



July 11, 2014

[REDACTED]
Public Charter School
[REDACTED]

RE: State Complaint No. 013-019

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 [REDACTED] Public Charter School ([REDACTED] alleging violations in the special education program of [REDACTED] [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 ensure parent participation in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to the child; and (2) failure to follow the proper discipline procedures with regard to a manifestation determination and provision of educational services.

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 §300.501(b)
 - a. Failure to ensure parent participation in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to the child.
2. 34 CFR §300.300(b)
 - a. Failure to obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.



3. 34 CFR §300.530

- a. Failure to follow the proper discipline procedures with regard to a manifestation determination and provision of educational services.

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. The student's LEA is [REDACTED]

ISSUES ONE AND TWO: PARENT PARTICIPATION AND CONSENT FOR SERVICES

Findings of Fact

1. The student was determined eligible for special education and related services under the disability category of specific learning disability on [REDACTED].
2. The student's initial IEP was developed on [REDACTED].
3. The [REDACTED] letter of invitation ("LOI") proposed [REDACTED] or [REDACTED] as dates for the student's annual IEP review meeting.
4. The [REDACTED] LOI proposed [REDACTED] or [REDACTED] as dates for the student's annual IEP review meeting.
5. The [REDACTED] LOI proposed [REDACTED] as the date for the student's annual IEP review meeting.
6. An IEP team meeting was held on [REDACTED].
7. A special education teacher, general education teacher, special education coordinator, transition coordinator, and guidance counselor attended the [REDACTED] meeting; the parent did not attend the meeting.
8. The student's [REDACTED] IEP prescribes 25 hours per week of specialized instruction outside the general education setting.
9. A meeting regarding the disciplinary incident was held [REDACTED]. The parent, the student, the special education coordinator, and the dean of students attended that meeting.

Discussion/Conclusion

[REDACTED] is in compliance with 34 CFR §300.501(b). [REDACTED] is not in compliance with 34 CFR §300.300(b).

Pursuant to 34 CFR §300.501(b), the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to the child. The IDEA also requires that after a student is found eligible for special education services, parents must provide consent for the initiation of special education services. (34 CFR §300.300(b)). The complainant alleges that [REDACTED] never received the results of the student's initial evaluation and IEP.

A state complaint must allege a violation that occurred not more than one year prior to the date the complaint was filed. (Pursuant to 34 CFR 300.153(c)). The complainant stated that when [REDACTED] was provided with a copy of the student's IEP at the [REDACTED] meeting it was the first time [REDACTED] had seen the student's IEP and the first time [REDACTED] learned that the student qualified for special education and related services under the disability category of specific

learning disability. The parent asserted that [REDACTED] was never informed of or invited to any meetings pertaining to the student's eligibility determination or review of [REDACTED] IEP. The student's initial evaluation and IEP development occurred on [REDACTED] and fall outside the timeline for this investigation. The record reflects that, with the exception of the disciplinary meetings addressed below, only one meeting was held during the investigation timeline in which the student's identification, evaluation, educational placement, or provision of FAPE were discussed. This meeting was held on [REDACTED] and was an annual IEP review meeting.

Consent for Services

Pursuant to 34 CFR §300.300(b), a public agency must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. The IDEA defines consent as "agreement in writing to the carrying out of the activity for which...consent is sought." (34 CFR §300.9 (b)). [REDACTED] staff reported receiving consent by phone for the initiation of special education services, but consent by phone does not meet the IDEA definition of consent. There is no documentation available in SEDS and [REDACTED] could not produce documentation that the parent provided written consent for initial services after the student was determined eligible for special education and related services by [REDACTED] on [REDACTED]. While the initial noncompliance occurred outside of the timeline, [REDACTED] failure to obtain initial consent for services and continued provision of services constitutes a continuing violation of 34 CFR §300.300(b).

Parent Participation in IEP Meeting

The IDEA requires public agencies to take steps to ensure parent participation in IEP team meetings, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. 34 CFR §300.322(a). If neither parent can attend the meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls. 34 CFR §300.322(c). A public agency can hold a meeting without a parent if the public agency is unable to convince the parents that they should attend, but must record attempts to arrange a mutually agreed upon time and place such as: detailed records of telephone calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or place of employment. 34 CFR §300.322(d).

On [REDACTED] [REDACTED] sent an LOI proposing 3 meeting dates for the student's annual IEP review meeting on [REDACTED]; or [REDACTED]. Another LOI was sent on [REDACTED] proposing meeting dates of [REDACTED]; or [REDACTED]. A final LOI was sent on [REDACTED] proposing a meeting date of [REDACTED]. [REDACTED] staff made reminder phone calls to the parent on the dates of the proposed IEP team meetings on [REDACTED]; [REDACTED]; and [REDACTED]. [REDACTED] received no response from the parent and proceeded with the IEP team

meeting on [REDACTED]. The meeting attendees included the student's special education teacher, general education teacher, special education coordinator, transition coordinator, and guidance counselor. [REDACTED] attempted to ensure the parent's participation at the student's [REDACTED] IEP team meeting by proposing multiple meeting dates, mailing LOIs home, and following up with phone calls. After receiving no response from the parent, [REDACTED] moved forward with the student's scheduled IEP team meeting. The parent did not request an alternative meeting date or another means of participation.

Therefore, [REDACTED] is in compliance with 34 CFR §300.501(b), but not in compliance with 34 CFR §300.300(b).

ISSUE THREE: DISCIPLINE PROCEDURES

Findings of Fact

1. The student's [REDACTED] IEP prescribes 25 hours per week of specialized instruction outside the general education setting.
2. The student brought a weapon to school on [REDACTED].
3. A Notice of Intent to Expel was sent home to the parent on [REDACTED]. The notice stated that the student would be suspended from [REDACTED] and that a manifestation disability review (sic) meeting would be held on [REDACTED].
4. A meeting regarding the disciplinary incident was held [REDACTED]. The parent, the student, the special education coordinator, and the dean of students attended that meeting.
5. Home-based instruction services began [REDACTED].
6. A meeting was held [REDACTED]. The parent, the student, and the assistant principal attended the entire meeting; the special education coordinator attended part of the meeting.
7. A Notice of Expulsion was sent home to the parent on [REDACTED]. The notice stated that the student would receive nine hours per week of home-based instruction until the end of the school year.
8. [REDACTED] was on spring break from [REDACTED].
9. [REDACTED] last day of school for the [REDACTED] school year was [REDACTED].
10. The student was in an interim alternative setting for 51 school days following [REDACTED] suspension that led to expulsion.
11. The student's final grades for the [REDACTED] school year are: Advanced Food I – C, Algebra II & Trigonometry – D, Barbering II – D, Chemistry I – C, Consumer Mathematics – C, English III – B, Spanish II – B, and US History I – B.

Discussion/Conclusion

[REDACTED] is not in compliance with 34 CFR §300.530.

Pursuant to 34 CFR §300.530, within 10 school days of the decision to change the placement of a child with a disability due to a violation of a code of student conduct, each public agency must

determine whether the conduct in question was a manifestation of the child's disability and continue to provide services to the child. The complainant alleges that the student's expulsion was inappropriate.

Manifestation Determination Review

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 child's IEP team must review all relevant information 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). On [REDACTED] the student brought a weapon to school. The school sent home a notice that the student would be suspended from [REDACTED] and that the student was being recommended for expulsion. The notice stated that a manifestation disability review meeting would be held on [REDACTED]. The parent and student attended the meeting scheduled for [REDACTED]. The school's special education coordinator and dean of students also attended the meeting. The meeting participants discussed the disciplinary incident, but did not discuss whether it was a manifestation of the student's disability. [REDACTED] reported that the manifestation determination was not made because the relevant members of the student's IEP team were not available. To date, the student's IEP team has not made a determination as to whether the student's conduct was caused by or had a direct and substantial impact to the child's disability or if the conduct was the direct result of the school's failure to implement the student's IEP.

In its response, [REDACTED] asserts that a manifestation determination was not required because the student's removal was for fewer than 45 days. Pursuant to 34 CFR §300.530(g), in cases where "special circumstances" are present, school personnel may remove a student to an interim alternative educational setting for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability. Special circumstances are defined to include cases in which the child carries a weapon to or possesses a weapon at school. (34 CFR §300.530(g)(1))

OSSE does not interpret the IDEA's "special circumstances" provision to obviate the need to hold a manifestation determination meeting. Rather, the special circumstances provision allows LEAs some flexibility with the provision at (34 CFR §300.530(f)(2)) which regulates the return of the student from which he or she was removed in cases where the behavior was a manifestation of the student's disability.

Section 34 CFR §300.530(g) provides that a 45 day change of placement may be made, "without regard to whether the behavior is determined to be a manifestation of the child's disability." (34 CFR §300.530(g)) The plain language of the regulation implies that a manifestation determination was made. The key difference when dealing with special circumstances under 34

CFR §300.530(g), is that unlike the requirement for routine disciplinary removals at 34 CFR §300.530(f)(2), when special circumstances are present, the school is not required to immediately return the student to the setting from which he or she was removed even if the behavior is found to be a manifestation of the student's disability. Instead, where special circumstances are present, the school may keep the student in an interim alternative education setting (IAES) for up to 45 days. The US Department of Education clarified the requirement to conduct manifestation determinations in a 2009 Question and Answers on Discipline Procedures by stating that LEAs must conduct a manifestation determination when there is a violation under 34 CFR §300.530(g).¹ [REDACTED] was required to hold a manifestation determination review meeting despite being allowed to remove the student to an interim alternative educational setting for up to 45 days because the student brought a weapon to school.

Interim Alternative Educational Setting and Educational Services

After a child with a disability has been removed from his or her current placement for 10 school days, the public agency must provide services. 34 CFR §300.530(b)(2). If the removal is a change of placement, the IEP team determines the appropriate services to enable the child to continue to participate in the general education curriculum and to progress toward meeting the IEP goals. 34 CFR §300.530(d).

The student began receiving home-based instruction on [REDACTED]. [REDACTED] was on spring break from [REDACTED] so students were not receiving instruction during that time. The student had been removed for nine in-session school days before services started. On [REDACTED] [REDACTED] the parent and student met with [REDACTED] assistant principal to discuss the school's recommendation to expel the student. Following the meeting, [REDACTED] issued a notice on [REDACTED] [REDACTED] that the student was expelled. The notice stated that the student would continue to receive nine hours per week of home-based instruction for the remainder of the school year. The assistant principal, in consultation with the special education coordinator, determined what services the student would receive while removed from [REDACTED] regular placement. The student's [REDACTED] IEP prescribes 25 hours per week of specialized instruction outside the general education setting. The assistant principal and special education coordinator took the student's IEP into consideration when deciding what educational services the student would receive, but the decision was not made by the student's IEP team as required by 34 CFR §300.530(d). Although this constitutes a procedural violation of the IDEA, the services provided to the student allowed [REDACTED] to continue to progress in the general education curriculum and the student passed all of [REDACTED] classes for the [REDACTED] school year.

From [REDACTED] until the last day of school on [REDACTED], the student missed a total of 51 in-session school days, which exceeds the 45 school days allowed for an interim alternative

¹ US Department of Education, Questions and Answers on Discipline Procedures (June 2009) at F-4.

educational setting due to possession of a weapon at school under 34 CFR §300.530(g)(1). [REDACTED] staff stated in an interview and confirmed via email that the student is allowed to enroll at [REDACTED] for the [REDACTED] school year, so the student's removal will not extend past the last day of the [REDACTED] school year.

Therefore, [REDACTED] is not in compliance with 34 CFR §300.530 for failure to hold a manifestation determination review meeting, failure to make decisions on the student's interim alternative educational setting and services with the IEP team, and for removing the student to an interim alternative educational setting for more than 45 school days.

CORRECTIVE ACTION

[REDACTED] is required to take the following actions:

1. To correct noncompliance with 34 CFR §300.300(b), [REDACTED] must:
 - a. Convene a meeting at a time and location convenient to the parent to obtain the parent's consent for services and explain the student's current IEP services to the parent. [REDACTED] PCS must convene the meeting within 60 days of the date of this decision.
 - b. Train special education staff on the evaluation process including the requirement to obtain parental consent for initial provision of services. The training must be completed within 120 days of the date of this decision.
2. To correct noncompliance with 34 CFR §300.530, [REDACTED] must:
 - a. 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. If [REDACTED] PCS and the student do not reach agreement, [REDACTED] PCS must offer the student a minimum of 20 hours of compensatory instruction. [REDACTED] PCS must convene the meeting within 60 days of the date of this decision.

All corrective actions must be completed by the dates 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
Avni Patel, PCSB