



January 25, 2013

[REDACTED]  
District of Columbia Public Schools  
[REDACTED]  
[REDACTED]

RE: State Complaint No. 012-014

## 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 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, the complainant contends that DCPS failed to make special education and related services available to the child in accordance with the child's IEP, particularly in regard to specialized instruction by a certified special education teacher.

The complainant also alleged that there was no general education teacher in the student's classroom. The student's placement is a full-time special education classroom, outside of the general education environment. Under these circumstances, the IDEA does not require a general education teacher, so this allegation was not investigated as part of the State complaint. The complainant also asserted that [REDACTED] disagreed with evaluations conducted by DCPS in September [REDACTED] and requested that OSSE order the authorization of an independent educational evaluation (IEE) as part of [REDACTED] requested relief. While the IDEA does permit a parent to request an IEE if the parent does not agree with an evaluation performed by the local education agency (LEA), the parent must first make that request of the LEA and allow the LEA to either grant the request or file a due process complaint for a hearing to determine whether the LEA's evaluation was appropriate. 34 CFR §300.502. Accordingly, the complainant must inform the school directly about [REDACTED] disagreement with the evaluations and make [REDACTED] request for an IEE directly to the school.

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 make special education and related services available to the child in accordance with the child’s IEP, specifically in regard to specialized instruction, in accordance with 34 CFR §300.323 (c).

**INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. Parent
2. [REDACTED], [REDACTED] EC
3. [REDACTED], [REDACTED] EC
4. [REDACTED], [REDACTED] EC
5. [REDACTED], [REDACTED] EC

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 qualifies as a student with a disability as defined by 34 CFR §300.8.
2. The student’s disability category is intellectual disability.

**ISSUE ONE: Provision of Special Education and Related Services in Accordance with IEP**

**Findings of Fact**

1. The student is in a full-time special education classroom.
2. There was no full-time special education instructor in the classroom between [REDACTED] and [REDACTED].
3. The student was entitled to 24 hours per week, or over 300 hours of specialized instruction between [REDACTED] and [REDACTED].
4. The school provided documentation for 37.5 hours of specialized instruction between [REDACTED] and [REDACTED].
5. The student was entitled to 8 hours of adapted physical education between [REDACTED] and [REDACTED].
6. Service trackers show that the student received 1 hour of adaptive physical education between [REDACTED] and [REDACTED].

**Discussion/Conclusion**

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

The IDEA regulations require public agencies to provide special education and related services in accordance with the IEP. (34 CFR §300.323 (c)) The complaint alleged that the student’s IEP was not being implemented appropriately, because there was no special education instructor in the student’s classroom, and therefore the student was not provided specialized instruction in accordance with the student’s IEP.

The student is placed in a self-contained classroom for students with intellectual disabilities. The student’s [REDACTED] IEP was the IEP in place on the first day of the [REDACTED] school year. The IEP entitled the student to the following instruction and services:

SERVICE	TIME	SETTING
Specialized Instruction	24 hours per week	Outside of General Education
Adaptive Physical Education	120 minutes per month	Outside of General Education
Occupational Therapy	240 minutes per month	Outside of General Education
Speech-Language Pathology	4 hours per month	Outside of General Education
Physical Therapy	120 minutes per month	Outside of General Education
Audiology	30 minutes per month	Consultation Service

The same services, time per service, and settings were maintained on the [REDACTED] IEP.

In its [REDACTED] response to the complaint, DCPS admitted that there had been no special education teacher in the student’s classroom from [REDACTED], the first day of the [REDACTED] school year, until [REDACTED]. DCPS stated that a full-time substitute teacher was placed in the classroom, and that the classroom was provided special education services by two special education teachers, who each provided the class a minimum of two hours of service per day. DCPS further stated that a compensatory education plan was being

developed for each student in the classroom and that a special education teacher was hired and began teaching in the classroom on [REDACTED].

Where an LEA is unable to secure a full-time teacher for a classroom, it is appropriate to use a long-term substitute teacher in the interim. However, the LEA must ensure that students continue to receive all of the services indicated on their IEPs. According to school staff, the substitute teacher was not certified in special education. Despite multiple requests for information, OSSE was able to obtain an accounting of only one special education teacher's service to the classroom. That teacher started servicing the classroom on [REDACTED], and spent 22.5 hours in the classroom during October, 13.75 hours in the classroom in November, and 1.5 hours in the classroom between [REDACTED] and [REDACTED]. This totals 37.75 hours of specialized instruction between [REDACTED], the first day of school for DCPS, and [REDACTED], when the full-time special education teacher started. This amounts to just over 10% of the 336 hours of specialized instruction the student was entitled to during the 14 week period. While the LEA reported that a compensatory plan was being developed for all students in the classroom, the school staff members were not aware of any such plan, and after multiple requests, the LEA failed to provide OSSE a copy of the compensatory plan.

Service trackers show that the student received the related services of occupational therapy, speech-language pathology, physical therapy, and audiology in accordance with [REDACTED] IEP during the interval under investigation. The student did not receive Adapted Physical Education (A.P.E.) in accordance with [REDACTED] IEP. The student was entitled to 120 minutes of A.P.E. per month, but received no A.P.E. until November [REDACTED] when an instructor was hired. Service trackers currently document that the student has received a total of 1 hour of service, but should have received at least 8 hours of service between the start of school and December [REDACTED]. The [REDACTED] stated that she plans to provide double time services to the student until all make-up hours are completed.

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

### **CORRECTIVE ACTION**

DCPS is required to take the following actions:

1. To correct noncompliance with 34 CFR §300.323 (c),
  - a. By [REDACTED], DCPS must convene the MDT at a time and place convenient for the parent. Given the length of missed services, the team must review the student's placement, and consider the parent's concerns about placement. The team must determine the amount and kind of compensatory services necessary for the student. If no agreement can be reached on compensatory services, DCPS must authorize a minimum of 252 hours of tutoring services for the student. DCPS must provide proof of the meeting and a compensatory education plan signed by the parent, or proof of authorization of the 252 hours

of tutoring to OSSE [REDACTED].

- b. DCPS must provide documentation of made-up A.P.E. hours in SEDS. If all 7 A.P.E. make-up hours are not completed and logged in SEDS by [REDACTED], DCPS must authorize the student to receive 7 hours of compensatory A.P.E. or Physical Therapy.
- c. DCPS must make compensatory education plans for each student who was placed in the classroom during the fall semester of the [REDACTED] school year. DCPS must provide OSSE a list of all students who were in the classroom, and a plan detailing how many hours of specialized instruction each student was entitled to on his or her IEP, and how each student will be provided make-up/compensatory hours for any hours each student was entitled to above the 37.75 hours of specialized instruction provided between [REDACTED] [REDACTED]. The compensatory education plan must provide each student with at least 75% of the specialized instruction hours the student was entitled to between [REDACTED] and [REDACTED]. DCPS must provide the plan and proof that parents have received the plan by [REDACTED]. OSSE will examine the proposed plans and each affected student's IEP and may order further corrective actions on a case-by-case basis. Proof of the initiation of service delivery according to the compensatory education plan is due by [REDACTED] [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

[REDACTED], DCPS [REDACTED]