evaluation, or educational placement.

Therefore, DCPS is out of compliance with 34 CFR §300.503(a)(2) with respect to issuance of written notice prior to initiating the student's educational placement as determined in the [REDACTED] IEP.

ISSUE THREE: PLACEMENT

Findings of Fact

1. An IEP meeting was held on [REDACTED] to determine whether the student was eligible for special education and related services and, if necessary, to develop an IEP.
2. The IEP Team determined that the student was eligible for special education and related services as a student identified with Autism Spectrum Disorder.
3. The IEP Team included a physical therapist, speech-language pathologist, psychologist, occupational therapist, family care coordinator and evaluation coordinator and the parent participated by phone.
4. The IEP Team reviewed student evaluations, including the independent Georgetown University Autism and Communication Disorders Clinic assessment.
5. The team unanimously agreed the student required 26 hours per week of specialized instruction and removal from the general education setting in order to receive this instruction and to make progress in areas where [REDACTED] experienced significant delays.
6. The IEP Team made a placement decision for the student at the [REDACTED] meeting and another placement determination was not required until [REDACTED].
7. The team did not identify the student's location of services at this meeting.
8. The parent received a location assignment and registration information for a self-contained classroom at [REDACTED] ES prior to the beginning of the [REDACTED] school year.
9. On [REDACTED], the IEP Team met to review the student's IEP.
10. The [REDACTED] IEP Team included the special education teacher, physical therapist, occupational therapist, physical therapist, special education coordinator, "outside" therapist, and the parents.
11. The team determined the student continued to require specialized instruction outside the general education environment in order to make progress in identified areas of concern.
12. The team discussed placement and agreed the student continued to require placement in the self-contained special education classroom and identified the student's location of services as [REDACTED] ES.

13. The team also decreased the number of hours of specialized instruction outside the general education environment from 26 hours to 25.5.

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; and the meaning of the evaluation data and the placement options. In addition, placement decisions must be made in conformity with a determination of the student's least restrictive environment (LRE), determined at least annually, based on the student's IEP, and consideration must be given to any potential harmful effects on the child or on the quality of services that the child requires. (34 CFR §300.116)

An IEP meeting was held on [REDACTED] to determine whether the student was eligible for special education and related services and, if necessary, to develop an IEP. The IEP Team determined that the student was eligible for special education and related services as a student identified with Autism Spectrum Disorder. The IEP Team included a physical therapist, speech-language pathologist, psychologist, occupational therapist, family care coordinator and evaluation coordinator. The parent participated by phone. The IEP Team reviewed student evaluations, including the independent Georgetown University Autism and Communication Disorders Clinic assessment. The team unanimously agreed the student required 26 hours per week of specialized instruction and removal from the general education setting in order to receive this instruction and to make progress in areas where [REDACTED] experienced significant delays. The IEP Team made a placement decision for the student at the [REDACTED] meeting; another placement determination was not required until [REDACTED]. The team did not identify the student's location of services at this meeting. However, the parent received a location assignment and registration information for a self-contained classroom at [REDACTED] ES prior to the beginning of the [REDACTED] school year. The [REDACTED] IEP Team consisted of the parent and evaluators knowledgeable about the child and the evaluation data and determined the student's placement pursuant to the procedural requirements.

On [REDACTED], the IEP Team met to review the student's IEP. The [REDACTED] IEP Team included the special education teacher, physical therapist, occupational therapist, physical therapist, special education coordinator, "outside" therapist, and the parents. The team determined the student continued to require specialized instruction outside the general education environment in order to make progress in identified areas of concern. The team discussed placement and agreed the student continued to require placement in the self-contained special education classroom and identified the student's location of services as [REDACTED] ES. Although the IEP Team was not required to determine the student's placement at the [REDACTED] meeting, all procedural requirements for determining placement were met.

Therefore, DCPS is in compliance with 34 CFR §300.116.

ISSUE FOUR: MAINTAIN VALID AND RELIABLE DATA

Findings of Fact

1. The student's [REDACTED] and [REDACTED] IEPs require four (4) hours of occupational therapy services per month.
2. The student is scheduled to receive occupational therapy every Thursday.
3. The occupational therapy service logs indicated that the student was unavailable for services on [REDACTED] and [REDACTED].
4. The student's attendance record shows that the student attended class on those days and the student's parent confirmed that the student was in attendance.
5. The parent has not received an explanation of why the child was unavailable for services on days for which the child was in attendance.

Discussion/Conclusion

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

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. All LEAs are required to enter accurate and complete data into SEDS for all aspects of special education practice. OSSE's January 5, 2010 Related Services Policy holds LEAs responsible for ensuring that delivery of related services is tracked by service providers. The policy goes on to detail the minimum requirements for rescheduling make-up sessions when they occur due to the provider's absence or the child's absence.

The student's [REDACTED] and [REDACTED] IEPs require four (4) hours of occupational therapy services per month. The student is scheduled to receive these services weekly on Thursdays. The occupational therapy service logs indicated that the student was unavailable for services on [REDACTED] and [REDACTED]. However, the student was not absent on either of these dates. The student's attendance record shows that the student attended class on those days and the student's parent confirmed that the student was in attendance.

The information provided in the student's occupational therapy service trackers is inconsistent with the information in the student's attendance records. The parent has not received an explanation of why the child was unavailable for services on days for which the child was in attendance. The discrepancy between these two data points constitutes a failure to maintain valid and reliable data consistent with federal requirements and OSSE's Related Services Policy.

Therefore, DCPS is out of compliance with 34 CFR §§300.211, 300.600(d) and 300.601(b).

CORRECTIVE ACTION

DCPS is required to take the following actions:

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2), by [REDACTED], DCPS must convene a meeting of the IEP Team, at a time and place determined in consultation

with the parent, to create a Compensatory Education Plan for the occupational therapy that was not delivered in accordance with the student's IEP. If DCPS and the parent cannot agree on the amount of compensatory education hours, DCPS shall provide a minimum of 13 hours of occupational therapy as compensatory education. DCPS must forward a copy of the Compensatory Education Plan by [REDACTED]. In order to close this corrective action, DCPS must demonstrate that delivery of the compensatory education has commenced by submitting service tracking forms or making these forms available in SEDS no later than five days following the delivery of services.

2. In order to correct the noncompliance with 34 CFR §300.503(a)(2), by [REDACTED], DCPS must provide documentation to OSSE that DCPS has provided Early Stages and [REDACTED] ES formal notice of the requirement to provide parents with written notice a reasonable time before the proposal or refusal to initiate or change the identification, evaluation, or educational placement of a child or the provision of FAPE to a child.
3. In order to correct the noncompliance with 34 CFR §§300.211, 300.323(c)(2), 300.600(d) and 300.601(b), by [REDACTED], DCPS must develop a provider resource or similar training materials to ensure that related service providers accurately record the delivery of services, the reasons for missed services, and properly enter this information into SEDS. In addition, by [REDACTED], DCPS must train the special education coordinator, related service providers, and principal at [REDACTED] on the prompt re-scheduling and delivery of missed service sessions that conforms to the requirements of OSSE's January 5, 2010 Related Services Policy.

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

Sincerely,

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

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