



June 13, 2013

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 012-026

LETTER OF DECISION

PROCEDURAL BACKGROUND

The State Complaint Office of the Office of the State Superintendent of Education (OSSE), Division of Specialized Education received a State Complaint from [REDACTED], hereinafter “complainant,” on [REDACTED] against District of Columbia Public Schools (DCPS) alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter “student” or “child.”

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 review and revise the IEP; and (2) failure to make special education and related services available in accordance with the child’s IEP and appropriately revise the IEP to address information about the child provided by the parents.

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 review and revise the child’s IEP with respect to assistive technology to address the results of any reevaluations conducted, information about the child provided to, or by, the parents, and the student’s anticipated needs as required by 34 CFR §300.324(b)(ii)(B-D)?
2. Whether DCPS failed to make special education and related services available to the child in accordance with the child’s IEP and failed to appropriately revise the IEP to address information about the child provided by the parent with respect to toilet



training as required by 34 CFR §§300.323(c)(2) & 300.324(b)(1)(ii)(C)?

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Parent
2. [REDACTED] High School
3. [REDACTED] School
4. [REDACTED] High School
5. [REDACTED] School

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 child with a disability as defined by 34 CFR §300.8.
2. The student's disability category is Autism Spectrum Disorder.

ISSUE ONE: REVIEW AND REVISE IEP

Findings of Fact

1. An Assistive Technology Evaluation was completed on [REDACTED].
2. An Assistive Technology Consultation Report was completed on [REDACTED].
3. The [REDACTED] Assistive Technology Report recommended the use of assistive technology.
4. At a [REDACTED] IEP team meeting the parent requested that a goal related to the use of assistive technology be added to the student's IEP.
5. On [REDACTED] the student began attending a new school in within DCPS.
6. On [REDACTED] the parent asked about the assistive technology device that had been ordered for the student by the student's previous school.
7. At a [REDACTED] IEP team meeting the IEP team discussed assistive technology devices that could be used with the student.
8. At a [REDACTED] IEP team meeting the IEP team decided what assistive technology device would be used with the student and set a timeline to start using the device.
9. On [REDACTED] the student's IEP was updated to add a goal that incorporated the use of an assistive technology device.

Discussion/Conclusion

DCPS is not in compliance with 34 CFR §300.324(b)(1)(ii)(B-D) with respect to Assistive Technology.

The IDEA regulations require IEP teams to review each student's IEP at least annually. (34 CFR §300.324(b)(1)(i)) The IEP team must revise the IEP to address reevaluation data, information provided to or by the parents, and the student's anticipated needs. (34 CFR §300.324(b)(1)(ii)(B-D)) The IDEA regulations also require that assistive technology devices and services are made available to a child with a disability if it is required as part of the child's special education or related services. (34 CFR §300.105(a)) The parent alleged that although use of an assistive technology device had been recommended in an evaluation and had been discussed at IEP team meetings, DCPS failed to provide an assistive technology device for [REDACTED] use.

An Assistive Technology (AT) Evaluation was completed for the student on [REDACTED]. DCPS reviewed the AT evaluation on [REDACTED], and accepted the findings, which included a recommendation that the student be provided with a voice input device. On [REDACTED], an AT Consultation Report was completed which concluded that the [REDACTED] evaluation was still valid and appropriate for the student's needs and goals. The July [REDACTED] report stated that the use of

assistive technology would help the student pursue [REDACTED] communication, daily living, academic, and transitional goals.

On [REDACTED] an MDT meeting was held at [REDACTED] High School. At the meeting the team reviewed the AT Consultation Report. The parent and educational advocate requested that use of an AT device be added as an IEP goal, specifically in the area of communication. The parent expressed concern that [REDACTED] was not seeing progress in the student's communication skills and wanted an AT device that could follow the student throughout the day. The educational advocate requested that DCPS recommend an AT device for the student, and the parent promised to fax in an outside AT report that was completed by Children's Hospital, however, the student's IEP was not updated at this time and no goals on the student's IEP incorporated use of an AT device.

The student began attending [REDACTED] School on [REDACTED]. On [REDACTED], the parent inquired about the assistive technology device that was ordered while the student was still at [REDACTED] High School. There is no indication in the record that the school attempted to resolve the parent's question until a review of the student's IEP was held on [REDACTED]. At this meeting the IEP team discussed what type of AT device would best benefit the student. The IEP team agreed to meet again in February to finalize the IEP and provide a definitive answer on the type of assistive AT device the student would use.

The IEP team met again on [REDACTED]. At this meeting the speech and language pathologist spoke about the AT device that would be used with the student. The school was to begin using the device with the student the following week after the speech language pathologist consulted with all staff members who worked with the student. The DCPS Technology Manager was at the meeting and spoke to the timelines associated with training and trial use of the AT device. At this meeting the parent also mentioned that Children's Hospital would start using a different AT device with the student and it was suggested that the two devices be compared to decide which one would be most appropriate for the student.

On [REDACTED] the student's IEP was updated and a goal that incorporated use of an AT device was added to the Communication/Speech and Language section of the student's IEP.

DCPS' July [REDACTED] AT Consultation Report indicated that the student had needs in the area of AT. The parent first requested that goals pertaining to use of an AT device be added to the student's IEP on [REDACTED]. A final decision regarding what type of assistive technology device to use with the student was made on [REDACTED], which was seven months after DCPS confirmed that an AT device would help the student achieve [REDACTED] IEP goals in the areas of communication, daily living skills, transition, and academics, and five months after the parent requested that AT goals be added to the IEP.

The IEP was revised to meet the student's anticipated needs in the area of AT on [REDACTED], which was six months after the parent requested such a goal, and eight months after DCPS' AT Consultation Report recommended the use of an AT device. DCPS discussed the student's AT needs with the parent at several meetings, and agreed to consider information the parent provided in accordance with 34 CFR 300.324 (b)(1)(ii)(C). However, DCPS failed to make a final decision on what type of device to use and to revise the student's IEP to address the results of the AT Consultation Report and the student's AT needs in a timely manner.

Therefore, DCPS is not in compliance with 34 CFR 300.324(b)(1)(ii)(B-D) with respect to Assistive Technology.

ISSUE TWO: PROVISION OF SERVICES IN ACCORDANCE WITH IEP AND APPROPRIATE REVISION OF IEP TO ADDRESS PARENT-PROVIDED INFORMATION

Findings of Fact

1. The [REDACTED] IEP included one goal related to toileting.
2. The [REDACTED] Amended IEP was in effect when the student began attending [REDACTED] School on [REDACTED].
3. The student's IEP was amended on [REDACTED].
4. The goal related to toileting was not removed or changed by the [REDACTED] IEP amendment.
5. The student's [REDACTED] IEP progress report states that the toileting goal was "not introduced."
6. The parent raised concerns around the student's toileting behaviors to the [REDACTED] School staff on [REDACTED].
7. The student's IEP was amended on [REDACTED], and the school added a different toileting goal to the student's IEP.

Discussion/Conclusion

DCPS is not in compliance with 34 CFR § 300.323 (c)(2), but is in compliance with (300.324(b)(1)(ii)(C)).

The IDEA requires public agencies to provide special education and related services in accordance with the IEP. (34 CFR § 300.323 (c)(2)) In addition, public agencies must appropriately revise the IEP to address information about the child provided by the parent. (300.324(b)(1)(ii)(C)) The complainant alleged that after the student transferred to [REDACTED] School in November of [REDACTED] the IEP was not implemented with respect to toileting, and school staff failed to incorporate the parent's suggestions about the student's toileting needs when revising the IEP.

Implementation of the IEP

The [REDACTED] Amended IEP was in effect when the student began attending [REDACTED] School on [REDACTED]. The [REDACTED] IEP was developed at [REDACTED] High School,

which is also a DCPS school, and included one goal related to toileting. The goal was an emotional, social and behavioral development goal, and stated that the student would follow the steps laid out in a social story about using the bathroom. [REDACTED] High School staff reported that the social story was used with the student three times per day during bathroom breaks and served as a step-by-step toileting guide for the student. The story and goal were developed because the student developed an aversion to the toilet, and therefore would no longer squarely face the toilet when using the restroom. [REDACTED] High School staff reported that the parent requested that school staff provide direct assistance to the student in the restroom. As the student was 15 years old and actively resisted staff attempts to angle [REDACTED] body toward the toilet, the staff developed a social story and a positive behavior support plan that were meant to encourage the student to use the toilet in a seated position.

The [REDACTED] School IEP team amended the student's IEP on [REDACTED], but did not remove or change the goal related to the toileting social story, and did not take steps to implement the goal. For example, the student's [REDACTED] IEP progress report states that the toileting goal was "not introduced." [REDACTED] School staff reported that the goal was not implemented because it came on the IEP from the student's previous school. Schools are responsible for implementing IEPs as written, and cannot decide not to implement IEP goals because they originated at a previous school.

The social story goal was removed from the student's IEP during the [REDACTED] IEP meeting. The social stories toileting goal was unimplemented for four months at [REDACTED] before being dropped from the IEP.

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

IEP Revision

On [REDACTED], at an MDT meeting at [REDACTED], the parent raised concerns around the student's toileting behaviors. The nature of the parent's concern shifted from whether the student was appropriately positioned in the restroom to whether the student was using the restroom at all.

The student was not wetting [REDACTED] pants or otherwise having accidents, but [REDACTED] was refusing to use the restroom at all during the day, and would not drink the bottled water [REDACTED] parent provided for [REDACTED] to drink at school. Staff reported that the student was given the opportunity to use the restroom and was taken to the restroom, but that [REDACTED] physically resisted going into the restroom, and they could not force [REDACTED] to enter the restroom.

The parent requested that the student be put on a behavioral plan related to [REDACTED] toileting needs. The school refused the parent's request, stating that there was no educational impact associated with the student's refusal to use the restroom.

The parent raised concerns about the student's refusal to use the bathroom at school again at the [REDACTED] MDT meeting. School staff stated that they would try to encourage the student to use the restroom more often. In interviews, [REDACTED] staff reported that the parent requested that the staff provide direct assistance to the student by removing [REDACTED] pants and placing [REDACTED] on the toilet. School staff did not agree that direct intervention was appropriate, because the student does not have accidents, is not interested in going into the bathroom, and physically resists attempts to take [REDACTED] into the bathroom when [REDACTED] does not have the urge to void.

On [REDACTED], the IEP team amended [REDACTED] IEP to include a toileting goal in the area of adaptive/daily living skills. The IEP indicates that the student will be provided a verbal and visual reminder to use the restroom once per hour and that the student will be given the opportunity to use a larger restroom located in the school gym.

While [REDACTED] staff did not incorporate every suggestion that the parent made, they considered [REDACTED] opinion at meetings, and gradually agreed to escalate toileting prompts informally at first and ultimately by adding a toileting goal to the IEP in response to the parent's concerns.

Therefore, DCPS is in compliance with (300.324(b)(1)(ii)(C)).

CORRECTIVE ACTION

DCPS is required to take the following actions:

1. To correct noncompliance associated with 34 CFR 300.324(b)(1)(ii)(B-D), DCPS must:
 - i. If the student does not currently have an AT device that meets the specifications of the AT Evaluation and Consultation Report, one must be provided to the student, along with appropriate training on the AT device for the student's teacher and any classroom aide that works with the student by [REDACTED]. If the student does currently have an appropriate AT device DCPS must submit proof to OSSE that demonstrates that the student and [REDACTED] teacher and any aides who work with the student have been trained to use the device by [REDACTED].
 - ii. DCPS must meet with the parent to determine how much compensatory education is necessary. If the parent and LEA are unable to agree, DCPS must provide a minimum of 20 hours of compensatory education in the area of communication or speech and language. Proof that compensatory education has been authorized is due to OSSE by [REDACTED].

2. To correct noncompliance associated with 34 CFR § 300.323 (c)(2), DCPS must provide training to the [REDACTED] School SEC and special education teachers regarding the implementation of student IEPs who transfer from another school within DCPS. Staff must be apprised of the obligation to implement services as specified in the IEP. Proof of training, including content and attendance roster, is due to OSSE by [REDACTED].

All corrective actions must be completed by the dates set forth above, but in no case later [REDACTED], which is one year from the issue date of this LOD.

If you have any questions regarding this decision, please contact Jennifer Masoodi, Director, Compliance and Monitoring, 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]