



February 20, 2015

[REDACTED]
Public Charter School
[REDACTED]

RE: State Complaint No. 014-014

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 ensure student discipline is applied in conformance with the IDEA, and failure to timely complete the student's initial evaluation.

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 §§300.530 & 300.534
 - a. Failure to ensure student discipline is applied in conformance with the IDEA.
2. 34 CFR §300.301(c)
 - a. Failure to timely complete the student's initial evaluation.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:



1. Complainant

2. [REDACTED]
3. [REDACTED]
4. [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 speech or language impairment.
3. The student’s local educational agency (LEA) is [REDACTED] PCS.

ISSUE ONE: STUDENT DISCIPLINE

Findings of Fact

1. On [REDACTED], the student was removed from the classroom for the first time during the [REDACTED] school year.
2. On [REDACTED], the parent signed a request for initial evaluation.
3. The student received one day of in school suspension on [REDACTED].
4. The student received two days of out of school suspension from [REDACTED] to [REDACTED].
5. The student was removed from the classroom for disciplinary action 37 times from the start of the [REDACTED] school year on [REDACTED] through [REDACTED].

6. Disciplinary removals from the classroom lasted for a duration of 5, 10, or 15 minutes increments.
7. During removals lasting more than 15 minutes, the student received behavior and classwork support from the [REDACTED] coach.
8. A functional behavior assessment (FBA) was completed on [REDACTED].
9. A behavior intervention plan (BIP) was completed on [REDACTED].
10. The [REDACTED] BIP requires the use of desk dots, goals and awards charting and classroom removals only for aggressive behaviors.
11. The student is subject to a school-wide behavior management system consisting of three color coded tiers (green, yellow, and red).

Discussion/Conclusion

[REDACTED] PCS is in compliance with 34 CFR §300.530 and 300.534.

Pursuant to 34 CFR §300.530(b), school personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement. 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, if the public agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. A public agency has been deemed to have had knowledge that the child is a child with a disability, if before the behavior that precipitated the disciplinary action occurred; the parent has requested an evaluation of the child. (34 CFR §300.534(b)(2)) The complainant alleges that during the [REDACTED] school year, the student suffered substantial harm because [REDACTED] PCS used egregious and unreasonable disciplinary measures, and the student was spending more time out of the classroom than in the classroom.

The student received one day of in school suspension on [REDACTED] and two days of out of school suspension on [REDACTED], [REDACTED] totaling three days of suspension during the [REDACTED] school year. The student was removed from the classroom for behavior incidents on 37 separate occasions from the beginning of the [REDACTED] school year through [REDACTED], the date of the complaint. [REDACTED] PCS staff reported that each time the student was removed from the classroom, [REDACTED] was sent to a [REDACTED] coach for 5, 10, or 15 minute increments. LEA staff additionally reported that during classroom removals for periods longer than 15 minutes, the [REDACTED] coach redirects the student and helps [REDACTED] complete classroom work in a quiet setting.

The written referral for evaluation was made on [REDACTED], giving [REDACTED] PCS

knowledge that the student was a child with a disability on this date. (34 CFR§300.534(b)(2)) The student is entitled to IDEA protections because the LEA had knowledge of the student's disability prior to the suspensions, and before 36 out of 37 removals from the classroom. (34 CFR §300.534(a)) The student's 37 removals from the classroom for a maximum of 15 minutes each, total one school day, 1 hour, and 15 minutes.¹ OSSE finds that the student's suspensions and classroom removals total 4 days, 1 hour and 15 minutes. Therefore, a change of placement did not occur where the student was not removed for more than 10 consecutive school days, in a school year. (34 CFR §300.536(a)) Although the student was entitled to IDEA protections, as a student referred for evaluation prior to the behavior that resulted in disciplinary action, the student was not subjected to a change in placement, and therefore the IDEA's disciplinary protections were not activated.

The complainant additionally alleged that the student's removals from the classroom impede learning. The IDEA requires LEAs to consider the use of positive behavioral interventions and supports (PBIS) and other strategies to address behavior when it impedes the child's learning or that of others. (34 CFR §300.324(a)(2)(i)) OSSE's review of the record confirms that the student was removed 37 times from the classroom for behavior concerns over the course of three months. PCS completed a FBA and developed a BIP on to address the student's aggressive behavior; including the use of desk dots, and goals and awards charting. The BIP additionally states that the student will be sent out of the classroom only for aggressive behaviors, threatening staff or peers, and refusal to follow directions after prompting. The LEA also has in place a school-wide behavior management system consisting of three behavior tiers and teacher warning systems. OSSE declines to make a finding on this issue where the record reflects a plan is in place for the student to receive individualized positive behavioral supports. However, OSSE reminds the LEA of their responsibility to consider the use of positive behavioral interventions and supports in the classroom in order to limit the number of times the student is removed and to ensure this information is incorporated into the student's initial IEP. (34 CFR §300.324(a)(2)(i))

Therefore, PCS is in compliance with 34 CFR §§300.530 & 300.534.

ISSUE TWO: INITIAL EVALUATION

Findings of Fact

1. The parent signed a request for initial evaluation on .
2. On , as meeting was convened to review existing data and determine if additional evaluations were needed.
3. The Acknowledgment of Referral to Special Education letter states that the referral for an initial evaluation of the student was received by the LEA on .

¹ This calculation is based on an 8 hour school day.

4. The parent signed consent for Initial Evaluation on [REDACTED].
5. The parent signed a Procedural Safeguards Notice (PSN) on [REDACTED].
6. A functional behavior assessment (FBA) was completed on [REDACTED].
7. A behavior intervention plan (BIP) was completed on [REDACTED].
8. The LEA issued a Prior Written Notice (PWN) to proceed with evaluation process on [REDACTED].
9. The Speech and Language Evaluation was completed on [REDACTED].
10. The team convened and determined the student as eligible for special education services on [REDACTED].

Discussion/Conclusion

[REDACTED] PCS is not in compliance with 34 CFR §300.301(b-c).

The IDEA regulations at 34 CFR §300.301(b) specify that, 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. Pursuant to 34 CFR §300.301(c), 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.² The complainant alleges that [REDACTED] PCS failed to complete an initial evaluation of the student within the required 120 day timeframe from the date the referral was made on [REDACTED].

Evaluation Timeline

On [REDACTED], the parent signed a Parental Request for Initial Evaluation. The LEA issued an Acknowledgement of Referral to Special Education Letter on [REDACTED] that confirmed the referral was received on [REDACTED]. A meeting was also held on [REDACTED] to review the student's existing data and the parent signed the Consent for Initial Evaluation. The team agreed to conduct an FBA and Speech and Language Evaluation. The IEP team convened on [REDACTED] and determined the student eligible for special education services under the category of speech or language impairment.

Based on the timeframe of 120 days from the referral made on [REDACTED], the student's eligibility determination should have been completed by [REDACTED]. However, the record reflects the student's eligibility determination was not made until [REDACTED], 23 days after the 120 day timeline ended. OSSE finds that the [REDACTED] eligibility determination occurred 143 after the parent's referral. As a result the LEA failed to complete the evaluation within 120 days of receiving the written referral.

² OSSE Part B Initial Evaluation/Reevaluation Policy, p. 14 (March 22, 2010).

Response to Request for Evaluation

OSSE's investigation revealed that after receiving the parent's written referral on [REDACTED], the LEA attempted interventions and gathered academic progress data for 39 days prior to convening the [REDACTED] meeting to review existing data. OSSE policy requires that upon receipt of a written referral for evaluation, 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.³ An [REDACTED] referral acknowledgement letter confirms [REDACTED] PCS received the referral from the parent on [REDACTED]. On [REDACTED], a meeting was convened to review the student's existing data and the team determined that the student required additional formal evaluations. The parent signed consent for evaluation and received the PSN on the same date. [REDACTED] PCS issued a PWN of the LEA's proposal to evaluate the student on [REDACTED] and the student's formal evaluations were completed on [REDACTED].

The date the school received the [REDACTED] written referral 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.⁴ The LEA did not comply with these requirements because the written referral acknowledgement and PSN were not issued until 39 days after the parent's referral for initial evaluation.⁵ Furthermore, the LEA reported that this delay was necessary to implement interventions and collect student data. The Office of Special Education Programs has opined that LEAs have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of a response to intervention (RTI) strategy. OSEP, Memorandum to: State Directors of Special Education, 56 IDELR 50 (January 21, 2011). OSSE finds that the LEA's use of RTI for this 39 day period constitutes an improper delay of the student's evaluation process.

Subsequent to this delay, the LEA failed to issue a PWN for another 99 days, totaling a 138 day delay between the parent's written referral and notice that the LEA intended to evaluate the student.⁶ OSSE finds that the LEA failed to respond to the parent's request for initial evaluation because the required action was not taken to acknowledge the referral or to communicate the LEA's intention to initiate the evaluation process.

Therefore, [REDACTED] PCS is not in compliance with 34 CFR §300.301(b-c) for failure to respond to the parent's request to evaluate the student and failure to timely complete the student's initial evaluation.

³ *Id.* at 13-14.

⁴ *Id.* at 13.

⁵ Thirty-nine (39) days passed between the parent's written referral for evaluation on [REDACTED] and the meeting held on [REDACTED].

⁶ Ninety-nine (99) days passed between the [REDACTED] meeting and the PWN issued on [REDACTED].

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.301(b-c), [REDACTED] PCS must:
 - a. Review and revise referral procedures to ensure delays do not occur at the commencement of the timeline to conduct an evaluation and determine eligibility. Documentation is due to OSSE within 30 days of the date of this letter.
 - b. Provide training to school special education staff on their responsibility to complete the evaluation process, including the eligibility determination, within 120 days of a student's referral for evaluation. Training materials must include information on the appropriate use of RTI in the evaluation process. Documentation of completion, including training materials, 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