



January 12, 2015

[REDACTED]  
District of Columbia Public Schools  
[REDACTED]

RE: State Complaint No. 014-008

## 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, failure to revise the IEP to address any lack of expected progress towards the annual goals and in the general education curriculum, information about the child provided by the child’s parents, and the child’s anticipated needs; failure to make special education and related services available to the child in accordance with the child’s IEP; failure to include in the IEP a statement of the special education and related services and supplementary aids and services that would be provided to enable the child to participate in extracurricular and other non-academic activities and failure to ensure provision of supplementary aids and services to provide nonacademic and extracurricular services and activities in the manner necessary to afford the child an equal opportunity for participation in those services and activities; and failure to obtain parental consent before disclosing personally identifiable information to parties other than officials of participating agencies.

The complainant also raised concerns regarding issues from the [REDACTED] school year. 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 did not investigate these concerns because they occurred more than one year prior to the date of the complaint.

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 §300.324(b)(ii)
  - a. Failure to revise the IEP to address any lack of expected progress towards the annual goals and in the general education curriculum, information about the child provided by the child's parents, and the child's anticipated needs.
2. 34 CFR §300.323(c)(2)
  - a. Failure to make special education and related services available to the child in accordance with the child's IEP.
3. 34 CFR §§300.107(a) and 300.320(a)(4)(ii)
  - a. Failure to include in the IEP a statement of the special education and related services and supplementary aids and services that would be provided to enable the child to participate in extracurricular and other non-academic activities, and failure to ensure provision of supplementary aids and services to provide nonacademic and extracurricular services and activities in the manner necessary to afford the child an equal opportunity for participation in those services and activities.
4. 34 CFR §300.622
  - a. Failure to obtain parental consent before disclosing personally identifiable information to parties other than officials of participating agencies.

### **INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. Parent
2. DCPS [REDACTED]
3. DCPS [REDACTED]
4. DCPS [REDACTED]
5. 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 developmental delay.
3. The student's LEA is DCPS.

**ISSUE ONE: REVISE IEP**

**Findings of Fact**

1. The student's most recent BIP is dated [REDACTED].
2. The student's [REDACTED] IEP prescribes 2.5 hours per week of specialized instruction in the general education setting for reading, 2.5 hours per week of specialized instruction in the general education setting for mathematics, and 120 minutes per month of speech-language pathology outside the general education setting.
3. The student was prohibited from participating in a field trip on [REDACTED] and [REDACTED] due to behavior concerns.
4. On [REDACTED] the parent emailed DCPS inquiring as to the student's progress, requested testing to determine [REDACTED] current skill level, and requested to revisit the student's IEP.
5. The student was suspended for three days due to a behavior incident on [REDACTED].
6. On [REDACTED] the IEP team convened and no changes were made to the IEP.

**Discussion/Conclusion**

**DCPS is not in compliance with 34 CFR §300.324(b)(ii).**

Pursuant to 34 CFR §300.324(b)(ii), the LEA must revise the student's IEP, as appropriate, to address any lack of expected progress towards the annual goals and in the general education curriculum, information about the child provided by the child's parents, and the child's anticipated needs. The complainant alleges that DCPS failed to comply with the parent's request to update the student's IEP and BIP.

*IEP*

The student's current IEP was revised on [REDACTED] and prescribes 2.5 hours per week of specialized instruction in the general education setting for reading, 2.5 hours per week of specialized instruction in the general education setting for mathematics, and 120 minutes per month of speech-language pathology outside the general education setting. On [REDACTED] [REDACTED] the complainant emailed the student's teacher requesting that the student be tested to determine [REDACTED] current skill level, to discuss the student's progress, and that the student's IEP be updated. The teacher indicated that the school was in the middle of their interim assessments and that once the data was evaluated, they could discuss the student's progress. There is no evidence in the record that the school discussed the student's progress with the parent following completion of the interim assessments.

In an email on [REDACTED] the parent expressed concern about the school's failure to modify the student's homework as required by the student's IEP. The student's IEP team met on [REDACTED] to discuss the parent's concerns. DCPS asserts that at this meeting, the student's teacher showed the complainant a portfolio of assignments that have been modified for the student, but the parent denies that this happened. Although all IEP team members were present at this meeting, no changes were made to the IEP. The student's teacher reported that the student's homework is modified by reducing assignment length and allowing the student additional time for completion. Although DCPS asserts that the student's homework is modified, a review of the student's [REDACTED] IEP shows that no such accommodation is listed. Where the record indicates mutual agreement among the IEP team that the student's homework should be modified, the LEA's failure to modify the IEP to include this accommodation constitutes failure to revise the student's IEP to address anticipated needs.

*BIP*

In its response DCPS asserts that the student does not have a BIP in place because the student does not have any behavior concerns. The student's most recent BIP is from [REDACTED]. On [REDACTED] and [REDACTED] the student was prohibited from attending field trips due to behavior concerns. The student's general education and special education teachers reported that the student's behavior was defiant and uncooperative to the extent that they were concerned for the student's safety during the field trips. The student was suspended for three days pursuant to an incident that occurred on [REDACTED], but the school reported that there has not been a pattern of disciplinary incidents. DCPS further asserted that the student does not receive behavioral support services and the student's [REDACTED] IEP does not contain behavior related goals. However, several school staff members expressed concern with the student's behavior to the parent. In emails to the parent dated [REDACTED] [REDACTED] and [REDACTED], the school principal indicates that the school has concerns about the student's behavior. In interviews, both the student's general education and special education teachers reported concerns that the student's behavior is often disruptive.

The record indicates that the school had concerns with the student's behavior as far back as [REDACTED]. DCPS reported that due to the parent's prompting and the school's recent concerns about the student's behavior, DCPS is currently conducting a functional behavioral assessment to determine if the student requires a BIP. The IDEA does not require that a student have a BIP to receive behavioral supports and services, but rather requires that the IEP team consider the use of positive behavioral interventions and supports, and other strategies in the case of a child whose behavior impedes the child's learning or that of others. (34 CFR §300.324(a)(2)(i)) The LEA's failure to modify the IEP to address information provided by the parent requesting behavior support, and failure to address the need for behavior supports since as early as [REDACTED], constitutes a failure to revise to IEP to address concerns raised by the parent and anticipated needs.

#### *Unreasonable Delay*

DCPS is currently in process to reevaluate the student and the parent signed consent on [REDACTED] for DCPS to complete an educational evaluation, psychological evaluation, and a functional behavioral assessment. DCPS reported a plan to update the student's IEP upon completion of the reevaluation in [REDACTED], and to assess the student's need for a BIP or other behavior services. Although an LEA is not required to convene the IEP team meeting every time a parent requests it, the LEA should honor a reasonable request to update a student's IEP. In 1999 OSEP provided guidance regarding the LEA's duty to convene the IEP at the request of the parent:

Although the public agency is responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with a disability have the right to request an IEP meeting at any time . . .

The legislative history of Public Law 94-142 makes it clear that there should be as many meetings a year as any one child may need (121 Cong. Rec. S20428-29 (Nov. 19, 1975) (remarks of Senator Stafford)). Public agencies should grant any reasonable parent request for an IEP meeting.

(34 CFR §300: Appendix A, Question 20, OSEP, 1999)<sup>1</sup>

While the IDEA does not establish a timeline for convening an IEP meeting requested by a parent, in this case more than three months have passed since the parent's request to revise the IEP on [REDACTED]. Given the circumstances, including the student's escalating behavior causing exclusion from two field trips and the LEA's acknowledgement that they

---

<sup>1</sup> Appendix A to the 1997 Regulations is available at <http://www.gpo.gov/fdsys/pkg/CFR-2002-title34-vol2/pdf/CFR-2002-title34-vol2-part300-appA.pdf>.

would convene after completion of in-progress assessments; the three month delay was unreasonable.

Therefore, DCPS is not in compliance with 34 CFR §300.324(b)(ii).

## **ISSUE TWO: MAKE SERVICES AVAILABLE**

### **Findings of Fact**

1. The student's [REDACTED] IEP prescribed 2.5 hours per week of specialized instruction in the general education setting for reading, 2.5 hours per week of specialized instruction in the general education setting for mathematics, and 120 minutes per month of speech-language pathology.
2. The student's [REDACTED] IEP prescribes 2.5 hours per week of specialized instruction in the general education setting for reading, 2.5 hours per week of specialized instruction in the general education setting for mathematics, and 120 minutes per month of speech-language pathology.
3. The student is in a general education classroom with one general education teacher and one special education teacher.
4. From [REDACTED] to [REDACTED] the student missed 435 minutes of speech-language pathology services due to provider unavailability.

### **Discussion/Conclusion**

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

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 in accordance with the student's IEP. The complainant alleges that DCPS is not implementing the student's IEP and BIP.

#### *Specialized Instruction & Related Services*

The student's [REDACTED] IEP prescribed 2.5 hours per week of specialized instruction in the general education setting for reading, 2.5 hours per week of specialized instruction in the general education setting for mathematics, and 120 minutes per month of speech-language pathology outside the general education setting. The student's IEP was revised on [REDACTED] and prescribes the same services. The student receives specialized instruction from a special education teacher inside the classroom. OSSE reviewed service trackers from November [REDACTED] to October [REDACTED] to calculate whether the student has been receiving the amount of speech-language pathology services required by [REDACTED] IEP. OSSE found that the student missed the following service hours due to provider unavailability: December [REDACTED] – 30 minutes, January [REDACTED] – 15 minutes, March [REDACTED] – 30 minutes, April [REDACTED] – 120 minutes, May [REDACTED] – 120 minutes, September [REDACTED] – 120 minutes. From November [REDACTED] to October [REDACTED] the student missed a total of 435 minutes of speech-language pathology services, approximately 3.5 months worth of services. OSSE finds that the LEA's failure to deliver these services constitutes a violation.

### *Classroom Accommodations*

The complainant asserts that the school is not modifying the student's homework assignments as required by the student's IEP. As discussed in Issue One above, the student's [REDACTED] IEP does not contain an accommodation related to modifying the student's homework.

The complainant asserts that the school is not implementing the student's BIP and that staff members do not even know that the student has a BIP. The student does not have a current BIP that is required to be implemented and there are no behavior related goals on [REDACTED] IEP. The issue of whether the student needs a BIP or whether the student's IEP needs to be updated to address behavior concerns is addressed in Issue One above.

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

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

#### **Findings of Fact**

1. The student's [REDACTED] IEP prescribed 2.5 hours per week of specialized instruction in the general education setting for reading, 2.5 hours per week of specialized instruction in the general education setting for mathematics, and 120 minutes per month of speech-language pathology.
2. The student's [REDACTED] IEP prescribes 2.5 hours per week of specialized instruction in the general education setting for reading, 2.5 hours per week of specialized instruction in the general education setting for mathematics, and 120 minutes per month of speech-language pathology.
3. The student was prohibited from participating in two field trips on [REDACTED] and [REDACTED].
4. The [REDACTED] DCPS Directive 310.6 requires schools to provide equal opportunity for special education student participation in field trips, including participation with students without disabilities to the maximum extent appropriate.
5. The [REDACTED] DCPS Directive 310.6 allows schools to exclude students from field trips for behavior concerns or suspensions.

#### **Discussion/Conclusion**

##### **DCPS is not in compliance with 34 CFR §§300.107(a) and 300.320(a)(4)(ii).**

Pursuant to 34 CFR §§300.107(a) and 300.320(a)(4)(ii), the student's IEP must include a statement of the special education and related services and supplementary aids and services that will be provided to enable the child to participate in extracurricular and other non-academic activities, and to ensure provision of supplementary aids and services to provide nonacademic and extracurricular services and activities in the manner necessary to afford the child an equal opportunity for participation in those services and activities. The complainant alleges that the student was prohibited from attending field trips.

The student was prohibited from attending two field trips on [REDACTED] and [REDACTED]. The April 12, 2012 DCPS Directive 310.6: Field Trips and Student Travel requires schools to provide equal opportunity for special education student participation in field trips, including participation with students without disabilities to the maximum extent appropriate. This Directive states that field trip participation, “may be denied to any student who demonstrated disregard for the policies and rules for DCPS or the local school,” and, “students who are approved to participate in any field trip . . . who are suspended . . . prior to departure, shall become ineligible to participate in the field trip. . .”. DCPS school staff reported that it is school policy to require the parent of a misbehaving student to accompany the student on a field trip if a teacher believes the student’s behavior impacts the safety of other students. With regard to the [REDACTED] field trip, the complainant was notified that the student would not be allowed to attend unless [REDACTED] was accompanied by one of [REDACTED] parents. With regard to the [REDACTED] field trip, the complainant was not notified that the student was prohibited from attending, and the student was in fact excluded from the activity. The school reported that the student was prohibited from attending the field trips due to uncooperative and defiant behavior and that no other students were prohibited from attending the trips.

Pursuant to the IDEA, the IEP team must consider the use of positive behavioral interventions and supports and other strategies in the case of a child whose behavior impedes the child’s learning or that of others. (34 CFR §300.324(a)(2)(i)) The student’s behavior has prevented [REDACTED] from attending more than one field trip during the [REDACTED] school year. Although the school policy may exclude the student for behavior concerns, requiring parent participation is not an appropriate substitute for positive behavioral interventions and supports as is required by the IDEA. In this matter, there is no evidence that the LEA has attempted to put in place supplementary aids and services, including positive behavioral supports, to allow the student to participate in field trips.

Therefore, DCPS is not in compliance with 34 CFR §§300.107(a) and 300.320(a)(4)(ii).

#### **ISSUE FOUR: DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION**

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

1. The parent alleges that DCPS discloses personally identifiable information of special education students to third parties.
2. OSSE was unable to substantiate the parent’s allegation.

##### **Discussion/Conclusion**

###### **DCPS is in compliance with 34 CFR §300.622.**

Pursuant to 34 CFR §300.622, parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies. The complainant alleges that DCPS discloses students’ special education status and behavior related



information to third parties.

In a [REDACTED] email to the school principal, the complainant expressed concern that the student's teacher discussed the student's behavior with people, other than the parents, who picked the student up from school. The school principal indicated via email response on same date that she spoke to the student's teacher to remind her that she cannot discuss a student's personal information with a third party without the parent's consent. The complainant also asserts that DCPS staff members have told [REDACTED] specific names of other special education students which leads [REDACTED] to believe that [REDACTED] student's name has also been disclosed to a third party. In an interview, the teacher identified by the complainant as disclosing the information, denied disclosing personal information of other students to the complainant or any other third party. By comparing the list of names given by the parent to the list of special education students at the student's school, OSSE was unable to substantiate the parent's allegations of knowledge of specific special education students. OSSE's investigation did not find evidence of a systemic problem of disclosure of personally identifiable information of students to third parties.

Therefore, DCPS is in compliance with 34 CFR §300.622.

### **CORRECTIVE ACTION**

1. In order to correct the noncompliance with 34 CFR §§300.107(a), 300.320(a)(4)(ii), and 300.324(b)(ii), DCPS must
  - a. Convene an IEP team meeting to update the student's IEP to include any previously agreed upon accommodations; discuss whether the student needs behavior support services and positive behavioral interventions; include a statement of the supplementary aids and services that will allow the student to participate in nonacademic and extracurricular services and activities such as field trips, and discuss any other concerns raised by the parent. Documentation is due to OSSE within 60 days of the date of this LOD.
  - b. Issue, via formal communication to the principal and special education staff at the student's school of attendance, information clarifying the responsibility to provide positive behavioral interventions and supports to special education students in order to provide equal opportunity to participate in field trips. Documentation is due to OSSE within 30 days of the date of this LOD.
2. In order to correct the noncompliance with 34 CFR §300.323(c)(2), DCPS must make up the 435 minutes of speech-language pathology services. Documentation 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](mailto:victoria.glick@dc.gov) or 202-724-7860.

Sincerely,

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

cc: [REDACTED], Complainant