



June 27, 2014

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 013-018

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] (complainant) against District of Columbia Public Schools (DCPS) alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter "student" or "child.")

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 make specialized instruction available in accordance with IEP, specifically in regard to specialized instruction delivered in the correct setting and implementation of the student's behavior intervention plan; and (2) failure to base the child's placement on 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. 34 CFR §300.323(c)(2)
 - a. Failure to make specialized instruction available in accordance with the IEP, specifically in regard to specialized instruction delivered in the correct setting and implementation of the student's behavior intervention plan.
2. 34 CFR §300.116(b)(2)
 - a. Failure to base the child's placement on the IEP.



INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

- 1. Parent
- 2. DCPS [REDACTED]
- 3. DCPS [REDACTED]
- 4. DCPS [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 other health impairment.
- 3. The student’s LEA is DCPS.
- 4. The student attends [REDACTED] Elementary School.

ISSUE ONE: SPECIAL EDUCATION AND RELATED SERVICES

Findings of Fact

- 1. The student’s [REDACTED] IEP prescribed 7 hours per week of specialized instruction in the general education setting, 19 hours per week of specialized instruction outside the general education setting, and 240 minutes per month of behavioral support services outside the general education setting.
- 2. The student’s [REDACTED] IEP prescribes 5 hours per week of specialized instruction in the general education setting, 21 hours per week of specialized instruction outside

the general education setting, and 240 minutes per month of behavioral support services outside the general education setting.

3. The student spent the full school day in a self-contained special education classroom from the beginning of the [REDACTED] school year until [REDACTED].
4. After [REDACTED], the student began transitioning into a general education classroom for 5 hours per week.
5. Office discipline referral forms were filled out for incidents that occurred on [REDACTED]; and [REDACTED].
6. The [REDACTED] BIP included behavior tracked by stickers, staff-accompanied breaks, noise-canceling headphones, visiting instruction, coping skills cards, daily conference with teacher, de-escalation techniques by staff and phone call to parent to help calm student when needed, shortened and repeated directions, use of timer for each activity, verbal Non-violent Physical Crisis Interventions, and phone call to parent during calm times and times of academic success.
7. The [REDACTED] BIP included behavior tracked by stickers, daily conference with teacher, phone call to parent to help calm student when needed, and removal from the classroom when the student becomes unsafe to [REDACTED] or others.
8. The classroom-wide behavior management system includes sticker sheets to track behavior, daily individual conferences with teacher on each student's behavior that day, and notes sent home to parents on the student's behavior.

Discussion/Conclusion

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

Pursuant to 34 CFR §300.323(c)(2), each public agency must make available special education and related services in accordance with the student's IEP. The complainant alleges that the school is not implementing the student's BIP and that the student is not receiving all of [REDACTED] specialized instruction in the correct setting.

Specialized Instruction

The student's [REDACTED] IEP, which was in effect at the beginning of the [REDACTED] school year, prescribed 7 hours per week of specialized instruction in the general education setting, 19 hours per week of specialized instruction outside the general education setting, and 240 minutes per month of behavioral support services outside the general education setting. The student's IEP was reviewed and updated on [REDACTED] to 5 hours per week of specialized instruction in the general education setting, 21 hours per week of specialized instruction outside the general education setting, and 240 minutes per month of behavioral support services outside the general education setting. The complainant alleges that at the [REDACTED] IEP team meeting [REDACTED] was informed that the student was not transitioning into the general education setting for 7 hours per week, but rather spent the entire school day in a self-contained special education classroom. Interviews with [REDACTED] staff confirmed that this was the case. From the beginning of the [REDACTED] school year the student spent the entire school

day in a self-contained classroom and all of the student's specialized instruction was provided in this setting. The student's IEP was not being implemented as written from the beginning of the [REDACTED] school year until [REDACTED]. After the [REDACTED] IEP team meeting, the student began transitioning into a general education classroom for 5 hours per week as required by [REDACTED] updated IEP.

Implementation of BIP

The student's [REDACTED] BIP was in effect at the beginning of the [REDACTED] school year. This BIP included the following interventions: behavior tracked by stickers, staff-accompanied breaks, noise-canceling headphones, visiting instruction, coping skills cards, daily conference with teacher, de-escalation techniques by staff and phone call to parent to help calm student when needed, shortened and repeated directions, use of timer for each activity, verbal Non-violent Physical Crisis Interventions, and phone call to parent during calm times and times of academic success. The student's BIP was updated on [REDACTED]. The updated BIP reduced and simplified the interventions, leaving only the behavior tracked by stickers, daily conference with teacher, phone call to parent to help calm student when needed, and removal from the classroom when the student becomes unsafe to [REDACTED] or others. The complainant alleges that [REDACTED] is not being called for all incidents and that the school is not consistently following through with the interventions listed on the student's BIP.

During the interview, the student's special education teacher expounded upon how the student's BIP is incorporated into the classroom-wide behavior management system. All students have a sheet on which they track their behavior with stickers by adding a sticker when they follow the classroom rules. Once a student fills up one sheet, they receive an entry in a biweekly drawing for a prize. Students have a one-on-one conference with the teacher at the end of each day to discuss their behavior. A note describing the student's behavior that day is sent home with each student. The student has had four incidents this school year that required a written incident report. One of the adults specified on the BIP (mother, father, or grandmother) was called for each incident. The [REDACTED] reported that there were no other behavior incidents that required a written report or for which the parent should have been called but was not. Although the parent expressed concern that [REDACTED] was not being called as often as [REDACTED] should be, [REDACTED] did not provide any specific dates or incidents for which [REDACTED] believed that [REDACTED] should have received a phone call. The record indicates that the school is implementing the student's [REDACTED] BIP; however when asked about the other interventions listed on the [REDACTED] BIP, the [REDACTED] reported that they were not strategies she used with the student from the beginning of the [REDACTED] school year until the BIP was updated on [REDACTED].

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

ISSUE TWO: PLACEMENT IN THE LRE

Findings of Fact

1. The student's [REDACTED] IEP prescribed 7 hours per week of specialized instruction in the general education setting, 19 hours per week of specialized instruction outside the general education setting, and 240 minutes per month of behavioral support services outside the general education setting.
2. The student's [REDACTED] IEP prescribes 5 hours per week of specialized instruction in the general education setting, 21 hours per week of specialized instruction outside the general education setting, and 240 minutes per month of behavioral support services outside the general education setting.
3. The student's self-contained special education classroom has 10 first and second grade special education students with a variety of disability categories.
4. The student's general education classroom has 18 second grade students, 5 of which are special education students.
5. The student spent the full school day in a self-contained special education classroom from the beginning of the [REDACTED] school year until [REDACTED].
6. After the [REDACTED] IEP team meeting, the student began transitioning into a general education classroom for 5 hours per week.
7. The student attends the general education class from 9:30 – 10:30am daily. During that time the class has read aloud time and their first station rotation.

Discussion/Conclusion

DCPS is not in compliance with 34 CFR §300.116(b)(2).

Pursuant to 34 CFR §300.116(b)(2), the student's placement must be based on the student's IEP. This provision additionally requires at 34 CFR §300.116(d) that consideration must be given to any potential harmful effect on the student or on the quality of services that he or she needs. The complainant alleges that the student is not transitioning into the general education setting as prescribed by [REDACTED] IEP.

The student's [REDACTED] IEP prescribed 7 hours per week of specialized instruction in the general education setting, 19 hours per week of specialized instruction outside the general education setting, and 240 minutes per month of behavioral support services outside the general education setting. From the beginning of the [REDACTED] school year the student spent the entire school day in a self-contained classroom of 10 first and second grade special education students with a variety of disability categories. At the [REDACTED] IEP team meeting the parent learned that the student was not transitioning into the general education setting for 7 hours per week as prescribed by [REDACTED] IEP. At the meeting the student's IEP was updated to prescribe 5 hours per week of specialized instruction in the general education setting, 21 hours per week of specialized instruction outside the general education setting, and 240 minutes per month of behavioral support services outside the general education setting. After that meeting the student began attending a general education classroom of 18 students, 5

of which are special education students, from 9:30 – 10:30am daily. During this time the class has read aloud time and their first station rotation. The [REDACTED] reported that overall the student has been doing well in the transition and has not had any major behavioral incidents. The [REDACTED] reported that this change was made due to a recommendation from herself and the behavior support supervisor to the IEP team that the student was ready to start transitioning into a general education setting. Although the school staff reported that they made placement decisions based on the student's needs, the IEP team should have been convened at the beginning of the [REDACTED] school year to update the IEP if the student's needs necessitated [REDACTED] spending the entire day in a self-contained special education classroom.

Therefore, DCPS is not in compliance with 34 CFR §300.116(b)(2).

CORRECTIVE ACTION

DCPS is required to take the following actions:

1. To correct noncompliance with 34 CFR §300.323(c)(2) and §300.116(b)(2), DCPS must:
 - a. Train school special education staff on its obligation to implement student's IEPs as written and to convene the IEP team to amend the IEP if the student's placement requires reconsideration.
 - b. DCPS must convene a meeting at a time and location convenient to the parent and determine how many hours of compensatory services are appropriate for the student, specifically in the form of behavioral support services or a summer program to address behavior and social skills development. If DCPS and the parent do not reach agreement, DCPS must offer the student a minimum of 50 hours of behavioral support compensatory services. DCPS must convene the meeting within 60 days of the date of this decision, and provide proof of the meeting and offer of services to OSSE by [REDACTED].

All corrective actions must be completed by the date specified above, but in no case later than one year from the date of this letter. If you have any questions regarding this decision, please contact Victoria Glick, Manager, State Complaints, at victoria.glick@dc.gov or 202-724-7860.

Sincerely,

Amy Maisterra, Ed.D., MSW
Assistant Superintendent for Specialized Education

cc: [REDACTED], parent