



January 7, 2014

[REDACTED]
District of Columbia Public Schools
[REDACTED]

[REDACTED]
Public Charter Schools
[REDACTED]

RE: State Complaint No. 013-009

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), and [REDACTED] Public Charter Schools ([REDACTED] alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED] as well as systemic violations of the Individuals with Disabilities Education Act, Part B, 20 USC § 1400 et seq. (IDEA). [REDACTED] is a charter school which has elected the District of Columbia Public Schools (DCPS) as its local educational agency (LEA) for special education purposes.

The complainant alleged that [REDACTED] and 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 provide written notice upon refusal to evaluate a child; and failure to conduct an evaluation in an expedited manner upon a request for an evaluation during the time period in which the child is subjected to disciplinary measures. In addition, with respect to all students expelled from [REDACTED] the complainant alleged a failure to ensure that student disciplinary practices were applied in conformance with the IDEA. In reliance on a report from the District of Columbia Public Charter School Board (“PCSB”) regarding the suspension and expulsion rates of public charter schools, the complainant alleges that [REDACTED] has a practice of wrongfully suspending or expelling students with disabilities and those suspected of having a disability in violation of their rights under the IDEA. In determining appropriate remedies for the denial of required services, the IDEA regulations require the SEA to address the appropriate provision of services for all children with disabilities. 34 CFR §300.151(b)(2). OSSE relies on the findings from investigation of the alleged systemic violations to inform the

determination regarding the appropriate provision of services for all children with disabilities.

Subsequent to the filing of this complaint, the parties agreed to participate in mediation. On [REDACTED] the parties executed a mediation agreement which settled the student level allegations including, 1) whether [REDACTED] and DCPS failed to provide prior written notice upon refusal to evaluate the child; and 2) whether [REDACTED] and DCPS failed to conduct an evaluation in an expedited manner upon a request for an evaluation during the time period in which the child was subjected to disciplinary measures. Consequently, OSSE's State Complaint Office has completed its investigation of the systemic level allegation only.

This Letter of Decision is the report of the final results of OSSE's investigation.

COMPLAINT ISSUE

The allegation raised in the complaint, further clarified by a review of documents and interviews or revealed in the course of the investigation, raised the following issue under the jurisdiction of the State Complaint Office:

1. Whether [REDACTED] and DCPS failed to ensure student discipline was appropriately applied to all students with disabilities or students suspected of having a disability in conformance with the IDEA provisions at 34 CFR §§300.530 and 300.534?

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]

The investigation also included review of the following documents which were either submitted by the complainant, submitted by DCPS or [REDACTED] or accessible via the Special Education Data System (SEDS):

[REDACTED]

ISSUE ONE: SYSTEMIC NONCOMPLIANCE WITH STUDENT DISCIPLINE STANDARDS

Findings of Fact

1. For the [REDACTED] school year, the PCSB reported the following rates of students with discipline events from [REDACTED] campuses: [REDACTED] – 26%; [REDACTED] – 59%; [REDACTED] – 6%;

- █████ – 3%; ██████ – 28%; █████ – 28%; █████ – 5%; ██████ – 11%; █████ – 37%.
2. The ██████ Parent/Student Handbook contain the following language describing manifestation determination meetings: “This meeting will *not* determine the consequences issued by the school for the recent infraction, though it may inform that decision. Discipline is handled by the school administration, who will hold a separate meeting. This meeting is to determine whether recent behavior was a manifestation of the disability and to review the appropriateness of the school plan.” (emphasis added).
 3. OSSE identified 37 ██████ students who had been expelled or suspended for more than 10 school days in the ██████ school year or who were subject to a manifestation determination review.
 4. Of these 37 students, six were children with IEPs.
 5. ██████ conducted manifestation determination reviews for all six students with IEPs. In two cases, a final determination was made that the behavior was a manifestation of the student’s disability, including one case where DCPS reviewed and reversed ██████ initial decision that the behavior was not a manifestation of the child’s disability. In both cases, the child was returned to the previous placement. In four cases, the students’ behavior was determined not to be a manifestation of the disability. Three of these four students were expelled for possession of either a weapon or illegal drugs; the fourth student was suspended.
 6. Meeting notes from manifestation determination reviews conducted in the ██████ school year contain the language from the Parent/Student Handbook that the meeting will *not* determine the consequences issued by the school for the recent infraction, though it may inform that decision.
 7. ██████ staff members asserted that the LEA has a general policy of making up related services that were missed due to suspension upon the student’s return, and of allowing students who had been expelled to receive services at the school’s administrative offices until they were able to enroll in another public agency. OSSE did not find evidence of the provision of services consistent with such a policy.
 8. Each of the four students who were suspended or expelled because their conduct was deemed not to be a manifestation of their disability were required to receive related services pursuant to their IEPs. Service trackers for these four students do not show any record of services in excess of their required weekly or monthly total of services following their suspension, which might indicate the provision of make-up services. Two of these four students never received all required services in any month in the ██████ school year.
 9. OSSE attempted to contact parents of the 31 students who did not have an IEP at the time of their suspension or expulsion. OSSE was able to collect phone numbers for and made phone calls to the parents of 22 of these 31 students, and conducted phone interviews with the parents of 11 students.
 10. Seven of these 11 parents reported that they never requested an evaluation.
 11. Four of these 11 parents indicated that they did request an evaluation, but not during the course of their child’s disciplinary removal. These parents were unable to identify

the individual or individuals at [REDACTED] to whom they made the request, and each parent indicated that they made the request either in person or over the phone.

12. Seven of the 31 students without IEPs did have prior eligibility or referral documentation in SEDS. Six of these seven students had either received services as a student with a disability and were subsequently found ineligible in a prior school year, or were referred for initial evaluation and found ineligible in a prior school year.
13. One student was referred for initial evaluation in the [REDACTED] school year. On [REDACTED], the student was suspended pending possible expulsion for possession of a weapon. The student was referred and consent for the evaluation was signed on [REDACTED]. Prior written notice of an initial evaluation was issued on [REDACTED]. The student exited [REDACTED] on [REDACTED] following [REDACTED] expulsion for possession of a weapon, and enrolled in DCPS on [REDACTED].

Discussion/Conclusion

[REDACTED] and DCPS are in compliance with 34 CFR §300.530(e).

[REDACTED] and DCPS are not in compliance with 34 CFR §300.530(b)(2).

[REDACTED] and DCPS are in compliance with 34 CFR §300.534.

In addition to the allegations raised with respect to the named student, which were subsequently settled in the mediation agreement executed [REDACTED], the complainant also alleged that [REDACTED] generally does not conform to the disciplinary procedures required by the IDEA. The complainant alleges that [REDACTED] has a practice of wrongfully suspending or expelling students with disabilities and those suspected of having a disability. To investigate these claims, OSSE reviewed [REDACTED] written handbook on student discipline, gathered and analyzed data regarding manifestation determination reviews, the provision of services during disciplinary removals, and the application of protections for children who were not determined eligible prior to the behavior that precipitated a disciplinary removal. Using data previously collected for federal reporting purposes, OSSE identified 37 [REDACTED] students who had been expelled or suspended for more than 10 school days in the [REDACTED] school year, during the one year time period relevant to this state complaint investigation. Of these 37 students, six were children with IEPs. OSSE reviewed documents available in the students' SEDS files and provided by [REDACTED] and interviewed [REDACTED] staff members and parents.

[REDACTED] has elected to have DCPS serve as its LEA for purposes of the IDEA, making DCPS the LEA responsible for meeting IDEA requirements of special education students enrolled at [REDACTED] DCPS and [REDACTED] coordinate on the completion of evaluations and student discipline. For example, DCPS makes guidance on IDEA processes available to [REDACTED], tracks evaluation meetings and ensures that providers are available to perform evaluations if necessary, and when notified by the dependent charter that a manifestation determination is to be held, will send a charter liaison to manifestation determination meetings to serve as LEA representative. However, [REDACTED] still serves as the LEA for all general education issues.

Manifestation Determination Reviews

The IDEA permits school personnel to remove a child with a disability who violates a code of student conduct from [REDACTED] or [REDACTED] current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days, and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement. (34 CFR §300.530(b)(1)) A change of placement occurs if the removal is for more than 10 consecutive school days; or the child has been subjected to a series of removals that constitute a pattern because the series of removals total more than 10 school days in a school year, because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. (34 CFR §300.536(a))

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability, or if the conduct in question was the direct result of the LEA's failure to implement the IEP. (34 CFR §300.530(e)(1)) If one of the above conditions is met, the conduct is a manifestation of the child's disability. (34 CFR §300.530(e)(2)) Where a child's conduct is a manifestation of the child's disability, except in the case of removals for special circumstances (weapons, illegal drugs, serious bodily injury) the IEP Team must return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of a behavioral intervention plan. (34 CFR 300.530(f)(2))

OSSE examined the SEDS files for the six children with IEPs who were either expelled or suspended for more than ten school days and determined that in all six cases [REDACTED] timely conducted a manifestation determination. In two cases, a final determination was made that the behavior was a manifestation of the student's disability, including one case where DCPS reviewed and reversed [REDACTED] initial decision that the behavior was not a manifestation of the child's disability. In both cases, the child was returned to the previous placement. In four cases, the behavior was determined not to be a manifestation of the disability. Three of these four students were expelled for possession of either a weapon or illegal drugs; the fourth student was suspended.

With respect to the procedural requirement to hold manifestation determination reviews, OSSE concludes that the [REDACTED] school year data demonstrates that [REDACTED] is conforming to the regulatory requirement. However, OSSE notes that the following language appears both in the [REDACTED] [REDACTED] Parent/Student Handbook and in the manifestation determination meeting notes generated over the course of the [REDACTED] school year:

“This meeting will not determine the consequences issued by the school for the recent infraction, though it may inform that decision. Discipline is handled by the school administration, who will hold a separate meeting. This meeting is to determine whether recent behavior was a manifestation of the disability and to review the appropriateness of the school plan.”

This language appears to empower [REDACTED] administrators with a flexibility that they do not possess under the IDEA. Except in the case of removals for special circumstances (weapons, illegal drugs, serious bodily injury), if behavior is found to be a manifestation of the child’s disability, the IEP Team must return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of a behavioral intervention plan. (34 CFR 300.530(f)(2)) In other words, if behavior is a manifestation of the disability, the school administration does not have the ability to determine consequences which are inconsistent with the return of the child to the previous placement unless the parent consents to a change of placement as part of a BIP.

Therefore [REDACTED] and DCPS are in compliance with 34 CFR §300.530(e) for the time period of this complaint investigation, but [REDACTED] policy contradicts the requirements of 34 CFR §300.530(f)(2).

Provision of Services during Removals

After a child with a disability has been removed from [REDACTED] or [REDACTED] current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services. (34 CFR §300.530(b)(2)) As noted above, if behavior is found to be a manifestation of the student’s disability, the student must generally be returned to the previous placement, where they will continue to receive services according to their IEP. (34 CFR §§300.323(c)(2) and 300.530(f)(2)) A child with a disability who is removed for conduct which is determined not to be a manifestation of the child’s disability, or for special circumstances (weapons, illegal drugs, serious bodily injury), may be removed to another setting but must continue to receive educational services to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child’s IEP. (34 CFR §§300.530(d)(1) and 300.530(g))

[REDACTED] staff members asserted that the LEA has a general policy of making up related services that were missed due to suspension upon the student’s return, and of allowing students who had been expelled to receive services at the school’s administrative offices until they were able to enroll in another public agency. OSSE reviewed the related service trackers for the four suspended/expelled students whose IEPs required at least one related service. Although service trackers would not necessarily indicate which sessions were make-up sessions, OSSE would expect to see a student receive services in excess of their required weekly or monthly total in order for those services to be considered make-up sessions. None of the four students show any record of services in excess of their required weekly or monthly total after their

OSSE identified a seventh student that was referred for initial evaluation during the [REDACTED] school year. The student was referred and consent for the evaluation was signed on [REDACTED]. Prior written notice of an initial evaluation was issued on [REDACTED]. The student exited [REDACTED] on [REDACTED] as a result of an expulsion for possession of a weapon, behavior which took place on [REDACTED]. From the data available, it appears that this student was suspended pending possible expulsion for special circumstances on [REDACTED]. [REDACTED] received and processed a request for evaluation on [REDACTED], and took further steps to evaluate the student by issuing a prior written notice on [REDACTED]. The student enrolled in DCPS on [REDACTED]. The student's file in SEDS shows that attempts were made to schedule an eligibility meeting between [REDACTED] and [REDACTED] and a prior written notice produced on [REDACTED] which shows DCPS' refusal to proceed because the MDT determined that no further evaluations were needed since there had been no academic or behavioral concerns since [REDACTED] enrolled at DCPS.

Therefore, [REDACTED] and DCPS are in compliance with 34 CFR §300.534(d)(2)(i).

CORRECTIVE ACTION

1. In order to correct the above systemic noncompliance with 34 CFR §300.530(b)(2), and to ensure the appropriate future application of the IDEA at 34 CFR §§300.530 – 536 with respect to all children with disabilities:
 - a. Within 60 days from the date of this decision, [REDACTED] will revise the policy detailed in their Parent/Student Handbook to conform to the requirements of 34 CFR §§300.530 – 300.536. While a complete restatement of those provisions is not required, at a minimum [REDACTED] must make implement a formal policy (i) to make-up specialized instruction and related services following a student's suspension, consistent with 34 CFR 300.530(d); (ii) to provide services at its administrative offices following a student's expulsion, pending their enrollment in another public agency; (iii) that the effect of a determination that a student's behavior was a manifestation of their disability will have consequences consistent with 34 CFR §300.530(f), including return of the student to the educational placement as appropriate; and (iv) to include the requirement to proceed with an expedited evaluation consistent with 34 CFR §300.534(d). [REDACTED] or DCPS must provide a copy of the revised policy to OSSE within 65 days of the date of this decision.
 - b. Within 90 days from the date of this decision, all [REDACTED] DC principals and special education coordinators must receive training on, at a minimum, the new policy provisions required in subpart (a), above, in addition to the training stipulated by the mediation agreement executed [REDACTED]. [REDACTED] or DCPS must certify completion of the training required by this Letter of Decision within 95 days of the date of this decision.

All corrective actions must be completed by the due date specified and in no case later than one year from the date of this Letter of Decision. 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
[REDACTED], parent