



August 2, 2012

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 011-030

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] (complainant) against the District of Columbia Public Schools (DCPS), alleging violations in the special education program of [REDACTED] [REDACTED] [REDACTED] (Student ID # [REDACTED] hereinafter "student" or "child.")

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; and failure to ensure the IEP team included, at the discretion of the parent, individuals with knowledge or specialized expertise regarding the student.

The complainant raised a concern regarding the amendment of transcripts to change the student's grade in a particular course. The State Complaint Office does not have jurisdiction under the IDEA to resolve a dispute concerning the assignment of grades.

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 ensure that the IEP Team included, at the discretion of the parent, other individuals who have knowledge or special expertise regarding the child, as required by 34 CFR 300.321(a)(6)?

INVESTIGATIVE PROCEDURE

This investigation included interviews with the following individuals:

1. Parent
2. Principal, [REDACTED] Middle School [REDACTED] ([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 (SLD).
3. The student attended [REDACTED] during the [REDACTED] school year.

ISSUE ONE: PROVISION OF SERVICES IN ACCORDANCE WITH THE IEP

Findings of Fact

1. The [REDACTED] IEP from [REDACTED] Elementary School, was in effect until [REDACTED].
2. The [REDACTED] IEP entitled the student to 1.5 hours per day of specialized instruction in math outside of the general education environment.
3. The [REDACTED] school year started on [REDACTED].

4. [REDACTED] had no math teachers who were certified in special education on staff until [REDACTED].
5. There were 67.5 school days for DCPS students between [REDACTED] and [REDACTED].
6. The student received an "F" in math for the first grading term, which ended on [REDACTED].
7. The student received an "F" in math for the second grading term, which ended on [REDACTED].
8. The student received a "B" in math for the third grading term, which ended on [REDACTED].
9. The student was absent from [REDACTED] math class on 14 school days between [REDACTED] and [REDACTED], for a total of 24 instructional periods in math.
10. The attendance record shows that of the student's 14 school day absences, 6 were excused, 3 were unexcused, and the remaining 5 absences were not classified as excused or unexcused.
11. [REDACTED] contacted the parent by telephone on [REDACTED] and expressed concern about the student's excessive absences.
12. [REDACTED] mailed the parent a letter on [REDACTED], listing recent unexcused absences and telling the parent that it was "extremely important" that [REDACTED] come in and discuss the student's absences.
13. On [REDACTED], after the student accrued additional absences, [REDACTED] sent the parent a letter requesting their attendance at a truancy conference, and noted that it was "urgent" for the parent to come to the meeting.

Discussion/Conclusion

DCPS is out of compliance with 34 CFR §§300.323(c)(2) and 300.324(a)(2)(i).

The IDEA regulations at 34 CFR §300.323(c)(2) state that public agencies must ensure that as soon as possible after development of an IEP, special education and related services must be made available to the student in accordance with the IEP. The IDEA regulations also require that in developing an IEP, the IEP Team must, in the case of a child whose behavior impedes the child's learning, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (34 CFR §300.324(a)(2)(i))

DCPS' [REDACTED] school year started on [REDACTED]. The student's [REDACTED] IEP was the IEP in place on the first day of school and entitled the student to 1.5 hours per day of specialized instruction in mathematics outside of the general education environment. [REDACTED] had no math teachers certified in special education until [REDACTED].

The student received no specialized instruction in math between [REDACTED] and [REDACTED]. The student was provided no specialized instruction in math during the first grading term, which ended on [REDACTED], and received an "F" for the term. The student

was provided no specialized instruction in math until half-way through the second grading term, which ended on [REDACTED], and received an “F” for the term. The student received specialized instruction in math in accordance with [REDACTED] IEP during the third grading term, which ended on [REDACTED], and received a “B” in math for the term. [REDACTED] invited the student to attend lunch-time math tutoring, but otherwise, there is no documentation of attempted or actual provision of make-up services to the student. The lunch-time tutoring offered was not specialized instruction, but general tutoring available to all students.

DCPS is responsible for providing FAPE in accordance with the IEP in all circumstances. Where appropriately certified teachers are temporarily unavailable, DCPS must immediately arrange for qualified substitutes, hire qualified teachers without delay, and should proactively arrange for make-up services to be delivered to each affected student in accordance with [REDACTED] or [REDACTED] IEP. Finally, DCPS must document all attempted and delivered make-up sessions.

DCPS’ response to the complaint acknowledges that there was a period of time at the beginning of the school year when the school had a shortage of special education teachers, but cites the student’s excessive absences as a factor in the student’s academic performance. Student absences do not excuse an LEA from providing FAPE in accordance with the IEP. Where a student’s behavior impedes [REDACTED] learning, an LEA must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (34 CFR §300.324(a)(2)(i))

Once [REDACTED] was aware that the student was excessively absent, [REDACTED] should have convened the IEP team to determine whether [REDACTED] absences were interfering with the provision of FAPE, and determined whether positive behavioral interventions and supports would have helped the student. The attendance record indicates that the student was absent from [REDACTED] math class on at least 14 of 67.5 school days between [REDACTED] and [REDACTED], for a total of 24 math instructional periods. While [REDACTED] took immediate action on the issue of truancy, and appropriately documented several attempts to discuss truancy with the parent, [REDACTED] did not examine whether the student’s absences were interfering with the provision of FAPE. The IEP was not reconvened until March of [REDACTED] well after the student’s math services were in place, and [REDACTED] math grades had recovered.

DCPS’ response also states that since the student earned a “C” in [REDACTED] math class for the year, there is no evidence of harm to the student. With certain exceptions in due process proceedings, hearing officers must look for substantive violations, or harm, when determining violations of FAPE. (34 CFR §300.513(a)(1-2)) OSSE notes that unlike due process hearings, within the State complaint process, the SEA is not subject to the harmless error limitation. (34 CFR §§300.151-153) The U.S. Department of Education has opined that the State complaint process is to be used to determine whether LEAs have made procedural and/or substantive violations of the IDEA. (71 Fed. Reg. 46601, August 14, 2006) As the State complaint process

may be used to find and correct procedural violations of the IDEA, there is no requirement that the SEA find harm before finding a violation of the IDEA and assigning a corrective action. (34 CFR §§300.151-153)

Therefore, DCPS is out of compliance with 34 CFR §§300.323(c)(2) and 300.324(a)(2)(i).

ISSUE TWO: DISCRETIONARY IEP TEAM MEMBERS

Findings of Fact

1. The [REDACTED] IEP amendment was attended by the parent, a special education teacher, an evaluator/individual qualified to interpret test results, an LEA representative, a general education teacher, and the parent's advocate.
2. The parent had a meeting with the principal on [REDACTED].

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.321(a)(6).

Under the IDEA regulations at 34 CFR §300.321(a)(6), public agencies must ensure that at the discretion of the parent of the agency, IEP teams include individuals who have knowledge or special expertise regarding the student. The individuals contemplated by 34 CFR §300.321(a)(6) are not the mandatory or required team members described in 34 CFR §300.321(a)(1-5), but additional, discretionary IEP members.

The [REDACTED] IEP meeting was attended by all of the mandatory participants described in 34 CFR §300.321(a)(1-5), including the parent, a general education teacher, a special education teacher, an agency representative, and an individual capable of interpreting assessment results. The complainant claims to have requested that the principal attend the student's IEP meeting on [REDACTED]. [REDACTED] does not have a record of this request, but assuming that such a request was made, the principal's failure to attend the meeting did not put [REDACTED] in violation of 34 CFR §300.321(a)(6). When considering discretionary team members under 34 CFR §300.321(a)(6), parents do not have a legal right to require a public agency employee who has not been invited by the agency to attend an IEP meeting. (OSEP Letter to Rangel-Diaz, April 21, 2011) Here, the principal was a discretionary IEP member, and was an agency employee who was not invited to the IEP by the agency, but by the parent, who could invite, but could not require the principal's attendance.

OSSE notes that by the parent's own report, the principal met privately with the parent on the same date as the IEP meeting, and the parent was able to express [REDACTED] concerns directly to the principal during that meeting.

Therefore, DCPS is in compliance with 34 CFR §300.321(a)(6).

CORRECTIVE ACTION

DCPS is required to take the following actions to correct the noncompliance with 34 CFR §§300.323(c)(2) and 300.324(a)(2)(i):

1. 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 specialized instruction in math that was not delivered and to address the failure to consider positive behavioral interventions and supports to address the student’s absences. If DCPS and the parent cannot agree on the amount of compensatory education hours, DCPS shall provide a minimum of 50 hours of specialized instruction in math as compensatory education. DCPS must provide a copy of the Compensatory Education Plan to OSSE by [REDACTED]. All compensatory services must be provided by [REDACTED]. To close this corrective action, DCPS must make service tracking forms documenting the delivery of all compensatory education hours available in SEDS within five business days of the provision of services.

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], DCPS [REDACTED]