



November 13, 2013

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 013-008

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 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, the complainant contends that DCPS failed to make special education and related services available to the child in accordance with the child’s IEP; failed to base the child’s placement on [REDACTED] IEP; and failed to request records upon a student’s transfer. The complainant also raised concerns regarding teacher conduct and student discipline. OSSE did not investigate these concerns as they did not allege a violation of Part B of the IDEA.

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 available special education and related services in accordance with the student’s IEP, specifically in regard to specialized instruction, as required by 34 CFR §300.323(c)(2)?
2. Whether DCPS failed to base the student’s placement on [REDACTED] IEP, as required by 34 CFR §300.116(b)?
3. Whether DCPS failed to request records upon a student’s transfer, as required by 34 CFR



§300.323(g)?

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Parent

2. [REDACTED] MS [REDACTED]

3. [REDACTED] MS [REDACTED]

4. [REDACTED] MS [REDACTED]

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 multiple disabilities.
3. The student transferred to [REDACTED] Elementary School ([REDACTED] ES) from a school in Virginia during the [REDACTED] school year.
4. The student began attending [REDACTED] Middle School ([REDACTED] MS) at the beginning of the [REDACTED] school year.

ISSUE ONE: SPECIAL EDUCATION AND RELATED SERVICES

Findings of Fact

1. The [REDACTED] IEP required provision of 30 minutes per week of speech-language services delivered outside the general education setting, and 1.5 hours per day of specialized instruction delivered within the general education setting in each of the following areas: mathematics, reading, and written expression.
2. There is no documentation in SEDS that speech-language services were delivered to the student in [REDACTED] 2013.
3. There is no documentation in SEDS that speech language services were delivered to the student in [REDACTED] 2013.
4. [REDACTED] MS has nine special education teachers delivering specialized instruction to 86 students with IEPs. Some students receive specialized instruction in a separate special education classroom, but the majority of students receive specialized instruction in an inclusion setting.
5. The student's class schedule includes courses in mathematics, language arts, world geography and cultures, and science.

Discussion/Conclusion

DCPS is not in compliance with 34 CFR §300.323(c)(2) with respect to speech and language services.

Pursuant to 34 CFR §300.323(c)(2), each public agency must ensure that as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. The complainant alleges that the student is not receiving any of the services listed on [REDACTED] IEP. The complainant attributes this alleged failure, in part, to [REDACTED] assertion that the school only employs two special education teachers.

The [REDACTED] IEP required provision of 1.5 hours per day of specialized instruction delivered within the general education setting in each of the following areas: mathematics, reading, and written expression. The student's class schedule includes courses in mathematics, language arts, world geography and cultures, and science. [REDACTED] MS has nine special education teachers delivering specialized instruction to 86 students with IEPs, the majority of whom receive specialized instruction in an inclusion setting. OSSE has identified no evidence to support the conclusion that the student is not receiving specialized instruction. OSSE notes that specialized instruction delivered within the general education setting will not look the same as instruction delivered in a separate classroom or via pull-out, and the fact that such instruction may be delivered more seamlessly does not necessitate a conclusion that instruction is not occurring.

The [REDACTED] IEP required provision of 30 minutes per week of speech-language services delivered outside the general education setting. Service trackers covering the period from the beginning of the school year to the date the complaint was filed demonstrate that the student did not receive any speech-language services. [REDACTED] MS staff members reported that make-up sessions would be scheduled during the first quarter, but as of the date of this LOD, there is no proof in the student record that any speech services have been delivered.

OSSE's January 5, 2010 Related Services Policy requires LEAs to develop a related service policy that explains the procedure for missed services and detail the steps taken by the LEA to ensure that missed sessions are rescheduled in a timely manner. The policy goes on to detail the minimum standard for rescheduling make-up sessions when they occur due to the provider's absence or the child's absence. DCPS failed to deliver the student's speech-language services consistent with the [REDACTED] IEP during the first few weeks of the [REDACTED] school year. Although DCPS should have the flexibility to respond to missed related service sessions consistent with OSSE's related services policy and schedule make-up sessions, the LEA has now failed to provide or failed to document the provision of speech services and make up services for more than two months.

Therefore, DCPS is not in compliance with 34 CFR §300.323(c)(2) with respect to speech and language services.

OSSE notes that during the course of the investigation the complainant raised additional concerns related to the failure to include transportation services on the student's IEP. In the District, students receive transportation if they are eligible based on their disability—that is, a student must have a special education need related to transportation. If the complainant believes that the student requires transportation on the basis of the student's disability, she should request a meeting to review the

student's IEP and determine the student's need for transportation services.

ISSUE TWO: PLACEMENT BASED ON IEP

Findings of Fact

1. The student's [REDACTED] IEP required a total of 4.5 hours per day of specialized instruction delivered within the general education setting, and 30 minutes per week of speech-language services delivered outside the general education setting.
2. The student attends classes in the general education setting.

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.116(b).

Pursuant to 34 CFR §300.116(a)(2), each public agency must ensure that placement decisions are made in conformity with a determination of the student's least restrictive environment. The placement must be based on the student's IEP. (34 CFR §300.116(b)(2)) The complainant alleges that the student's placement was inappropriate because [REDACTED] was not receiving services via pull-out.

The student's [REDACTED] IEP required provision of 4.5 hours per day of specialized instruction delivered within the general education setting and 30 minutes per week of speech-language services delivered outside of the general education setting. The student's speech-language services required delivery outside of the general education classroom. However, the student's specialized instruction services, pursuant to the IEP, were required to be delivered within the general education classroom. According to the [REDACTED] IEP, the IEP team did not determine that the student required specialized instruction delivered outside of the general education classroom. The student's placement in inclusion classes and a full-time general education setting was consistent with the IEP. There is no requirement in the IEP that the student receive the prescribed specialized instruction via pull-out.

Therefore, DCPS is in compliance with 34 CFR §300.116(b).

ISSUE THREE: REQUEST RECORDS

Findings of Fact

1. The student was transferred to the [REDACTED] MS roster in SEDS on [REDACTED]. From that point forward, [REDACTED] MS staff members had access to the student's SEDS records, including [REDACTED] IEP.
2. The [REDACTED] MS special education coordinator assigned a speech-language therapist to the student on [REDACTED].

Discussion/Conclusion

DCPS is in compliance with 34 CFR §300.323(g).

Pursuant to 34 CFR §300.323(g), the new public agency in which a child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous public agency in which the child was enrolled.

In the District, public schools and public charter schools utilize SEDS to generate and maintain student special education records. If a student with an IEP transfers from an out-of-state school to a public school or public charter school in the District within the same school year, the new public agency must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous public agency until the new public agency conducts an evaluation if necessary, and develops, adopts and implements a new IEP. See 34 CFR §300.323(f). The transfer of special education records is completed via the import into SEDS of any applicable special education records.

If a student with an IEP transfers between schools in different public agencies within the District, the new public agency must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous public agency until the new public agency either adopts the child's IEP from the previous public agency or develops, adopts, and implements a new IEP. See 34 CFR §300.323(e). The transfer of special education records is completed electronically.

If a student with an IEP moves from one school to another within the same public agency, no actual transfer of records occurs. Instead, the student is moved from the SEDS roster of the first school (the "sending" school), to the SEDS roster of the second school (the "receiving" school), so that staff members at the receiving school can access the student's records.

Prior to [REDACTED] enrollment at [REDACTED] MS, the student was a DCPS student at [REDACTED] ES. The student's SEDS record shows that [REDACTED] was transferred from the [REDACTED] ES roster to the [REDACTED] MS roster on [REDACTED]. The [REDACTED] MS special education coordinator assigned a speech-language therapist to the student on [REDACTED], prior to the start of the school year.

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

CORRECTIVE ACTION

To correct noncompliance associated with 34 CFR §300.323(c)(2), DCPS must provide the parent and OSSE a plan detailing the total number of speech language services missed between the first day of school and the date of this LOD. The plan must provide the dates and duration of each make-up speech and language session for the student, and must include information about how and when the student will receive speech and language services going forward. DCPS must provide OSSE with proof that make-up and regularly scheduled speech and language sessions have commenced. DCPS may elect to authorize compensatory education for the make-up sessions, but still must provide information about how and when the student will receive speech and language services going forward.

Alternatively, if make-up and/or regular speech language sessions have already commenced, DCPS may submit proof to the parent and the State complaint office and provide a plan for completion of all remaining make-up sessions.

Proof of correction is due by [REDACTED]. All corrections are to be completed by the due date but in no case later than one year from the date of issue for 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