



January 12, 2015

[REDACTED]
[REDACTED] Public Charter School
[REDACTED]

RE: State Complaint No. 014-006

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] (complainants) against [REDACTED] Public Charter School (PCS) alleging violations in the special education program of their [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, failure to provide special education and related services to the child in accordance with the child’s IEP, and failure to revise the IEP as appropriate to address the student’s anticipated needs, specifically with respect to educational needs resulting from [REDACTED] medical condition.

The complainant also raised concerns regarding improper use of teacher authority and maltreatment at the expense of their [REDACTED] (Student ID # [REDACTED]. The complainant also raised concerns that the LEA violated the civil rights of [REDACTED]. OSSE did not investigate these concerns as the State Complaints Office is limited to investigating complaints alleging a failure to provide a free and appropriate public education (FAPE).

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 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 provide special education and related services to the child in accordance with the child's IEP.
2. 34 CFR §300.324(b)(ii)(D)
 - a. Failure to revise the IEP as appropriate to address the student's anticipated needs, specifically with respect to educational needs resulting from [REDACTED] medical condition.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

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

The investigation also included review of the following documents which were either submitted by the complainant, submitted by [REDACTED] PCS, 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 multiple disabilities.
3. The student's LEA is [REDACTED] PCS.

ISSUE ONE: PROVIDE SERVICES

Findings of Fact

1. The student's [REDACTED] IEP prescribed 10 hours per week of specialized instruction outside the general education setting, 60 minutes per week of speech-language pathology services outside the general education setting, 60 minutes per week of occupational therapy services outside the general education setting, and 60 minutes per week of behavioral support services outside the general education setting.
2. The student's [REDACTED] IEP prescribes 10 hours per week of specialized instruction outside the general education setting, 60 minutes per week of speech-language pathology services outside the general education setting, 60 minutes per week of occupational therapy services outside the general education setting, and 60 minutes per week of behavioral support services outside the general education setting.
3. [REDACTED] PCS provided all occupational therapy service hours required by the student's IEP from [REDACTED] to [REDACTED].
4. [REDACTED] PCS provided all speech-language pathology service hours required by the student's IEP from [REDACTED] to [REDACTED].
5. [REDACTED] PCS did not provide all behavioral support service hours required by the student's IEP from [REDACTED] to [REDACTED].
6. The student's special education teacher provides all specialized instruction hours required by the student's IEP.

Discussion/Conclusion

[REDACTED] PCS is not in compliance with 34 CFR §§300.323(c)(2), 300.211, 300.600(d), 300.601(b), and the OSSE LEA Data Management Policy.

Pursuant to 34 CFR §300.323(c)(2), as soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP. The complainant alleges that [REDACTED] PCS did not fulfill the services in the student's IEP.

The student's [REDACTED] IEP prescribed 10 hours per week of specialized instruction outside the general education setting, 60 minutes per week of speech-language pathology services outside the general education setting, 60 minutes per week of occupational therapy services outside the general education setting, and 60 minutes per week of behavioral support services outside the general education setting. The student's IEP was updated on [REDACTED] and no changes were made to the prescribed service hours. The student's special education teacher reported she provides the student's required specialized instruction daily through one hour of specialized math instruction, one hour of specialized reading instruction, and additional time in the resource room focused on IEP goals and areas of concerns. The special education teacher clarified that math instruction is provided apart from the general education instruction, and reading instruction is provided outside of the classroom in a small group. The special education

teacher keeps weekly progress notes to assess the student’s progress towards IEP goals. OSSE finds that the student received specialized instruction as required by the [REDACTED] and [REDACTED] IEPs where the student receives specialized instruction for 10 hours per week outside the general education setting.

In accordance with the IDEA regulations at 34 CFR §300.153(c), a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. OSSE reviewed service trackers to calculate the number of service hours provided each month of the school year during the investigation timeline. As required by the OSSE Related Services policy, LEAs must make up missed services due to provider absences, but are not required to make up missed services due to student absences.¹ The total hours below include service hours delivered, and hours attempted but missed due to the student’s absence or school closure. These totals do not include hours missed due to the service provider’s unavailability, unless they were delivered by the LEA as make up services.

Total Hours Delivered Per Month ([REDACTED])			
Month	Speech-Language	Occupational Therapy	Behavioral Support
Oct [REDACTED]	4.5 hours	4.5 hours	4 hours
Nov [REDACTED]	5 hours	5.25 hours	3 hours
Dec [REDACTED]	4 hours	4.75 hours	3 hours
Jan [REDACTED]	4 hours	5 hours	4 hours
Feb [REDACTED]	3.5 hours	4.25 hours	4 hours
Mar [REDACTED]	5 hours	3 hours	3 hours
Apr [REDACTED]	4 hours	5.25 hours	4 hours
May [REDACTED]	5 hours	5 hours	3 hours
Jun [REDACTED] ²	3.5 hours	2.15 hours	1 hour
Aug [REDACTED] ³	1 hour	1 hour	0 hours
Sep [REDACTED]	4 hours	4 hours	5 hours
Oct [REDACTED])	4.5 hours	2.5 hours	2.5 hours

Based upon OSSE’s review of service logs, [REDACTED] PCS failed to provide 6 hours of

¹ OSSE Related Services policy (January 5, 2010) at p. 10. Although LEAs are not required to make up missed services due to student absences, the IEP team must conduct a case by case analysis to determine if the interruption is a denial of FAPE and requires make-up services or IEP amendment. (OSEP Letter to Clarke, March 8, 2007 (48 IDELR 77))

² School ended June [REDACTED]. As a result, student required three weeks of services this month.

³ School started August [REDACTED]. As a result, the student required one week of services this month.

behavioral support services from [REDACTED] to [REDACTED]. In all cases where fewer than four hours of occupational therapy or speech-language pathology services were provided in a month, the missing service hours were made up in the preceding or following month.

The IDEA at 34 CFR §300.211 requires that a LEA provide the state educational agency (SEA) with information necessary to enable the SEA to carry out its duties under Part B of the IDEA. Pursuant to 34 CFR §§300.600(d) and 300.601(b), the State must monitor the LEAs located in the State using quantifiable indicators including collecting valid and reliable data. All LEAs are required to enter accurate and complete data into SEDS within five (5) business days for all aspects of special education practice.⁴ Service logs for behavioral support services for October [REDACTED] through May [REDACTED] were unavailable in SEDS. The [REDACTED] PCS social worker reported that this was due to a misunderstanding of the system and service logs were marked as drafts instead of saved as final copies, and thus were no longer available in the system after an expiration period. OSSE was able to determine the number of service hours provided during this time based upon the social worker's case notes. OSSE reminds [REDACTED] PCS of the requirement to accurately document all special education services in the State's system of record and the LEA's responsibility to ensure all service providers are familiar with how to use the system. OSSE's review of the student's SEDS record reflects that the service provider began to document related services in accordance with OSSE policy in June [REDACTED]. However, the LEA's failure to properly document services within 5 business days for an eight month period inhibited the SEA's ability to monitor the LEA based on quantifiable indicators and constitutes a failure to provide valid and reliable data.

Therefore, [REDACTED] PCS is not in compliance with 34 CFR §§300.323(c)(2), 300.211, 300.600(d), 300.601(b), and the OSSE LEA Data Management policy.

ISSUE TWO: REVISE IEP

Findings of Fact

1. The school created a Section 504 plan on [REDACTED].
2. The [REDACTED] Section 504 plan states: "An IEP is in place for [student]. However, it is common because of [medical condition] for [student] to require more time to complete assignments. Concentration takes a lot of effort for [student]; there will be good days and some challenging days."
3. The [REDACTED] Section 504 plan states: "attendance for [student] is a challenge if [REDACTED] is hospitalized."
4. The [REDACTED] National Children's Medical Center report states that hospitalizations may be prolonged if complications arise and the student may require 1-2 days out of school after discharge.

⁴ OSSE LEA Data Management Policy (December 9, 2010) at p.3.

5. The [REDACTED] National Children's Medical Center report states that episodic tutoring may be needed for education planning.
6. Children's National medical Center created an IHP for the student for the [REDACTED] and [REDACTED] school years.
7. The [REDACTED] email from the LEA states the student has been absent for 14 days during the [REDACTED] school year.

Discussion/Conclusion

[REDACTED] PCS is not in compliance with 34 CFR §300.324(b)(ii)(D).

Pursuant to 34 CFR §300.324(b)(ii)(D), each public agency must revise the IEP, as appropriate, to address the child's anticipated needs. The complainant alleges that [REDACTED] PCS is not adequately addressing the student's needs arising from [REDACTED] medical condition, including the student's need for visiting home instruction.

In its response, [REDACTED] PCS asserts that the student's IEP is specifically designed to address the student's educational needs resulting from [REDACTED] medical condition and the student also has an individualized health plan and Section 504 plan to address [REDACTED] health needs. Children's National Medical Center created IHPs for the student for the [REDACTED] and [REDACTED] school years, which were provided to the school. [REDACTED] PCS reported that the school nurse is involved in this process and acts as a liaison to Children's National Medical Center. On [REDACTED] the school drafted a Section 504 plan to further address the student's medical needs as they relate the impairment of major life activities and correspond to the [REDACTED] Children's National Medical Center report and IHPs. The Section 504 plan includes one academic related accommodation requiring that the student receive more time to complete assignments because [REDACTED] medical condition can impact [REDACTED] ability to concentrate. [REDACTED] PCS confirmed that the student is allowed extra time to complete assignments; however, this accommodation is not included on the student's IEP. A student's IEP must include a statement of the special education and related services and supplementary aids and services to be provided to the child. (34 CFR §300.320(a)(4)) The student's IEP Team determines these services by reviewing the educational impact of the student's disability. OSSE's investigation did not reveal that the educational impact of the student's medical condition was discussed at the [REDACTED] or [REDACTED] IEP meetings; nor was the accommodation of additional time for assignments included in the resulting IEPs.

[REDACTED] PCS reported that the parents requested that the student's medical issues be kept separate from academics and thus the student's medical condition is discussed at separate meetings and not at IEP team meetings. OSSE attempted to confirm this with the parents, but the parents did not provide any further information. The U.S. Court of Appeals for the Eighth Circuit clarified that in instances of dual eligibility for services under IDEA and Section 504, LEAs may not choose to provide services and accommodations under Section 504 when a student is

IDEA eligible.⁵ LEAs must comply with both Section 504 and IDEA requirements and must develop an IEP inclusive of all services necessary to provide FAPE to the student.⁶ Although OSSE's investigation indicates that accommodations are in place to address the student's medical needs through the Section 504 plan and IHP, any needs that have an educational impact must be included on the student's IEP and [REDACTED] PCS' failure to do so constitutes a procedural violation.

The complainant also raised concerns regarding the provision of a visiting home instructor to deliver education services during and after a crisis. The [REDACTED] Section 504 plan states, "attendance for [student] is a challenge if [REDACTED] is hospitalized." The [REDACTED] National Children's Medical Center report states that hospitalizations may be prolonged if complications arise and the student may require 1-2 days out of school after discharge. This report further states that for education planning, "episodic tutoring may be needed." The [REDACTED] special education coordinator reported that the LEA is currently developing plans to initiate visiting home instruction services for an anticipated hospitalization during the second half of the [REDACTED] school year. However, the LEA communicated to the parent via email on [REDACTED] that the student was absent 14 days during the [REDACTED] school year. OSSE's investigation confirmed that the 14 absences were due to hospitalization or doctor's appointments related to the student's medical condition. The LEA stated that it is not responsible for education planning during these absences if they are not notified of when, and for how long, the student will be absent.

Despite planning for future instruction during hospitalization, a medical report anticipating intermittent absences, and a Section 504 plan that speaks to potential hospitalization; the LEA failed to revise the student's IEP to address the need for services during absences resulting from the student's medical condition. Instead, the LEA notified the parent of their responsibility to comply with the LEA's attendance policies. The LEA's failure to revise the student's IEP to address the anticipated absences, including provision of home instruction services for extended or intermittent but predictable absences, constitutes a violation.

Therefore, [REDACTED] PCS is not in compliance with 34 CFR §300.324(b)(ii)(D).

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2), [REDACTED] PCS must make up the 6 hours of behavioral support services. Documentation of completed hours is due to OSSE within 90 days of the date of this LOD.

⁵ *Yankton Sch. Dist. v. Schramm*, 93 F. 3d. 1376 (8th Cir. 1996).

⁶ *Id.*

2. In order to correct the noncompliance with §§300.211, 300.600(d) and 300.601(b) and OSSE's LEA Data Management Policy, [REDACTED] PCS must provide evidence that the student's behavioral supports service records in SEDS are corrected to include services delivered from October [REDACTED] through May [REDACTED]. Documentation of services entered into SEDS is due to OSSE within 30 days of the date of this LOD.
3. In order to correct the noncompliance with 34 CFR §300.324(b)(ii)(D), [REDACTED] PCS must
 - a. Amend the student's IEP to include the accommodation of allowing the student more time to complete assignments and the provision of home instruction services to be delivered during extended and intermittent school absences due to the student's medical condition. Documentation of the amended IEP must be provided to OSSE within 60 days of the date of this LOD.
 - b. To compensate the student for educational services not received during the 14 days [REDACTED] was absent [REDACTED] school year, provide the student with 10 hours of specialized instruction. Documentation of completed hours is due to OSSE within 90 days of the date of this LOD.

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,

Elisabeth M. Morse, J.D.
Interim Assistant Superintendent for Elementary, Secondary, and Specialized Education

cc: [REDACTED], parent
[REDACTED], parent
Avni Patel, PCSB