



October 25, 2012

[REDACTED]  
District of Columbia Public Schools  
[REDACTED]

RE: State Complaint No. 012-006

## 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,” or “parent,” on [REDACTED] alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter “student” or “child,” while enrolled at [REDACTED] Middle School, a school within the District of Columbia Public Schools (DCPS.)

The complainant alleged that DCPS 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 timely complete the student’s initial evaluation; (2) failure to determine whether the student is a student with a disability; (3) failure to use a variety of assessment tool and strategies and failure to assess in all areas related to the suspected disability; and (4) failure to provide notice which describes all evaluations and notifies the parent before proposing or refusing to change the identification, evaluation, educational placement or provision of FAPE to the student.

The State Complaint Office for OSSE has completed its investigation of the State Complaint. This Letter of Decision (“LOD”) 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 timely complete the student’s initial evaluation, as required by 34 CFR §300.301(c)(1)?
2. Whether DCPS failed, in conducting the evaluation, to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, and failed to ensure that the child was 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 as required by 34 CFR §300.304(b) & (c)(4), and whether DCPS failed to determine whether the child was a child with a disability, as required by 34 CFR §300.306?

3. Whether DCPS failed to issue written notice to the parent of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child, as required by 34 CFR §§300.304(a) and 300.503(a)?

The [REDACTED] initiation letter for this investigation initially separated 34 CFR §300.306 and 34 CFR §300.304(b) & (c)(4) into two issues. This LOD combines them into one issue. The initiation letter also misidentified 34 CFR §300.304(b) as 34 CFR §300.304(a). This LOD corrects that error and adds 34 CFR §300.304(a) to issue 3.

#### **INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. Complainant
2. DCPS [REDACTED] MS
3. DCPS [REDACTED]

The investigation also included 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 was a student at █ Middle School during the █ school year.

**ISSUE ONE: Timely Evaluation**

**Findings of Fact**

1. The parent gave consent for █ to be evaluated on █.
2. On █, DCPS sent the parent an Acknowledgement of Referral to Special Education Letter which stated that the referral to evaluate the student was received by DCPS on █.
3. The evaluation was completed, and an eligibility determination issued on █.

**Discussion/Conclusion**

**DCPS is in compliance with 34 CFR §300.301(c)(1).**

The IDEA regulations at 34 CFR §300.301(c)(1)(i-ii) specify that initial special education evaluations must be conducted within 60 days of receiving parental consent for the evaluation or within the timeframe established by the state. The District of Columbia has established a 120 day timeline from the date of referral for completing assessments or evaluations of students. (D.C. Official Code § 38-2561.02 (a))

The complaint alleges that the parent made several requests for support for █, who was struggling emotionally and academically, including a written request for special education testing on █. Neither DCPS nor the parent has a record of the █ request for testing.

On █, the parent signed a DCPS Consent for Initial Evaluation. On █, DCPS sent the parent an Acknowledgement of Referral to Special Education Letter which stated that the referral to evaluate the student was received by DCPS on █.

The evaluation process was completed and an eligibility determination was made on █. Whether the 120 day timeline started on █ or █, DCPS completed the evaluation within 120 days.

Therefore, DCPS is in compliance with 34 CFR §300.301(c)(1).

**ISSUE TWO: Evaluation Procedures & Eligibility Determination**

**Findings of Fact**

1. The evaluation was based on a formal educational achievement assessment, student grades, classroom observation, a review of the student's cumulative file, information from the parent, and interviews with current teachers.
2. The parent referred the student for a special education evaluation partially out of concern for the emotional problems and behaviors the student displayed at home.
3. The student was under treatment for emotional and behavioral issues at Children's National Medical Center at the time of the referral.
4. DCPS completed the evaluative process without reviewing assessment data from Children's National Medical Center.
5. DCPS did not do any psychological assessments as part of its evaluation.
6. Members of the eligibility team considered special education eligibility for the student under the category of emotional disturbance and other health impairment.
7. The student was found ineligible for special education services on [REDACTED].
8. The eligibility determination was made without a current psychological assessment.

### **Discussion/Conclusion**

**DCPS is in compliance with 34 CFR §300.304(b), but is not in compliance with 34 CFR §§300.304(c)(4) or 300.306.**

The IDEA regulations require public agencies conducting evaluations to use a variety of assessment tools and strategies, including information from the parent, to gather relevant functional, developmental, and academic information about the student. (34 CFR §300.304(b)) Students must be 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. (34 CFR §300.304(c)(4).) When determining whether a student is eligible to receive special education services, the IDEA regulations provide that upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the student determine whether the student is a student with a disability. (34 CFR §300.306(a)(1)) The regulations also require the eligibility determination to be based upon information from a variety of sources and requires that all information is documented and carefully considered. (34 CFR §300.306(c)(i-ii))

### *Evaluation Procedures*

The parent referred the student for a special education evaluation because the student was having emotional problems at home and [REDACTED] academic performance had declined. DCPS' [REDACTED] Data Evaluation Review drew on several sources of data, including a formal educational assessment, student grades, classroom observation, a review of the student's cumulative file, information from the parent, and interviews with current teachers. The review included information about the student's then-current behavioral and social functioning at school, [REDACTED] academic progress, and a review of [REDACTED] scholastic development. The evaluation drew on a variety of assessment tools and strategies, and met the requirements of 34 CFR §300.304(b).

The complaint alleged that the parent requested that DCPS provide psychological testing for the student, and that DCPS never provided such testing. Since the referral was based on concerns for the student's psychological state, DCPS should have performed a psychological assessment. When DCPS received the referral, the parent informed the school that the student was under treatment at Children's National Medical Center (Children's) for attention deficit disorder. The school team did not recommend additional psychological testing because the team wanted to use the evaluations being performed at Children's. The Children's evaluation took longer to complete than originally anticipated, and the team completed the evaluative process without collecting or reviewing any current psychological assessment data.

Ultimately, the team completed the evaluation and made an eligibility determination without reviewing the Children's psychological assessment or performing their own psychological assessment. The team reviewed a DCPS psychological report from [REDACTED] however, a six year old report would not provide adequate information about the student's current psychological functioning, particularly as [REDACTED] was referred to the team because [REDACTED] behavior at home had recently changed.

While the team used a variety of assessment tools and strategies, the IDEA requires assessment in all areas of suspected disability. (34 CFR §300.304(c)(4).) Where a student is referred for special education services based partially on behavioral and emotional concerns, there should be evidence that the team considered current psychological or emotional assessments during the course of the evaluation. Because DCPS did not consider current psychological or emotional assessments, it is out of compliance with 34 CFR §300.304(c)(4).

#### *The Eligibility Determination*

The student was found ineligible for special education services on [REDACTED]. Members of the eligibility team reported considering eligibility under the categories of emotional disturbance and other health impairment. Emotional disturbance was ruled out because the team did not find evidence that the student's behaviors were severe or long-lasting enough to meet the categorical criteria established in 34 CFR §300.8(c)(4). The parent reported depressed and anxious behaviors at home, but with the exception of failing to turn in homework and refusing to show up for tutoring sessions held before school, after school, and during lunch time, the student's behavior at school was unremarkable.

The team considered the student's eligibility for special education services under the category of other health impairments. The student met the first eligibility criterion, because [REDACTED] had a diagnosis of attention deficit disorder, but the team did not find that [REDACTED] met the second criterion of adverse educational performance. (34 CFR §300.8(c)(9)) The team reviewed the student's academic progress and found that the student's grades were reportedly lower than previous years, but were still within average range. During Term 1, the student's grades were B+, C, D, D. During Term 2,

the student's grades were A, B, B-, C-, F. When observed in class, the student was "mostly on task and displayed behaviors similar to the majority of [REDACTED] classmates and interacted in positive ways with both [REDACTED] peers and teacher." The team did not have other data that suggested that the student's attention deficit disorder was adversely affecting [REDACTED] educational performance.

While the eligibility determination reflected the data considered by the team, the eligibility determination was procedurally inadequate because the team did not review current psychological data. Although review of that data would not have altered the team's determination that the student did not meet the criteria for emotional disturbance given the short duration of the student's behavior, the assessment data could have been relevant to the team's consideration of whether the student qualified for special education eligibility under the category of other health impairment.

Therefore, DCPS is not in compliance with 34 CFR §§300.304((c)(4) & 300.306.

### **ISSUE THREE: Prior Notice**

#### **Findings of Fact**

1. On [REDACTED], DCPS issued the parent Prior Written Notice of an Evaluation.
2. The Prior Written Notice did not indicate that the student would be given a formal educational assessment.
3. The Prior Written Notice did not indicate that the team intended to wait for or consider the results of an independent psychological examination.

#### **Discussion/Conclusion**

##### **DCPS is not in compliance with 34 CFR §§ 300.304(a) & 300.503(a).**

The IDEA requires public agencies to provide notice to parents of children with disabilities, in accordance with 34 CFR §300.503, that describes any evaluation procedures that the agency proposes to conduct. (34 CFR §300.304(a)) Public agencies must also give parents notice before the agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to a student. (34 CFR §300.503(a)(1-2))

On [REDACTED], DCPS issued the parent Prior Written Notice (PWN) of an Evaluation. DCPS' PWN form includes a field for the school to enter a, "description of the proposed or refused action(s)." In that field, the school entered the following: "LEA proposes to conduct an initial or re-evaluation and no additional assessments are needed. Parent Requested Testing." While the PWN indicates that no new assessments will be conducted for purposes of the evaluation, the student was given a Woodcock-Johnson on [REDACTED].

The PWN form contains a second field for the school to enter, "explanation of reasons for proposal or refusal of action." In that field, the school entered the following: "Team has enough information to make decisions about the educational needs of the student. Parent Requested Testing." The

PWN does not indicate that the team was waiting for or would consider the results of the psychological evaluation information from Children's.

The [REDACTED] PWN was inadequate because it failed to give notice that the school would conduct a formal educational assessment and failed to document the team's intention to use the results of an independent psychological evaluation. The PWN did not accurately inform the parent about all evaluation procedures or actions the school proposed or refused to take.

Therefore, DCPS is not in compliance with 34 CFR §§300.304(a) & 300.503(a).

It must also be noted that communication generally between DCPS and the parent was not consistent throughout the eligibility determination process. A DCPS special education staff member went on leave during this process, and the school did not maintain adequate communication with the parent. For example, during the investigation of this State complaint, all parties interviewed discussed the eligibility team's intent to consider psychological evaluations from Children's. The parent and at least one school team member believed that after the [REDACTED] eligibility meeting there would be a follow-up meeting where the Children's evaluation would be considered and the student would be considered for enhanced general education supports or for a Section 504 plan. It is not clear that the parent fully understood that the [REDACTED] meeting was the final step in the special education eligibility process. Although we make no findings in regard to these specific communication failures, DCPS is encouraged to exercise greater diligence in clearly communicating expectations to the parent.

### **CORRECTIVE ACTION**

DCPS is required to take the following actions:

1. To correct noncompliance with 34 CFR §300.306 and 34 CFR §300.304(c)(4), DCPS must: Provide training to the SEC, and all special education teachers at [REDACTED] MS regarding the evaluative process and subsequent eligibility determinations. The training must cover the requirement to assess in all areas related to the suspected disability.
2. To correct noncompliance with 34 CFR §§300.304(a) & 300.503(a), and to ensure adequate communication with parents: The SEC and all special education teachers at [REDACTED] MS must be trained to provide fully accurate information on PWN forms, to include a list of all assessments to be conducted, and more detailed notice about what kinds of tests will or will not be performed when a parent has specifically requested testing.

Proof of these corrections is due to OSSE by [REDACTED].

If you have any questions regarding this 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: [REDACTED], Complainant  
Neela Rathinasamy, DCPS Deputy Chief of Compliance