



August 10, 2012

[REDACTED]  
District of Columbia Public Schools  
[REDACTED]

RE: State Complaint No. 011-032

## 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, against the District of Columbia Public Schools (DCPS), alleging violations in the special education program of [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, (1) failure to provide special education and related services in accordance with the IEP and failure to revise the IEP to address lack of progress and information provided by the parents, (2) failure to ensure reevaluations are conducted, (3) failure to determine an appropriate educational placement, and (4) failure to properly implement a settlement agreement.

The complainant also raised concerns regarding the student’s grade promotion despite evidence of academic failure; the factual statements associated with this allegation relate to the requirements to revise the student’s IEP to address any lack of progress, and were investigated through Issue 1, above. In addition, the complainant alleged facts relating to events which occurred more than one year prior to the date the complaint was filed. 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. Therefore, OSSE did not make findings of noncompliance based on events that occurred prior to [REDACTED].

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, and whether DCPS failed to revise the child's IEP to address any lack of expected progress, the results of any reevaluation, information about the child provided by or to the parents, the child's anticipated needs, or other matters, as required by 34 CFR §§300.323(c)(2) & 300.324(b)(1)(ii)?
2. Whether DCPS failed to ensure that a reevaluation is conducted if the public agency determines that the educational or related services needs of the child warrant a reevaluation, or if the child's parent requests a reevaluation, as required by 34 CFR §300.303(a)?
3. Whether DCPS failed to conform to the requirements of 34 CFR §300.116 to determine the student's educational placement?
4. Whether DCPS failed to implement the [REDACTED] settlement agreement by failing to convene an IEP meeting to review the Psychological Assessment; review and revise the student's IEP, if necessary; and discuss location of services, if necessary?

**INVESTIGATIVE PROCEDURE**

This investigation included interviews with the following individuals:

1. [REDACTED], [REDACTED] High School

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]

[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] High School during the [REDACTED] school year.

### **ISSUE ONE: PROVISION OF SERVICES AND REVISION OF THE IEP**

#### **Findings of Fact**

1. The [REDACTED] IEP entitled the student to 15 hours of specialized instruction in the general education environment.
2. During the [REDACTED] school year, the student received specialized instruction in two block periods per day.
3. During the [REDACTED] school year, the student's extended literacy and world history classes at [REDACTED] High School were taught by teachers certified in special education. The student's English 1 class was taught by a general education teacher with co-teaching and assistance from a special education teacher.
4. DCPS convened the MDT to review an independent psychological assessment on [REDACTED].
5. [REDACTED] was the 22<sup>nd</sup> school day of the [REDACTED] school year.
6. Complainant requested that special education services be increased at the [REDACTED] MDT meeting.
7. Special education services were not increased at the [REDACTED] MDT meeting.
8. After failing the first semester of algebra, the student was placed in an algebra class with a certified special education teacher. During the remainder of the [REDACTED] school year, the student's algebra class was taught by a certified special education teacher.
9. The student earned 2 F's, 1 D, 3 C's and 1 B for the [REDACTED] school year.
10. The student ranked 112 out of 286 students in [REDACTED] class for the [REDACTED] school year.

#### **Discussion/Conclusion**

**DCPS is out of compliance with 34 CFR §300.323(c)(2).**

**DCPS is in compliance with §300.324(b)(1)(ii).**

The IDEA regulations at 34 CFR §300.323(c)(2) require public agencies to ensure that special education and related services are provided to the child in accordance with the IEP. The regulations also require public agencies to ensure that IEP teams revise IEPs as appropriate to address lack of expected progress toward annual goals and in the general curriculum, results of reevaluations, information provided about the child provided by the parents, the child's anticipated needs, and other matters. (34 CFR §300.324(b)(1)(ii))

The [REDACTED] IEP entitled the student to 15 hours of specialized instruction in the general education environment. The goals on the [REDACTED] IEP were in the areas of

math, reading, and written expression. Under the block schedule used by ██████ High School during the ██████ school year, 15 hours of specialized instruction per week is the equivalent of specialized instruction during two classes per day. The complaint states that the student was not receiving specialized instruction in algebra 1, and was not receiving specialized services in world history. The complaint is correct in stating that there was no specialized instruction provided during the first semester of the student's algebra class, even though the IEP included goals in math.

The student received specialized instruction in ██████ extended literacy and world history courses during the first semester of the ██████ school year, which provided ██████ with a total of 15 hours of specialized instruction per week in the areas of reading and written expression. The school did not provide any specialized instruction in algebra during the first semester. In cases like this one, where the IEP entitles the student to a particular number of undifferentiated hours of specialized instruction, the school must provide services that will allow the student to progress on his or her IEP goals. Here, the student was taking algebra and had IEP goals in the area of mathematics. The school should have ensured that the student received some of ██████ weekly specialized instruction hours during algebra. If the student had not been enrolled in algebra or another math course, it would have been appropriate to entirely devote the specialized instruction hours to supporting the student in meeting ██████ goals in reading and written expression. Therefore, the school did not meet its duty to provide services in accordance with the IEP during the first semester of the ██████ school year. (34 CFR §300.323(c)(2))

The student received a total of 15 hours per week of specialized instruction in algebra and English 1 during the second semester. Therefore, the student received special education and related services in accordance with ██████ IEP during the second semester. (34 CFR §300.323(c)(2))

On ██████, the MDT met to review an independent psychological evaluation and discuss the student's progress. As of ██████, the student had been at ██████ High School for 22 school days. Based on the evaluation and the student's academic performance and suspensions during middle school, the advocate asked for the student's special education services to be increased, that ██████ be placed out of general education full-time, and provided counseling services. The MDT considered the information from the independent psychological evaluation, disputed some of the conclusions of the evaluation, implemented some of the recommendations from the evaluation, considered the information from the student's guardian and advocate, and reviewed the student's academic performance and behavior during ██████ first 22 days at ██████ High School. The team decided to allow the student's performance at ██████ determine whether ██████ needed additional services.

The MDT's decision not to revise the IEP immediately, and to allow the student's academic performance and behavior at the high school determine whether ██████ would need more services

outside of the general education environment was a reasonable response to a student who appeared to have had difficulties behaviorally and academically in middle school, but whose behavior and academics during the first few weeks of school in [REDACTED] new school environment were satisfactory.

Ultimately the student earned 2 F's, 1D, 3 C's and 1 B for the [REDACTED] school year, and ranked in the top 50% of [REDACTED] class. The team responded to the student's academic performance during the [REDACTED] school year and revised services as necessary. For instance, after the student failed [REDACTED] first semester of algebra, the student was placed in an algebra class taught by a math teacher certified in special education.

OSSE notes that the complainant stated that compensatory education was requested for failure to provide counseling services at a [REDACTED] IEP meeting. There is no [REDACTED] IEP meeting in the student's record, but there was an MDT meeting on [REDACTED]. A complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. (34 CFR §300.153(c)) OSSE received this complaint on [REDACTED], and cannot make findings of noncompliance based on events that occurred prior to [REDACTED].

Therefore, DCPS is in compliance with §300.323(c)(2) and 34 CFR §300.324(b)(1)(ii).

## **ISSUE TWO: CONDUCT REEVALUATION**

### **Findings of Fact**

1. The student had an independent FBA and BIP on [REDACTED].
2. DCPS convened the MDT to review an independent psychological evaluation on [REDACTED].
3. The independent psychological evaluation recommended that the school perform an FBA.
4. The MDT considered the results of the independent psychological evaluation.
5. At the [REDACTED] MDT meeting, the advocate and guardian requested that [REDACTED] High School perform an FBA.
6. [REDACTED] High School did not perform an FBA.
7. [REDACTED] High School did not notify the parent that it would not perform the requested FBA.
8. [REDACTED] was the 22<sup>nd</sup> school day of the [REDACTED] school year.

### **Discussion/Conclusion**

**DCPS is in compliance with 34 CFR §300.303(a). DCPS is out of compliance with 34 CFR §300.503(a)(2).**

The IDEA regulations at 34 CFR §300.303(a) requires public agencies to ensure that reevaluations of children with disabilities are conducted if the public agency determines that education or related services needs of the child warrant a reevaluation, or if the child's parent

or teacher requests a reevaluation. Reevaluation must occur at least once every three years, but is limited to once per year, unless the parent and public agency agree otherwise. (34 CFR §300.303(b)(1-2)) When a public agency refuses a request to evaluate a student, it must provide prior written notice to the parent. (34 CFR §300.503(a)(2))

The student had an independent FBA and BIP dated [REDACTED]. The MDT convened on [REDACTED], approximately six months after the [REDACTED] meeting. The advocate and guardian asked for an FBA at the [REDACTED] meeting. [REDACTED] High School did not perform an FBA. Because the [REDACTED] meeting was only six months after the [REDACTED] meeting, the one evaluation per year limitation of 34 CFR §300.303(b)(1) was in effect, and the school was not obligated to perform another evaluation unless both the school and the parent agreed that a reevaluation was necessary. As of [REDACTED], the student had been in attendance at [REDACTED] High School for a total of 22 school days. The school reported that the student's behavior to that point was satisfactory, and did not agree to perform a second FBA within the same year. The school failed to provide written notice to the parent that it was refusing to perform the requested FBA. (34 CFR §300.503(a)(2))

OSSE notes that the complainant emphasizes that an independent psychological evaluation from [REDACTED] contained a recommendation that the school perform an FBA to determine appropriate behavioral supports for the student. The IDEA regulations at 34 CFR §300.502(c)(1) require public agencies to consider the results of the evaluation in any decision made with respect to the provision of FAPE to the student. However, the IDEA does not require the public agency to adopt the conclusions or recommendations of the independent evaluation.

The record indicates that the team thoroughly considered the independent psychological examination during the [REDACTED] meeting. The school disputed some of the findings in the evaluation, adopted three of the recommendations, and did not adopt others. The school met its obligation to consider the results of the evaluation when making decisions about the provision of FAPE to the student. (34 CFR §300.502(c)(1))

Therefore, DCPS is in compliance with 34 CFR §300.303(a), and out of compliance with 34 CFR §300.503(a)(2).

### **ISSUE THREE: EDUCATIONAL PLACEMENT**

#### **Findings of Fact**

1. The [REDACTED] IEP entitled the student to 15 hours of specialized instruction in the general education environment.
2. The student's extended literacy, world history, and algebra 1B classes at [REDACTED] High School were taught by teachers certified in special education.
3. DCPS convened the MDT to review an independent psychological evaluation on

4. The [REDACTED] IEP meeting notes indicate that the student's math grade level scores had improved by at least one grade level, and that [REDACTED] reading, writing, and English had also improved.
5. [REDACTED] was the 22<sup>nd</sup> school day of the [REDACTED] school year.

### **Discussion/Conclusion**

#### **DCPS is in compliance with 34 CFR §300.116.**

The IDEA regulations at 34 CFR §300.116 provide that student placement decisions must be made by a group which includes the parents, and people knowledgeable about the student, the evaluation data, and placement options. The regulations also state that placement decisions must be made in conformity with the Least Restrictive Environment (LRE) provisions of the IDEA. (34 CFR §300.116(a)(2))

The complaint requested increased specialized instruction, and stated that [REDACTED] High School's small class sizes and ability to provide specialized instruction within general education classes were being used as a reason to deny the request to increase the student's time out of the general education environment. At the [REDACTED] MDT meeting, the advocate and guardian requested that the student remain at [REDACTED] High School, but requested that [REDACTED] be given full-time placement in special education classes.

While the advocate and guardian requested that the student be provided a full-time special education placement, OSSE's Individualized Education Program Process Policy of August 30, 2011 states that IEP decisions are to be made by consensus, which is defined as, "broad agreement reached through group decision-making such that the opinions of all team members are considered." (OSSE, p.2, August 30, 2011) The request to increase the student's specialized instruction was considered at the MDT meeting, and [REDACTED] performance at [REDACTED] High School was discussed at length. The team did not increase services, but the record reflects proper implementation of the educational decision-making process under OSSE's Individualized Education Program Process Policy.

The decision not to decrease the student's time in the general education environment also comports with the school's duty under the IDEA. The IDEA emphasizes that students are entitled to be educated in the LRE. (34 CFR §300.114) The LRE mandate requires schools to educate students with disabilities with their non-disabled peers to the maximum extent appropriate. A student with disabilities should only be pulled out of the regular education environment to receive services where the nature or severity of the disability is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily. (34 CFR §300.114(2)(ii))

The student's [REDACTED] IEP entitled the student to 15 hours of specialized instruction

in the general education environment. The MDT notes from [REDACTED] indicate that the team considered the request to increase specialized instruction, but based on the student's performance to that date, the school did not agree that the student required more time outside of the regular education environment. Nothing in the record indicates that this was an unreasonable decision for the team to make at that time. The most recent evidence that the team had, derived from the student's performance during the first 22 days of school, indicated that given support, the student was capable of being educated in the general education environment. The school provided support in the regular education environment by maintaining low student-to-teacher ratios in co-taught courses, providing classroom aides, differentiating instruction in the classroom, and providing tutoring. The student's extended literacy and world history classes at [REDACTED] High School were taught by teachers certified in special education. After the first semester, the student's algebra 1B class also was taught by a certified special education teacher. A special education teacher provided co-teaching and assistance in English 1, and a special education certified case manager provided support to the student in English 1 and science. The record indicates that the student was able to obtain educational benefit in the general education environment. The [REDACTED] IEP notes state that the student's math, reading, writing, and English skills had increased, and the student's grades placed [REDACTED] in the top 50% of [REDACTED] class. The parent was in attendance at the [REDACTED] IEP, but did not request increased specialized instruction.

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

#### **ISSUE FOUR: IMPLEMENTATION OF SETTLEMENT AGREEMENT**

##### **Findings of Fact**

1. The student attended [REDACTED] middle school during the [REDACTED] school year.
2. The [REDACTED] Settlement Agreement authorized the parent to obtain an independent psychological assessment.
3. The [REDACTED] Settlement Agreement required DCPS to convene an IEP meeting within 25 business days of receipt of the psychological assessment to review the assessment, review and revise the student's IEP if necessary, and discuss the location of services, if necessary.
4. The independent psychological evaluation occurred on [REDACTED], and the report is dated [REDACTED].
5. DCPS convened the MDT to review the independent psychological assessment on [REDACTED].
6. [REDACTED], was the 22<sup>nd</sup> school day of the [REDACTED] school year.

##### **Discussion/Conclusion**

**DCPS is in compliance with the Settlement Agreement of [REDACTED].**

The [REDACTED] Settlement Agreement authorized the parent to obtain an independent psychological assessment. The Settlement Agreement also required DCPS, within 25 days of



receipt of the evaluation and report, to convene the IEP to review the assessment, review and revise the IEP if necessary, and discuss the location of services, if necessary.

DCPS met the requirement to convene the team within 25 business days of receipt of the report. The psychological assessment is dated [REDACTED]. The MDT met to review the psychological assessment on [REDACTED], which was 17 business days after DCPS received the evaluation, and within the timeline required under the [REDACTED] Settlement Agreement.

At the [REDACTED] MDT meeting, the team reviewed the results of the independent psychological assessment, which diagnosed the student with adjustment disorder with mixed anxiety and depressed mood, and also made multiple recommendations, including recommending that the MDT team reevaluate treatment strategies to appropriately address the student's academic needs; that an FBA be done to assess the student's behavior and include behavioral strategies in the IEP if necessary; that the student would benefit from seeing the school counselor when [REDACTED] is having difficulty with peer relationships; that [REDACTED] would benefit from individual therapy to help [REDACTED] explore aggressive behavior; that [REDACTED] should play an organized team sport to help [REDACTED] learn appropriate social skills; and that [REDACTED] would benefit from involvement in a big brother/big sister program to help [REDACTED] develop positive interpersonal skills. The school disputed the diagnosis made in the independent psychological assessment, stating that the student's behavior and demeanor did not reflect anxiety or depression, and that [REDACTED] was well-mannered. The school also questioned whether certain diagnostic criteria were properly met.

The team then discussed whether services on the IEP needed to be revised, and whether the student's placement was appropriate. The student's advocate stated that at [REDACTED] previous school, the student had been suspended for fighting on multiple occasions and that [REDACTED] had received "Fs" in nearly every class. The fighting was said to result from the student being teased for being much larger in stature than [REDACTED] grade-level peers. The student's advocate and guardian requested that full-time placement in special education and 30 minutes of counseling be added to the IEP in light of the psychological report and the student's past behavioral difficulties and history of poor grades.

The team reviewed the student's behavior and classroom performance for the first few weeks of the school year at [REDACTED] High School, and stated that apart from a tendency for the student to "take it easy" academically, the student's behavior and academic performance had been satisfactory, and did not warrant changes in services or placement. The team discussed the recommendations in the psychological evaluation, and noted that the student was a member of the high school [REDACTED] team, that [REDACTED] self-esteem was increasing, and that [REDACTED] large stature was an advantage in [REDACTED]. The [REDACTED] stated that the student could access the school social worker or the SEC [for counseling purposes], and introduced the student and advocate to

a mentor from the “Best [REDACTED]” program, an after-school mentoring program that focuses on relationships with peers and adults.

While the guardian and advocate disagreed with the team’s decision, the record shows that the team reviewed the independent evaluation, compared it to their own data and experiences with the student, and attempted to implement some of the recommendations, including membership on a sports team, making counseling support available as necessary through the social worker and SEC, and introducing the student to the mentor from the Best [REDACTED] program and inviting the student to join the program. The team also reviewed the current IEP and location of services, but determined that the data did not support a finding that additional services or a more restrictive placement were necessary at that time.

Therefore, DCPS is in compliance with the Settlement Agreement of [REDACTED].

**CORRECTIVE ACTION**

DCPS is required to take the following actions:

To correct noncompliance with 34 CFR §300.323(c)(2):

1. DCPS must convene the IEP team at a time and location convenient to the parent, and discuss the student’s needs for tutoring in the area of mathematics. DCPS and the parent must determine how many hours of compensatory tutoring in mathematics are appropriate for the student. If DCPS and the parent do not reach agreement, DCPS must offer the student a minimum of 70 hours of tutoring. All tutoring must be provided by an individual certified to teach high school mathematics. DCPS must convene the IEP meeting by [REDACTED], and provide proof of the meeting and offer of tutoring services to OSSE by [REDACTED].

To correct noncompliance with 34 CFR §300.503(a)(2):

1. DCPS must train all [REDACTED] High School building administrators, SECs, and special education teachers on the proper procedures for providing prior written notice by [REDACTED]. DCPS must provide proof of this training to OSSE by [REDACTED].

If you have any questions regarding this report, please contact Jennifer Masoodi, State Complaints Manager, at [jennifer.masoodi@dc.gov](mailto:jennifer.masoodi@dc.gov) or 202-741-0479.

Sincerely,

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

cc: [REDACTED], Complainant  
[REDACTED], Parent