



November 21, 2012

[REDACTED]  
District of Columbia Public Schools  
[REDACTED]

RE: State Complaint No. 012-010

## 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 S [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 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 ensure special education and related services were provided in accordance with the IEP; (2) failure to revise the student's IEP with regard to a psychological evaluation; (3) failure to properly identify the student's educational placement; (4) failure to specify transition services in the IEP; and (5) failure to implement the [REDACTED] settlement agreement with respect to discussing the need for compensatory education at the required meeting.

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 special education and related services were made available to the student in accordance with the student's IEP, specifically with regard to specialized instruction and counseling services, as required by 34 CFR §300.323(c)(2)?
2. Whether DCPS failed to revise the IEP to address the child's anticipated needs, specifically with regard to the results of the student's [REDACTED] comprehensive



psychological evaluation, as required by 34 CFR §300.324(b)(1)(i)(B&D)?

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 specify transition services, including courses of study and vocational training, in the student's IEP, as required by 34 CFR §300.320(b)(2)?
5. Whether DCPS failed to implement the [REDACTED] settlement agreement with respect to discussing the need for compensatory education at the required meeting?

**INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. [REDACTED], DCPS
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [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 is a student with a disability as defined by 34 CFR §300.8.
2. The student’s disability category is Emotional Disturbance.
3. The student was an adult during the entire one-year time period under investigation for this complaint.

**ISSUE ONE: Provision of Counseling Services in Accordance with IEP**

**Findings of Fact**

1. The [REDACTED] and [REDACTED] IEPs entitled the student to four hours of counseling per month.
2. The [REDACTED] program was capable of providing the student with the counseling hours required by the IEP.
3. DCPS did not implement the [REDACTED] IEP.

**Discussion/Conclusion**

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

Pursuant to the IDEA regulations, public agencies must ensure that as soon as possible following the development of the IEP, special education and related services are provided to the student in accordance with the IEP. OSEP has stated that the term “as soon as possible” means that, “with very limited exceptions, IEPs for most children with disabilities should be implemented without undue delay following the IEP meetings.” (64 Fed. Reg. 12579; *n.b.*: 34 CFR §300.342(b)(1)(ii) now renumbered as 34 CFR §300.323(c)(2))

The complaint alleged that DCPS’ agreement to increase in specialized instruction from 10 to 12 hours per week on the [REDACTED] IEP indicated that DCPS had violated the IDEA by providing the student with fewer hours of specialized instruction per week during two years prior to the increase in services. The State complaint process is limited to investigating issues that occurred within one year of the date of filing, so only the year preceding the filing of the complaint is considered here. (34 CFR §300.153(c)) The IDEA contemplates adjustments to the amount and kind of special education or related services provided to a student on at least an annual basis. (34 CFR §300.324(b)(i-ii)) An increase in the specialized instruction hours offered to the student does not indicate that the student required more specialized instruction in past years.

The [REDACTED] IEP entitled the student to 10 hours per week of specialized instruction outside of the general education environment and 4 hours per month of behavioral support

services. There is no measure available which demonstrates whether 10 hours per week of specialized instruction were, in fact, inadequate to meet the student's needs, because the record shows that the student, who reached adulthood prior to the start of the [REDACTED] school year, attended school for only 23 days during the [REDACTED] school year. There are no grades, behavioral reports, or other data available upon which to base a determination that the IEP was adequate. Conversely, there is no evidence in the record that any member of the IEP team or other interested party requested that the student receive more services. Therefore, the 10 hours per week of specialized instruction that the IEP team agreed to provide to the student is presumed to have been a reasonable assessment of the student's needs at the time.

The complaint also alleged that the [REDACTED] program was not able to provide the student with the counseling services [REDACTED] was entitled to on the IEP within the [REDACTED] program's regular school hours. This allegation was not supported by the record.

Both the [REDACTED] IEP and the [REDACTED] IEP entitled the student to four hours of counseling per month. Interviews with DCPS staff indicate that a counselor was on staff four days per week at the [REDACTED] program, and that a service provider capable of delivering four hours of counseling services per month during regular school hours was assigned to the student.

While DCPS had adequate staffing to deliver the student's counseling hours, OSSE's investigation revealed that DCPS failed to implement the student's [REDACTED] IEP.. The student's IEP was reviewed and revised on [REDACTED], but because [REDACTED] had already missed the enrollment period for the quarter, [REDACTED] was not allowed to begin attending school at [REDACTED], and was told to come back to school at a later date to register for the quarter beginning on [REDACTED]. This indicates that the IEP team anticipated an implementation delay of at least seven weeks, and made no arrangements for the student to receive any of [REDACTED] special education services in accordance with [REDACTED] IEP in the interim. While the flexibility of the "as soon as possible" language in 34 CFR §300.323(c)(2) contemplates the possibility of a short delay between the creation of an IEP and its implementation, a total denial of special education and related services for seven school weeks is unreasonable.

DCPS must not allow administrative issues such as school registration periods to become barriers that prevent students from receiving FAPE in accordance with their IEPs. Where the team was aware that it would be at least seven weeks before the student could receive services, DCPS had a duty to find an alternative location for the provision of IEP services. As of this date, the student has not returned to school.

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

## **ISSUE TWO: Revision of the IEP with Regard to the Psychological Evaluation**

### **Findings of Fact**

1. The [REDACTED] Comprehensive Psychological Evaluation states that individual therapy sessions and the ability to seek out the school counselor during the school day would be helpful to the student.
2. The [REDACTED] Comprehensive Psychological Evaluation states that the use of a computer for assignments and tests would be “entirely appropriate” for the student because [REDACTED] has “graphomotor limitations.”
3. The [REDACTED] Independent Occupational Therapy Evaluation states that the student, “has adequate skills to manipulate materials in the school environment,” and does not recommend the use of a computer.
4. The IEP team considered the results of the [REDACTED] Comprehensive Psychological Evaluation at the [REDACTED] IEP meeting.
5. The IEP team provided the student with four hours of counseling services per month and allowed the student to see the school social worker on an as-needed basis.
6. DCPS has no record of a request that the student be given a laptop computer.

### **Discussion/Conclusion**

#### **DCPS is in compliance with 34 CFR §300.324(b)(1)(i)(B&D).**

The IDEA regulations require public agencies to review each student’s IEP at least annually to determine whether the annual goals for the child are being achieved; and revise the IEP, as appropriate, to address the results of reevaluations and to meet the student’s anticipated needs. (34 CFR §300.324(b)(1)(i) and (ii)(B and D)) The complaint alleged that DCPS violated the IDEA by failing to allow the student to seek out [REDACTED] school counselor when [REDACTED] felt out of control, and by failing to provide the student with a laptop, both of which were recommended in the student’s [REDACTED] Comprehensive Psychological Evaluation, and requested at the [REDACTED] IEP meeting.

Where a student submits an independent assessment that meets LEA criteria for such assessments to [REDACTED] or [REDACTED] IEP team, the team must consider the results of the independent assessment when making decisions related to the provision of FAPE for the student. (34 CFR §300.502(c)(1)) The [REDACTED] Comprehensive Psychological Evaluation was provided at the LEA’s expense pursuant to the [REDACTED] Settlement Agreement, and is therefore presumed to meet DCPS’ criteria for comprehensive psychological assessments. DCPS was obligated to consider the results of the independent comprehensive psychological assessment, but was not required to adopt its findings or recommendations.

The record indicates that DCPS met its duty to consider the [REDACTED] Comprehensive Psychological Evaluation. The [REDACTED] meeting notes state that the team reviewed the results of the evaluation. The team elected to give the student four hours of counseling services per month, and allow the student to access the school counselor/social worker on an as-needed basis to get help with [REDACTED] emotional concerns. The [REDACTED] Comprehensive

Psychological Evaluation, which was administered by a pre-doctoral clinical psychology intern working under the supervision of a licensed clinical psychologist, described the student as having “graphomotor limitations,” and stated that the use of a computer for school work would be appropriate for the student. Conversely, the [REDACTED] Independent Occupational Therapy Evaluation states that the student’s, “[f]ine motor skills are intact... [REDACTED] printed handwriting is clear. [REDACTED] fine motor skills are adequate for manipulation of school materials.” The [REDACTED] Independent Occupational Therapy Evaluation did not recommend that the student use a computer to complete school work or indicate that handwriting was a concern for the student. Given the contradictory assessments, it was reasonable for the team to accept the occupational therapist’s analysis of the student’s fine motor skills over the psychologist’s, because occupational therapists, by definition, have expertise in the analysis and correction of deficits in fine motor skills, while psychologists generally do not. In addition, interviews and documentation from the [REDACTED] meeting confirmed that DCPS has no record of a request that DCPS provide the student a laptop. The team considered the results of the independent Comprehensive Psychological Evaluation and adopted some, but not all of the recommendations.

Therefore, DCPS is in compliance with 34 CFR §300.324(b)(1)(i)(B&D).

### **ISSUE THREE: Educational Placement**

#### **Findings of Fact**

1. The placement decision was made by a group of people who had knowledge of the student.
2. The independent evaluations did not suggest or recommend a full-time therapeutic placement for the student.

#### **Discussion/Conclusion**

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

In determining the educational placement of a student with a disability, an LEA must ensure that the placement decision is made by a group of persons who are knowledgeable about the student and that the decision is made in conformity with the Least Restrictive Environment (LRE) provisions of the IDEA regulations. (34 CFR §300.116(a)) The complaint alleges that based on the student’s evaluations, the advocate requested that the student be placed in a full-time therapeutic educational program, and that DCPS’ failure to provide a full-time therapeutic placement violated the IDEA.

The placement decision met the requirements of 34 CFR §300.116. The decision was made by a group of individuals who were knowledgeable about the student, including the adult student and [REDACTED] advocate. The team included a school psychologist, who served as the individual capable of interpreting evaluation results, and the school’s SEC, who was the individual able to discuss DCPS resources including placement options. (34 CFR §300.116(a)(1))

The complainant did not agree with the placement at [REDACTED], and alleged that the student's evaluations required a more restrictive, full-time therapeutic placement. The evaluations do not suggest that the student requires a more restrictive placement. The [REDACTED] Comprehensive Psychological Evaluation recommendations include that DCPS provide highly structured coursework, extra time on assignments and tests, and the provision of counseling, a psychiatric evaluation, and a [REDACTED] role model. The [REDACTED] independent vocational assessment recommendations include that DCPS provide information about getting a GED instead of a diploma, comprehensive job readiness instruction, career exploration, and hands-on projects and activities. The [REDACTED] Independent Occupational Therapy Evaluation recommends consultation with an occupational therapist three times per year to help the student develop skills in the interpretation of visual materials. None of the evaluations suggest that the student's needs are too great to be met in a regular school environment, and no evaluation recommends a therapeutic placement. While the complainant disagreed with the placement decision, the team made a procedurally correct and substantively appropriate placement.

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

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

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

1. The [REDACTED] Settlement Agreement required DCPS to provide an independent vocational assessment.
2. The student had an independent vocational assessment on [REDACTED].
3. The results of the [REDACTED] independent vocational assessment were considered at the [REDACTED] IEP meeting.

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

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

The IDEA regulations require that for students turning 16 and older, the IEP must include measurable postsecondary goals and the transition services needed to assist the student in reaching those goals. (34 CFR §300.320(b)(2)) The complaint alleged that DCPS violated the IDEA by failing to identify a school or placement for the student that had culinary arts or construction work courses, both of which were identified as areas of interest in the student's [REDACTED] independent vocational assessment.

The [REDACTED] independent vocational assessment was provided at the LEA's expense pursuant to the [REDACTED] Settlement Agreement, and is therefore presumed to meet DCPS' criteria for vocational assessments. DCPS was obligated to consider the results of the independent vocational assessment, but was not required to adopt the findings or recommendations of the independent assessment. (34 CFR §300.502(c)(1))

The meeting notes from the [REDACTED] meeting state that the independent vocational evaluation was reviewed by the team, and that the team considered the major findings, which included that the student liked working with people and that [REDACTED] was seeking a job requiring little training. DCPS staff confirmed that information from the [REDACTED] independent vocational assessment was used to update the transition goals on the [REDACTED] IEP.

The student's [REDACTED] IEP includes a complete transition plan based on educational and functional assessments, with measurable postsecondary goals related to education and employment. The plan meets the requirements of the IDEA. (34 CFR §300.320(b)(1-2))

While the independent vocational assessment identified culinary arts and construction work as areas of interest, the assessor did not state that the student should be placed in culinary arts or construction courses. Even if the assessment had made such a recommendation, DCPS was obligated to consider, but not obligated to implement the suggestion.

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

#### **ISSUE FIVE: Implementation of Settlement Agreement**

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

1. The [REDACTED] Settlement Agreement required DCPS to discuss compensatory education.
2. Compensatory education was discussed at the [REDACTED] meeting.

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

**DCPS has properly implemented the [REDACTED] Settlement Agreement with respect to discussing the need for compensatory education at the required meeting.**

The State Complaint Office is authorized to review alleged failures to implement a Settlement Agreement (SA) that resolves a due process hearing request. (OSSE's Formal State Complaint Policy and Procedures, p.3, 2009)

The student and DCPS entered into an SA on [REDACTED], which resolved a due process complaint filed by the student on [REDACTED]. The SA required DCPS to convene a meeting, and among other things, "discuss Compensatory Education if warranted."

The complaint stated that DCPS failed to provide appropriate compensatory education, however, the SA did not require DCPS to provide compensatory education. Instead, the SA required DCPS to discuss compensatory education. The record indicates that DCPS met its obligation to discuss compensatory education at the [REDACTED] meeting. The meeting notes state that compensatory education was discussed, and the DCPS case manager confirmed that an offer of 45 hours of compensatory education was made.



Therefore, DCPS has properly implemented the [REDACTED] Settlement Agreement with respect to discussing the need for compensatory education at the required meeting.

**CORRECTIVE ACTION**

DCPS is required to take the following actions:

1. To correct noncompliance with 34 CFR §300.323(c)(2):
  - a. DCPS must offer the student immediate enrollment in a school which is identified for the student as being able to provide services on [REDACTED] IEP and which has a seat available for [REDACTED]
  - b. If the student enrolls in any DCPS school, then the IEP team must convene within 15 school days and discuss compensatory services, and DCPS must offer the student a minimum of 50 hours of specialized instruction and 28 hours of counseling services. The specialized instruction may be in math or written expression or both, as the student prefers. DCPS must ensure that the specialized instruction hours are delivered by a certified teacher.

Proof of the offer of enrollment is due to OSSE by [REDACTED]. If the student does not enroll in a DCPS school by [REDACTED], then this corrective action will close.

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], Adult Student

[REDACTED], DCPS [REDACTED]