



November 21, 2012

[REDACTED]  
Public Charter School

RE: State Complaint No. 012-009

## 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 [REDACTED] Public Charter School ([REDACTED]) alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED]). The original complaint was a joint complaint against [REDACTED] and another LEA. Since there was no overlapping responsibility for the student in this case, OSSE bifurcated the complaint and performed separate investigations of the allegations affecting each LEA.

The complainant alleged that [REDACTED] 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 comply with the IDEA's disciplinary procedures; and (2) failure to specify transition services in the student's course of study.

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 comply with the disciplinary procedures outlined in 34 CFR §300.530?
2. Whether [REDACTED] 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<sup>1</sup>:

1. [REDACTED]

The investigation also included review of the following documents which were either submitted by the complainants, submitted by [REDACTED] 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: Disciplinary Procedures**

**Findings of Fact**

1. The student’s evaluations were up to date when the [REDACTED] manifestation determination meeting occurred.
2. [REDACTED] did not receive a request or recommendation that the student be evaluated for any purpose prior to the [REDACTED] manifestation determination meeting.
3. The manifestation determination meeting occurred on the 10<sup>th</sup> school day after the student was suspended.

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<sup>1</sup> The State Complaint Office made several attempts to contact the parent for this investigation, but was unable to make contact.

4. [REDACTED] had no further obligation to provide services to the student following [REDACTED] expulsion on [REDACTED] because of the student's enrollment in DCPS on or before [REDACTED].

#### Discussion/Conclusion

[REDACTED] is in compliance with 34 CFR §300.530.

[REDACTED] expelled the student on [REDACTED]. The complaint alleged that [REDACTED] violated the IDEA's discipline procedures by failing to perform evaluations necessary to correctly determine whether the student's behavior was a manifestation of [REDACTED] disability, by holding the manifestation determination meeting untimely, and by failing to identify a new placement for the student after expulsion.

#### *Evaluations*

The IDEA regulations governing discipline procedures do not require LEAs to perform evaluations for the purpose of making a manifestation determination. (34 CFR §§300.530-300.537) On [REDACTED], a manifestation determination was held and the team concluded that the student's behavior was not a manifestation of [REDACTED] disability. The complaint alleged that the team's conclusion was incorrect because the student required additional evaluations before a proper manifestation determination meeting could be conducted.

The LEA was not required to perform an evaluation for purposes of the manifestation determination, and there is no evidence that the student needed an evaluation that [REDACTED] failed to perform. At the time of the manifestation determination hearing, the student's records were up to date, and there had been no request or recommendation for additional evaluations. Prior to the disciplinary incident in question here, the student's behavior was unremarkable, and [REDACTED] had not served any out-of-school suspensions. The LEA was not required to perform additional evaluations for the purpose of the manifestation determination, and the complainant's allegation that new evaluations were necessary for the team's decision making at the [REDACTED] manifestation determination meeting is not supported by the record.

#### *Timeliness of Manifestation Determination*

The IDEA regulations require LEAs to hold manifestation determination meetings within 10 school days of any decision to change the placement of a student with a disability because of a violation of a student code of conduct. (34 CFR §300.530(e)) The complaint alleged that the manifestation determination was untimely, but this allegation was not supported by the record.

The student was suspended with a recommendation to expel on [REDACTED]. The [REDACTED] calendar shows that [REDACTED] was a professional development day, and [REDACTED] were spring break days. Since no students were at school on these dates, they do not count as school days for the purposes of the 10 school day rule in 34 CFR §300.530(e). (34 CFR §300.11(c))

The manifestation determination meeting was held on [REDACTED], which was the 10<sup>th</sup> school day after the suspension, and within the timeline established by the IDEA regulations.

#### *Post-Expulsion Placement*

Pursuant to IDEA regulations, when an LEA makes a disciplinary change in placement that exceeds 10 consecutive school days, and the behavior that led to the disciplinary action is determined not to be a manifestation of the student's disability, the LEA must continue to provide educational services so as to enable the student to participate in the general education curriculum, and to progress toward meeting the goals set out in the student's IEP. (34 CFR §300.530(c)&(d)) The complaint alleged that after expelling the student, [REDACTED] failed to identify a new placement for the student, and that the student was out of school for over a month. The allegation is contradicted by the record.

The student was expelled from [REDACTED] on [REDACTED]. After expulsion, [REDACTED] was not required to provide the full range of services on the student's IEP, but retained responsibility for providing educational services so as to provide FAPE to the student unless or until the student entered school in a different LEA. (34 CFR §300.530(d)(i); 71 Fed. Reg. 46715-46716) The student enrolled at school in a different LEA on [REDACTED]. Therefore, [REDACTED] had responsibility for the provision of services in accordance with 34 CFR §300.530(d)(i) between [REDACTED] and [REDACTED].

[REDACTED] students took the DC CAS during the week of [REDACTED], and as such, students were only in attendance for half days during that week. The [REDACTED] manifestation determination notes indicate that the team implemented a system for the student to take the DC CAS, and then to receive tutoring after the CAS ended. The student took the DC CAS from [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] were week-end days, and by [REDACTED], the student had enrolled in another LEA, and [REDACTED] no longer retained responsibility for providing the student FAPE.

Therefore, [REDACTED] is in compliance with 34 CFR §300.530.

#### **ISSUE TWO: Transition Services**

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

1. The student was not enrolled at [REDACTED] when [REDACTED] turned 16.
2. [REDACTED] updated the student's transition plan when the IEP was reviewed on [REDACTED].

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

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

The IDEA regulations require that the IEP that will be in effect when the child turns 16 must

include measurable postsecondary goals and the transition services needed to assist the student in reaching those goals. (34 CFR §300.320(b)(1&2)) Once in place, transition plans must be updated annually. (34 CFR §300.320(b)) The complaint alleged that [REDACTED] did not have appropriate transition services in place for the student, but this allegation is not supported by the record.

The student turned 16 on [REDACTED]. The student was not an [REDACTED] student on [REDACTED] 16<sup>th</sup> birthday, and [REDACTED] was not responsible for creating the IEP in effect on the student's 16<sup>th</sup> birthday. The student enrolled in [REDACTED] on [REDACTED]. The incoming IEP included a transition plan. When [REDACTED] reviewed the student's IEP on [REDACTED], [REDACTED] updated and expanded the student's transition plan. [REDACTED] transition plan was based on functional, vocational, and academic assessments and information, and included measurable postsecondary goals. The student's [REDACTED] transition plan met the requirements of the IDEA.

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

**CORRECTIVE ACTION**

No noncompliance was found. Therefore, there are no corrective actions associated with this Letter of Decision.

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], [REDACTED] PCS