



August 2, 2012

[REDACTED]
[REDACTED]
District of Columbia Public Schools
[REDACTED]
[REDACTED]

RE: State Complaint No. 011-027

LETTER OF DECISION

PROCEDURAL BACKGROUND

The State Complaint Office of the Office of the State Superintendent (OSSE), received a State Complaint from [REDACTED], [REDACTED], hereinafter "complainant" on [REDACTED], alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter "student," while [REDACTED] was a student at [REDACTED] High School in the District of Columbia Public Schools (DCPS).

The complainant alleged that the school violated several provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. and regulations promulgated at 34 CFR Part 300. Several of the same issues were subsequently raised in a due process complaint; specifically, failure to properly determine the student's placement; failure to determine whether conduct that prompted the student's suspension was caused by or had a direct relationship to the student's disability, failure to ensure that special education and related services were made available to the student in accordance with the IEP; failure to provide educational services to a student with a disability removed from [REDACTED] current placement for more than 10 days; and failure to review and revise the student's IEP to address information about the child provided by the parent, the child's anticipated needs or other matters. As of this date, the due process hearing has not occurred. IDEA requires the SEA to set aside any part of the complaint that is being addressed in a due process hearing until the conclusion of the hearing, therefore these issues were not considered as part of the State complaint. (34 CFR §300.152(c))

This Letter of Decision addresses the complainant's remaining issue, specifically, failure to hold a MDT meeting to review the student's missed services, create a Compensatory Education Plan, and revise the student's IEP to include positive behavioral interventions and supports, consistent with the requirements of OSSE's [REDACTED] Letter of Decision.



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 hold a MDT meeting to review the student’s missed services, create a Compensatory Education Plan, and revise the student’s IEP to include positive behavioral interventions and supports, consistent with the requirements of OSSE’s [REDACTED] Letter of Decision corrective actions one and two?
2. Whether DCPS failed to input valid and reliable data in the Special Education Data System, as required by 34 CFR §§300.211, 300.600(d), 300.601(b) and OSSE’s December 9, 2010 LEA Data Management Policy?

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. [REDACTED], DCPS
2. [REDACTED], [REDACTED] High School

The investigation included a review of the following documents which were either submitted by the complainants, 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: IMPLEMENTATION OF CORRECTIVE ACTIONS

Findings of Fact

1. Corrective action one in the [REDACTED] Letter of Decision required DCPS to convene a meeting of the IEP team to review the student's missed services, and create a Compensatory Education Plan to address DCPS' failure to consider the use of positive interventions and supports, student absences, and to make related services available to the student in accordance with the IEP.
2. The [REDACTED] Letter of Decision required the IEP to be convened by [REDACTED].
3. The IEP team was convened on [REDACTED].
4. DCPS acknowledges that the IEP meeting was held six weeks late due to DCPS' failure to schedule the meeting in a timely manner.
5. The [REDACTED] Letter of Decision stated that if DCPS and the student were unable to agree on the amount of compensatory education services, DCPS must provide a minimum of 26 hours of behavioral support services, 6 hours of speech-language services, and 6 hours of occupational therapy services.
6. The IEP team discussed compensatory education at the meeting, but did not come to agreement on the amount of services.
7. DCPS offered the student 26 hours of behavioral support services, 6 hours of speech-language services, and 6 hours of occupational therapy services.
8. On [REDACTED] DCPS sent a Compensatory Education Services Authorization to the parent, entitling the student to 26 hours of behavioral support services, 6 hours of speech-language services, and 6 hours of occupational therapy services.
9. Corrective action two in the [REDACTED] Letter of Decision required the IEP team to review and revise the student's IEP to include additional positive behavioral interventions and supports to address the student's absences.
10. The IEP team discussed the student's absences, and DCPS agreed to add a goal addressing attendance.
11. As of [REDACTED] the student was no longer enrolled in DCPS.
12. On [REDACTED] the parent was invited to an IEP meeting on [REDACTED].

Discussion/Conclusion

DCPS is out of procedural compliance with corrective actions one and two in the [REDACTED] Letter of Decision.

DCPS is in substantive compliance with corrective actions one and two in the [REDACTED] Letter of Decision.

The [REDACTED], LOD addressed several areas of student-specific noncompliance, including failure to provide related services in accordance with the IEP. All instances of noncompliance with the provisions of 34 CFR Part 300 are subject to 34 CFR §300.600(e), which requires that noncompliance be corrected as soon as possible, and in no case later than one year from identification. However, the U.S. Department of Education has stated that to ensure that students with disabilities are provided with a FAPE, when reading 34 CFR §300.600(e) in the context of student-specific IEP timelines, noncompliance is to be corrected as soon as possible. (73 Fed. Reg. 73006, December 1, 2008) Therefore, LEAs must adhere to the timelines specified by OSSE in corrective actions. OSSE calculates the timeline for each corrective action to allow adequate time for correction while ensuring that in instances of student-specific timelines, noncompliance is corrected as soon as possible and the student is provided with FAPE. While meeting established timelines is a procedural compliance issue, under the IDEA regulations, procedural inadequacies can result in a denial of FAPE if the student's right to FAPE is impeded. (34 CFR §300.513(a)(2)(i)) Failure to correct non-compliance in a timely fashion may result in substantive noncompliance where delayed programming and services deny the student a FAPE.

The [REDACTED] LOD required the school to convene an IEP by [REDACTED] to correct noncompliance specific to the student. DCPS failed to schedule the IEP in a timely manner, and as a result, the IEP was not convened until [REDACTED]. Therefore, DCPS is out of procedural compliance with corrective actions one and two in the [REDACTED] LOD.

In this case, DCPS' procedural noncompliance did not deny the student a FAPE.

With respect to corrective action one of the [REDACTED] LOD, DCPS was required to review the student's missed services and create a Compensatory Education Plan. The LOD specified that if the parties failed to agree on the amount of compensatory education, DCPS was required to provide a minimum of 26 hours of behavioral support services, 6 hours of speech-language services, and 6 hours of occupational therapy services. The team did not reach an agreement on compensatory education at the [REDACTED] IEP meeting. DCPS offered the minimum hours required by the [REDACTED] LOD. Following the meeting, DCPS sent a Compensatory Education Services Authorization to the parent which authorized [REDACTED] to contract compensatory education in the amounts offered in accordance with the [REDACTED] LOD. DCPS held the IEP meeting and made the offer of compensatory services in accordance with the substantive provisions of corrective action one in the [REDACTED] LOD. Therefore, DCPS is in compliance with the substantive requirements of corrective action one.

Corrective action two required DCPS to review and revise the student's IEP to include additional positive behavioral interventions and supports to address the student's absences. Despite attempts to support the student's attendance, DCPS was unable to provide services due to the student's multiple absences. Attendance records show that the student was suspended on [REDACTED] and that the student never returned to school following the suspension. The student was disenrolled from DCPS on [REDACTED]. OSSE notes that DCPS did not submit truancy paperwork to the central office on this student. However, DCPS was aware that the student had an attendance problem and reacted appropriately for purposes of special education compliance by convening the IEP team on [REDACTED].

The [REDACTED] IEP notes indicate that the team discussed the student's absences and agreed to add an additional goal addressing attendance. DCPS records show that as of [REDACTED], the student was no longer enrolled in DCPS, and that [REDACTED] status was unknown. On [REDACTED], DCPS invited the parent to an IEP meeting on [REDACTED]. The IEP meeting did not occur. DCPS reviewed and agreed to revise the student's IEP in accordance with corrective action two. The student's subsequent disenrollment prevented the team from reconvening to add the agreed upon goals. Therefore, DCPS is in compliance with the substantive requirements of corrective action two.

Therefore, DCPS is out of procedural compliance with corrective actions one and two in the [REDACTED] LOD and is in substantive compliance with corrective actions one and two in the [REDACTED] LOD.

ISSUE SEVEN: VALID AND RELIABLE DATA

Findings of Fact

1. An IEP meeting was held on [REDACTED].
2. The IEP was not finalized in the SEDS system until [REDACTED].

Discussion/Conclusion

DCPS is out of compliance with 34 CFR §§300.211, 300.600(d), 300.601(b), and OSSE's December 9, 2010 LEA Data Management Policy.

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 LEA Data Management Policy of December 9, 2010 states that LEAs have a maximum of 5 business days to enter or update their student's records including program related information

for students with disabilities in the SEDS data system. DCPS held an IEP on [REDACTED] but did not finalize the IEP within the SEDS system until [REDACTED]. This is well beyond the 5 business day maximum outlined in the Data Management Policy.

Therefore, DCPS is out of compliance with 34 CFR §§300.211, 300.600(d), 300.601(b), and OSSE's December 9, 2010 LEA Data Management Policy.

CORRECTIVE ACTION

In order to correct the noncompliance identified in this letter of decision, DCPS is required to take the following actions:

1. By [REDACTED], DCPS must provide training to all DCPS case managers to ensure they are aware of the duty to comply with specific timelines for each corrective action outlined in OSSE's Letters of Decision. DCPS must provide documentation of the completed training to OSSE by [REDACTED].
2. By [REDACTED] DCPS must review OSSE's December 9, 2010, LEA Data Management Policy with the [REDACTED] High School building principal, SEC, special education teachers, and any support staff who work with SEDS. DCPS must provide documentation of the completed training to OSSE by [REDACTED].

If you have any questions regarding this Letter of Decision, please contact Jennifer Masoodi, Manager, State Complaints, at jennifer.masoodi@dc.gov or 202-741-0479.

Sincerely,

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

cc: [REDACTED], complainant
[REDACTED], parent
[REDACTED], DCPS [REDACTED]