



November 21, 2012

[REDACTED]  
District of Columbia Public Schools  
[REDACTED]

RE: State Complaint No. 012-008

## 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 on [REDACTED], from [REDACTED] (complainant) against the District of Columbia Public Schools (DCPS), alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED]). The original complaint was a joint complaint against DCPS and an independent charter LEA. Since there was no overlapping responsibility for the student in this case, OSSE bifurcated the complaint and performed separate investigations of each LEA.

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 reevaluate the student; (2) failure to revise the student's IEP with regard to counseling services; (3) failure to ensure special education and related services were provided in accordance with the IEP; and (4) failure to specify transition services in the IEP.

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 ensure that a reevaluation of the child with a disability was conducted as required by 34 CFR §300.303(a)?
2. Whether DCPS failed to revise the IEP to address the child's anticipated needs, specifically with regard to counseling services, as required by 34 CFR §300.324(b)?
3. Whether DCPS failed to ensure that special education and related services were made



available to the student in accordance with the student's IEP, specifically with regard to counseling services, as required by 34 CFR §300.323(c)(2)?

4. Whether DCPS failed to specify transition services, including courses of study, 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] HS

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 is a student with a disability as defined by 34 CFR §300.8.
2. The student's disability category is Specific Learning Disability.

### **ISSUE ONE: Reevaluation of a Student with a Disability**

#### **Findings of Fact**

1. DCPS performed a triennial special education eligibility evaluation during [REDACTED] and [REDACTED] of [REDACTED].
2. DCPS found the student continued to be eligible to receive special education services on [REDACTED].
3. There is no record of a request or referral for additional or different evaluations than those performed for the triennial eligibility determination.

### **Discussion/Conclusion**

**DCPS is in compliance with 34 CFR §300.303(a) and 34 CFR §300.304(c)(4).**

The IDEA regulations specify that students must be reevaluated to determine special education eligibility at least once every three years, and may be evaluated up to once per year where the parent requests a reevaluation or the LEA determines reevaluation is necessary. (34 CFR §300.303(a & b)) The complaint stated that an evaluation request had been made on behalf of the student in [REDACTED] of [REDACTED] and that DCPS did not complete the evaluation at that time or when the student returned to DCPS schools on [REDACTED]. The [REDACTED] evaluation request is outside of the one year timeline for this investigation, so OSSE did not investigate whether the request was made or fulfilled at that time, but did investigate whether the student's evaluations were properly handled upon [REDACTED] return to DCPS on [REDACTED].

The student's triennial eligibility determination was due by [REDACTED]. DCPS evaluated the student by completing a review of records and using a combination of formal and informal assessments, teacher observations, parent input, and student interviews. (34 CFR §300.304(b) On [REDACTED], the student was found eligible to continue to receive special education services under the category of specific learning disability.

The IDEA regulations require students to be evaluated in all areas of suspected disability (34 CFR §300.304(c)(4)) The complaint alleged that DCPS did not properly evaluate the student because [REDACTED] was not specifically evaluated for behavioral concerns even though [REDACTED] was expelled from [REDACTED] previous LEA. The IDEA regulations do not require that students automatically be evaluated for emotional disturbance after expulsion. (34 CFR §300.301-305) To qualify a student for special education services under the category of emotional disturbance, DCPS would have had to have seen the student exhibit one or more of the following characteristics over a long period of time and to a marked degree that adversely affected the student's educational performance: an inability to learn not explained by other factors; inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of 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(4)(i)(A-E)) The student entered DCPS on [REDACTED]. The student's triennial evaluation was due no later than [REDACTED]. The three week interval between the student's entry to DCPS and the due date for [REDACTED] evaluation was too short for DCPS to appropriately consider evaluation under the category of emotional disturbance. Aside from the expulsion from [REDACTED] previous LEA, there was no evidence that the student had pervasive behavioral issues that required evaluation. [REDACTED] had no behavioral incidents to that date, and [REDACTED] progress reports stated that [REDACTED] was exhibiting satisfactory class and school conduct. There is no record of a request from the parent or LEA staff for additional or different evaluations than those performed for the [REDACTED] eligibility determination meeting.

Therefore, DCPS is in compliance with 34 CFR §300.303(a) and 34 CFR §300.304(c)(4).

## **ISSUE TWO: Revision of the IEP**

### **Findings of Fact**

1. The [REDACTED] investigated the reasons for the student's transfer to DCPS when the student entered [REDACTED] SHS.
2. The [REDACTED] IEP team determined that the student required 30 minutes per week of counseling services.

### **Discussion/Conclusion**

#### **DCPS is in compliance with 34 CFR §300.324(b).**

Public agencies must review each student's IEP at least annually, and must revise the IEP to address the student's anticipated needs. (34 CFR §300.324(b)(ii)(D)) The complaint alleged that because the student had been expelled from another LEA before [REDACTED] entered DCPS on [REDACTED], DCPS should have increased the counseling services on [REDACTED] IEP from 30 minutes per week to 1 hour per week.

The IDEA does not require that LEA's automatically increase counseling services for students who have been expelled. Instead, the IDEA requires all special education-related decisions to be individualized and based on the needs of the individual student as identified by the IEP team. (34 CFR §300.320) The record indicates that DCPS' decision to maintain the student's counseling services at 30 minutes per week was reasonable, and based upon an individualized consideration of the student's anticipated needs.

After the student entered DCPS on [REDACTED], the SEC talked to the student about the reason for [REDACTED] transfer in an attempt to understand the student's needs and potential behavioral issues. The student was re-evaluated for special education eligibility within the first 30 days of [REDACTED] arrival at DCPS, and on [REDACTED], the IEP team convened and updated the IEP. The IEP team included the parent, the student, the SEC, a special education teacher, general education teacher, and a school social worker. Together, the team determined that the student continued to require 30 minutes of counseling services per week. There is no evidence in the record that any team member disagreed about the amount or frequency of counseling services offered to the student.

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

## **ISSUE THREE: Provision of Services in Accordance with IEP**

### **Findings of Fact**

1. The student's IEP entitled [REDACTED] to 30 min of counseling services per week.
2. Three weeks of counseling services were missed during the month of May due to unavailability of the service provider.
3. No make-up counseling sessions were provided to the student.

### **Discussion/Conclusion**

#### **DCPS is not in compliance with 34 CFR §300.323(c)(2).**

The IDEA regulations require that as soon as possible after development of the IEP, special education and related services are made available to the student in accordance with the IEP. (34 CFR §300.323(c)(2)) The complaint alleged that DCPS failed to provide the student with the counseling services [REDACTED] was entitled to per [REDACTED] IEP.

The student entered DCPS on [REDACTED]. The incoming IEP entitled the student to 30 minutes of counseling services per week. The IEP was reviewed and updated by DCPS on [REDACTED], and continued to entitle the student to 30 minutes of counseling services per week. Counseling services were initiated in a timely manner for the student, and [REDACTED] was assigned a service provider within two weeks of [REDACTED] arrival at [REDACTED] SHS. Service trackers for May and June show that the student missed three counseling appointments due to unavailability of the service provider. The student was not provided make-up sessions for missed counseling services.

Therefore, DCPS is not in compliance with 34 CFR §300.323(c)(2).

### **ISSUE FOUR: Transition Services**

#### **Findings of Fact**

1. The student enrolled at [REDACTED] HS on [REDACTED].
2. The incoming IEP included a complete transition plan.
3. DCPS reviewed and updated the IEP, including the transition plan, on [REDACTED].

### **Discussion/Conclusion**

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

For students turning 16 and older, the IEP in effect must include appropriate measurable postsecondary transition goals and the transition services needed to assist the child in reaching those goals. (34 CFR §300.320(b)(2)) The complaint alleged that DCPS failed to include appropriate transition services on the IEP.

The student enrolled at [REDACTED] HS on [REDACTED]. The incoming IEP included a complete transition plan. DCPS reviewed and updated the student's IEP on [REDACTED]. The [REDACTED] IEP includes measurable postsecondary goals based on vocational and functional assessments and academic information. The transition plan includes transition services for postsecondary education and training. The [REDACTED] IEP's transition plan met the requirements of the IDEA.

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

**CORRECTIVE ACTION**

DCPS is required to take the following actions:

1. To correct noncompliance with 34 CFR §300.323(c)(2), DCPS must offer the student 90 minutes of counseling services. Proof of the offer of services 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], Parent  
[REDACTED], DCPS [REDACTED]