



January 16, 2015

[REDACTED] PCS
[REDACTED]

RE: State Complaint No. 014-009

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] PCS ([REDACTED]) alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED]) hereinafter "student" or "child."

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, failure to make special education and related services available to the child in accordance with the child's IEP, specifically in regard to specialized instruction, related services, and transportation; failure to consider the use of positive behavioral interventions and supports to address behavior that impedes the child's learning or that of others; and failure to allow the parent to inspect and review educational records.

The complainant also raised concerns regarding teacher conduct and student discipline in the context of the student's physical impairment. OSSE did not investigate these concerns as they did not allege a violation of Part B of the IDEA. OSSE referred the parent to [REDACTED] LEA and the U.S. Department of Education, Office for Civil Rights to address these concerns.

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. Whether [REDACTED] failed to make special education and related services available to the child in accordance with the child's IEP, specifically in regard to specialized instruction, related services, and transportation?
2. 34 CFR §300.324(a)(2)(i)
 - a. Whether [REDACTED] failed to consider the use of positive behavioral interventions and supports to address behavior that impedes the child's learning or that of others?
3. 34 CFR §300.613
 - a. Whether [REDACTED] failed to allow the parent to inspect and review educational records?

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED]
3. [REDACTED]

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].

ISSUE ONE: MAKE SERVICES AVAILABLE

Findings of Fact

1. The student's [REDACTED] IEP prescribed 10 hours per week of specialized instruction in the general education setting and 90 minutes per month of speech-language pathology outside the general education setting.
2. The student's [REDACTED] amended IEP prescribes 10 hours per week of specialized instruction in the general education setting, 5 hours per week of specialized instruction outside the general education setting, 90 minutes per month of speech-language pathology outside the general education setting, 2 hours per month of behavioral support services outside the general education setting, and 1 hour per month of behavioral support services in the general education setting. Transportation and ESY services were added to the amended IEP.
3. The student's [REDACTED] amended IEP states that [REDACTED] was identified with mild to moderate range of delay in using language to effectively communicate in social situations.
4. The student receives 10 hours per week of specialized instruction pushed into the general education classroom and 5 hours per week of specialized instruction outside of the classroom from a special education teacher.
5. The LEA reported the student's specialized instruction includes collaborative lesson planning, modified assignments, extended time on assignments, instruction in small groups, and re-teaching or one-to-one assistance with lessons.
6. The student did not receive any speech-language pathology services from [REDACTED] through [REDACTED] due to provider unavailability.
7. The LEA developed a plan to make up missed speech-language pathology services and the student was anticipated to complete these services by [REDACTED] but did not do so due to student absences.
8. In October [REDACTED] the student received 150 minutes of speech-language pathology services and 120 minutes of services were missed due to the student's absence.
9. In November [REDACTED] the student received 60 minutes of speech-language pathology services and 75 minutes of services were missed due to the student's absence.
10. In September [REDACTED] the student received 30 minutes of behavioral support services and 45 minutes were missed due to the student's absence.
11. In October [REDACTED] the student received 235 minutes of behavioral support services and 15 minutes were missed due to the student's absence.
12. In November [REDACTED] the student received 45 minutes of behavioral support services and 75 minutes were missed due to the student's absence.
13. On [REDACTED], the student did not receive transportation services from school to home.

Discussion/Conclusion

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

Pursuant to 34 CFR §300.323(c)(2), as soon as possible following 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 the student did not receive transportation services when left at school by the bus driver, and that the student does not receive the required IEP services.

Transportation

Transportation was added to the student's IEP on ██████████. The complainant alleges that the student was left at school by the bus driver and that ██████████ never received a full explanation for what transpired. School staff and the complainant reported that the student missed the bus due to a teacher request to remain after class. The complainant reported that the student is unable to communicate concerns to school staff due to ██████████ disability and therefore could not communicate that ██████████ needed to meet ██████████ bus. The ██████████ IEP states that the student was identified with mild to moderate delay in ██████████ ability to use language effectively to communicate. Both the complainant and ██████████ confirm that the missed bus was a one-time occurrence and the student has otherwise received transportation services according to ██████████ IEP.

A single failure to provide transportation services does not amount to a denial of FAPE or evidence of inadequate procedures for ensuring the student receives ██████████ transportation services. Furthermore, the OSSE Transportation Policy does not identify a single incidence of missed transportation as rising to the level of "chronic," requiring explanation to OSSE, or requiring convening of the IEP team to address student services.¹ The record does not indicate that the missed bus was related to the student's disability and there is no indication that the single incident of missed transportation services needs to be addressed through ██████████ IEP, or that ██████████ fails to provide the transportation services required by the student's IEP.

IEP Services

The student's ██████████ IEP prescribed 10 hours per week of specialized instruction in the general education setting and 90 minutes per month of speech-language pathology outside the general education setting. The student's IEP was amended on ██████████ to prescribe 10 hours per week of specialized instruction in the general education setting, 5 hours per week of specialized instruction outside the general education setting, 90 minutes per month of speech-language pathology outside the general education setting, 2 hours per month of behavioral support services outside the general education setting, and 1 hour per month of behavioral support services in the general education setting. Transportation and ESY services were added to the amended IEP.

¹ OSSE Special Education Transportation Policy (November 6, 2013) at p. 8.

In its response, [REDACTED] admits that the student was not receiving speech-language pathology services at the beginning of the school year due to a lack of a service provider, but that a speech-language pathologist has been hired and a make-up plan was put in place to ensure student receipt of services. OSSE reviewed service trackers from the beginning of the school year until the month the complaint was filed and totaled the service hours. 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.² However, while there is no hard requirement to provide make-up services for student absences, LEAs should do a case by case analysis to determine the necessity of make-up services or amendment to services in cases where students have missed several days.³ The total hours below show service hours delivered and service hours attempted but missed due to the student's absence.

Total Related Service Hours from [REDACTED] to [REDACTED]		
	Speech-Language Services	Behavioral Support Services
[REDACTED] IEP	90 min/month	Not yet required
August [REDACTED] – September [REDACTED]	0 services	Not yet required
[REDACTED] IEP	90 min/month	2 hrs/month outside gen ed, 1 hr/month inside gen ed
September [REDACTED] – [REDACTED]	0 services	30 min delivered, 45 min student absent
October	150 min delivered, 120 min student absent	235 min delivered, 15 min student absent
November	60 min delivered, 75 min student absent	45 min delivered, 75 min student absent

Speech-Language Pathology Services

The student missed a total of 112.5 minutes of speech-language pathology services from [REDACTED] [REDACTED] 4 through [REDACTED].⁴ In order to make up the services missed at the beginning of the school year, the speech-language pathologist scheduled 60 minutes of services per week for the student for the month of October. In October [REDACTED] the student received all required 90 minutes of speech-language pathology services plus 60 additional minutes. Another 120 minutes were attempted but missed due to the student's absence. [REDACTED] made up, or attempted to make up, all missed services hours. In November [REDACTED] the student

² OSSE Related Services policy (January 5, 2010) at p. 10.

³ OSEP Letter to Clarke, March 8, 2007 (48 IDELR 77).

⁴ School started on August 26, [REDACTED]. As a result, the student required one week, or 22.5 minutes, of speech-language pathology services during August [REDACTED].

received 60 minutes of services, and 75 minutes were missed due to the student's absence. Although all speech-language pathology services required by the student's IEP from [REDACTED] through [REDACTED] are accounted for in the service trackers, only 210 minutes were delivered, the remaining 195 minutes were missed due to the student's absence. [REDACTED] should decide whether the minutes attempted but not received due to student absence should be made up.

Behavioral Support Services

The student's IEP was amended on [REDACTED] to add 180 minutes per month of behavioral support services. In September [REDACTED] the student received 30 minutes of services and 45 minutes were missed due to the student's absence, for a deficit of 60 minutes.⁵ In October [REDACTED] the student received the required 180 minutes and an additional 55 minutes, making up the minutes owed for September. The student did not receive 15 minutes of services in October [REDACTED] due to the student's absence. In November [REDACTED] the student received 45 minutes of services and 75 minutes were missed due to the student's absence, for a deficit of 60 minutes. [REDACTED] must make up the 60 minutes of services not attempted in November and must decide if the 135 minutes attempted but not received from September through November should be made up.

Specialized Instruction

[REDACTED] reported that the student receives 10 hours per week of specialized instruction in the general education setting and 5 hours per week of specialized instruction outside the classroom from a special education teacher in accordance with the student's IEP. Specialized instruction hours are not recorded in service trackers. [REDACTED] reported that specialized instruction is provided to the student for 2 hours per day inside the classroom and one at the end of each day outside the general education setting. Specialized instruction is delivered to the student through collaborative lesson planning, modified assignments, extended time on assignments, instruction in small groups, and re-teaching or one-to-one assistance with lessons. The record indicates that the student is receiving specialized instruction in accordance with [REDACTED] IEP.

Therefore, [REDACTED] is not in compliance with 34 CFR §300.323(c)(2) for failure to provide behavioral support services.

ISSUE TWO: CONSIDER USE OF PBIS

Findings of Fact

1. The student's [REDACTED] amended IEP prescribes 10 hours per week of specialized instruction in the general education setting, 5 hours per week of specialized

⁵ The behavioral support services were added to the student's IEP on [REDACTED]. As a result, the student required three weeks of services, or 135 minutes in [REDACTED] [REDACTED]

instruction outside the general education setting, 90 minutes per month of speech-language pathology outside the general education setting, 2 hours per month of behavioral support services outside the general education setting, and 1 hour per month of behavioral support services in the general education setting.

2. The [REDACTED] amended IEP contains two goals in the area of emotional, social, and behavioral development: “[Student] will be able to identify aggressive, assertive, and passive behavior styles as well as identify non-verbal cues e.g. voice tone, facial expressions, and body language with 80% accuracy in 4 out of 5 opportunities” and “[Student] will be able to distinguish between fact, rational belief, and irrational belief in real and hypothetical situations with 80% accuracy in 4 out of 5 trials.”
3. The [REDACTED] psychological evaluation recommends that “[Student] will require intensive ongoing counseling/therapy during [REDACTED] school day so that [REDACTED] can access the learning environment. This individual therapy will be helpful in assisting [REDACTED] to develop effective social interactions and coping strategies.” and “A social skills group will be helpful in increasing the development of [Student’s] social skills, and [REDACTED] understanding of complex social cues and interactions.”
4. On [REDACTED] the complainant emailed school staff regarding an incident involving the student in the classroom on the same day.
5. On [REDACTED] school staff emailed the complainant regarding an incident involving the student in the classroom on [REDACTED].

Discussion/Conclusion

[REDACTED] is in compliance with 34 CFR §300.324(a)(2)(i).

Pursuant to 34 CFR §300.324(a)(2)(i), when a child’s behavior impedes the child’s learning or that of others, the LEA must consider the use of positive behavioral interventions and supports (PBIS) and other strategies to address that behavior. The complainant alleges that by requiring the whole class to walk laps around the school when students were talking excessively in class, [REDACTED] uses mass punishment that is inappropriate for the student.

Behavioral support services were added to the student’s IEP on [REDACTED]. The amended IEP contains behavioral support service goals related to building social skills, including: “[Student] will be able to identify aggressive, assertive, and passive behavior styles as well as identify non-verbal cues e.g. voice tone, facial expressions, and body language with 80% accuracy in 4 out of 5 opportunities” and “[Student] will be able to distinguish between fact, rational belief, and irrational belief in real and hypothetical situations with 80% accuracy in 4 out of 5 trials.” These additional services and goals were based on IEP team discussion and recommendations from the [REDACTED] psychological evaluation, including the recommendation for individual therapy to develop effective social interactions and coping skills. The student does not have a record of disciplinary or serious behavioral problems at the school. During the period under review, the only incidents on record included email exchanges between the complainant and school staff on [REDACTED] and [REDACTED] regarding classroom

incidents where the student experienced challenges in peer and teacher interaction. Neither the complainant nor [REDACTED] report that the student exhibits behavior consistent with the excessive classroom talking addressed by the class-wide punishment.

The student's behavior requires, and [REDACTED] IEP includes, goals and services to address social skill development. The record does not indicate that the student has behavioral concerns that need to be addressed through additional positive behavioral interventions and supports.

Therefore, [REDACTED] is in compliance with 34 CFR §300.324(a)(2)(i).

ISSUE THREE: INSPECT AND REVIEW EDUCATIONAL RECORDS

Findings of Fact

1. The student's [REDACTED] amended IEP prescribes 10 hours per week of specialized instruction in the general education setting, 5 hours per week of specialized instruction outside the general education setting, 90 minutes per month of speech-language pathology outside the general education setting, 2 hours per month of behavioral support services outside the general education setting, and 1 hour per month of behavioral support services in the general education setting.
2. In an email on [REDACTED] the complainant asked the [REDACTED] special education compliance officer if she was ensuring that the teachers were in compliance with the student's IEP services and requested that the student's homework and quizzes that received a failing grade be presented at an upcoming IEP team meeting.
3. The complainant's attorney requested meeting notes via email on [REDACTED]. The meeting notes were provided by [REDACTED] the same day.
4. [REDACTED] provided copies of the student's related service trackers to the complainant on [REDACTED].

Discussion/Conclusion

[REDACTED] is in compliance with 34 CFR §300.613.

Pursuant to 34 CFR §300.613, each LEA must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency. The records must be provided within 45 days after the request has been made. The complainant alleges that she requested documentation of the student's services and has not received a response.

OSSE reviewed email communication between the complainant and [REDACTED] and found that the parent's attorney requested a copy of meeting notes on [REDACTED] and was provided the requested document the same day. In an email sent on [REDACTED] the complainant asked the [REDACTED] special education compliance officer if she was ensuring that the teachers were in compliance with the student's IEP services. In response to this inquiry, [REDACTED] provided the parent with all of the student's related service trackers on [REDACTED].

█ The complainant alleges that █ wanted documentation of all IEP services being provided to the student, including specialized instruction, but █ reported understanding the documentation request to only include related services. █ reported that specialized instruction is not recorded hour for hour by service logs but a description of services received would be made available to parents if requested.

From OSSE's investigation there does not appear to be disagreement over what documents are available to the parent, but rather confusion over which documents were requested. There is insufficient evidence to find that █ has failed to permit the parent to inspect and review educational records relating to the student where the LEA provided the documents within 45 days of the complainant's requests. OSSE encourages the complainant and █ to resolve the misunderstanding over which documents the complainant has requested.

Therefore, █ is in compliance with 34 CFR §300.613.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2), █ must
 - a. Provide the student the 60 minutes of missed behavioral support services. Documentation of completion is due to OSSE within 60 days of the date of this letter.
 - b. Convene the IEP team to consider if related services missed due to student absences impacted the student's receipt of FAPE, and determine whether these services should be made up. Documentation of completion is due to OSSE within 60 days of 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,

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

cc: █, Complainant
Avni Patel, Public Charter School Board