



August 2, 2012

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 011-029

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] [REDACTED] (Student ID # [REDACTED] hereinafter "student," while [REDACTED] was a student in 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 provide specialized instruction in accordance with the student's IEP; failure to determine an appropriate educational placement; failure to review the IEP at least annually; failure to consider positive behavioral supports and strategies to address behaviors that impede student learning; and failure to conduct timely reevaluations.

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 provide special education and related services to the child in accordance with the child's IEP, specifically with regard to provision of specialized instruction, as required by 34 CFR §300.323(c)(2)?
2. Whether DCPS failed to conform to the requirements of 34 CFR §300.116 to



- determine the student's educational placement?
3. Whether DCPS failed to ensure the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved, as required by 34 CFR §300.324(b)(1)(i)?
 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 timely conduct reevaluations, as required by 34 CFR §300.303?

INVESTIGATIVE PROCEDURE

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):



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.

ISSUE ONE: PROVISION OF SERVICES IN ACCORDANCE WITH THE IEP

Findings of Fact

1. The [REDACTED], IEP entitles the student to 10 hours per week of specialized instruction outside of the general education environment, 30 minutes per month of behavioral support services outside of the general education environment, and 30 minutes per month of behavioral support services consultation.
2. The student exited DCPS on [REDACTED].
3. The student reentered DCPS on [REDACTED].
4. The student exited DCPS on [REDACTED].
5. During the one year time frame covered by this complaint, the student was enrolled in DCPS for 12 school days.

Discussion/Conclusion

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

The IDEA at 34 CFR §300.323(c)(2) provides that each public agency must 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 entitled [REDACTED] to 10 hours per week of specialized instruction, 30 minutes per month of behavioral support services, and 30 minutes per month of behavioral support services consultation. The [REDACTED] IEP was effective for one year, until December [REDACTED].

The complaint filed on [REDACTED], alleges that no specialized instruction or counseling services were provided to the student during the [REDACTED] and [REDACTED] school years. The IDEA regulations at 34 CFR §300.153(c) state that a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. This investigation covers the dates [REDACTED]. The student exited DCPS in February of [REDACTED] and did not reenter DCPS until [REDACTED]. On [REDACTED], the student exited DCPS again, and has not reenrolled as of the date of this letter.

The IDEA does not require LEAs to provide special education services to students who are not enrolled in school. According to the [REDACTED] and [REDACTED] DCPS calendars, the student has only been enrolled in school for 12 school days during the year covered by this complaint, from [REDACTED] to [REDACTED]. An IEP was in place during that time. There is no evidence that DCPS failed to provide services as required under the IEP for those 12 days.

Therefore, DCPS is in compliance with 34 CFR §300.323(c)(2).

ISSUE TWO: EDUCATIONAL PLACEMENT

Findings of Fact

1. The [REDACTED] Letter of Invitation (LOI) to the [REDACTED] IEP documents six attempts to contact the adult student by letter and phone to secure [REDACTED] participation in an IEP meeting.
2. In the [REDACTED] LOI, five of the documented attempts to contact the adult student pre-date the [REDACTED] IEP meeting.
3. The student's file contains an IEP dated [REDACTED].
4. The [REDACTED] IEP retains the same educational placement as the [REDACTED] IEP.

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.116.

DCPS is out of compliance with OSSE's [REDACTED] Individualized Education Program Process Policy.

The IDEA at 34 CFR §300.116 requires public agencies to ensure that educational placement decisions are made by a group of persons and are made in conformity with the Least Restrictive Environment (LRE) provisions of the IDEA.

The complainant alleged that DCPS did not have an IEP in place during the [REDACTED] school year, and therefore failed to determine an appropriate educational placement for the student. Complainant's allegation is contradicted by the existence of an IEP dated [REDACTED] which contained a statement of the student's educational placement. The [REDACTED] IEP was in effect from [REDACTED], the portion of the [REDACTED] school year under investigation here, as well as the 12 days for which the student was enrolled during the [REDACTED] school year.

The [REDACTED] IEP was reviewed and revised by a group of school officials who were members of the IEP team. According to OSSE's Individualized Education Program Process Policy, a student over the age of 18 becomes a mandatory participant on the IEP team. (OSSE, August 30, 2011) The student was over the age of 18 when the [REDACTED], IEP was created, but did not participate in the IEP meeting.

The [REDACTED] LOI documents that the student was invited to the [REDACTED] IEP meeting on two occasions, once by phone on [REDACTED], and once by the LOI on [REDACTED]. OSSE's Individualized Education Program Process Policy requires the school to make reasonable efforts to secure parent/adult student participation, and defines reasonable efforts as a minimum of three attempts using multiple modalities. (OSSE, August 30, 2011) If a parent/adult student is non-responsive or refuses to participate after three documented attempts using multiple modalities, then the IEP meeting may be convened without the parent/adult

student. (OSSE, August 30, 2011) OSSE notes that the [REDACTED] LOI states that the student was contacted on 6 previous occasions. However, 5 of those contacts preceded the [REDACTED] IEP and cannot be counted as attempts to secure the student's participation in the [REDACTED] IEP. Therefore, DCPS is out of compliance with OSSE's Individualized Education Program Process Policy requirement that the LEA document reasonable efforts to secure the participation of the parent/adult student.

Therefore, DCPS is in compliance with 34 CFR §300.116, but out of compliance with OSSE's August 30, 2011 Individualized Education Program Process Policy.

ISSUE THREE: ANNUAL REVIEW OF IEP

Findings of Fact

1. The student's file contains an IEP dated [REDACTED].
2. The student's file contains an IEP dated [REDACTED].
3. The [REDACTED], IEP was signed by the student and [REDACTED] parent.
4. The student's file contains an IEP dated [REDACTED].
5. The [REDACTED], IEP was due for review in December of [REDACTED].
6. The SEDS student history shows that the student was no longer enrolled in DCPS as of [REDACTED].

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.324(b)(1)(i).

The IDEA at 34 CFR §300.324(b)(1)(i) requires each public agency to ensure that the IEP team reviews a student's IEP periodically, but at least annually. The student's IEP was reviewed in March and December of [REDACTED]. [REDACTED] IEP was due for review in December of [REDACTED] but [REDACTED] was no longer enrolled in school as of [REDACTED]. LEAs are not required to review the IEPs of students who are no longer enrolled in school.

OSSE notes that this student has not yet graduated from high school and is currently 20 years old. Under these circumstances, OSSE's Entry and Exit Guidance Related to Special Education Records states that the student will remain eligible to receive special education services until the end of the semester in which [REDACTED] turns 22. (OSSE, July 29, 2011) If the student returns to school before [REDACTED] turns 22, [REDACTED] will be entitled to have [REDACTED] IEP reviewed by the IEP team, and will be entitled to receive the special education services determined to be appropriate at that time.

Therefore, DCPS is in compliance with 34 CFR §300.324(b)(1)(i).

ISSUE FOUR: POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS

Findings of Fact

1. The [REDACTED] Final Eligibility Determination Report discussed the student's truancy and describes strategies teachers used to encourage the student to attend class.
2. The [REDACTED] Functional Behavior Assessment investigated the student's chronic absenteeism/truancy and outlined positive, non-punitive methods to encourage the student to attend school.

Discussion/Conclusion

DCPS is in compliance with 34 CFR 300.324(a)(2)(i).

The IDEA at 34 CFR §300.324(a)(2)(i) requires that when developing an IEP for a child whose behavior impedes the child's learning or that of others, the IEP Team must consider the use of positive behavioral interventions, supports, and other strategies to address that behavior. The student displayed persistent difficulties with truancy and was enrolled in school for only 12 days in the year under consideration here.

DCPS made positive, non-punitive attempts to encourage the student to attend school. DCPS conducted an FBA that included an investigation of the student's chronic absenteeism/truancy, and suggested interventions and rewards to increase the student's rate of attendance. These included frequent praise and positive reinforcement for attendance, and regular communication with the home to encourage the student to attend classes. The [REDACTED] Final Eligibility Determination Report also detailed additional strategies used by the student's teachers to encourage [REDACTED] to attend school and help [REDACTED] to continue to make progress despite [REDACTED] frequent absences. These include modified assignments, the use of progress charts, and highlighting key information for the student.

Therefore, DCPS is in compliance with 34 CFR 300.324(a)(2)(i).

ISSUE FIVE: TIMELY REEVALUATION

Findings of Fact

1. The [REDACTED] IEP stated that the previous triennial eligibility determination occurred on [REDACTED].
2. The next triennial eligibility determination would have been due in February of [REDACTED].
3. A triennial eligibility determination occurred on [REDACTED], and the student was found to be eligible for special education services under the category of emotional disturbance.
4. Prior Written Notice of the student's continuing eligibility for special education services was issued to the student on [REDACTED].
5. The next triennial eligibility determination date is March [REDACTED].

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.303.

Pursuant to IDEA at 34 CFR §300.303 a public agency must ensure that a reevaluation of each child with a disability is conducted if the agency determines that the educational or related services needs warrant a reevaluation or if the child's parent or teacher requests reevaluation. Reevaluation must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

The student had triennial eligibility determinations in February of [REDACTED] and in March of [REDACTED]. Prior Written Notice of the student's continuing eligibility for special education services was sent to the student on [REDACTED]. Although the student's triennial eligibility determination was completed in [REDACTED] more than three years after the [REDACTED] eligibility determination, this event occurred more than one year prior to the filing of this complaint. The next triennial evaluation date is not until March [REDACTED] and there is no record of the student requesting additional reevaluations.

Therefore, DCPS is in compliance with 34 CFR §300.303.

CORRECTIVE ACTION

In order to correct noncompliance with OSSE's August 30, 2011, Individualized Education Program Process Policy DCPS is required to take the following actions:

1. By [REDACTED], DCPS must ensure that all administrators, SECs, and special education teachers at [REDACTED] are provided training on OSSE's August 30, 2011, Individualized Education Program Process Policy. The training must identify mandatory participants at IEP meetings and must provide guidance on the meaning of "reasonable efforts" to encourage participation in IEPs. DCPS must clarify that an IEP meeting may not be held without the parent/adult student unless at least three multi-modal attempts to contact the student are documented, and the parent/adult student is non-responsive or refuses to participate. Finally, DCPS must ensure that staff are aware that the required "reasonable efforts" to secure participation start anew with each IEP, and attempts to secure participation at previous IEPs cannot be counted as attempts to secure participation at current or future meetings. DCPS must provide OSSE with proof of the required training 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 Special Education

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