



January 6, 2014

[REDACTED]
[REDACTED] Public Charter School

RE: State Complaint No. 013-011

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 [REDACTED] Public Charter School ([REDACTED]), alleging violations in the special education program of [REDACTED], [REDACTED] (Student ID # [REDACTED])

The complainant alleged that [REDACTED] 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 [REDACTED] failed to make special education and related services available to the child in accordance with the child’s IEP, failed to provide assistive technology in accordance with the child’s IEP, and failed to base the child’s placement on [REDACTED] 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 make available special education and related services in accordance with the student’s IEP, as required by 34 CFR §300.323(c)(2)?
2. Whether [REDACTED] failed to provide assistive technology in accordance with the child’s IEP, as required by 34 CFR §300.105?
3. Whether [REDACTED] failed to base the student’s placement on [REDACTED] IEP, as required by 34 CFR §300.116(b)(2)?



INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

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

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 specific learning disability.
3. [REDACTED] Public Charter School is the student’s LEA.
4. The student attends [REDACTED] School.

ISSUES ONE AND TWO: SPECIAL EDUCATION AND RELATED SERVICES AND ASSISTIVE TECHNOLOGY

Findings of Fact

1. The [REDACTED] amended IEP required provision of 27 hours per week of specialized instruction outside the general education setting, one hour per week of speech-language services delivered outside the general education setting, two hours per week of behavioral support services delivered outside the general education setting, and one hour per week of occupational therapy delivered outside the general education setting.
2. Under Other Classroom Aids and Services on the IEP it states “laptop computer or notepad device that will accommodate Dragon Naturally Speaking Premium, Version 11 (Windows 7/Vista/2000/XP. This software has been provided by [REDACTED] [REDACTED].”
3. The original understanding when the assistive technology was added to the student’s IEP was that the LEA would provide the laptop computer or notepad device and that [REDACTED] would provide the software.
4. The student’s LEA for the [REDACTED] school year provided a laptop for the student to use at the nonpublic school.
5. The student was enrolled in a new LEA, [REDACTED], for the [REDACTED] school year.
6. The Complainant communicated via email on [REDACTED]; and

- ██████████ with ██████████ special education coordinator (SEC) about her concern that her son did not have a laptop and was not in compliance with ██████████ IEP.
7. The complainant requested an IEP team meeting via email on ██████████.
 8. The ██████████ SEC stated in a ██████████ email that an IEP team meeting would not be held until the student's current IEP expired on ██████████.
 9. ██████████ has not provided the student with a laptop computer or notepad device.
 10. The student is able to access the Dragon Naturally Speaking software on the classroom computers at ██████████.
 11. ██████████ first communicated with ██████████ ██████████ about the student's educational programming upon the filing of this complaint.
 12. The student is receiving specialized instruction, speech-language services, behavioral support services, and occupational therapy according to ██████████ IEP.

Discussion/Conclusion

██████████ is not in compliance with 34 CFR §300.323(c)(2).

██████████ is not in compliance with 34 CFR §300.105.

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 public agency must also ensure that assistive technology devices and/or assistive technology services are made available to a child with a disability if required as a part of the child's special education or related services. (34 CFR §300.105.) An assistive technology device includes any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capabilities of a child with a disability. (34 CFR §300.5.) Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. This includes purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities. (34 CFR §300.6.) The complainant alleges that the student does not have access to the assistive technology listed on ██████████ IEP, specifically that the student does not have a laptop computer to enable him to use the Dragon Naturally Speaking software during class.

Although the student attends and receives services at ██████████ ██████████ ██████████ is the student's LEA and is ultimately responsible for ensuring that the student receives special education and related services in accordance with ██████████ IEP. During the ██████████ school year, the student's previous LEA provided a laptop for the student to use at ██████████ ██████████. After enrolling the student in a new LEA, ██████████, for the ██████████ school year, the parent contacted the SEC to make sure that the student would have the laptop computer ██████████ needed as identified on ██████████ IEP. The parent also requested an IEP team meeting. The SEC did not give an answer in regard to the laptop computer, but stated that ██████████ would not hold an IEP team meeting until the annual review date the following May ██████████ OSSE notes that while LEAs are not required to schedule meetings upon parental request, the U.S. Department of Education, Office of Special Education Programs (OSEP) has provided guidance stating that public agencies should grant any reasonable request for such a meeting. (*Notice of Interpretation*, Appendix A to 34 CFR Part 300, Question 20, 64 Fed. Reg. 12476 (Mar 12, 1999)). In this case, the parent's request for an IEP meeting appears to have been reasonable, and ██████████ should have convened the IEP team meeting as requested.

After failing to resolve her concerns with the SEC, the parent filed this State complaint. During the investigation OSSE learned that the SEC with whom the parent had been communicating is no longer employed by ██████████ and that a new SEC has been hired. Upon notification from OSSE of this State complaint, the new SEC has been in contact with ██████████ ██████████ to ensure that the student is receiving all services according to ██████████ IEP. The complainant's allegations focused on assistive technology, and did not raise concerns about the student's receipt of other special education services. OSSE's review of service trackers and interviews confirmed that the student is receiving the remainder of ██████████ special education services as written on ██████████ IEP. ██████████ ██████████ further reported that the student is able to access the Dragon Naturally Speaking software on the new classroom computers the school has this school year and thus has access to the software ██████████ is entitled to on the IEP. However, the IEP states that the student will be provided with a laptop. If the current educational setting and equipment provided make the laptop unnecessary, the LEA must convene the IEP team and update the student's IEP. If the laptop is still necessary for the student, then the LEA must provide it without delay.

Therefore, ██████████ is not in compliance with 34 CFR §§300.323(c)(2) and 300.105.

ISSUE THREE: PLACEMENT BASED ON IEP

Findings of Fact

1. The ██████████ amended IEP required provision of 27 hours per week of specialized instruction outside the general education setting, one hour per week of speech-language services delivered outside the general education setting, two hours per week of behavioral support services delivered outside the general education setting, and one hour per week of occupational therapy delivered outside the general education setting.
2. The student attends a special education nonpublic school.

Discussion/Conclusion

██████████ 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 IEP is not being implemented as it is written in the school setting. As the student's LEA, ██████████ is responsible for ensuring that the student's placement is based on the student's IEP and that both the IEP and placement are reviewed at least annually to ensure that they continue to reflect the student's needs.

The ██████████ amended IEP required provision of 27 hours per week of specialized instruction, one hour per week of speech-language services, two hours per week of behavioral support services, and one hour per week of occupational therapy, all delivered outside the general education setting. The student attends a nonpublic school, ██████████ ██████████, which provides a full time special education setting and appears to be able to implement the student's IEP. The student's previous LEA decided that the nonpublic school was the most appropriate setting. ██████████ can maintain that placement until the next required annual review of the child's placement and at that time must

determine whether the nonpublic school continues to be the least restrictive environment that meets the student's needs. If the parent has any concerns about the appropriateness of the student's placement she can request an IEP team meeting to discuss the student's placement.

Therefore, [REDACTED] is in compliance with 34 CFR §300.116(b).

CORRECTIVE ACTION

[REDACTED] is required to take the following actions:

1. To correct noncompliance associated with 34 CFR §§300.323 and 300.105, [REDACTED] must:
 - a. Convene an IEP team meeting to review the student's IEP and ensure that the student has access to the assistive technology as written on [REDACTED] IEP, or update the IEP as necessary. The IEP team must address any other outstanding concerns the parent has. The meeting must be held by [REDACTED].
 - b. By [REDACTED], [REDACTED] must develop a policy for monitoring students who are enrolled in their LEA and attend a nonpublic school. The policy must include how [REDACTED] monitors the nonpublic school to ensure that students are receiving services according to their IEPs and how [REDACTED] maintains contact with the parents of students who attend nonpublic schools.

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