



January 23, 2015



RE: State Complaint No. 014-010

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 (PCS) alleging violations in the special education program of [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 revise the IEP, as appropriate, to address the child’s anticipated needs, and failure to make special education and related services available to the child in accordance with the child’s 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 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)(1)(ii)(D)
 - a. Failure to revise the IEP, as appropriate, to address the child’s anticipated needs, specifically with respect to speech and language services.
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.



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):



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 autism spectrum disorder.
3. The student's LEA is [REDACTED] PCS.

ISSUE ONE: REVISE IEP

Findings of Fact

1. The student's [REDACTED] IEP prescribed 3 hours per month of speech-language pathology outside the general education setting.
2. Under communication considerations on the [REDACTED] IEP it states: "[Student] receives speech and language services to address [REDACTED] communication needs."
3. The [REDACTED] IEP has three goals related to communication/speech and language: 1) "[Student] will participate and initiate conversation and maintain 2-3 conversational exchanges with peers and/or adults with minimal cuing required in 4 out of 5 trials over 3 sessions." 2) "[Student] will appropriately respond to an interaction initiated by adults and/or peers by giving an appropriate response, either verbal or non-

verbal with 60% accuracy with minimal cueing as measured over 3 consecutive sessions.” 3) “[Student] will follow basic 1-2 step directions with only 2 prompts provided for accuracy in 4 out of 5 trials over 3 consecutive weekly trials.”

4. On [REDACTED] the student’s speech-language pathologist provided written recommendations via email for the IEP team to review at the [REDACTED] meeting.
5. On [REDACTED] the IEP team met to review and revise the student’s IEP.
6. The student’s [REDACTED] IEP prescribes 2 hours per month of behavioral support services outside the general education setting, and 3 hours per month of speech-language pathology outside the general education setting.
7. Under communication considerations on the [REDACTED] IEP, it states: “[Student] receives speech and language services to address [REDACTED] pragmatic deficits.”
8. The [REDACTED] IEP has three goals related to communication/speech and language: 1) “[Student] will appropriately participate in at least a 2 -3 conversational exchange with no more than 1 prompts required in 4 out of 5 trials.” 2) “[Student] will appropriately respond to an interaction initiated by adults and/or peers by giving an appropriate response, either verbal or non-verbal with 80% accuracy with minimal cueing as measured over 3 consecutive sessions.” 3) “[Student] will transition/merge appropriately back to the classroom setting with 1 prompt provided for accuracy over 3 consecutive sessions.”
9. The [REDACTED] IEP team meeting notes state: “Speech and language – recommendation was made to remove services if team was in agreement. She felt that [REDACTED] had mastered [REDACTED] goals. Team was against it. Team felt that a student with [REDACTED] disability requires speech and language to help with communicating to adults and peers as well as to learn social skills.”

Discussion/Conclusion

[REDACTED] PCS is in compliance with 34 CFR §300.324(b)(1)(ii)(D).

Pursuant to 34 CFR §300.324(b)(1)(ii)(D), the LEA must revise the IEP, as appropriate, to address the child’s anticipated needs. The complainant alleges [REDACTED] was told at a [REDACTED] IEP team meeting that the student no longer needed speech therapy for articulation and reading comprehension, but the complainant believes the student was previously receiving, and continues to need speech therapy services to address [REDACTED] social skills and pragmatic speech.

The student’s [REDACTED] IEP prescribed 3 hours per month of speech-language pathology outside the general education setting to address [REDACTED] communication needs. The IEP team met to review and update the student’s IEP on [REDACTED]. The student’s speech-language pathologist did not attend the meeting, but provided written recommendations via email on [REDACTED] for the team to review. The speech-language pathologist recommended removing speech-language pathology services from the student’s IEP because the student had met [REDACTED] speech goals and [REDACTED] new goals were centered

around behavior support services.

The complainant reported that at the [REDACTED] meeting, the team recommended removal of services to address articulation and reading comprehension. Meeting notes confirm the complainant disagreed with the recommendation for removal of services because [REDACTED] believes that the student was previously receiving, and continued to require the services to address [REDACTED] social skills and pragmatic speech. Although meeting notes confirm the complainant's disagreement with removal of services, the notes do not indicate a discussion of articulation and reading comprehension, but rather a discussion of services to address communication and social skills. Meeting notes additionally indicate that the IEP team discussed behavior support services to address the student's ability to complete classroom tasks with minimal prompting; an area previously addressed through speech-language pathology services.

The IEP team ultimately decided to keep speech-language pathology services on the student's IEP to help [REDACTED] communicate with adults and peers and to learn social skills. The [REDACTED] IEP retained the two communication/speech and language goals related to social skills and a third goal was added to address transitioning back to the classroom. Under the communication considerations on the IEP, the team added language to clarify that the "[Student] receives speech and language services to address [REDACTED] pragmatic deficits." The [REDACTED] IEP was additionally revised to include behavioral support services to address the student's concurrent behavior concerns and speech-language development needs. The record indicates that [REDACTED] appropriately revised the student's IEP in accordance with IEP team discussion and to address the student's anticipated needs.

Therefore, [REDACTED] PCS is in compliance with 34 CFR §300.324(b)(1)(ii)(D).

ISSUE TWO: MAKE SERVICES AVAILABLE

Findings of Fact

1. The student's [REDACTED] IEP prescribed 3 hours per month of speech-language pathology outside the general education setting.
2. The [REDACTED] IEP has five goals related to communication/speech and language: 1) "[Student] will engage in appropriate cooperative social play interactions initiated by [REDACTED] and/or others with maximum teacher prompts 4/5 opportunities over 3 consecutive data collections." 2) "[Student] will expand friendships and deepen the quality of [REDACTED] relationships with specific peers (evidenced by initiations and sustained interactions) 2 x per day four consecutive weekly trials." 3) "[Student] will develop an understanding of the rationale for various social skills/situations by stating the reason or what to do when asked (i.e., Why do we say excuse me?) (What do you say when someone is bothering you?) with 80% accuracy as measured over 3 consecutive sessions goal is targeted." 4) "Given maximum prompts, [Student] will appropriately

acknowledge an interaction initiated by adults and peers by giving an appropriate response, either verbal or non-verbal with 60% as measured over 3 consecutive sessions." 5) "[Student] will follow classroom rules and directives given throughout day 5 out of 5 trials over 4 consecutive weekly trials."

3. The student's [REDACTED] IEP prescribed 3 hours per month of speech-language pathology outside the general education setting.
4. The [REDACTED] IEP has three goals related to communication/speech and language: 1) "[Student] will participate and initiate conversation and maintain 2-3 conversational exchanges with peers and/or adults with minimal cuing required in 4 out of 5 trials over 3 sessions." 2) "[Student] will appropriately respond to an interaction initiated by adults and/or peers by giving an appropriate response, either verbal or non-verbal with 60% accuracy with minimal cueing as measured over 3 consecutive sessions." 3) "[Student] will follow basic 1-2 step directions with only 2 prompts provided for accuracy in 4 out of 5 trials over 3 consecutive weekly trials."
5. The student's [REDACTED] IEP prescribes 3 hours per month of speech-language pathology outside the general education setting.
6. The [REDACTED] IEP has three goals related to communication/speech and language: 1) "[Student] will appropriately participate in at least a 2 -3 conversational exchange with no more than 1 prompts required in 4 out of 5 trials." 2) "[Student] will appropriately respond to an interaction initiated by adults and/or peers by giving an appropriate response, either verbal or non-verbal with 80% accuracy with minimal cueing as measured over 3 consecutive sessions." 3) "[Student] will transition/merge appropriately back to the classroom setting with 1 prompt provided for accuracy over 3 consecutive sessions."
7. A private educational consultant observed the student on [REDACTED] and reported that the speech-language pathologist worked with the student on reading comprehension skills.

Discussion/Conclusion

[REDACTED] **PCS 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 to the child in accordance with the IEP. The complainant alleges that the student has been incorrectly receiving speech therapy to address articulation and reading comprehension instead of services to address social skills and pragmatic speech.

The student's [REDACTED] IEP prescribed 3 hours per month of speech-language pathology outside the general education setting. The student's IEP was updated on [REDACTED] and again on [REDACTED] to include the same amount of speech-language pathology services. OSSE reviewed service logs for speech-language pathology for the one-year investigation timeline 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.¹ 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.² The total hours below show service hours delivered and service hours attempted but missed due to the student’s absence or school closure.

	Speech-Language Pathology (3 hours/month)
November	60 min attempted
December	90 min received, 45 min attempted
January	105 min received, 75 min attempted
February	135 min received, 90 min attempted
March	105 min received, 90 min attempted
April	195 min received
May	45 min received, 135 min attempted
June	135 min received
September	135 min received
October	45 min received, 90 min attempted
November	180 min received

failed to make available 90 minutes of speech-language pathology services in September and October of the current school year. During the one-year investigation timeline, the student missed 585 minutes of speech-language pathology services due to absence or school closure.

Beyond receipt of services, the complainant is concerned about what is working on with the student during speech-language pathology service sessions. The complainant hired a private educational consultant to observe the student at school. The educational consultant observed the student during a speech-language pathology services session and reported that the speech-language pathologist worked with the student on reading

¹ OSSE Related Services policy (January 5, 2010) at p. 10.

² OSEP Letter to Clarke, March 8, 2007 (48 IDELR 77).

³ The student was required to receive 45 minutes for the portion of November that is included in the investigation timeline, which began .

⁴ The school was closed December 19, – January 3, . The student was required to receive 135 minutes for December.

⁵ The last day of school was June 19, . The student was required to receive 135 minutes of services for June 2014.

⁶ The first day of school was September 2, . The student was required to receive the full 180 minutes of services for this month.

comprehension skills. Four out of five of the student's communication/speech and language goals on the [REDACTED] IEP are related to social skills; the fifth goal is related to following classroom rules. Two out of three of the student's communication/speech and language goals on the [REDACTED] IEP are related to social skills; the third goal is related to following directions. The student's [REDACTED] IEP retained the two communication/speech and language goals related to social skills and replaced the third goal with one related to transitioning back to the classroom. At no point during the investigation timeline did the student's IEP contain communication/speech and language goals related to reading comprehension or articulation.

[REDACTED] s [REDACTED] reported that she provided services to the student in a small group with two to three other students and that they worked on social communication. The [REDACTED] additionally reported that she incorporated language skills into service delivery when they were related to other students' goals or when the student mispronounced certain letters. The service logs contain progress notes on what the service provider worked on with the student during each service session. A review of service logs shows that during the investigation timeline some speech-language pathology service session time was devoted to pronunciation and reading comprehension, but these were combined with structured activities with peers. Progress notes show that the service provider worked with the student on appropriate greetings with peers and adults, taking turns during games, and following directions. The record indicates that the speech-language pathologist was working on the student's communication/speech and language IEP goals, including social skills and pragmatic speech.

Therefore, [REDACTED] PCS is not in compliance with 34 CFR §300.323(c)(2) for failure to provide 90 minutes of speech-language.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2), [REDACTED] must:
 - a. Make up the missed 90 minutes of speech-language pathology. Documentation of completion is due to OSSE within 120 days of the date of this letter.
 - b. Convene the IEP team to consider if speech-language pathology 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: [REDACTED], Complainant
Avni Patel, Public Charter School Board