



January 9, 2013

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 012-013

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], the Office of the State Superintendent (OSSE) received a State Complaint 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 consider the results of a parent-initiated independent educational evaluation; and (2) failure to develop or revise the IEP to ensure that it met the academic needs of the student and addressed any lack of expected progress toward the student's annual goals.

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 consider the results of a parent-initiated independent educational evaluation as required by 34 CFR §300.502(c)?
2. Whether DCPS failed to develop or revise the IEP to ensure that it met the academic needs of the student and addressed any lack of expected progress toward the student's annual goals as required by 34 CFR §300.324 (a)(iv) &(b) and to properly determine the child's educational placement as required by 34 CFR §300.116?



INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Parent
2. [REDACTED] ES
3. [REDACTED] ES

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):





GENERAL FINDINGS OF FACT

1. The student qualifies as a student with a disability as defined by 34 CFR §300.8.
2. The student's disability category is learning disability.
3. The student is [REDACTED] years old and is currently in the [REDACTED] grade.

ISSUE ONE: Consideration of Results of Independent Educational Evaluation

Findings of Fact

1. The parent privately arranged for an independent psychological evaluation in September of [REDACTED]
2. The school psychologist reviewed the IEE and prepared a written report which described its methodology and conclusions.
3. The parent and the psychologist who administered the IEE participated in an MDT meeting on [REDACTED].
4. The results of the IEE were considered during the [REDACTED] MDT meeting.
5. The school began or continued to implement some of the recommendations made in the IEE.

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.502(c).

Where a parent obtains an Independent Educational Evaluation (IEE) which meets agency criteria, the public agency must consider the results when making decisions about the provision of FAPE to the student. (34 CFR §300.502(c)(1)) The complaint alleged that school staff violated the IDEA by disputing the results of the IEE. The record confirms that the school staff disputed the results of the IEE, but the dispute was not a violation of the IDEA.

The parent privately arranged for [REDACTED] to undergo an independent psychological evaluation in September of [REDACTED]. The school was obligated to consider the results of the evaluation, but was not obligated to accept the recommendations therein. (34 CFR §300.502(c)(1)) The school met its obligation to consider the results of the IEE. The school psychologist reviewed the IEE and provided a written Review of Independent Educational Evaluation. The results of the IEE were discussed by the MDT at a meeting on [REDACTED]. The parent and the psychologist who administered the IEE were present at that meeting. The IEE states that it is "clear that [the student] has not gained benefit from [REDACTED] special education program." The school team voiced several objections about the appropriateness of the evaluation and its conclusions. The school team objected to the fact that the IEE drew conclusions about the appropriateness of the student's educational programming without requesting student work

samples, or previous test scores, without observing the student in the classroom until after the report was written, and for basing conclusions on a two-year old IEP that was no longer in effect. The school team also objected to the psychologist's claim that the student's attendance was not relevant to the student's lack of progress, noting that the student had 106 late arrivals during the [REDACTED] school year, and had accumulated 37 late arrivals during the [REDACTED] school year.

While the school team objected to certain aspects of the IEE, the team has also implemented or continued to implement some of the recommendations made in the IEE. The IEE includes a recommendation that the student cannot learn in a large group setting, and requires individualized instruction. The school has incorporated this suggestion into the student's programming by using an intensive small group pull-out program where the student is grouped with 4-6 students and 2 adult instructors. The IEE also recommended that the school use incentives to encourage the student to complete [REDACTED] work. The student's BIP shows that the school is using a token economy, positive reinforcement, leadership opportunities, and scheduled breaks as incentives for the student. The school team began or continued implementing certain recommendations from the IEE, but also raised several reasonable objections to the evaluation procedure and to the psychologist's conclusions. The school team clearly met their duty to give consideration to the results of the IEE.

The parent requested that the school be ordered to refund the cost of the IEE. OSSE will not order DCPS to refund the cost of the IEE. Contrary to the requirements of 34 CFR §300.502(b), the parent did not request authorization for an IEE from the school before having it completed. Failure to request funding for the IEE deprived DCPS of the opportunity, as permitted by 34 CFR §§300.502(b)(2)(i) and 300.502 (e), to file a due process complaint to establish the appropriateness of evaluations DCPS performed or to ensure that the IEE was performed in accordance with DCPS criteria. Accordingly, DCPS had no obligation to ensure that the IEE was performed at public expense and, hence, has no obligation to reimburse the parent.

Therefore, DCPS is in compliance with 34 CFR §300.502(c).

ISSUE TWO: Development or Revision of the IEP to Address Academic Needs and Lack of Progress

Findings of Fact

1. The student is not currently performing at grade-level in [REDACTED] academic courses.
2. The student's academic progress is demonstrated by [REDACTED] year-over-year progress in reading and progress toward mastery of many of [REDACTED] IEP goals.
3. The IEP team has revised the IEP to address lack of progress toward annual goals by adding specialized instruction and related services to the student's IEP.
4. The LEA's LRE review recommended the current setting as the student's LRE.
5. The school staff believes that the current setting is the student's LRE, and that academic

and behavioral interventions in the current setting have not been exhausted.

6. There is no evidence that the student requires a more restrictive environment to benefit from ■ education.

Discussion/Conclusion

DCPS is in compliance with 34 CFR §§ 300.324 (a)(iv) &(b) and 300.116.

In developing a student's IEP, the IDEA regulations require the IEP team to consider the academic, developmental, and functional needs of the student. (34 CFR §300.324 (a)(iv)) The IEP team must revise the IEP to address any lack of expected progress toward annual goals. (34 CFR §300.324 (b)(ii)(A)) The complaint alleged that the student has made inadequate academic progress, and that the student requires more intensive services to be successful.

The student is currently in ■ grade. DC CAS test results from 4th grade show that the student performs "below basic" in both reading and math. The student's 4th grade report cards show that ■ did not meet standard in English, math, science, or social studies. ■ met or exceeded standards in music, art, and health/physical education. While the student is not working at grade-level in ■ academic courses, a review of student records shows that ■ is making progress in the modified curriculum. For example, the student completed the Wilson Assessment of Decoding and Encoding in both the 3rd and 4th grades. In 3rd grade, the student got 21% of the "sound" items correct, and 2.7% of the "reading" items correct. In 4th grade the student got 42% of the "sound" items and 17.5% of the "reading" items correct. A review of the student's progress reports for the ■ school year showed that in the area of mathematics, the student had six total goals and made consistent progress on one goal, had a mixture of regression and progress on three goals, mastered one goal, and made progress then plateaued on one goal. In the area of reading, the student had seven total goals and made consistent progress on 5 goals, mastered one goal, and made progress then plateaued on one goal.

While the student has demonstrated academic progress, the school has also made appropriate revisions to the student's IEP and programming. The MDT identified behavioral concerns and concerns about the student's frequent late arrival to school as barriers to ■ academic progress, and these concerns have been systematically addressed. The ■ IEP entitled the student to 16 hours of specialized instruction outside the general education setting, and 2 hours of specialized instruction in the general education setting per week. The student was also receiving 60 minutes per week of speech and OT. The ■ IEP added 2 hours of behavioral support services per month, and the MDT agreed to perform an FBA. The FBA was performed and a BIP was developed to support the student in March of ■ The ■ IEP increased the student's specialized instruction in the general education environment from 2 hours to 4 hours per week. Bus transportation was also added for the student. In addition, the student has been added to a "lunch bunch" social skills program, where students discuss and develop social skills using a peer-teaching method and the school

has secured a [REDACTED] role model/aide to work with the student. The school staff have consistently revised the student's IEP and made changes to the student's educational programming in response to problems or difficulties that the team identifies.

At the [REDACTED] IEP meeting, the school staff reported using multiple modalities and coaching to help the student work on modified curricular standards in math and reading. The school staff reported, and the record confirmed, that the student is currently exposed to a modified [REDACTED] grade curriculum, and performs at a 3rd grade level. The parent's desire for the student to show greater academic gains is understandable, however, the record shows that the student is making academic and behavioral progress, and that the school staff has consistently considered the academic, developmental, and functional needs of the student, and revised the IEP to address any lack of expected progress toward annual goals.

The school staff believes that the student is best served in [REDACTED] current placement, but the parent and advocate believe a change of placement is necessary. The least restrictive environment ("LRE") requirements of the IDEA mandate that the LEA ensure "to the maximum extent appropriate" that children with disabilities are educated with their nondisabled peers. 34 CFR §300.114. In determining a child's educational placement, the IDEA requires the LEA to make a determination of the child's placement at least annually and the determination must be based on the child's IEP, among other requirements. 34 CFR §300.116.

The student's current IEP requires 16 hours of specialized instruction outside the general education setting, 4 hours of specialized instruction in the general education setting per week, 2 hours of behavioral support services per month, 120 minutes per month of speech, and 60 minutes per month of OT. DCPS provides these services in a public school setting and as discussed above, the student is making progress. In February of [REDACTED] at the request of the parent, the LEA performed an LRE review, in which an LEA representative observes the student and provides a recommendation to the school regarding the student's placement. After observing the student over two days and considering the student's academic activities, social skills, communication with students and teachers, and behaviors, the LEA recommended the current school as the student's LRE. In the [REDACTED] Prior Written Notice document, school staff commented that the addition of behavioral support services and the creation of the BIP had resulted in better behavior and academic performance from the student, and further noted that not all strategies/interventions had been exhausted, so a more restrictive placement was not warranted. The record does not support the contention that the student requires a more restrictive setting in order to benefit from [REDACTED] education.

Therefore, DCPS is in compliance with 34 CFR §§300.324 (a)(iv) &(b) and 300.116.

CORRECTIVE ACTION

DCPS is required to take the following actions:

No non-compliance was found. Therefore, there are no corrective actions associated with this LOD.

If you have any questions regarding this decision, please contact Jennifer Masoodi, Manager, State Complaints, at jennifer.masoodi@dc.gov or 202-741-0479.

Sincerely,

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

cc: [REDACTED], Complainant
[REDACTED], DCPS [REDACTED]