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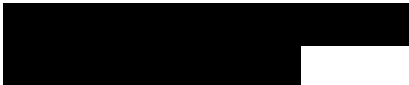


State Superintendent of Education

June 15, 2012



District of Columbia Public Schools



RE: State Complaint No. 011-022

LETTER OF DECISION

PROCEDURAL BACKGROUND

The State Complaint Office of the Office of the State Superintendent of Education (OSSE), Division of Special Education received a State Complaint on [REDACTED] from [REDACTED] (complainant) alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter “student” or “child,” while attending [REDACTED] Middle School (MS), a school within the District of Columbia Public Schools (DCPS).

The complainant alleged that DCPS 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 take whatever action is necessary to ensure that a parent understands the proceedings of an IEP Team meeting. OSSE investigated the complainant’s concerns related to the parent’s ability to record IEP Team meeting proceedings under the IDEA requirements cited below.

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, in implementing the school tape recording policy, failed to take whatever action is necessary to ensure that a parent understands the proceedings of the IEP Team meeting, as required by 34 CFR §300.322(e)?

INVESTIGATIVE PROCEDURE

This investigation included interviews with the following individuals:

1. Complainant
2. Parent
3. [REDACTED] MS [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 multiple disabilities.

ISSUE ONE: PARENTAL UNDERSTANDING OF PROCEEDINGS

Findings of Fact

1. On [REDACTED], the complainant emailed the [REDACTED] MS special education coordinator to request a meeting to review the results of an independent educational evaluation and indicating [REDACTED] intent to record the meeting.
2. On [REDACTED], the [REDACTED] MS special education coordinator indicated to the complainant via email that it was against DCPS policy to record meetings and that [REDACTED] would not be allowed to record the student’s upcoming meeting.
3. On [REDACTED], the DCPS assistant attorney general emailed the complainant to reiterate DCPS’s position that, subject to DCPS rules and policies for guests, the complainant would not be allowed to record the upcoming meeting.

4. DCPS did not respond to the complainant's request for a copy of the relevant DCPS rules and policies for guests.
5. The October 29, 1984 DCPS Procedures for School Visitors states that the principal has the overall responsibility and authority to regulate the admission of visitors and oversee their conduct while in the school or on school property. The Procedures further indicate that visitors who violate established procedures regarding visits to schools are subject to immediate removal from the school property.
6. The [REDACTED] MS Handbook includes policies on family involvement, including sections on parent-teacher conferences, meetings with the principal or assistant principals, and family visits; however, these sections do not address a school or district policy regarding tape recording meetings.
7. On [REDACTED], DCPS invited the parent to a meeting to review evaluations, determine the student's eligibility, and develop an IEP on [REDACTED].
8. In an [REDACTED] letter to DCPS, the complainant explained that the intent behind the request to record the IEP meeting proceedings was to ensure that the parent could "fully understand" the proceedings.
9. The complainant's [REDACTED] letter to DCPS indicated that recording of the IEP meeting was necessary because the parent was diagnosed with attention deficit hyperactivity disorder and experiences difficulty processing information in meetings without the ability to go back and listen to a tape recording.
10. At the [REDACTED] eligibility meeting, the complainant and parent made a request to record the meeting.
11. At the [REDACTED] eligibility meeting, the complainant and parent were informed that if they proceeded with recording they would be escorted from the building.
12. The parent reported that [REDACTED] went forward with the meeting without the recording due to [REDACTED] belief that if [REDACTED] persisted in [REDACTED] request to record it would delay the student's determination of eligibility and receipt of services.

Discussion/Conclusion

DCPS is out of compliance with 34 CFR §300.322(e).

Pursuant to 34 CFR §300.322(e), a public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

Memorandum 91-24, issued by the U.S. Department of Education, Office of Special Education Programs (OSEP) on July 18, 1991, noted that a decision regarding whether parents may tape record IEP meetings should be left to the discretion of local school districts, based upon local considerations. This memorandum indicated that in the absence of conflicting Federal statute, a State educational agency (SEA) or school district has the option to require, prohibit, limit, or otherwise regulate the use of tape recorders at IEP meetings. The memorandum went on to state that any policy limiting or prohibiting a parent's right to tape record the proceedings at an IEP meeting must provide for exceptions if they are necessary to ensure that the parent is able to understand the proceedings at the IEP meeting or to implement other parental rights under Part B. In *Letter to Anonymous*, 40 IDELR 70 (June 4, 2003), OSEP reiterated this requirement for exceptions to any limiting or prohibitive policy. 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. Although the regulatory provision at issue here was, prior to the 2004 revisions, found at 34 CFR §300.345(e), OSSE identified no significant change with respect to the content of the regulation. In the absence of State or local policy, OSSE will use OSEP Memorandum 91-24 and *Letter to Anonymous* to inform this decision.

The complainant indicated [REDACTED] intention to record the eligibility meeting proceedings and was told both by the special education coordinator and the DCPS assistant attorney general that recording was not allowed. Although DCPS indicated to the complainant that this position was based on school policy, DCPS did not provide the complainant with any applicable written policy, nor did the LEA indicate that any exceptions could be made to the prohibition on recording. The complainant indicated in [REDACTED] letter to DCPS that the parent had a disability which necessitated such a recording, but it does not appear from the record that DCPS provided a response or examined this request in the context of an exception to its general practice. At the [REDACTED] eligibility meeting, the complainant and parent were informed that if they insisted on recording the meeting they would be escorted from the building. The parent reported that [REDACTED] went forward with the meeting because [REDACTED] believed that insisting on a recording would delay the student's eligibility determination and receipt of services.

In the absence of local law or policy to the contrary, DCPS is well within its rights to develop a general policy against recording IEP team meetings. DCPS provided no such policy to the complainant and submitted no formal written response to this complaint pointing to such a policy. OSSE's investigation revealed written procedures for school visitors, issued on October 29, 1984, which grant the principal overall authority to regulate the conduct of visitors while on school property, and it was the position of the principal and the DCPS attorney in this case that no recording was allowed. Although no written policy has been made available to OSSE, the facts of this case illustrate that, at minimum, there is a *practice* of prohibiting the recording of meetings. But whether this prohibition exists as a written policy or an unwritten practice, there is no evidence that DCPS has made provision for exceptions to this prohibition if recording is necessary to ensure that the parent is able to understand the proceedings at an IEP meeting or to implement other parental rights under Part B. Even assuming that DCPS's practice allows for appropriate exceptions, there is no evidence that DCPS examined whether the parent's disability necessitated an exception in order to ensure her understanding of the proceedings.

The parent, through [REDACTED] counsel, indicated that [REDACTED] disability necessitated that [REDACTED] record the meeting in order to ensure that [REDACTED] understood the proceedings. There is no evidence that DCPS's general prohibition on recording allows for exceptions as detailed in OSEP Memorandum 91-24 and *Letter to Anonymous*, or that DCPS actually considered an exception to ensure the parent understood the proceedings. Therefore, DCPS is out of compliance with 34 CFR §300.322(e) for failing to take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including considering exceptions to any general policy or practice of prohibiting recording at IEP meetings.

CORRECTIVE ACTION

DCPS is required to take the following actions:

1. In order to correct the noncompliance with 34 CFR §300.322(e):
 - a. By [REDACTED], DCPS must hold an IEP team meeting, at a time and place determined in consultation with the parent, to review the student’s prior eligibility determination and existing IEP. DCPS must permit the parent to record the proceedings of this IEP meeting. DCPS may demonstrate fulfillment of this corrective action through an acknowledgement of permission to record signed by the parent. Any requests made by the parent or parent’s counsel to record additional IEP meeting proceedings will be governed by the policy and exceptions developed pursuant to corrective action 1b.
 - b. By [REDACTED], DCPS must develop a written policy regarding the recording of IEP team meetings. DCPS may choose to develop a consistent district-wide policy or to vest the authority to permit or prohibit recording in school principals, but it must ensure that any policy limiting or prohibiting a parent’s right to tape record the proceedings at an IEP meeting provides for exceptions if they are necessary to ensure that the parent is able to understand the proceedings at the IEP meeting or to implement other parental rights under Part B. The policy must provide for a mechanism of reviewing requests for exception following an initial denial.

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], Complainant
[REDACTED], Parent
[REDACTED], DCPS [REDACTED]