



January 6, 2014

[REDACTED] Public Charter School  
[REDACTED]

RE: State Complaint No. 013-010

## 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 [REDACTED] Public Charter School ([REDACTED]) alleging violations in the special education program of [REDACTED] child, [REDACTED] (Student ID # [REDACTED]) hereinafter “student” or “child.”

The complainant alleged that [REDACTED] PCS 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 base the child’s placement on the child’s IEP; (2) failure to make special education and related services available to the child in accordance with the child’s IEP, specifically in regard to specialized instruction; (3) failure to timely notify parent of IEP meeting and indicate time and location of meeting; (4) failure to consider the use of positive behavioral interventions and supports; and (5) failure to review the child’s IEP periodically, but not less than annually. The complainant also alleged that the student was given inappropriate instructional materials however, upon interviewing the complainant clarified with the complaint investigator that her central concerns were that the student was not given appropriate grade level curriculum. The IDEA does not regulate grade-level materials, so this investigation focused on whether special education and related services were provided in accordance with the IEP.

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 [REDACTED] failed to base the child's placement on the child's IEP as required by 34 CFR §300.116(b)?
2. Whether [REDACTED] failed to make special education and related services available to the child in accordance with the child's IEP, specifically in regard to specialized instruction as required by 34 CFR §300.323(c)(2)?
3. Whether [REDACTED] failed to timely notify the parent of the IEP meeting and indicate time and location of meeting as required by 34 CFR §300.322(a) and (b)?
4. Whether [REDACTED] failed to consider the use of positive behavioral interventions and supports as required by 34 CFR §300.324(a)(2)(i)?
5. Whether [REDACTED] failed to review the child's IEP periodically, but not less than annually as required by 34 CFR §300.324(b)(i)?

**INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. Parent
2. [REDACTED]
3. [REDACTED]

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

[REDACTED]

[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. During the [REDACTED] school year, the student attended [REDACTED] Educational Campus, a school within DCPS.
4. The parent enrolled the student in the [REDACTED] online school on [REDACTED].

### **ISSUES ONE & TWO: PLACEMENT BASED ON IEP; MAKE SERVICES AVAILABLE**

#### **Findings of Fact**

1. The student's [REDACTED] IEP required provision of 24 hours per week of specialized instruction delivered outside the general education environment, 8 hours per month of behavioral support services delivered outside the general education environment, and 30 minutes per week of behavioral support services delivered within the general education environment.
2. The student's [REDACTED] IEP required provision of 5 hours per week of specialized instruction delivered outside the general education environment, 1 hour per week of behavioral support services delivered outside the general education environment, 30 minutes per week of behavioral support services consultation, and 1 hour per week of specialized instruction consultation.
3. The [REDACTED] prior written notice indicates that the student's IEP was being modified to reflect his enrollment in an online school. The PWN also noted that if the student returned to a brick and mortar school, [REDACTED] would require IEP services that were more similar to those found on the [REDACTED] IEP.
4. [REDACTED] offered the student instruction through the online program, including one hour of individualized instruction online each day, and a weekly face-to-face session at the school. Related services were scheduled during the student's weekly session on campus. This instructional schedule was in place during implementation of both the [REDACTED] IEP and the [REDACTED] IEP.
5. The [REDACTED] log of specialized instruction indicates a consistent effort to provide scheduled specialized instruction consistent with the online learning model.
6. [REDACTED] contacted or attempted to contact the parent via phone and through the school's electronic mail system more than a dozen times between [REDACTED] and [REDACTED] to review the school's online learning model, schedule a review of the student's IEP, and attempt to improve the student's attendance.

#### **Discussion/Conclusion**

[REDACTED] is in compliance with 34 CFR §§300.116(b) and 300.323(c)(2).

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)). 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 (34 CFR §300.323(c)(2)). The complainant alleges that ██████ did not provide the student with an appropriate placement or specialized instruction based on his IEP.

During the ██████ school year, the student attended ██████ Educational Campus (██████ EC), a DCPS school. The complainant enrolled the student in the ██████ online school on ██████ because ██████ thought that the student's academic performance would improve outside of a brick and mortar setting. Pursuant to 34 CFR §300.323(a), at the beginning of each school year, public agencies must have an IEP in effect for each child with a disability, and ██████ was required to provide the student with a placement based on his IEP in which it could provide the services on the ██████ IEP, or comparable services.

██████' online program serves parents who are unhappy with traditional school options and wish to have more involvement in their child's day to day instruction. As such, parents are often the designated learning coach. The parent is not always a student's learning coach, it can also be a neighbor, a retired teacher or someone else the parent designates, but it is usually the parent. The learning coach is responsible for the student's learning and must be present during virtual classroom instructional hours so that they can provide support to the student. The learning coaches are informed of their responsibilities in the Parent's Handbook which states, "Learning Coaches are expected to be full and committed partners with teachers in their children's education and must be at home each day to provide support. Students may not be left alone during school hours to complete learning activities."

When enrolled into the online program, students are typically separated into different "classrooms" by academic ability. Specialized instruction is primarily delivered through the virtual classroom by a special education teacher, and is also delivered during weekly face to face sessions at a brick and mortar location at the parent's convenience. Related services are delivered by service providers exclusively during the weekly sessions at brick and mortar locations which are scheduled at the parent's convenience.

The student's ██████ IEP was developed by DCPS while the student was enrolled in a brick-and-mortar program at ██████ EC. This IEP required 24 hours per week of specialized instruction delivered outside the general education environment, 8 hours per month of behavioral support services delivered outside the general education environment, and 30 minutes per week of behavioral support services delivered within the general education environment. Pending review of the student's ██████ IEP, ██████ offered the student instruction through the online program, including one hour of individualized instruction online each day, and a weekly face-to-face session at the school. Related services were offered

during the student's weekly session on campus.

██████ developed an IEP for the student on ██████████ which required provision of 5 hours per week of specialized instruction delivered outside the general education environment, 1 hour per week of behavioral support services delivered outside the general education environment, 30 minutes per week of behavioral support services consultation, and 1 hour per week of specialized instruction consultation. The ██████████ prior written notice indicates that the student's IEP was being modified to reflect ████████ enrollment in an online school. The prior written notice also notes that if the student returned to a brick and mortar school, ████████ would require IEP services that were more similar to those found on the ██████████ IEP.

To help determine whether the reduction in service hours for this student was based on student need, OSSE analyzed all 13 student IEPs developed for students with disabilities who attend the ████████ online program. Services delivered by the ████████ online program ranged from 10 minutes per month to 15 hours per week of specialized instruction, and from 30 minutes a week to 12 hours per week of related services. This review also indicated that the school has provided increased services for students. For example, one student was receiving 3 hours per week of specialized instruction and 1 hour per week of related services at the previous LEA, but was prescribed 15 hours per week of specialized instruction and 12 hours per week of related services at ████████ online program. Similarly, one student's specialized instruction and related service hours changed over the course of a year while enrolled in ████████ online program. This indicates that the ████████ online program individualizes services for students.

Between the day of the student's enrollment and the development of the ██████████ IEP, the ████████ online program did not offer the student a placement where ████████ could receive 24 hours per week of specialized instruction. However, this placement is not inappropriate on its face because of the change in physical location from a brick-and-mortar school to an online school. The hours of specialized instruction and related services on the ██████████ IEP were specified when the student was enrolled in a traditional brick-and-mortar program. Following a student's enrollment in a nontraditional program, an LEA should be permitted a reasonable amount of time to make necessary adjustments to instructional hours, related services, and accommodations to ensure the continued provision of FAPE. The facts do not support a finding that the student's placement in this online program, at ████████ parent's request, was inappropriate.

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

██████ has provided records sufficient to demonstrate that it attempted to contact the parent to schedule a review of the student's IEP, ensure the student's attendance at online learning sessions and face-to-face sessions on campus, and participation in mandatory testing. These records also demonstrate that ████████ consistently made instruction available, but the student

frequently missed online and face-to-face learning sessions. Given the difference between the online and brick-and-mortar programs, OSSE concludes that prior to development of the [REDACTED] IEP, [REDACTED] made available services which were comparable to those specified on the [REDACTED] IEP. Therefore, [REDACTED] is in compliance with 34 CFR §300.323(c)(2) with regard to the provision of specialized instruction.

### **ISSUE THREE: OPPORTUNITY FOR PARENTAL PARTICIPATION**

#### **Findings of Fact**

1. [REDACTED] contacted or attempted to contact the parent through the school's electronic mail system four times between [REDACTED] and [REDACTED] to schedule a review of the student's IEP.
2. On [REDACTED], [REDACTED] sent the parent a letter of invitation to the [REDACTED] meeting.
3. The [REDACTED] letter of invitation indicated it was an invitation to an IEP meeting, listed the meeting's date and time, specified that it would take place via conference call, and indicated the [REDACTED] staff members that would attend.
4. The [REDACTED] letter of invitation documented attempts to reach the parent via phone on [REDACTED] and [REDACTED] to schedule the meeting.
5. [REDACTED] reviewed the student's IEP on [REDACTED].
6. The parent did not attend the [REDACTED] IEP meeting.

#### **Discussion/Conclusion**

**[REDACTED] is in compliance with 34 CFR §300.322(a) and (b).**

Pursuant to 34 CFR §300.322(a), public agencies must take steps to ensure that the parents of a child with a disability are present at IEP meetings or afforded the opportunity to participate in IEP meetings, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agree on time and place. Parents must be provided notice which includes the meeting's purpose, time, location and who will be in attendance (34 CFR §300.322(b)).

The parent enrolled the student in the [REDACTED] online school on [REDACTED]. [REDACTED] staff members contacted or attempted to contact the parent through the school's electronic mail system four times between [REDACTED] and [REDACTED] to schedule a review of the student's IEP. On [REDACTED], [REDACTED] sent the parent a letter of invitation to an IEP meeting on [REDACTED], which included the meeting's date, time and location, and indicated the [REDACTED] staff members that would be in attendance. The [REDACTED] letter of invitation also documented attempts to reach the parent via phone on [REDACTED] and [REDACTED] to schedule the meeting.

OSSE's August 30, 2011 IEP Process Policy permits an LEA to conduct a meeting without parent participation if the LEA exercises reasonable efforts to secure the parent's agreement to

participate, and defines reasonable efforts as a minimum of three attempts using multiple modalities. [REDACTED] efforts to contact the parent and provide notice of the meeting were sufficient to satisfy the requirements present in the regulation and in OSSE's IEP Process Policy.

Therefore, [REDACTED] is in compliance with 34 CFR §300.322(a) and (b).

#### **ISSUE FOUR: CONSIDERATION OF POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS**

##### **Findings of Fact**

1. The student's [REDACTED] IEP required provision of 8 hours per month of behavioral support services delivered outside the general education environment, and 30 minutes per week of behavioral support services delivered within the general education environment.
2. A [REDACTED] behavioral intervention plan was developed for the student while [REDACTED] was still enrolled at [REDACTED] EC in DCPS. The plan's components were designed to address the student's attention-seeking and off-task behaviors.
3. Related services were scheduled during the student's weekly session on campus, but the student was regularly absent.
4. A note from an [REDACTED] behavioral services consultation indicates that the parent stated that the student did not display attention-seeking behaviors while engaged in online lessons.
5. An [REDACTED] letter from [REDACTED] to the parent notes the failure of the student to attend online instructional sessions, to attend face-to-face instructional sessions, to attend mandatory conferences, and to make consistent daily academic progress.
6. The [REDACTED] academic improvement plan concludes with a number of requirements that the parent and student must meet in order to continue the student's enrollment in the online program. These requirements include regular attendance, a written excuse in the online system for any absences, and a weekly conference with the teacher. The [REDACTED] letter is signed and dated by both the parent and a [REDACTED] administrator.
7. An [REDACTED] letter from [REDACTED] to the parent notes the failure of the student to attend mandatory benchmark testing.
8. A [REDACTED] letter from [REDACTED] to the parent notes the failure of the student to attend online instructional sessions, to attend face-to-face instructional sessions, to attend a makeup session for mandatory benchmark testing, and to make consistent daily academic progress according to the Academic Improvement Plan dated [REDACTED].
9. [REDACTED] contacted or attempted to contact the parent via phone and through the school's electronic mail system more than a dozen times between [REDACTED] and [REDACTED] to review the school's online learning model, schedule a review of the student's IEP, and attempt to improve the student's attendance.

10. [REDACTED] staff members reported that, while it was difficult to ensure the student's attendance, the student did not display the behavior targeted by the [REDACTED] BIP.

### **Discussion/Conclusion**

**[REDACTED] is in compliance with 34 CFR §300.324(a)(2).**

Pursuant to 34 CFR §300.324(a)(2), the IEP Team must in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavior interventions and supports, and other strategies, to address that behavior. The student's [REDACTED] IEP required the provision of behavioral support services, but the student was consistently absent from these sessions. A [REDACTED] behavioral intervention plan (BIP) was developed for the student while [REDACTED] was enrolled at [REDACTED] EC, a DCPS school, to address the student's attention-seeking and off-task behaviors. However, [REDACTED] staff members reported that the student did not display the behaviors targeted by the BIP. Notes from an [REDACTED] behavioral support consultation indicate that the parent agreed that the student did not display these behaviors when completing coursework online. OSSE cannot conclude that [REDACTED] failed to implement the [REDACTED] BIP when it appears that the student was not displaying the behavior identified in the BIP while [REDACTED] was attending classes online.

Letters from [REDACTED] to the parent note that the student failed to attend his daily online classes and weekly face-to-face sessions. Chronic student absences can rise to the level of a behavior problem that an IEP Team should consider addressing via the use of positive behavior interventions and supports. However, it appears that [REDACTED] concluded that the student's chronic absences were related to the parent's failure to respond to emails and phone messages, and to participate in scheduled conference calls with the teacher, rather than an expression of a behavior problem on behalf of the student. This conclusion is supported by the communication logs provided by [REDACTED] that document more than a dozen attempts to contact the parent over a two-month period to review the school's learning model, schedule a review of the student's IEP, and attempt to improve the student's attendance. OSSE has not identified facts sufficient to conclude that [REDACTED] should have attributed the student's chronic absences to a behavior problem and convened an IEP Team meeting to consider the use of positive behavioral interventions and supports to address the behavior.

Therefore, [REDACTED] is in compliance with 34 CFR §300.324(a)(2).

### **ISSUE FIVE: ANNUAL IEP REVIEW**

#### **Findings of Fact**

1. DCPS developed an IEP for the student on [REDACTED] while [REDACTED] was a student at [REDACTED] EC.
2. The student's previous IEP was due for review on or before [REDACTED].
3. [REDACTED] developed an IEP for the student on [REDACTED].

**Discussion/Conclusion**

██████████ is in compliance with 34 CFR §300.324(b)(1)(i).

Pursuant to 34 CFR §300.324(b)(1)(i), each public agency must ensure that the IEP Team reviews the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. The complainant alleged that ██████████ failed to properly review the IEP because it failed to hold a 30-day review meeting. The IDEA regulations do not require a 30 day review of an IEP upon a student’s transfer. The regulations at 34 CFR §§300.323(e) and (f) describe requirements with respect to IEPs for students who transfer public agencies in the same State and IEPs for children who transfer from another State and require the new public agency to implement the IEP from the previous public agency until the new public agency either adopts it or develops a new one. This review, however, need not occur within 30 days.

The student’s previous IEP was developed on ██████████ and was due for annual review on or before ██████████. ██████████ convened an IEP team meeting to review the student’s IEP on ██████████, one day before the annual review deadline.

Therefore, ██████████ is in compliance with 34 CFR §300.324(b)(1)(i).

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: ██████████, complainant