

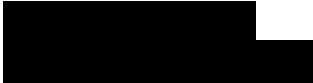


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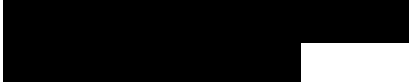


State Superintendent of Education

June 8, 2012



District of Columbia Public Schools



RE: State Complaint No. 011-021

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] / [REDACTED] hereinafter "student" or "child," while attending [REDACTED] High School ([REDACTED] HS), 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 a meeting to develop an IEP for a child was conducted within 30 days of a determination that the child needs special education and related services; failure to conform to the regulatory requirements to determine the student's educational placement; failure to conduct appropriate transition assessments necessary for the IEP Team to develop appropriate transition goals for the student; and failure to specify transition services, including courses of study, in the student's IEP.

The complaint also raised concerns regarding whether DCPS failed to timely complete initial evaluations and determine eligibility consistent with 34 CFR §300.301(c), D.C. Code §38-2561.02, and 5 DCMR §A-3005.2. Pursuant to 34 CFR §300.153(c), a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. On the facts alleged and confirmed by review of the student's record in the Special Education Data System (SEDS), the alleged violation of the timeline to complete an initial evaluation and determine the student's eligibility according to District law and regulations, occurred more than one year prior to

the date this complaint was received. Although information detailing the background of this referral is included in this Letter of Decision, OSSE did not investigate and will not make any findings related to these issues.

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 a meeting to develop an IEP for a child was conducted within 30 days of a determination that the child needs special education and related services, as required by 34 CFR §300.323(c)(1)?
2. Whether DCPS failed to determine the student’s placement according to the requirements of 34 CFR §300.116?
3. Whether DCPS failed to conduct appropriate transition assessments necessary for the IEP Team to develop appropriate transition goals for the student, as required by 34 CFR §300.320(b)(1)?
4. Whether DCPS failed to specify transition services, including courses of study, in the student’s IEP, as required by 34 CFR §300.320(b)(2)?

INVESTIGATIVE PROCEDURE

This investigation included interviews with the following individuals:

1. Complainant
2. [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 Specific Learning Disability.
3. The student attended [REDACTED] HS from the beginning of the [REDACTED] school year through the filing of this complaint on [REDACTED].

ISSUE ONE: DEVELOP IEP

Findings of Fact

1. On [REDACTED], the parent referred the student for an initial evaluation to determine if the student was eligible for special education and related services.
2. The parent provided consent to evaluate the student on [REDACTED].
3. On [REDACTED], DCPS completed an Acknowledgement of Referral Letter in SEDS noting the [REDACTED] referral date.
4. An MDT meeting was held on [REDACTED] to review existing student data, determine if additional assessments were required, and determine if the student was eligible for special education and related services.
5. The parent attended the [REDACTED] MDT meeting.
6. The [REDACTED] MDT team reviewed the [REDACTED] Confidential Psychological Evaluation Report.
7. The [REDACTED] MDT Meeting Notes stated the team would not be able to determine if the student was eligible for special education services without all available data.
8. The team determined that the student required a functional behavioral assessment prior to a determination of eligibility.
9. The complainant and [REDACTED] HS staff confirmed that an eligibility determination was not made at the [REDACTED] MDT meeting.
10. The [REDACTED] HS social worker gathered data regarding the student’s behavior between [REDACTED] and [REDACTED].
11. The social worker completed the functional behavioral assessment on [REDACTED].
12. A MDT meeting was held on [REDACTED] to review existing student data, determine the student’s eligibility for special education services, and develop an initial IEP.
13. At the [REDACTED] meeting, the team determined the student eligible for special education and related services as a student with a specific learning disability.
14. The parent attended the [REDACTED] meeting.

15. The Draft Eligibility Determination Report which indicates that the eligibility meeting was held on [REDACTED] was not faxed into SEDS until [REDACTED].
16. The Final Eligibility Determination Report indicates the date of the eligibility meeting was [REDACTED].
17. The Final Eligibility Determination Report was finalized on [REDACTED] and the student was determined eligible for special education services as a student with a Specific Learning Disability.
18. Following determination of eligibility on [REDACTED], the team developed the student's IEP.

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.323(c)(1).

The IDEA at 34 CFR §300.323(c)(1) provides that each public agency must ensure that a meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services. DCPS completed a confidential psychological evaluation and convened a meeting on [REDACTED] to determine the student's eligibility. Notes from the [REDACTED] meeting show and both the complainant and [REDACTED] HS special education coordinator confirmed that an eligibility determination was not made at the [REDACTED] meeting. Specifically, the team determined that additional data was required and requested a functional behavioral assessment (FBA) for the student.

The [REDACTED] HS social worker gathered data regarding the student's behavior between [REDACTED] and [REDACTED]. The social worker completed an FBA on [REDACTED] and the team, including the parent, reconvened on the same day. At the [REDACTED] meeting, the team determined that the student was eligible for special education and related services as a student with a specific learning disability. Although DCPS avers in its response that it determined the student's eligibility at the [REDACTED] meeting, and the Draft Eligibility Determination Report indicates that the eligibility meeting was held on [REDACTED], this document was not completed and faxed into SEDS until [REDACTED]. Based on interviews with the parent and [REDACTED] HS special education coordinator, the notes from the [REDACTED] and [REDACTED] meetings, and the [REDACTED] Final Eligibility Determination Report, the student was determined eligible for special education and related services on [REDACTED].

The IEP team developed an IEP for the student at the [REDACTED] meeting, on the same day as the final determination of eligibility. Therefore, DCPS is in compliance with the requirement in 34 CFR §300.323(c)(1) to develop an initial IEP within 30 days of the determination of eligibility.

The student was referred for an initial evaluation on [REDACTED]. Pursuant to 34 CFR §300.301(c), an initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation, or if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. The District of Columbia has established a 120 day timeframe. See D.C. Code §38-2561.02. As noted in OSSE's March 22, 2010 Part B Initial Evaluation/Reevaluation Policy, an LEA must complete an initial evaluation, including the determination of eligibility, of a child suspected of having a disability within 120 calendar days of receiving the written referral. DCPS was required to complete an initial evaluation, including

determination of eligibility, by [REDACTED]. Pursuant to 34 CFR §300.153(c), a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. This complaint was filed on [REDACTED], more than one year after the due date for the initial evaluation and eligibility determination; therefore, OSSE did not investigate and makes no findings of noncompliance with respect to the late completion of the initial evaluation and determination of eligibility. However, OSSE notes with concern that 116 days passed between the parent's referral and consent for evaluation, and 292 days passed between the referral and the determination of the student's eligibility and subsequent development of the IEP. OSSE recommends that DCPS examine the circumstances that led to the significant delay in the determination of eligibility and provision of services to the student.

ISSUE TWO: PLACEMENT

Findings of Fact

1. A meeting was held on [REDACTED] to review existing student data, determine the student's eligibility for special education services, and develop an initial IEP.
2. The team determined that the student was eligible for special education and related services as a student identified with a specific learning disability.
3. The team included the parent, special education coordinator, psychologist, special education teacher, educational advocate, and social worker.
4. The team reviewed the FBA and parent provided information at the meeting.
5. The team developed an IEP for the student immediately following the determination of eligibility.
6. The IEP Team reviewed the student's present levels of performance and goals, special education and related services, graduation status, team member feedback, and developed a final copy of the student's IEP.
7. The IEP Team determined the student would receive 240 minutes per month of behavioral support services outside the general education environment through the school social worker in order to make progress in the area of social/emotional development.
8. The IEP Team unanimously determined the student required continued interaction with age appropriate peers to assist in social and emotional skill development.
9. The IEP Team unanimously determined the student required 90 minutes per day of specialized instruction in the general education setting to make academic progress.
10. The IEP Team unanimously determined the student required 80 minutes per day of specialized instruction removed from the general education setting to a small group or individual environment in order to make academic progress.
11. The IEP Team made a placement decision for the student at the [REDACTED] meeting and another placement determination was not required until [REDACTED].
12. The team identified the student's location of services at this meeting as the [REDACTED] HS, student's neighborhood school.

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)

A 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 team determined that the student was eligible for special education and related services as a student identified with a specific learning disability. The team included the parent, special education coordinator, psychologist, special education teacher, educational advocate, and social worker. Immediately after making an eligibility determination, the IEP Team developed an IEP. The team reviewed the FBA and the parent provided information and agreed the student required 240 minutes per month of behavioral support services outside the general education environment through the school social worker in order to make progress in the area of social/emotional development. The IEP Team unanimously determined the student required continued interaction with age appropriate peers to assist in social and emotional skill development. In order to assure academic progress, the Team agreed the student would receive 90 minutes per day of specialized instruction in the general education setting and 80 minutes per day of specialized instruction removed from the general education setting to a small group or individual learning environment. The IEP Team made a placement decision for the student at the [REDACTED] meeting; another placement determination was not required until [REDACTED]. The Team identified the student's location of services at this meeting as [REDACTED] HS, the student's neighborhood school, on the basis that it could provide the agreed upon services. 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.

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

ISSUE THREE: TRANSITION ASSESSMENTS

Findings of Fact

1. The student turned sixteen (16) years of age on [REDACTED].
2. The team met on [REDACTED], determined the student eligible for special education services and developed the student's initial IEP.
3. The [REDACTED] IEP contains a completed Post-Secondary Transition Plan, including student's long-range goals and interests, age appropriate transition assessments utilized to determine long-range goals and interests, annual measurable goals for post-secondary transition, courses of study to support post-secondary transition goals, post-secondary transition activities and services, and graduation/exit information.
4. The annual goals, courses of study, activities, and services listed in the student's postsecondary transition plan for the [REDACTED] IEP were based on a student interview conducted by the [REDACTED] special education coordinator at the meeting and listed on the IEP transition plan section.

5. [REDACTED] staff reported formal transition assessments were not conducted prior to the [REDACTED] Eligibility and IEP Meetings.
6. [REDACTED] staff and the parent reported the IEP Meeting was held on the same date as student's eligibility determination because the parent requested that they move immediately to develop the IEP during the [REDACTED] meeting.
7. An amended IEP or revised IEP was not developed between [REDACTED] and [REDACTED], the date the student turned sixteen (16) years old.
8. There is no evidence that assessments related to training, education, and independent living skills were completed at any time prior to the filing of this complaint.

Discussion/Conclusion

DCPS is out of compliance with 34 CFR §300.320(b)(1).

Pursuant to IDEA at 34 CFR §300.320(b)(1), beginning not later than the first IEP to be in effect when the child turns 16, the IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills. Although there is evidence that the transition plan developed in conjunction with the [REDACTED] IEP was based on a student interview, this is insufficient in itself to provide information to the IEP Team in developing and writing practical, achievable and measurable postsecondary goals and identifying transition services necessary to enable the student to reach those goals. The [REDACTED] [REDACTED] reported that formal transition assessments were not conducted prior to the [REDACTED] meeting and that the parent's request that the IEP be developed immediately following the eligibility determination was made during the [REDACTED] meeting. Although the [REDACTED] IEP includes a transition plan, the IDEA requires that this plan be based upon transition assessments. The assertion that the parent requested the IEP meeting take place immediately after the team determined the student eligible for special education services does not negate DCPS' responsibility to collect relevant data to develop measurable postsecondary goals and identify transition services necessary to enable the student to reach those goals.

The student turned 16 on [REDACTED]. DCPS did not revise the IEP to include a transition plan based on appropriate transition assessments prior to the student's 16th birthday. In addition, there was no evidence that assessments related to training, education, and independent living skills were completed prior to the filing of this complaint on [REDACTED].

Therefore, DCPS is out of compliance with IDEA at 34 CFR §300.320(b)(1) in that the postsecondary goals were not based upon appropriate transition assessments related to training, education, employment, and if appropriate, independent living skills.

ISSUE FOUR: TRANSITION SERVICES

Findings of Fact

1. The student turned sixteen (16) years of age on [REDACTED].
2. The team met on [REDACTED], determined the student eligible for special education services and developed the student's initial IEP.
3. The [REDACTED] IEP included postsecondary goals, courses of study, activities and services.

4. The postsecondary goals on the [REDACTED] IEP were measurable.
5. The [REDACTED] team discussed the student's courses and determined the student would earn credits toward a high school diploma.
6. The postsecondary courses of study listed on the [REDACTED] IEP were English, Science, Lab Science, Algebra, Geometry, Upper Level Math, World history, US History, US Government, DC History, Foreign Languages, Music, Art, Physical Education/Health, Career & Technical Education, and Other 1.5 credits.
7. [REDACTED] staff reported the courses of study to support postsecondary transition goals are the courses assigned by the school guidance counselor, based on the student's projected exit category identified as a high school diploma.
8. The [REDACTED] IEP post-secondary transition activities and services included use of the District of Columbia College Access Program (DC-CAP) for thirty minutes per month and the assistance of the school guidance counselor for sixty minutes per year.

Discussion/Conclusion

DCPS is out of compliance with 34 CFR §300.320(b)(2).

Pursuant to IDEA at 34 CFR §300.320(b)(2), beginning not later than the first IEP to be in effect when the child turns 16, and updated annually, thereafter, the IEP must include the transition services (including courses of study) needed to assist the child in reaching his or her postsecondary goals. While the postsecondary transition plan included with the [REDACTED] IEP includes goals and courses of study, as detailed above, these goals and courses of study were not based on appropriate assessments. Without a basis in data related to training, education, employment, and, if appropriate, independent living skills, the transition services, including courses of study, cannot be considered to be appropriately developed.

Therefore, DCPS is out of compliance with IDEA at 34 CFR §300.320(b)(2).

CORRECTIVE ACTION

DCPS is required to take the following actions:

1. In order to correct the noncompliance with 34 CFR §300.320(b)(1):
 - a. By [REDACTED], DCPS must administer assessments of the student's postsecondary training, education, employment and, if appropriate, independent living skills. DCPS must upload copies of these assessments into SEDS within 5 business days of completion.
 - b. DCPS must ensure that the IEP of each student enrolled at [REDACTED] HS who is age 16 or older, or who will turn 16 during the term of their current IEP, contains a postsecondary transition plan that is based on meaningful assessments. By [REDACTED], DCPS must ensure that copies of transition assessments are uploaded into SEDS for each of the students that fit these criteria.
2. In order to correct the noncompliance with 34 CFR §300.320(b)(2):
 - a. By [REDACTED], DCPS must convene a meeting of the IEP team, at a time and place determined in consultation with the parent, to revise the student's postsecondary transition plan based on the results of the transition assessments

identified in point 1a, above. DCPS must upload a copy of the updated IEP, including proof that the parent and student attended the meeting and any relevant meeting notes, into SEDS within 5 business days.

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 Specialized Education

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