



September 14, 2012

RE: State Complaint No. 012-002

### LETTER OF DECISION

#### PROCEDURAL BACKGROUND

The State Complaint Office of the Office of the State Superintendent (OSSE), received a State Complaint from hereinafter "complainant" on [REDACTED], alleging violations in the special education program of [REDACTED] hereinafter "student," while [REDACTED] was a student at [REDACTED].

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, specifically, (1) failure to assess the student in all areas related to the suspected disability; (2) failure to revise the student's IEP to address lack of expected progress; (3) failure to consider the use of positive behavior supports and other strategies to address behavior which impedes the student's learning; (4) failure to provide educational services to the student upon removal from the current placement for more than 10 days; (5) failure to determine whether conduct prompting suspension was caused by or had a substantial relationship to the student's disability; (6) failure to conform to IDEA's requirements when determining the student's placement; and (7) failure to specify transition services in the student's IEP.

The complainant also raised concerns regarding [REDACTED] implementation of the student code of conduct. In accordance with the IDEA regulations at 34 CFR §300.153(b)(1), a complaint must allege that a public agency has violated a requirement of Part B of the Act, therefore OSSE did not investigate the code of conduct allegation. The complainant also alleged violations on the part of the [REDACTED] with respect to the student's placement. Pursuant to 5 DCMR §3019.2, a public charter school must elect whether to have [REDACTED] serve as its local educational agency (LEA) for purposes of the IDEA or be an independent LEA. [REDACTED] an independent LEA; therefore, [REDACTED] has neither authority over nor responsibility for this student. (See 5 DCMR §3019.3)

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 [REDACTED] failed to assess the student in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities, as required by 34 CFR §300.304(c)(4)?
2. Whether [REDACTED] failed to revise the student's IEP to address any lack of expected progress toward the annual goals and in the general education curriculum, the student's anticipated needs or other matters, as required by 34 CFR §300.324(b)(1)(ii)?
3. Whether in developing the child's IEP, [REDACTED] 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)?
4. Whether [REDACTED] failed to provide educational services upon the removal of a child with a disability for more than 10 days from their current placement, as required by 34 CFR §300.530(b)(2) and (d)?
5. Whether [REDACTED] failed to determine whether conduct that prompted suspension of a child with a disability was caused by or had a direct and substantial relationship to the child's disability, or was the direct result of the LEA's failure to implement the IEP according to the requirements of the IDEA promulgated at 34 CFR §§300.530(e) and 300.536?
6. Whether [REDACTED] failed to conform to the requirements of 34 CFR §300.116 to determine the student's educational placement?
7. Whether [REDACTED] failed to specify transition services, including courses of study and vocational training, in the student's IEP, as required by 34 CFR §300.320(b)(2)?

### **INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. [REDACTED]

The investigation included a review of the following documents which were either submitted by the complainants, submitted by [REDACTED], or accessible via the Special Education Data System (SEDS):

[illegible]

11/11/2016



## **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.

## **ISSUE ONE: ASSESSMENT IN ALL AREAS RELATED TO SUSPECTED DISABILITY**

### **Findings of Fact**

1. The [REDACTED], incoming IEP identified the student's primary disability as specific learning disability.
2. [REDACTED] convened an MDT meeting on [REDACTED] to address an escalation in the student's negative behaviors which started on [REDACTED].
3. At the [REDACTED] meeting, the MDT team identified a potential cause of the negative behaviors, changed the student's schedule, implemented a daily check-in system to help the student regulate [REDACTED] own behavior, and identified a mentor for the student.
4. At the [REDACTED] IEP, the team increased specialized instruction from 8.5 hours per week in the general education setting to 12.5 hours per week in the general education setting and 4.5 hours per week outside of the general education setting.
5. On [REDACTED], [REDACTED] conducted a clinical evaluation and determined that the student had ADHD.
6. On [REDACTED], [REDACTED] drafted a BIP to support the student's behavior at school.

### **Discussion/Conclusion**

is in compliance with 34 CFR §300.304(c)(4).

The IDEA regulations at 34 CFR §300.304(c)(4) require public agencies to ensure that students are assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

The complaint alleges that [REDACTED] violated 34 CFR §300.304(c)(4) by failing to evaluate the student for Emotional Disturbance (ED). ED is defined as a condition exhibiting one or more of the following characteristics over a long time and to a marked degree: an inability to learn, an inability to build or maintain satisfactory interpersonal relationships, inappropriate behavior or feelings under normal circumstances, a general pervasive mood of unhappiness or depression, or a tendency to develop physical symptoms or fears associated with personal or school problems. (34 CFR §300.8(c)(4)(i)) There is no request for an ED evaluation in the student's record, so the compliance determination turns on whether the record indicates that [REDACTED] should have suspected that the student had ED. When considered as a whole, the student's record supports decision not to evaluate the student for ED.

The student came to [REDACTED] from a more restrictive setting at a different school. The [REDACTED] incoming IEP identified the student's primary disability as specific learning disability. The incoming IEP describes the student as a likeable student who is easily distracted. In the present levels of performance in the area of emotional, social, and behavioral development, the [REDACTED] IEP states that the student, "gets off task and is impulsive... requires constant redirection and lacks focus, which presents with [sic] playful banter [sic] with [REDACTED] peers." The incoming IEP did not contain information which would have put [REDACTED] on notice that the student should be evaluated for ED.

When the student arrived at [REDACTED], [REDACTED] exhibited some inappropriate behaviors. [REDACTED] punched another student on [REDACTED]. Between [REDACTED] and [REDACTED], the student's disciplinary record is unremarkable. The record indicates that between [REDACTED] and [REDACTED], the student was talking out of turn on two days, got up out of [REDACTED] seat and walked around or out of class on two days, and was failing or in danger of failing at least two classes. The student's disciplinary record from the start of school and [REDACTED] did not put [REDACTED] on notice that the student might have ED.

Starting on [REDACTED] the student's negative behaviors appeared to escalate. [REDACTED] refused to work, walked out of class, and tore posters off the wall. On [REDACTED], the student engaged in several disruptive behaviors, slamming classroom doors, harassing another student, leaving classes without permission, and disrupting classes. The school reacted quickly to the increase in negative behaviors and convened an MDT meeting on [REDACTED] to, "discuss the sudden surge in [the student's] behaviors..." The team identified a potential cause of the negative behaviors and changed the student's schedule, implemented a daily check-in system to help the student regulate [REDACTED] own behavior, and identified a mentor for the student.

At the point of the MDT meeting, on [REDACTED], the student's increased negative behaviors had only been occurring for 2 or 3 weeks. By definition, ED requires a student to display particular characteristics for, "a long time." (34 CFR §300.8(c)(4)(i)) While the IDEA regulations do not define what interval is sufficient to qualify as "a long time" for purposes of the ED definition, OSEP has advised that most states require that behaviors be displayed for between 2 and 9 months. (Letter to Anonymous, 213 IDELR 247, (August 11, 1989)) In addition to evidence that behaviors have persisted for 2-9 months, states also typically require the application of behavioral interventions and documentation of their effectiveness. (Id.)

At the [REDACTED] IEP meeting, the team discussed whether the student's current placement reflected [REDACTED] LRE, and increased specialized instruction from 8.5 hours per week in the general education setting to 12.5 hours per week in the general education setting and 4.5 hours per week outside of the general education setting. In [REDACTED], four months after the student's negative



behaviors increased, [REDACTED] conducted a clinical evaluation and determined that the student had ADHD. The student's behavior continued to escalate, resulting in two suspension notices in March. On [REDACTED], [REDACTED] drafted a BIP to support the student's behavior at school. The student was on suspension for most of April, and when [REDACTED] returned to school in May, [REDACTED] amended the IEP and moved the student to the [REDACTED], which is a more restrictive setting and provides more paraprofessional support and small class sizes.

When viewed as a whole, the record indicates that [REDACTED] acted quickly to resolve the student's escalating behavioral problems, tried to implement several strategies to provide support to the student in the general education setting, evaluated [REDACTED] for additional disabilities, and ultimately moved [REDACTED] to a more restrictive setting when the student continued to have difficulties in the general education environment.

The record indicates that [REDACTED] was attentive to the student's needs, and tried to support the student. When [REDACTED] problems persisted for four months, the school evaluated the student for ADHD, and developed a BIP. While the school did not specifically evaluate for the purpose of classifying the student as ED, the school did appropriately evaluate the student and implement a variety of strategies in an attempt to diagnose and treat problems the student was having in the school setting.

Therefore, [REDACTED] is in compliance with 34 CFR §300.304(c)(4).

## **ISSUE TWO: REVISION OF IEP TO ADDRESS LACK OF PROGRESS**

### **Findings of Fact**

1. The student's [REDACTED] IEP was reviewed on [REDACTED].
2. The [REDACTED] IEP increased specialized instruction from 8.5 hours per week in the general education setting to 12.5 hours per week in the general education setting and 4.5 hours per week outside of the general education setting.
3. On [REDACTED], the student's IEP was amended, and the student's placement was changed to a full-time special education placement.

### **Discussion/Conclusion**

[REDACTED] is in compliance with 34 CFR §300.324(b)(1)(ii).

The IDEA regulations at 34 CFR §300.324(b)(1)(ii) require public agencies to revise IEPs to address lack of expected progress toward annual goals.

The complaint alleges that [REDACTED] failed to revise the IEP despite the student's failure to make progress in the inclusion setting. This allegation is contradicted by the record, which shows that the IEP was reviewed on [REDACTED], and the team increased specialized instruction from 8.5 hours per week in the general education setting to 12.5 hours per week in the general education

setting and 4.5 hours per week outside of the general education setting. On [REDACTED], the IEP was amended to change the student's placement to a full-time special education placement. [REDACTED] reviewed and revised the IEP twice during the 2 [REDACTED] school year and made changes each time to address the student's lack of progress in the inclusion setting.

Therefore, [REDACTED] is in compliance with 34 CFR §300.324(b)(1)(ii).

### **ISSUE THREE: CONSIDERATION OF POSITIVE BEHAVIOR SUPPORTS**

#### **Findings of Fact**

1. The [REDACTED] and [REDACTED] IEPs entitled the student to 120 minutes of behavioral support counseling services per month.
2. The student's progress in counseling was discussed at the [REDACTED] IEP meeting.
3. The [REDACTED] MDT meeting resulted in a changed schedule for the student, identification of a mentor, and the implementation of a daily check-in system.

#### **Discussion/Conclusion**

[REDACTED] is in compliance with 34 CFR §300.324(a)(2)(i).

The IDEA regulations at 34 CFR §300.324(a)(2)(i) require IEP teams to consider the use of positive behavior interventions, supports, and other strategies to address the behavior of a student whose behavior impedes his or her learning.

The complaint states that the student's behavior impacted [REDACTED] educational performance, but did not increase the student's counseling time or add any additional behavior supports for the student. The complaint is correct in stating that the student's counseling time was not increased, but the failure to increase counseling time did not result in noncompliance with the IDEA. The student received 120 minutes per month of counseling, and at the [REDACTED] IEP meeting the team noted that the student was making, "remarkable gains" in the therapeutic setting. The team considered the student's counseling services, but did not determine it was necessary to increase counseling services at that time. Nothing in the IDEA required the team to increase counseling services if the team did not believe additional counseling services were necessary for the student.

The assertion that [REDACTED] did not add additional behavioral support for the student is incorrect. On [REDACTED], [REDACTED] changed the student's schedule, identified a mentor for the student, and started the student on a daily self-check-in program, designed to help [REDACTED] track and manage [REDACTED] own behavior and school work. The [REDACTED] IEP described the use of frequent parent conferences, graphic organizers, guided notes, and chunked assignments to support the student's



behavior and learning. All of these are non-punitive, positive behavioral supports and were implemented in response to the student's behavior.

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

#### **ISSUE FOUR: PROVISION OF SERVICES DURING REMOVAL**

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

1. The student was suspended for 20 days on [REDACTED]
2. The student was given work packets, and was provided mandatory on-campus tutorial time with a special education and general education teacher, and was provided on-campus time to meet with the school psychologist.
3. The student did not attend any on-campus tutoring or meetings.
4. The parent was informed that the student was not attending the on-campus tutoring on three occasions, [REDACTED]
5. At the [REDACTED] principal's conference, the family was informed again that the student was not attending on-campus tutoring or meetings, and that services were still available to [REDACTED]

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

is in compliance with 34 CFR §300.530(b)(2) and (d).

The IDEA regulations at 34 CFR §300.530(b)(2) and (d) provide that after a student has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the student which will allow the student to continue to participate in the general education curriculum and continue to make progress toward meeting [REDACTED] IEP goals.

The complaint states that the student's suspensions kept [REDACTED] out of school for more than 30 days and that [REDACTED] was not provided with special education services during that time. The complaint is incorrect. During the [REDACTED] suspension, the student was out of school for 20 school days. The student was given work packets, and was provided mandatory on-campus tutorial time with a special education and general education teacher, and was provided on-campus time to meet with the school psychologist. The student did not attend any of the on-campus tutoring or meeting times. The parent was notified 3 times, on [REDACTED], that the student was not attending the campus-based tutoring and meeting sessions. At the [REDACTED] principal's conference the family was again told that the student was not attending the mandatory school-based tutoring sessions. The meeting participants discussed whether the student was telling [REDACTED] family that [REDACTED] was going to school when [REDACTED] was not. The family then revealed that they had not wanted the student to return to [REDACTED] for the services. [REDACTED] informed the family that the student needed to be at school to complete [REDACTED] testing, and stated that services would continue to be



available for the student. The record shows that [REDACTED] attempted to provide services to the student in accordance with 34 CFR §300.530(b)(2) and (d) throughout [REDACTED] 20 day suspension.

Therefore [REDACTED] is in compliance with 34 CFR §300.530(b)(2) and (d).

#### **ISSUE FIVE: CONDUCT MANIFESTATION DETERMINATION**

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

1. The student's first 20 day suspension started on [REDACTED]
2. The student's second 20 day suspension started on [REDACTED]
3. The school held one manifestation determination to discuss both suspensions, on [REDACTED]
4. [REDACTED] was on spring break from [REDACTED]
5. The second suspension was successfully appealed by the student on [REDACTED]
6. The student was suspended on [REDACTED]
7. The manifestation determination meeting took place on [REDACTED]

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

[REDACTED] is in compliance with 34 CFR §300.530(e), and 34 CFR §300.536(a).

Pursuant to the IDEA regulations at 34 CFR §300.530(e), the LEA, the parent, and relevant members of the IEP team must conduct a manifestation determination within 10 school days of any decision to change the placement of a child with a disability because of a violation of the student code of conduct. A change of placement occurs whenever the school removes a student for more than 10 consecutive school days or the student is subjected to a series of removals that constitute a pattern. (34 CFR §300.536(a))

The complaint makes two allegations regarding manifestation determinations. First, the complaint alleges that the student was suspended for two separate incidents but only one manifestation determination meeting was held. Second, the complaint alleges that the manifestation determination was not held within 10 days of the suspensions.

While holding one manifestation determination to cover two suspensions is unusual, there is nothing in the IDEA that prohibits the practice. In this case, the school held one manifestation determination, on [REDACTED] and discussed two suspensions. [REDACTED] scheduled one meeting because the student had been issued two notices of suspension for two separate disciplinary incidents that took place in a four-day period, and the school team believed it would be easier for the parent to attend one meeting instead of two. The notes from the [REDACTED] manifestation determination meeting include a recounting of the group's separate discussion and determination for each disciplinary incident. [REDACTED] did not violate the IDEA by holding one manifestation determination meeting to cover both incidents.

The IDEA regulations specify that the manifestation determination meeting must take place within 10 school days of the decision to change placement. Both suspensions at issue here counted as changes of placement, because though they were to run concurrently, each suspension was for 20 days. (34 CFR §300.536(a)) A school day is defined as any day, including a partial day, that students are in attendance at school for instructional purposes. (34 CFR §300.11(c)(1))

The first suspension started on [REDACTED]. The second suspension started two days later, on [REDACTED]. [REDACTED] spring break was [REDACTED]. The manifestation determination meeting was held on [REDACTED] which was the sixth school day after the first suspension started, and the fourth school day after the second suspension started. The student appealed the second suspension, and [REDACTED] agreed to "drop" the suspension. The manifestation determination meeting was held within the 10 school day time frame specified in 34 CFR §300.530(e).

OSSE notes that The team's ultimate determination, for each suspension, was that the student's behavior was not a manifestation of [REDACTED] disability. The student's advocate and family disagreed with the team in both cases, however, the notes indicate that the team considered all relevant information. While the [REDACTED] team and the parent were not in agreement, the team's determination that threatening a teacher and theft were not related to the student's disabilities of ADHD or LD was reasonable.

Therefore, [REDACTED] is in compliance with 34 CFR §300.530(e) and 34 CFR §300.536(a).

#### **ISSUE SIX: DETERMINATION OF EDUCATIONAL PLACEMENT**

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

1. At the [REDACTED] MDT meeting, the team changed the student's schedule, implemented a daily check-in system to help the student regulate [REDACTED] own behavior, and identified a mentor for the student in an attempt to address the student's behavioral and academic problems.
2. At the [REDACTED] IEP meeting, the team increased specialized instruction from 8.5 hours per week in the general education setting to 12.5 hours per week in the general education setting and 4.5 hours per week outside of the general education setting.
3. On [REDACTED] [REDACTED] drafted a BIP to support the student's behavior at school.
4. On [REDACTED] [REDACTED] moved the student into the RISE program, which is a full-time special education setting.

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

[REDACTED] is in compliance with 34 CFR §300.116.



The IDEA regulations at 34 CFR §300.116 require public agencies to ensure that placement decisions are made by a group of persons knowledgeable about the student, including the parent, and that placement decisions are made in conformity with the LRE provisions of the IDEA. IDEA's LRE provisions mandate that to the maximum extent possible, students with disabilities are educated with non-disabled students, and that removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR §300.114(a))

The complaint states that after the first grading period, [REDACTED] failed to change the student's placement or consider a more restrictive environment despite the student's poor academic and behavioral performance. The complaint is correct that [REDACTED] did not change the student's placement after the first grading period; however, the failure to immediately change the student's placement did not constitute a compliance violation, but was indicative of proper implementation of the LRE mandate. [REDACTED] acted properly to maximize the student's time in the regular education environment by implementing a series of academic and behavioral supports, and gradually reducing the student's time in the general education environment before finally changing the student's placement to a full-time special education setting.

For example, at the [REDACTED] MDT meeting, the team changed the student's schedule, implemented a daily check-in system to help the student regulate [REDACTED] own behavior, and identified a mentor for the student. At the [REDACTED] IEP meeting, the team discussed the student's placement and considered whether full-time placement in the regular education environment was the student's LRE. The team increased specialized instruction from 8.5 hours per week in the general education setting to 12.5 hours per week in the general education setting and 4.5 hours per week outside of the general education setting. On [REDACTED] [REDACTED] created a BIP to provide behavioral support for the student. In [REDACTED], after the student continued to display academic and behavioral difficulties, [REDACTED] amended the IEP and moved the student to the [REDACTED], which is a more restrictive, full-time special education setting. [REDACTED]'s gradual but consistent increase of academic and behavioral support prior to changing the student's placement to full-time special education in [REDACTED] was in keeping with the duty to consider the LRE and maximize the student's opportunity to be educated in the regular education environment with [REDACTED] non-disabled peers.

Therefore, [REDACTED] is in compliance with 34 CFR §300.116.

#### **ISSUE SEVEN: TRANSITION SERVICES**

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

1. At the time the complaint was filed, the student's age was [REDACTED]

2. The [REDACTED] IEP, as amended on [REDACTED], is the IEP that will be in place when the student turns 16, unless the IEP is reconvened and reviewed prior to the 1 year review deadline.
3. The [REDACTED] IEP includes a transition plan with a measurable goal based on formal and informal assessments in the areas of education, functional skills, and vocational interests.

#### Discussion/Conclusion

is in compliance with 34 CFR §300.320(b)(2).

The IDEA regulations at 34 CFR §300.320(b)(2) state that not later than the first IEP to be in effect when the child turns 16, the IEP must include transition services needed to assist the child in reaching appropriate measurable transition goals based on age appropriate transition assessments.

The complaint alleged that the student's IEP did not include transition services. The allegation is contradicted by the [REDACTED] IEP, which includes a complete transition plan including a measurable goal based on appropriate formal and informal educational, functional, and vocational assessments.

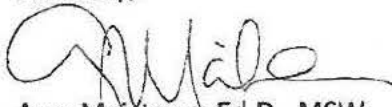
Therefore, [REDACTED] is in compliance with 34 CFR §300.320(b)(2).

#### CORRECTIVE ACTION

There are no corrective actions associated with this Letter of Decision.

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

Sincerely,



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

cc: