



March 28, 2013

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

RE: State Complaint No. 012-018

## 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].

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, failure 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 highly qualified special education teacher.

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 the student received specialized instruction from a highly qualified special education instructor in accordance with 34 CFR §300.323 (c) and 34 CFR §300.18(a) &(b).



### **INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. Parent

2. [REDACTED] at [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]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[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 specific learning disability.

### **ISSUE ONE: Provision of Special Education and Related Services from a Highly Qualified Teacher**

#### **Findings of Fact**

1. There was no certified special education instructor in the student's classroom between [REDACTED] and [REDACTED].
2. The long-term substitute teacher assigned to the student's special education classroom between [REDACTED] and [REDACTED] was not a highly qualified special education teacher.
3. On [REDACTED], prior to the filing of this state complaint, a Hearing Officer Decision was issued concerning the same student.
4. The hearing officer determined that the student made progress on [REDACTED] IEP, and that [REDACTED] was provided FAPE.

#### **Discussion/Conclusion**

DCPS is in compliance with 34 CFR §300.323 (c). DCPS is not in compliance with 34 CFR §300.18 (a) & (b).

The IDEA regulations require public agencies to provide special education and related services in accordance with the IEP. (34 CFR §300.323 (c)) In this case, the student's [REDACTED] IEP entitles the student to 27 hours of specialized instruction per week, outside of the general

education environment. The student receives instruction in core subjects such as math and reading during the 27 hours of specialized instruction each week. The IDEA regulations require that special education teachers teaching core academic subjects be highly qualified, which means that they hold at least a bachelor's degree, and have obtained full State certification as a special education teacher or passed the State special education teacher licensing examination, and hold a license to teach in the State as a special education teacher. (34 CFR §300.18 (a) & (b)) The complaint alleged that there was no certified special education instructor in the student's classroom between [REDACTED] and [REDACTED].

#### *Instruction in Accordance with the IEP*

After accepting the complaint for investigation, OSSE learned that on [REDACTED], a Hearing Officer Decision (HOD) was issued concerning the same student prior to the filing of this State complaint.

The issue in the HOD was whether the student had been denied FAPE in [REDACTED] current setting. Part of the student's argument was that the lack of a certified special educator in the student's classroom meant that the school was unable to implement the student's IEP. The hearing officer recognized, in accordance with IDEA regulation, that there is no individual right of action on behalf of a student for the failure of a particular LEA employee to be highly qualified. (34 CFR §300.156(e)) This is because the IDEA gives authority over enforcement of highly qualified teacher issues to the SEA. (34 CFR §300.156(e)) We treat the highly qualified teacher question below.

The hearing officer found that the student was making progress on [REDACTED] IEP goals, and that the LEA was providing FAPE to the student. Where a hearing officer has made a determination that the student received FAPE, OSSE declines to make a student-level finding based on a procedural violation of 34 CFR §300.323(c), because the State complaint process may not operate as a second venue to obtain relief denied by a hearing officer. By stating that the student received FAPE, the HOD concludes that the student's IEP was satisfactorily implemented.

Therefore, DCPS is in compliance with 34 CFR §300.323 (c).

#### *Highly Qualified Teacher*

The IDEA regulations require that special education teachers teaching core academic subjects be highly qualified, which means that they hold at least a bachelor's degree, and have obtained full State certification as a special education teacher or passed the State special education teacher licensing examination, and hold a license to teach in the State as a special education teacher. (34 CFR §300.18 (b)) The complaint alleged that between [REDACTED] and [REDACTED], the student was taught by a substitute teacher who was not a highly qualified teacher under the IDEA. In its response to the complaint, the LEA conceded that the substitute teacher was not a highly qualified teacher.



The record indicates that the parent had concerns about the student's progress, and made several attempts to reach the student's teacher. The school promised to relay messages to the teacher, but never informed the parent that the student's teacher had taken maternity leave, and that a long-term substitute who was not a highly qualified special education teacher had taken charge of the self-contained classroom.

In 2004, the U.S. Department of Education strongly recommended that long-term substitute teachers meet the requirements for highly qualified teachers, and noted that the No Child Left Behind Act of 2001 (NCLB) requires parent notification<sup>1</sup> if a student has received instruction for four or more consecutive weeks by a teacher who is not highly qualified. (U.S. Department of Education, *No Child Left Behind: A Toolkit for Teachers*) Where an LEA must utilize a long-term substitute in a special education classroom, and is unable to secure a substitute who has special education certification, the LEA may have to employ a substitute who is not highly qualified, but meets the state's basic requirements for substitute teachers. Employment of a substitute who is not highly qualified, however, should be limited in duration and the LEA must ensure that the absence of a highly qualified special education teacher does not serve to deny FAPE to special education students in the classroom. Given the duration of time here that DCPS did not provide a highly qualified special education teacher, OSSE finds that DCPS was not in compliance with 34 CFR §300.18(a) & (b). OSSE declines to award any additional relief to the student because of the HOD finding that the student received FAPE. DCPS, however, must take corrective action at the LEA level and with respect to the other students who were in the same classroom as the student.

#### **CORRECTIVE ACTION**

DCPS is required to take the following actions:

1. To correct noncompliance with 34 CFR §300.18 (b):
  - A. DCPS must review the records of the other students in the classroom to determine whether each student was provided FAPE during the time that the regular teacher was on leave. DCPS must provide OSSE a list of all students in the class between [REDACTED] and [REDACTED], and the findings from DCPS' review for each student. For any student who was not provided FAPE, DCPS must create a compensatory education plan. OSSE will review the results of DCPS' case analysis and compensatory education plans and may require additional corrective actions on a case-by-case basis.
  - B. DCPS must train all principals on the proper procedure to follow when a long-term

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<sup>1</sup> The parental notice requirement is codified at 20 USC § 6311(h)(6)(B)(ii) and in the regulations at 34 CFR § 200.61(b)(2).


substitute who is not special education certified will be placed in a special education classroom. The training must include the following elements:

- i. If the long-term substitute will provide instruction for four or more consecutive weeks, then the school must send a letter of notification home to parents.
- ii. The letter must state that the teacher is not a highly qualified teacher per the IDEA.
- iii. The letter must explain what measures the school is taking or will take to ensure that students will receive services in accordance with their IEPs. For example, the school may state that as each IEP team convenes, the need for any compensatory education will be discussed, and/or that lesson plans developed by a highly qualified special education teacher will be left for each student, or that another highly qualified special education teacher on staff will provide ongoing support to the classroom, etc.

Proof of correction for corrective action 1(A) is due by [REDACTED]. Proof of correction for corrective action 1(B) is due 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], Complainant

[REDACTED] Parent

[REDACTED] DCPS [REDACTED]