



March 23, 2015

[REDACTED]

District of Columbia Public Schools

[REDACTED]

[REDACTED]  
Public Charter Schools [REDACTED]

RE: State Complaint No. 014-016

### 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] PCS) alleging violations in the special education program of [REDACTED] [REDACTED] (Student ID # [REDACTED] hereinafter “student” or “child.”<sup>1</sup>

The complainant alleged that DCPS and [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 that special education and related services are made available to the child in accordance with the child’s IEP, failure to include in the child’s IEP a statement of the child’s present levels of academic achievement and functional performance and a statement of measurable annual goals, failure to base the child’s placement on the child’s IEP, failure to ensure the child is assessed in all areas related to the suspected disability, failure to ensure the review of existing evaluation data, failure to consider the use of positive behavioral interventions and supports, failure to revise the IEP, and failure to conduct a functional behavioral assessment (FBA).

The State Complaint Office for OSSE has completed its investigation of the State Complaint.

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<sup>1</sup> [REDACTED] PCS is a dependent charter school, electing DCPS as the Local Education Agency (LEA) for special education students attending the school.



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. Failure to ensure that special education and related services are made available to the child in accordance with the child's IEP, specifically with regard to specialized instruction and transportation services.
2. 34 CFR §300.320(a)(1) – (2)
  - a. Failure to include in the child's IEP a statement of the child's present levels of academic achievement and functional performance and a statement of measurable annual goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.
3. 34 CFR §300.116(b)(2)
  - a. Failure to base the child's placement on the child's IEP.
4. 34 CFR §§300.304 and 300.305
  - a. Failure to ensure the child is assessed in all areas related to the suspected disability of the child, as required by 34 CFR §300.304(c)(4).
  - b. Failure to ensure the review of existing evaluation data on the child as part of any reevaluation, as required by 34 CFR §300.305(a)(1).
5. 34 CFR §300.324
  - a. Failure to 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, as required by 34 CFR §300.324(a)(2)(i).
  - b. Failure to revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals, the results of any reevaluation, information about the child provided by the parent, or the child's anticipated needs, as required by 34 CFR §300.324(b)(ii).
6. 34 CFR §300.530(f)(1)(i)
  - a. Failure to conduct a functional behavioral assessment (FBA) upon a determination that the student's behavior was a manifestation of the

student's disability following a removal of more than 10 school days.

The complainant also raised concerns regarding IEP revision, placement determination, and the student's re-evaluation for special education service eligibility while attending [REDACTED] Middle School. A due process complaint was filed on [REDACTED] (SHO# [REDACTED]) against DCPS alleging the same violations. A settlement agreement resulted from the resolution process and was executed on [REDACTED] to resolve the complaint. OSSE did not investigate these concerns as the [REDACTED] settlement agreement is binding on the parties as to the issues of the student's IEP revision, placement determination, and the student's re-evaluation for special education services while attending [REDACTED] Middle School.

The complaint additionally raised concerns regarding the student's placement determination for 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 as they pertain to [REDACTED] through [REDACTED] as they occurred more than one year prior to the date of the complaint.

The complaint also raised concerns regarding failure to implement services comparable to the previous IEP when the student transferred from [REDACTED] Middle School to [REDACTED] PCS. In accordance with the IDEA regulations at 34 CFR §153(b)(1) a complaint must allege that a public agency has violated a requirement of Part B of the Act. OSSE did not investigate these concerns as they did not allege a violation of Part B of the IDEA where the IDEA does not require the provision of comparable services to students transferring between schools within the same LEA. Concerns regarding the LEA's failure to implement services upon enrollment at [REDACTED] PCS will be investigated under 34 CFR §300.323(c)(2) as identified above.

#### **INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. Complainant
2. Complainant's educational advocate
3. DCPS [REDACTED]
4. DCPS [REDACTED]
5. DCPS [REDACTED]
6. [REDACTED]
7. [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):



**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 specific learning disability.
3. The student attended [REDACTED] Middle School for the [REDACTED] school year.
4. The student attends [REDACTED] PCS.
5. The student's LEA is DCPS.

## **ISSUE ONE: MAKE SERVICES AVAILABLE**

### **Findings of Fact**

1. The student's [REDACTED] IEP prescribed 12 hours per week of specialized instruction in the general education setting and transportation services.
2. The student received specialized instruction from a special education teacher in the general education setting and worked on IEP goals.
3. The student's [REDACTED] IEP prescribes 15 hours per week of specialized instruction outside the general education setting and transportation services.
4. After the student's IEP was updated on [REDACTED], the student began receiving specialized instruction through small group and one-on-one instruction from a special education teacher in a resource room for English, math, and reading.
5. At [REDACTED] PCS the student is in a general education classroom with co-teachers for all core academic classes. One of the co-teachers is a special education teacher.
6. At [REDACTED] PCS the student is given more time to complete assignments and tests, allowed to take breaks, assignments are scaffolded and broken into pieces, and the student is in an intervention class for reading and math.
7. The student received transportation services at [REDACTED] Middle School during the [REDACTED] school year.
8. [REDACTED] first day of school was August 25, [REDACTED].
9. The complainant's educational advocate emailed [REDACTED] PCS on [REDACTED] to request transportation services.
10. A transportation request was made by [REDACTED] PCS on [REDACTED] to change the receiving school to [REDACTED] PCS. The requested change was implemented by [REDACTED].

### **Discussion/Conclusion**

**DCPS and [REDACTED] PCS are 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 DCPS and [REDACTED] PCS failed to provide specially designed instruction to meet the student's needs and that the student did not receive transportation services upon transferring to [REDACTED] PCS.

#### *Specialized Instruction*

The student's [REDACTED] IEP prescribed 12 hours per week of specialized instruction in the general education setting. The student attended [REDACTED] Middle School for the [REDACTED] school year. DCPS staff reported that the student received specialized instruction in English and math in an inclusion setting. Special education teachers worked on the student's IEP goals, which aligned with the curriculum taught in the student's classes. The student's IEP was

updated on [REDACTED] to prescribe 15 hours per week of specialized instruction outside the general education setting. DCPS staff additionally reported that after this update, the student was pulled out for instruction in a resource room for English, math, and reading intervention. In the resource room, a special education teacher worked with the student in a small group setting or provided one-on-one instruction. OSSE finds that DCPS provided specialized instruction in accordance with the student's IEP while at [REDACTED] Middle School for the [REDACTED] school year.

For the [REDACTED] school year the student enrolled in [REDACTED] PCS. [REDACTED] PCS staff reported that the student is in a general education setting with co-teachers for all core academic classes. One of the co-teachers is a special education teacher who provides specialized instruction and one-on-one assistance as needed. The student is given more time to complete assignments and tests, allowed to take breaks, and assignments are scaffolded and broken into pieces. The student is in an intervention class for reading and math. Although the student is receiving specialized instruction at [REDACTED] PCS, it is not delivered outside the general education setting as required by the student's IEP. In order to implement the student's IEP, [REDACTED] PCS must provide specialized instruction outside the general education setting. Therefore, OSSE finds that DCPS and [REDACTED] PCS failed to provide specialized instruction as prescribed by the student's IEP.

#### *Transportation*

The student's [REDACTED] and [REDACTED] IEPs both include transportation services. During the [REDACTED] school year, the student had transportation services in place at [REDACTED] Middle School. When the student enrolled in [REDACTED] PCS for the [REDACTED] school year, transportation services did not start immediately. On the first day of school on August 25, [REDACTED], the complainant's educational advocate emailed [REDACTED] PCS to request transportation services. A transportation request was made in OSSE's Transportation Online Tool for Education (TOTE) system on [REDACTED] to change the receiving school to [REDACTED] PCS. The requested change was implemented by [REDACTED]. OSSE finds that DCPS and [REDACTED] failed to provide transportation services to the student from [REDACTED].

Therefore, DCPS and [REDACTED] PCS are not in compliance with 34 CFR §300.323(c)(2) for failure to provide transportation services and specialized instruction outside the general education setting.

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<sup>2</sup> The request was made by the LEA on [REDACTED] in TOTE and OSSE DOT implemented the requested change by [REDACTED].

## **ISSUE TWO: IEP PRESENT LEVELS OF PERFORMANCE AND ANNUAL GOALS**

### **Findings of Fact**

1. Pursuant to a settlement agreement, DCPS completed a comprehensive psychological assessment on [REDACTED].
2. The IEP team met to review the assessment and revise the student's IEP on [REDACTED].
3. The student's [REDACTED] IEP prescribes 15 hours per week of specialized instruction outside the general education setting and transportation services.
4. On the [REDACTED] IEP, under the areas of concern for mathematics, reading, and written expression, the present levels of academic achievement and functional performance contain information from the [REDACTED] comprehensive psychological assessment.
5. From the [REDACTED] IEP to the [REDACTED] IEP, two of the student's annual goals for mathematics remained the same and two goals contained additional criteria.
6. From the [REDACTED] IEP to the [REDACTED] IEP, the student's annual goals for reading remained the same.
7. From the [REDACTED] IEP to the [REDACTED] IEP, one of the student's annual goals for written expression remained the same, one goal was changed, and one goal contained additional criteria.

### **Discussion/Conclusion**

#### **DCPS and [REDACTED] PCS are in compliance with 34 CFR §300.320(a)(1) – (2).**

Pursuant to 34 CFR §300.320(a)(1) – (2), the IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum, and a statement of measurable annual goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum. The complainant alleges that the student's IEP goals are not based on [REDACTED] present levels of performance.

#### *Present Levels of Performance*

The student's most recent IEP was updated on [REDACTED] while the student was attending [REDACTED] Middle School. The student's present levels of performance are recorded on the IEP under each area of concern. On the [REDACTED] IEP the present levels of performance for each academic area—mathematics, reading, and written expression—contain results from recent assessment data, including the [REDACTED] comprehensive psychological assessment. The present level of performance for each academic area is updated and different from what was recorded in the student's [REDACTED] IEP. The record reflects that the student's current IEP, dated [REDACTED], contains the most up to date information available on the student's present levels of academic achievement and functional performance.

### *Measurable Annual Goals*

DCPS staff reported that the student's [REDACTED] IEP goals were aligned with areas the teachers were working on with the student in class. Staff additionally reported that most of the IEP goals were not changed at the [REDACTED] meeting because the student had not mastered them. A few of the goals contained additional criteria and one goal related to written expression was changed. A child's failure to master IEP goals within one year does not automatically invalidate those goals. The record indicates that the student was not making academic progress, which contributed to the IEP revision at the [REDACTED] meeting, requiring the student to be placed in a resource room for instruction in English, math, and reading. DCPS staff reported that once the student was placed in the resource room for instruction, [REDACTED] began to make academic progress. Given the student's initial lack of academic progress and the IEP revision to deliver services in a more restrictive setting in order to achieve progress on these goals, it is not inappropriate that the student's academic goals remained the same on the [REDACTED] IEP. The record indicates that the student's current IEP, dated [REDACTED] [REDACTED] contains annual goals that are based on recent reevaluation and achievement data.

Therefore, DCPS and [REDACTED] PCS are in compliance with 34 CFR §300.320(a)(1) – (2).

### **ISSUE THREE: PLACEMENT**

#### **Findings of Fact**

1. The student's [REDACTED] IEP prescribes 15 hours per week of specialized instruction outside the general education setting and transportation services.
2. At [REDACTED] PCS the student receives specialized instruction in a general education classroom with co-teachers for all core academic classes.
3. The complainant's educational advocate requested a change in placement via email on [REDACTED].
4. At the [REDACTED] 30-day IEP review meeting, the student's IEP was not revised but the complainant requested a change in placement and [REDACTED] PCS indicated that a request had already been submitted to DCPS Central Office to begin the placement process.
5. The complainant requested a change in placement at the [REDACTED] IEP team meeting and was told that the student's placement would be discussed once all assessments were completed.

#### **Discussion/Conclusion**

**DCPS and [REDACTED] are not in compliance with 34 CFR §§300.115 and 300.116(b)(2).**

Pursuant to 34 CFR §300.116(b)(2), the child's placement must be based on the child's IEP. The complainant alleges that the student's placement at [REDACTED] PCS is not based on the student's IEP and that [REDACTED] PCS is unable to implement the student's IEP.

The student enrolled in [REDACTED] PCS for the [REDACTED] school year. [REDACTED] PCS staff



reported that the school provides only an inclusive setting for special education students. There is no resource room instruction and there are no special education classes. The student is placed in a general education classroom with co-teachers for all of [REDACTED] core academic classes. [REDACTED] PCS is unable to implement the student's [REDACTED] IEP that prescribes 15 hours per week of specialized instruction outside the general education setting. On the first day of school, [REDACTED], the complainant's advocate emailed school staff to request a placement that could implement the student's IEP because [REDACTED] PCS had already acknowledged to the complainant via phone that it would be unable to accommodate the student's need for specialized instruction outside the general education setting. At the [REDACTED] 30-day IEP review meeting, the request for a change in placement was renewed. [REDACTED] PCS responded that a request had been made to DCPS; however, DCPS denies receiving such a request from [REDACTED] PCS. The request for a change in placement was discussed again at the [REDACTED] IEP team meeting. At this meeting DCPS and [REDACTED] PCS said that they would wait until all agreed upon assessments were completed and reviewed before discussing the student's placement.

The parties appear to conflate a location assignment that can implement the student's IEP and a referral for a more restrictive placement. Pursuant to the IDEA at 34 CFR §300.115, each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services, including instruction in regular classes, special class, special schools, home instruction, and instruction in hospitals and institutions. DCPS, as the student's LEA in this case, is responsible for ensuring a continuum of placements is available to students who attend [REDACTED] PCS and who may require a more restrictive environment beyond the inclusion setting provided at this school. The student's [REDACTED] IEP does not require a fulltime placement in a separate special education school; it only requires that the student receive part of [REDACTED] specialized instruction outside the general education setting. The IEP was reviewed and these services were confirmed at the [REDACTED] meeting. The student is entitled to have [REDACTED] IEP implemented as written, and DCPS as the LEA should have offered locations on the continuum where the student's IEP could be implemented. DCPS does not need to wait until after new assessments are completed in order to do this. A referral to a more restrictive setting is inappropriate in this situation. OSSE finds that DCPS and [REDACTED] PCS have failed to base the student's placement on the IEP for the [REDACTED] school year and DCPS has failed to ensure that a continuum of alternative placements was made available to meet the student's need for specialized instruction outside of the general education setting.

Therefore, DCPS and [REDACTED] PCS are not in compliance with 34 CFR §§ 300.115 and 300.116(b)(2).

## **ISSUE FOUR: REEVALUATION**

### **Findings of Fact**

1. A due process complaint was filed on [REDACTED] alleging DCPS' failure to comprehensively reevaluate the student and failure to develop an appropriate IEP.
2. A settlement agreement was executed on [REDACTED] that required DCPS to complete a comprehensive psychological assessment and convene an IEP team meeting to review the assessment and revise the student's IEP.
3. A comprehensive psychological assessment was completed on [REDACTED].
4. The IEP team meeting met on [REDACTED] to review the assessment and revise the student's IEP. At this meeting the IEP team decided to increase the student's specialized instruction to 15 hours per week outside the general education setting and agreed to complete a functional behavioral assessment (FBA).
5. A 30-day IEP review meeting was held on [REDACTED]. The complainant, the complainant's advocate, a special education teacher, a general education teacher, and [REDACTED] special education coordinator attended this meeting.
6. The complainant requested a speech-language and occupational therapy assessment at the [REDACTED] IEP team meeting.
7. An IEP team meeting was scheduled for [REDACTED], but was subsequently cancelled by [REDACTED] PCS via email on [REDACTED] due to staff unavailability. The meeting was rescheduled for [REDACTED].
8. The IEP team met on [REDACTED] to review existing student data including academic progress and test results, the [REDACTED] psychological assessment, and teacher observations. At this meeting the IEP team agreed to complete a speech-language assessment, an occupational therapy assessment, social history, educational, and an FBA and the parent signed consent to evaluate.

### **Discussion/Conclusion**

DCPS and [REDACTED] PCS are in compliance with 34 CFR §§300.304 and 300.305. DCPS and [REDACTED] PCS are not in compliance with 34 CFR §300.321(a)(4). DCPS and [REDACTED] PCS are not in compliance with 34 CFR §300.303(a)(2) and D.C. Official Code §38-2561.02(a). Pursuant to 34 CFR §300.304(b)(1), the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's IEP. In addition, the public agency must ensure that the child is assessed in all areas related to the suspected disability. (34 CFR §300.304(c)(4)) Furthermore, the public agency must ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs. (34 CFR §300.304(c)(6)) Pursuant to 34 CFR §300.305(a), as part of any reevaluation, the IEP team must review existing evaluation data on the child in order to identify what additional data, if any, is needed to determine whether the child continues to have such a disability and the educational needs of the child. The complainant alleges that DCPS and [REDACTED] PCS

did not review existing student data including evaluations, information from the parent, and current classroom assessments and observations by teachers and related services personnel as part of the reevaluation.

### School Year Reevaluation

#### *Comprehensive Reevaluation*

The complainant filed a due process complaint on [REDACTED] alleging DCPS' failure to comprehensively reevaluate the student and failure to develop an appropriate IEP. The complaint was resolved via a [REDACTED] settlement agreement that required DCPS to complete a comprehensive psychological assessment and convene an IEP team meeting to review the evaluation and revise the student's IEP. A comprehensive psychological assessment was completed on [REDACTED] and the IEP team met on [REDACTED]. Along with the psychological assessment, the IEP team reviewed past formal assessments, the student's academic performance, and input from teachers. At this meeting the IEP team decided to increase the student's specialized instruction to 15 hours per week outside the general education setting. The IEP team also discussed the student's behavioral concerns and agreed to additionally complete a functional behavioral assessment (FBA).<sup>3</sup> The complainant did not request any other assessments at this time. On the same date, a final eligibility determination and prior written notice confirmed the student's increased service hours and state that these decisions were based on formal and informal student data. Where the LEA reviewed all student evaluation data available and mutually agreed to by the parties as necessary, the record does not indicate that the student's reevaluation was insufficiently comprehensive to determine the student's eligibility status and identify the student's special education and related services needs.

#### *Review of Existing Data*

A reevaluation may be conducted if the public agency determines that one is warranted or if a reevaluation is requested by the child's parent or teacher. (34 CFR §300.303) In this case, the student's reevaluation was conducted pursuant to a settlement agreement in which the complainant and DCPS mutually agreed to the necessary formal assessment. The IEP team met to review the agreed upon assessment on [REDACTED]. The meeting notes indicate that at this meeting, the IEP team also reviewed the student's academic performance and grades, teacher observations, and past formal assessments. Prior to the meeting, the student's evaluation summary report was filled out on [REDACTED] and included information from the psychological assessment, classroom-based assessments, observations, input from the parent, and student work samples. Based on the review of the psychological assessment and student data, the IEP team agreed to increase the student's specialized instruction to 15 hours per week outside the general education setting. The IEP team also agreed to complete an FBA to address the student's behavioral concerns. OSSE finds that DCPS did not fail to review existing student

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<sup>3</sup> DCPS's subsequent failure to complete the FBA is addressed in Issue Five below.

data where DCPS and the complainant agreed as to which assessment would be completed via a settlement agreement, and the record reflects IEP team review of informal and formal student assessments.

### ██████████ School year Reevaluation

#### *Comprehensive Reevaluation*

The student enrolled in ██████████ PCS for the ██████████ school year. A 30-day IEP review meeting was held on ██████████. The complainant, complainant's educational advocate, ██████████ special education teacher, general education teacher, and special education coordinator were present at the meeting. At this meeting the complainant requested that a speech-language and an occupational therapy assessment be completed. In response to the parent's request, ██████████ PCS stated that another meeting would need to be held with a DCPS representative, an occupational therapist, and a speech-language therapist present in order to determine whether the requested assessments would be completed. In response to the parent's request, a meeting was scheduled for ██████████ to review student information and determine which assessments would be completed, but this meeting was cancelled by ██████████ PCS due to staff unavailability and had to be rescheduled. The meeting was rescheduled for ██████████. At this meeting the IEP team reviewed the student's academic progress, ██████████ psychological assessment, and input from the student's teachers. The IEP team agreed to complete a speech-language and an occupational therapy assessment, social history and educational assessment, and an FBA and the parent signed consent to evaluate. The reevaluation process is not yet complete; however, the record indicates that DCPS and ██████████ PCS have agreed complete assessments in all areas of concern raised by the complainant. OSSE declines to make a finding regarding the sufficiency of data reviewed where the reevaluation process is still underway and the record indicates that DCPS and ██████████ PCS are attempting to evaluate the student in all areas of suspected disability identified by the complainant and IEP team.

However, OSSE's review of the student record indicates that an LEA representative was not present at the ██████████ IEP meeting. An LEA representative who is knowledgeable about the availability of resources of the LEA is a required IEP team participant. (34 CFR §300.321(a)(4)) DCPS and ██████████ PCS's failure to include an LEA representative at the ██████████ IEP team meeting constitutes a failure to include a team member knowledgeable about LEA resources. The resulting unnecessary delay and the reevaluation timeline is addressed below.

#### *Review of Existing Data*

In accordance with OSSE's Initial Evaluation and Reevaluation Policy, if an LEA proposes to conduct a reevaluation, the IEP team must review all currently available data in order to identify what additional data is needed to determine the educational needs of the child. (OSSE Evaluation and Reevaluation Policy, pp. 13 – 14 (March 22, 2010)) Following the complainant's

request to complete two specific formal assessments on [REDACTED], the IEP team met on [REDACTED] to review student data and create a student evaluation plan. At the [REDACTED] meeting the IEP team reviewed the student's academic progress, the [REDACTED] psychological assessment, teacher observations, and test results. Following the review of this data the IEP team identified a variety of formal assessments to be completed. OSSE finds that DCPS and [REDACTED] PCS adequately reviewed existing student data in order determine what additional data was needed to determine all of the student's educational needs.

#### *Reevaluation Timeline*

Pursuant to 34 CFR §300.303(a)(2), a public agency must ensure that a reevaluation of each child with a disability is conducted if the child's parent requests a reevaluation. 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)) The reevaluation timeline began on [REDACTED] when the complainant requested a speech-language and occupational therapy evaluation at the IEP team meeting as acknowledged in the meeting notes. The 120-day evaluation timeline ended on [REDACTED]. As of [REDACTED], DCPS and [REDACTED] PCS did not complete the reevaluation and therefore failed to do so within the required timeline.

Therefore, DCPS and [REDACTED] are not in compliance with 34 CFR §§300.303(a)(2) and D.C. Official Code §38-2561.02(a) for failure to complete the reevaluation within the 120-day timeline. DCPS and [REDACTED] are not in compliance with 34 CFR §300.321(a)(4).

### **ISSUE FIVE: PBIS AND REVISE IEP**

#### **Findings of Fact**

1. Subsequent to a settlement agreement, a comprehensive psychological assessment was completed on [REDACTED].
2. The IEP team met to review the psychological assessment on [REDACTED].
3. At the [REDACTED] IEP team meeting the IEP team agreed to increase the student's specialized instruction to 15 hours per week outside the general education setting and agreed to complete an FBA.
4. The student had no suspensions during the [REDACTED] school year.
5. There was a disciplinary incident on [REDACTED] involving fighting that did not result in suspension.
6. The student enrolled at [REDACTED] PCS for the [REDACTED] school year.
7. The IEP team met on [REDACTED] for a 30-day review meeting and did not make any changes to the student's IEP. At this meeting the complainant requested a speech-language and occupational therapy assessments.
8. The IEP team met on [REDACTED] to review existing student data.
9. At the [REDACTED] meeting the IEP team agreed to complete a speech-language assessment, an occupational therapy assessment, social history, educational, and an FBA

and the parent signed consent to evaluate.

### Discussion/Conclusion

**DCPS and ██████████ are not in compliance with 34 CFR §300.324.**

Pursuant to 34 CFR §300.324(b)(ii), each public agency must revise the student's IEP, as appropriate, to address any lack of expected progress, the results of any reevaluation, information about the child provided by the child's parents, and the child's anticipated needs. In the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports and other strategies to address that behavior. (34 CFR §300.324(a)(2)(i)) The complainant alleges that the student has behavioral issues and is struggling academically and the school has not taken steps to address these concerns.

Throughout the ██████████ school year the student was not making academic progress, as evidenced by the student's academic history and DCPS staff reports. Pursuant to a settlement agreement, the IEP team at ██████████ Middle School met to review a comprehensive psychological assessment and update the student's IEP. At this meeting the student's specialized instruction was increased to 15 hours per week outside the general education setting and the student began receiving instruction in English, math, and reading in a resource room. Staff reported that the student began to make academic progress in the resource room. At the ██████████ meeting the IEP team also discussed the student's behavioral issues. Although the student did not have any disciplinary incidents that resulted in suspension, the student struggled in ██████████ peer interactions. The IEP team agreed to conduct an FBA to address the student's behavior. There is no evidence that the FBA was completed over the course of more than one month prior to the end of the school year or that school staff took any other measures to address the student's behavioral concerns. The student was subsequently involved in a disciplinary incident on ██████████ that involved fighting with other students. Although this incident did not result in a suspension for the student, it is evidence that the student continued to struggle in ██████████ peer interactions. OSSE finds that DCPS' failure to address ongoing peer interaction concerns and to complete the FBA constitutes a failure to consider the use of positive behavioral interventions and supports to address the student's behavioral concerns.

The student enrolled at ██████████ for the ██████████ school year. The complainant requested a variety of assessments to address ██████████ concerns related to the student's academic performance at a meeting on ██████████. DCPS and ██████████ PCS agreed to complete the assessments after reviewing student data in an IEP team meeting on ██████████. These assessments included a speech-language assessment, an occupational therapy assessment, social history, educational, and an FBA and the parent signed consent to evaluate. This constitutes a delay of nearly three (3) months before agreeing to address the parent's concerns. As discussed above in Issue Four, the assessments were not completed within the

required evaluation timeframe and no changes have been made to the student's IEP or educational programming during the [REDACTED] school year. OSSE finds that this constitutes an unreasonable delay to address the complainant's concerns and a failure to revise the IEP to address information about the child provided by the child's parent.

Therefore, DCPS and [REDACTED] are not in compliance with 34 CFR §300.324.

#### **ISSUE SIX: FBA FOLLOWING MANIFESTATION DETERMINATION**

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

1. There was a disciplinary incident on [REDACTED] involving fighting that did not result in suspension.
2. The student had no suspensions during the [REDACTED] school year.
3. The student has had no suspensions during the [REDACTED] school year.

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

**DCPS and [REDACTED] are in compliance with 34 CFR §300.530(f)(1)(i).**

Pursuant to 34 CFR §300.530(f)(1)(i), upon determination that the child's conduct was a manifestation of the child's disability, the IEP team must conduct a functional behavioral assessment and implement a behavioral intervention plan for the child. The complainant alleges that the student has a history of discipline issues and DCPS and [REDACTED] PCS have failed to conduct an FBA.

School personnel may remove a child with a disability who violates a code of student conduct from his or her current placement, including suspension, for not more than 10 school days. (34 CFR §300.530(b)) Until the child's removal reaches 10 school days, a child with a disability is subject to the same disciplinary procedures as general education children. The student was involved in a disciplinary incident at the end of the [REDACTED] school year on [REDACTED] involving fighting. This incident did not result in a suspension for the student. The student did not have any other suspensions while at [REDACTED] Middle School during the [REDACTED] school year. The student has not had any suspensions at [REDACTED] PCS during the [REDACTED] school year. The record shows that the student has not been removed from [REDACTED] current placement due to a disciplinary incident for more than 10 school days and therefore DCPS and [REDACTED] PCS's responsibility to conduct an FBA following a determination that the child's conduct was a manifestation of the child's disability has not been triggered.

Therefore, DCPS and [REDACTED] are in compliance with 34 CFR §300.530(f)(1)(i).

## **CORRECTIVE ACTION**

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2), DCPS and [REDACTED] PCS must
  - a. Convene an IEP team meeting to determine compensatory education for the student for not receiving specialized instruction outside the general education setting. Documentation of this meeting must be submitted to OSSE within 60 days of the date of this letter of decision.
  - b. Reimburse the parent for costs associated with transporting the student to and from school for five school days from [REDACTED]. Documentation of reimbursement must be submitted to OSSE within 90 days of the date of this letter of decision.
2. In order to correct the noncompliance with 34 CFR §§300.115 and 300.116(b)(2), DCPS must
  - a. Offer the student a location assignment at a school that can implement the student's IEP. Documentation of this offer must be submitted to OSSE within 30 days of the date of this letter of decision.
  - b. Train [REDACTED] PCS special education staff and DCPS dependent charter support team staff on the difference between a location assignment that can implement a student's IEP and a referral for a more restrictive placement. Documentation of this training must be submitted to OSSE within 90 days of the date of this letter of decision.
3. In order to correct the noncompliance with 34 CFR §§300.303(a)(2), 300.321(a)(4), and D.C. Official Code §38-2561.02(a) and, DCPS must
  - a. Train [REDACTED] PCS special education staff and DCPS dependent charter support team staff on evaluation timelines and the requirement to ensure that an LEA representative is present at every IEP team meeting. Documentation of this training must be submitted to OSSE within 90 days of the date of this letter of decision.
  - b. Convene an IEP team meeting to determine compensatory education for the student for the delay in completing the student's reevaluation. Documentation of this meeting must be submitted to OSSE within 60 days of the date of this letter of decision.
4. In order to correct the noncompliance with 34 CFR §300.324, DCPS must
  - a. Complete the speech-language assessment, occupational therapy assessment, social history, educational, and FBA, and convene an IEP team to review the assessments and update the student's IEP as soon as possible, but in no case later than 45 days from the date of this letter of decision.

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  
[REDACTED], educational advocate