



October 25, 2013

[REDACTED]  
District of Columbia Public Schools  
[REDACTED]

RE: State Complaint No. 013-005

## LETTER OF DECISION

### **PROCEDURAL BACKGROUND**

On [REDACTED], 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,” 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; (1) failure to provide notice of procedural safeguards; (2) failure to provide an opportunity to inspect educational records; (3) failure to consider the use of positive behavioral interventions and supports; (4) failure to revise the IEP as appropriate to address the child’s anticipated needs; (5) failure to determine whether a pattern of removals constitutes a change of placement; and (6) failure to hold a manifestation determination.

The complainant also raised concerns regarding staff use of restraint and administration of prescription medication. The IDEA does not address the use of restraint or the administration of medication, so the State Complaint Office did not investigate those allegations.

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 provide notice of procedural safeguards to the parent, as required by 34 CFR §300.504?

2. Whether DCPS failed to allow the parent to examine the student's educational records as required by 34 CFR §300.501?
3. Whether DCPS failed to consider the use of positive behavioral interventions and supports as required by 34 CFR §300.324(a)(2)(i)?
4. Whether DCPS failed to revise the IEP as appropriate to address the child's anticipated needs as required by 34 CFR §300.324(b)(1)(ii)(D)?
5. Whether DCPS failed to determine whether a pattern of removals constitutes a change of placement as required by 34 CFR §300.536(b)(1)?
6. Whether DCPS failed to hold a manifestation determination as required by 34 CFR §300.530(e)?
7. Whether DCPS failed to provide OSSE with information necessary for OSSE to carry out its responsibilities under the IDEA, as required by 34 CFR §300.211?

**INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. Guardian (hereinafter, "parent")
2. [REDACTED] ES
3. [REDACTED] ES
4. [REDACTED] ES

The investigation also included review of the following documents which were either submitted by the complainant, 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 intellectual disability.

**ISSUE ONE: PROCEDURAL SAFEGUARDS**

**Findings of Fact**

1. An IEP meeting was held on [REDACTED].
2. The student’s eligibility category was changed at that meeting.
3. The parent received a copy of DCPS’ notice of procedural safeguards at the [REDACTED] meeting.
4. DCPS’ notice of procedural safeguards details the availability of independent educational evaluations.

**Discussion/Conclusion**

**DCPS is in compliance with 34 CFR §300.504.**

The IDEA regulations require that procedural safeguards be provided to the parent of a child with a disability once per school year. (34 CFR §300.504) The procedural safeguards include information about the parent’s right to seek an independent educational evaluation at public expense. (34 CFR §§300.504(c); 300.502) The complaint alleged that DCPS failed to inform the parent that [REDACTED] had the right to seek an independent educational evaluation. This allegation is not supported by the record.

The parent attended an IEP meeting on [REDACTED]. At that meeting the student’s disability eligibility category was changed from developmental delay to intellectual disability. The IEP form lists the primary disability as “Intellectual Disability (also known as mental retardation).” The parent is not comfortable with the term mental retardation, and signaled [REDACTED] disagreement with the eligibility category next to [REDACTED] signature on the IEP, writing, “(don’t agree with assessment).”

The parent signed a receipt confirming that [REDACTED] was provided a copy of the procedural safeguards on [REDACTED], the same date as the IEP meeting. The DCPS notice of procedural safeguards includes information about the right to seek an independent educational evaluation. DCPS met its obligation to provide the procedural safeguards to the parent, and IDEA does not require public agencies to take additional steps to inform parents about the

availability of independent educational evaluations.

Therefore, DCPS is in compliance with 34 CFR §300.504

## **ISSUE TWO: ACCESS TO RECORDS**

### **Findings of Fact**

1. School staff told the parent that disciplinary incident reports were only available through a central security office.
2. The disciplinary incident reports are available in the SEDS data system.

### **Discussion/Conclusion**

#### **DCPS is not in compliance with 34 CFR § 300.501**

The IDEA regulations require public agencies to afford the parents of a child with a disability the opportunity to inspect and review all education records with respect to identification, evaluation, educational placement, and the provision of FAPE to the student. (34 CFR §300.501(a)) The complaint alleged that the school refused to provide discipline incident reports to the parent. The investigation confirmed that on at least one occasion, the parent requested access to educational records and was told that the school could not provide the records.

Interviews with school staff confirmed that the parent had requested behavioral incident reports, but that staff informed the parent that the school could not provide those records to [REDACTED]. The parent was told incident reports were held by a centralized security office. DCPS staff confirmed that in cases of criminal incidents, records are held by a centralized security office, but that incident reports that are kept as part of the educational record should be available for parental inspection and review in the same manner as other educational records. In this case, while the police were called to the school on occasion, no criminal charges were filed and the disciplinary incident reports were not linked to criminal incidents. The incident reports are stored in SEDS with other educational records and should have been made available to the parent at the school in the same way that other educational records are provided.

Therefore, DCPS is not in compliance with 34 CFR §300.501.

## **ISSUE THREE & FOUR: POSITIVE BEHAVIORAL SUPPORTS; REVISION OF IEP TO ADDRESS ANTICIPATED NEEDS**

### **Findings of Fact**

1. The [REDACTED] IEP was revised on [REDACTED].
2. The student participated in a school-wide positive behavior support program.
3. On [REDACTED], the school performed a functional behavior assessment (FBA).
4. On [REDACTED] a behavior intervention plan (BIP) was developed from the FBA.
5. The BIP included several positive behavior interventions and supports, including

student-directed behavior charting, tangible and intangible reinforcers to be used with the student, student-directed breaks when the student felt overwhelmed, and instruction in relaxation techniques and cues to the student to use the techniques when behavior escalated.

6. The [REDACTED] IEP included 240 minutes per month of behavioral support services and the use of visual scheduling and visual behavioral reminders.
7. The IEP team agreed to amend the IEP in April, [REDACTED] in response to the student's escalated behaviors when unfamiliar staff were present in the environment.

### **Discussion/Conclusion**

**DCPS is in compliance with 34 CFR §§ 300.324(a)(2)(i) and 300.324(b)(1)(ii)(D).**

If a child's behavior impedes the learning of the child or others, the IDEA regulations require IEP teams to consider the use of positive behavioral interventions and supports and other strategies to address the child's behavior. (34 CFR §300.324(a)(2)(i)) The IDEA also requires IEP teams to revise the IEP, as appropriate, to address the child's anticipated needs. (34 CFR §300.324(b)(1)(ii)(D)) The complaint alleged that the school failed to utilize appropriate interventions with the student, and failed to revise the IEP in response to the student's behavioral difficulties. This allegation is contradicted by the record.

The record indicates that the school revised the IEP in response to the student's needs and considered and implemented a variety of behavioral strategies in response to the student's behaviors. After a series of behavioral incidents, the [REDACTED] IEP was revised in January of [REDACTED]. In addition to the school-wide positive behavioral support program ([REDACTED] Bucks) which the student participated in, on [REDACTED], the school performed a functional behavior assessment (FBA). On [REDACTED] a behavior intervention plan (BIP) was developed from the FBA, and included the use of student-directed behavior charting, several tangible and intangible reinforcers to be used in situations that are known to trigger behavioral escalation for the student, student-directed breaks if [REDACTED] felt overwhelmed, and instruction in relaxation techniques and cues to the student to use the techniques when behavior escalated (take a deep breath, try counting to five slowly, etc.). The [REDACTED] IEP included 240 minutes per month of behavioral support services and the use of visual scheduling and visual behavioral reminders. On [REDACTED], in response to the student's behavioral needs, the IEP team agreed to amend the IEP to include a testing accommodation that allowed the student to take tests with a familiar person. While the student continued to have behavioral difficulties throughout the school year, the school clearly considered and implemented several different positive behavioral support techniques in an attempt to provide support to the student, and made changes to the IEP in anticipation of the student's needs.

Therefore, DCPS is in compliance with 34 CFR §300.324(a)(2)(i) and 300.324 (b)(1)(ii)(D).

## **ISSUE FIVE & SIX: CHANGE OF PLACEMENT; MANIFESTATION DETERMINATION**

### **Findings of Fact**

1. The student was suspended for seven school days during the period under investigation.
2. The parent provided a record of 11 additional days on which [REDACTED] was called to pick up the student.
3. The school did not document the dates or times that the parent was called and took the student home.
4. The school did not determine whether the 18 removal dates constituted a change in placement.
5. The school did not hold a manifestation determination meeting.

### **Discussion/Conclusion**

**DCPS is not in compliance with 34 CFR § 300.536(b)(1), 300.530(e), and 300.211.**

The IDEA regulations state that a change of placement has occurred in any case where a student has been subjected to a series of removals that total more than 10 days and constitute a pattern of removals. (34 CFR §300.536(a)) The public agency determines whether a series of removals that total more than 10 days constitutes a change of placement. (34 CFR §300.536(b)(1)) If the agency determines that a change of placement has occurred, the student is entitled to a manifestation determination, where the LEA, parent, and relevant members of the IEP team meet to determine whether the conduct in question was caused by or had a substantial relationship to the student's disability, or if the conduct was a result of failure to implement the IEP. The complaint alleged that the parent was repeatedly called to take the student home without providing formal notice of disciplinary action, and that after the school suspended or sent the student home informally, there was no discussion about whether the student's IEP and behavioral interventions were being properly implemented. A review of the record confirms these allegations.

The student served three formal suspensions totaling seven school days: [REDACTED], [REDACTED], and [REDACTED]. These dates were confirmed by the parent and school staff. In addition, the parent reported that [REDACTED] was asked to pick up the student on at least 11 occasions during the time period under investigation ([REDACTED]), but that no disciplinary record or record of the student's attendance/dismissal was made on any of these occasions. School staff acknowledged that the [REDACTED] was called to the school on several occasions and that [REDACTED] took the student home. School staff were unable to verify the dates provided by the parent and admitted that the absences were undocumented, therefore OSSE accepts the parent's record as accurate. Staff stated that no documentation of the absences was made because the absences typically happened toward the end of the school day. The school also stated that the parent took the student home at [REDACTED] own will rather than have the school call [REDACTED] repeatedly.

LEAs must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the IDEA. (34 CFR §300.211) The information that the SEA requires includes accurate documentation of student attendance and services rendered to the student. While both sides agree the student frequently went home during the school day, since the school did not properly document the student's attendance, it is not possible to determine if the student was entitled to special education programs and services, but did not receive them as a result of ■ leaving school during the middle of the day. Repeatedly sending or allowing a student to go home during the middle of the school day is not a legitimate behavioral intervention or disciplinary practice, particularly where there is no documentation of the absence, missed services, and circumstances that led to the student leaving the educational setting. Sending or allowing students to go home is an unacceptable practice because the school may deprive students of educational programs and services to which they are entitled under their IEPs. **The school must immediately cease the practice of informal, undocumented release or dismissal of students from school.**

Because the school did not document the absences, it never determined whether the 18 days of removal from the school setting constituted a change in placement under 34 CFR §300.536(b)(1). Therefore, DCPS is not in compliance with 34 CFR §300.536 (b)(1). OSSE has determined that the parent's account of the absences is accurate, which means that the student would have reached more than 10 removal days and been entitled to a change of placement determination starting with ■ first formal suspension, on ■. Assuming that the change of placement determination would have shown a pattern of removals under 34 CFR §300.536(a)(2) due to the similar underlying reasons for the removals (behavioral outbursts, violent behaviors, foul language, etc.) and the close proximity of the removals (■ etc.), the student would have been entitled to a manifestation determination under 300.530(e).

Therefore, DCPS is not in compliance with 34 CFR §§300.536(b)(1), 300.530(e), and 300.211.

### **CORRECTIVE ACTION**

OSSE notes that the complaint requested several student-specific remedies, including an independent educational evaluation, reconsideration of eligibility for ESY, revision of the IEP/BIP, a change in placement, and comp ed. The student was provided authorization for an IEE in July of ■. On ■, DCPS found the student eligible for ESY, revised the student's IEP and placement to include a total of 27.5 hours per week of specialized instruction outside of the general education environment, and has increased behavioral support services from 240 minutes per month to 2.5 hours (150 minutes) per week. Therefore OSSE requires only one additional student-level corrective action which is included under 34 CFR §§300.536(b)(1) and 300.530(e) below.

1. To correct noncompliance with 34 CFR §300.501:  
DCPS must provide training on the release of records to all administrators and special education staff at the school. The training must cover the proper procedure for release of disciplinary incident reports. Training must be completed by [REDACTED].
2. To correct noncompliance with 34 CFR § 300.211:  
DCPS must provide training on the proper documentation of “push outs” or informal removals from the classroom to the school’s administrators, registrars, attendance aides, and special education teachers. The training must clarify the need to document all absences, including partial day absences. The training must also ensure that all informal removals are documented as suspensions or disciplinary removals as appropriate. Training must be completed by [REDACTED].
3. To correct noncompliance with 34 CFR §§300.536(b)(1) and 300.530(e):  
DCPS must authorize one hour of compensatory education services for each day the student was pushed out of school without documentation, for a total of 11 hours of compensatory education. These services can be in the area of specialized instruction or behavioral services as the parent deems appropriate. Compensatory services must be authorized by [REDACTED].

In addition, DCPS must provide training on IDEA disciplinary procedures to the LEA representative and all special education teachers at the school. The training must cover the disciplinary procedures at 34 CFR §300.530 et seq. Training must be completed by [REDACTED].

All corrections must be made by the deadlines specified above, but in no case later than one year from the issue date of this letter. If you have any questions regarding this decision, please contact Jennifer Masoodi, Director, Monitoring and Compliance, 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], Guardian  
[REDACTED], Advocate  
[REDACTED], DCPS [REDACTED]