



February 13, 2015

[REDACTED]
District of Columbia Public Schools
[REDACTED]

[REDACTED]
Public Charter Schools
[REDACTED]

RE: State Complaint No. 014-012

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) and [REDACTED] Public Charter Schools ([REDACTED] 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 respond to a parent’s request for initial evaluation, failure to timely complete the student’s initial evaluation, failure to make reasonable efforts to obtain the informed consent from the parent for an initial evaluation, and failure to follow the proper disciplinary procedures with regard to notice of removal constituting a change of placement, a manifestation determination, appropriate alternative education setting, provision of education services, and expedited evaluations.

The complainant also raised systemic allegations concerning the expulsion of students from District charters and child find related concerns arising during 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 concerns relating to the high expulsion rates as the information cited by the complaint was reported more than one year prior to the date of the complaint. OSSE did not investigate the child find related concerns arising during the [REDACTED] school year as they



occurred more than one year prior to the date of the complaint.

The complainant additionally alleged that the LEA failed to extend IDEA protections to the student as a child who has not been determined eligible for services, but for whom the agency had knowledge of a suspected disability. The IDEA regulations at 34 CFR §300.534(a) and (b) allow children to assert IDEA disciplinary protections if, before the behavior predicated the disciplinary event, the parent of the child requested an evaluation. The facts provided by the complainant did not allege the LEA failed to initiate the manifestation determination and disciplinary removal protections for the student engaged in the evaluation process. The facts presented alleged that these procedures were not properly conducted and therefore were investigated under 34 CFR §§300.530, 300.531, and 300.534(d)(2)(i).

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 §§300.300 and 300.301
 - a. Failure to respond to a parent's request for initial evaluation as required by 34 CFR §300.301(b).
 - b. Failure to timely complete the student's initial evaluation as required by 34 CFR §300.301(c).
 - c. Failure to make reasonable efforts to obtain the informed consent from the parent for an initial evaluation as required by 34 CFR §300.300(a)(iii).
2. 34 CFR §§300.530, 300.531, and 300.534(d)(2)(i)
 - a. Failure to follow the proper disciplinary procedures with regard to notice of removal constituting a change of placement, a manifestation determination; appropriate alternative education setting; provision of education services, and expedited evaluations.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. Complainant's educational advocate
3. DCPS [REDACTED]
4. [REDACTED]
5. [REDACTED]

6. [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 intellectual disability.
3. The student's LEA is DCPS.
4. The student attended [REDACTED] PCS during the [REDACTED] school year.
5. DCPS is the LEA for [REDACTED] PCS.

ISSUE ONE: INITIAL EVALUATION

Findings of Fact

1. The parent sent [REDACTED] a written referral for evaluation in March [REDACTED]

2. [REDACTED] scheduled a student evaluation plan meeting within 10 days of receiving the written referral.
3. An FBA report was completed on [REDACTED].
4. A student evaluation plan meeting was held on [REDACTED].
5. A second student evaluation plan meeting was held on [REDACTED] to review student data.
6. A BIP was created on [REDACTED].
7. [REDACTED] sent a letter to the parent on [REDACTED] acknowledging the parent's referral for an initial evaluation of the child on [REDACTED].
8. A comprehensive psychological evaluation report was completed on [REDACTED]. An addendum to the evaluation report was completed on [REDACTED].
9. The eligibility meeting was held [REDACTED].

Discussion/Conclusion

DCPS and [REDACTED] are not in compliance with 34 CFR §§300.301(b-c) and 300.211. DCPS and [REDACTED] are in compliance with 34 CFR §300.300(a)(iii).

Pursuant to 34 CFR §300.301(b), either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. Once the evaluation request is made, the LEA must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability. (34 CFR §300.300(a)(iii)) The IDEA regulations at 34 CFR §300.301(c) specify that initial special education evaluations must be conducted within 60 days of receiving parental consent for the evaluation or within the timeframe established by the state. The District of Columbia has established a 120 day timeline from the date of referral for completing assessments or evaluations of students. (D.C. Official Code § 38-2561.02 (a)) OSSE has clarified that the 120 day timeline applies to the initial evaluation of all students with disabilities by local educational agencies in the District of Columbia and that initial evaluation includes the determination of eligibility.¹ The complainant alleges that [REDACTED] made [REDACTED] initial request for evaluation in February [REDACTED] and the eligibility meeting was not held until [REDACTED].

Response to Request for Evaluation

The complainant alleges that [REDACTED] made a verbal request for evaluation in February [REDACTED]. No [REDACTED] staff member could recall this request and OSSE's investigation was unable to confirm that the complainant's request occurred in February [REDACTED]. OSSE policy requires that the 120-day timeline for initial evaluation procedures begins upon receipt of a written referral and the LEA must provide the parent a copy of the of the procedural safeguards notice (PSN), a written notification of the referral (referral acknowledgement), and a prior written notice (PWN) of the LEA's proposal or refusal to evaluate the student.² [REDACTED] acknowledges receipt of a written

¹ OSSE Part B Initial Evaluation/Reevaluation Policy, p. 14 (March 22, 2010).

² *Id.* at 13-14

referral letter from the parent in March [REDACTED] but the record does not reflect the exact date of receipt and the LEA did not retain a copy of the letter. Meetings to review the student's data were held on [REDACTED] and [REDACTED]. At the [REDACTED] student evaluation plan meeting a PSN was issued and the team reviewed the student's existing data. The record does not reflect that a PWN was issued at any time. [REDACTED] did not issue a referral acknowledgement letter until [REDACTED] that cited to the [REDACTED] meeting as the date of referral. However, [REDACTED] reported that the [REDACTED] meeting was held within 10 days of receiving the written referral. This admission establishes the written referral and start of the 120 day timeline, at the latest, on [REDACTED].

The date the school received the March [REDACTED] letter from the parent should have triggered the initial evaluation procedures, including issuance of the PSN, referral acknowledgement, and PWN of the LEA's proposal to collect additional data and to evaluate the student.³ The LEA violated procedural requirements by failing to issue a written referral acknowledgement until [REDACTED] and failing to issue a PWN entirely, despite holding a meeting to review the student's data and issuing a PSN. OSSE finds that the LEA failed to respond to the parent's request for initial evaluation because the LEA failed to take the required action to acknowledge the parent's request for referral and to communicate the LEA's intention to initiate the evaluation process.

OSSE policy requires that when a parent makes a verbal request for evaluation, the LEA must assist the parent in completing a written referral.⁴ Although OSSE's investigation was unable to confirm that the parent verbally requested an initial evaluation in February [REDACTED] OSSE reminds the LEA of their obligation to provide parent assistance and document verbal requests in writing as required by State policy.

Providing the State Education Agency with Information

The IDEA at 34 CFR §300.211 requires that an 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, including reporting on timely initial evaluations. LEAs are additionally required to update student's records within 5 business days, including information for students with disabilities in SEDS.⁵ [REDACTED] failure to upload the parent's March [REDACTED] written request for initial evaluation into SEDS, or correctly record the date of receipt, constitutes a failure to provide OSSE with accurate and reliable data.

Reasonable Efforts to Obtain Consent

The complainant alleges a delay between [REDACTED] initial request for evaluation and when the school

³ *Id.* at 13

⁴ *Id.* at 12

⁵ OSSE LEA Data Management Policy, p. 3 (December 9, 2010).

allowed [REDACTED] to sign consent on [REDACTED]. At the student evaluation plan meeting held on [REDACTED], LEA staff members and the parent reviewed existing student data, including grades and assessment data, teacher observations, the [REDACTED] FBA, and input from the parent. The team agreed to reconvene after collecting additional student data on response to interventions and further determine which evaluations were needed for the student's initial evaluation. The team reconvened on [REDACTED] to review data on how the student responded to the various interventions put in place and created a BIP to address the student's behavior. The team determined that a psychological evaluation was necessary and the parent signed consent to evaluate. [REDACTED] obtained the parent's consent on their first attempt to do so at the [REDACTED] meeting and the parent signed the consent to evaluate 16 – 26 days after [REDACTED] written referral for an initial evaluation.⁶ During that time, the LEA had begun collecting and reviewing existing student data to start the initial evaluation process and had taken steps to address the student's behavior. OSSE does not find that there was an unreasonable delay in obtaining parental consent to evaluate.

Evaluation Timeline

As discussed above, the LEA received a written referral for evaluation no later than the [REDACTED] student evaluation team meeting, if not up to ten days prior as reported by [REDACTED] staff. The comprehensive psychological evaluation determined necessary at the [REDACTED] meeting was completed on [REDACTED]. An addendum to the evaluation report was completed on [REDACTED]. An eligibility meeting was held [REDACTED] where the student was determined to be a student with a disability under the category of intellectual disability. OSSE finds that the [REDACTED] eligibility meeting occurred at least 122 days after the referral date because the LEA received the written referral for evaluation no later than [REDACTED]. As a result, the LEA failed to complete the evaluation within 120 days of receiving the written referral.⁷

Therefore, DCPS and [REDACTED] are not in compliance with 34 CFR §300.301(b-c) for failure to take the required action to acknowledge the parent's written referral for evaluation, failure to issue prior written notice of the LEA's proposal to evaluate the student, failure to timely complete the student's initial evaluation. DCPS and [REDACTED] are also not in compliance with §200.11 for failure to provide OSSE with accurate and reliable data.

ISSUE TWO: DISCIPLINARY PROCEDURES

Findings of Fact

1. The parent sent [REDACTED] a written referral for evaluation in March [REDACTED]
2. The student was suspended for 3 days on [REDACTED] for bringing a knife to school.
3. The blade of the knife was 3¾ inches long.

⁶ [REDACTED] is 16 days. The referral was received up to 10 days prior to the [REDACTED] meeting.

⁷ [REDACTED] to [REDACTED] is 122 days.

4. A manifestation determination meeting was held on [REDACTED]. At this meeting the IEP team decided that they would wait until after the student's eligibility meeting to make the determination.
5. A disciplinary meeting was held on [REDACTED].
6. The student was expelled from [REDACTED] on [REDACTED].
7. The [REDACTED] written expulsion notification informed the complainant that [REDACTED] had 10 days to provide [REDACTED] with proof of enrollment in another educational program.
8. [REDACTED] last day of school for the [REDACTED] school year was [REDACTED].
9. The student missed 8.5 school days due to suspension and expulsion at the end of the [REDACTED] school year.
10. The student was determined eligible for special education services on [REDACTED].
11. At a manifestation determination meeting on [REDACTED], the IEP team determined that the behavior incident on [REDACTED] was a manifestation of the student's disability.
12. The parent enrolled the student in another DCPS elementary school on [REDACTED].
13. [REDACTED] first day of school for the [REDACTED] school year was [REDACTED].
14. DCPS' first day of school for the [REDACTED] school year was [REDACTED].

Discussion/Conclusion

DCPS and [REDACTED] are not in compliance with 34 CFR §§300.530(d), 300.531 and 300.534(d)(2)(i). DCPS and [REDACTED] are in compliance with 34 CFR §300.530(e) & (h).

Pursuant to 34 CFR §300.534(a), a child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in the IDEA regulations if the public agency has knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred, the parent of the child requested an evaluation of the child. (34 CFR §300.534(b)(2)) The complainant requested an evaluation in March [REDACTED] prior to the disciplinary incident that occurred on [REDACTED], thus the student was entitled to the disciplinary protections provided for in the IDEA regulations.

Notice of Removal

Pursuant to 34 CFR §300.530(h), on the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice (PSN). The complainant alleges that [REDACTED] did not receive written notice on the day that the student was expelled.

The student was suspended for an incident that occurred on [REDACTED]. A manifestation determination meeting was held on [REDACTED] where the parent received a copy of the PSN.

A separate disciplinary meeting was held the same day. The following day, on [REDACTED], the [REDACTED] principal called the complainant to inform [REDACTED] that the student was expelled and could not return to [REDACTED]. A written notice of expulsion dated [REDACTED] was mailed to the complainant. The complainant reported that [REDACTED] received the written notice in the mail a week later. The decision on [REDACTED] to expel the student constitutes a change in placement requiring notice to the parent. (34 CFR §§300.530(h) and 300.536(a)(1)) The regulations do not require notice of the decision to be in writing, but rather that notice is provided on the same date as the decision to remove the student. OSSE finds that [REDACTED] notified the parent of the decision to remove the child from the child's current placement where the record reflects the parent received notice of procedural safeguards on [REDACTED] and notice of the expulsion via phone on [REDACTED].

Manifestation Determination

Pursuant to 34 CFR §300.530(e), 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 determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability. The complainant alleges that the LEA failed to initiate the manifestation determination process for the student.

At the manifestation determination meeting held on [REDACTED], the IEP team decided that they could not make the determination because they had not yet held the student's eligibility meeting. A disciplinary meeting was also held on [REDACTED]. On the following day, [REDACTED], the decision was made to expel the student. The student missed the last 8.5 days of the school year from the date of suspension on [REDACTED], until the last day of school on [REDACTED].⁸ The student's IEP team convened on [REDACTED] and the student was determined eligible for special education services. On the same date a second manifestation determination meeting was held and the IEP team determined that the student's behavior was a manifestation of the student's disability. Although the manifestation determination was made more than a month after the decision to expel the student, only 6 school days had passed from the date the decision to expel the student, until the last day of school on [REDACTED]. OSSE finds that manifestation determination was held in accordance with the required timeline.

Alternative Education Setting

If the behavior is determined to be a manifestation of the student's disability, the child must be returned to the placement from which [REDACTED] was removed, unless special circumstances apply. (34 CFR 300.530(f)(2)) Special circumstances allow a school to remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the

⁸ The incident report shows that the incident occurred at 1:15pm on [REDACTED]. OSSE is counting [REDACTED] as a half day of suspension.

behavior is determined to be a manifestation of the child's disability, if the child carries a weapon to or possesses a weapon at school. (34 CFR §300.530(g)(1)) The regulations define weapon according to 18 USC §930(g)(2) and exclude pocket knives with a blade of less than 2.5 inches long. (34 CFR §300.530(h)(i)(4)) The complainant alleges that the LEA failed to accept the student back to school within 45 days following the expulsion and manifestation determination meeting.

The knife the student brought to school had a blade 3¾ inches long and qualifies as a weapon, thus the LEA was able to remove the student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior was determined to be a manifestation of ■■■ disability.

Provision of Education Services

Pursuant to 34 CFR §300.530(d), a child with a disability who is removed from the child's current placement for more than 10 school days must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the child's IEP goals. The IEP team is responsible for determining the student's educational services and the setting for receipt of those services (34 CFR §§300.530(d)(5) & 531) The decision to expel the student was made on ■■■ and there is no evidence that the IEP team convened to determine what educational services would be provided, and in what setting the student would continue to receive educational services. Instead, ■■■ provided no guidance regarding continuing educational services and placed the burden of identifying the educational setting solely on the parent by directing the parent to enroll the student in a new school. The parent did so, enrolling the student in a new school within the same LEA on ■■■.

A manifestation determination meeting was held on ■■■ where the team determined the student's behavior was a manifestation of ■■■ disability. This is the second point at which the student's IEP team should have determined the services necessary to enable the student to continue to participate in the general education curriculum and the educational setting for the provision of services during the student's expulsion. (34 CFR §§300.530(d)(5)&531) The LEA's failure to ensure that the IEP team determined the required educational services and the interim educational setting, after expelling the student and finding that the behavior was a manifestation of ■■■ disability, constitutes a failure to determine the student's appropriate services and educational setting for services.

The student was suspended on ■■■, expelled on ■■■, and the school year ended on ■■■. As a result, the student missed only 8.5 days of school before the end of the ■■■ school year. The student is not owed any make-up services because ■■■ did not miss more than 10 school days. However, ■■■ direction to the parent to enroll the student in a new school absent any action to identify services and an educational setting for the student is

evidence of failure to ensure the student continued to receive educational services for the duration of a disciplinary action that constituted a change in placement. As the LEA, DCPS must ensure that students removed from their placement at dependent charter schools continue to receive educational services. The burden of ensuring continued educational services upon removal may not be placed on the parent through post-expulsion enrollment requirements. The LEA's failure to take any action to determine necessary services and an educational setting for receipt of those services constitutes a violation of the requirement to ensure the student continues to receive education services during disciplinary removals that constitute a change in placement.

Expedited Evaluations

Pursuant to 34 CFR §300.534(d)(2)(i), if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. The complainant alleges that the LEA failed to conduct an expedited evaluation while the child was being disciplined.

At the [REDACTED] manifestation determination, the meeting notes indicate that the student's eligibility meeting was scheduled for [REDACTED]. There is no evidence in the record that the LEA attempted to expedite the evaluation process after the [REDACTED] incident, and ultimately held the eligibility meeting late on [REDACTED], at least two days beyond the 120 day timeline for initial evaluations.

Therefore, DCPS and [REDACTED] are not in compliance with 34 CFR §300.531 for failure to determine an interim alternative educational setting, 34 CFR §300.530(d) for failure to provide educational services, and §300.534(d)(2)(i) for failure to conduct an expedited initial evaluation.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.301(b-c), DCPS and [REDACTED] must
 - a. Change the student's referral date in SEDS to [REDACTED] or a prior date. Documentation is due to OSSE within 30 days of the date of this LOD.
2. In order to correct the noncompliance with 34 CFR §§300.530(d)(5) & 531, DCPS and [REDACTED] must:
 - a. Amend the student's record to remove the [REDACTED] expulsion. Documentation is due to OSSE within 30 days of the date of this LOD.
 - b. Provide training to school staff on the IEP team's responsibility to determine educational services necessary to enable the student to continue to participate in the general education curriculum and an interim alternative educational setting when a student is removed from the student's placement for more than 10 school days pursuant to a disciplinary incident. Documentation is due to OSSE within 90 days of the date of this LOD.

3. In order to correct the noncompliance with 34 CFR §300.534(d)(2)(i), [REDACTED] and DCPS must
 - a. Provide training to school staff on their responsibility to conduct an expedited evaluation during disciplinary measures, including specific timelines associated with an expedited evaluation. 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 or 202-724-7860.

Sincerely,

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

cc: [REDACTED], Complainant
[REDACTED], Advocate, Advocates for Justice and Education