



May 12, 2015

[REDACTED] PCS

RE: State Complaint No. 014-018

## LETTER OF DECISION

### PROCEDURAL BACKGROUND

On [REDACTED], the State Complaint Office of the Office of the State Superintendent of Education (OSSE), Division of Specialized Education received a State Complaint from [REDACTED] (complainant) against [REDACTED] PCS ([REDACTED]) alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED]) hereinafter “student” or “child.”

The complainant alleged that [REDACTED] violated certain provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. and regulations promulgated at 34 CFR Part 300, specifically, failure to revise the individualized education program (IEP), as appropriate, to address information about the child provided by the parent and the child’s anticipated needs, specifically with regard to transportation services and extended school year services (ESY).

The complainant also raised concerns regarding staff conduct and retaliation. OSSE did not investigate these concerns as they did not allege a violation of Part B of the IDEA.<sup>1</sup> OSSE referred the parent to her LEA and the U.S. Department of Education, Office for Civil Rights to address these concerns.

The State Complaint Office for OSSE has completed its investigation of the State Complaint. This Letter of Decision is the report of the final results of OSSE’s investigation.

### COMPLAINT ISSUES

The allegations in the complaint, which were clarified through reviewing documents and conducting interviews in the course of the investigation, raised the following issues under the

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<sup>1</sup> OSSE’s State Complaint Office receives, investigates and resolves complaints that allege a violation of Part B of the IDEA, or the District of Columbia’s laws and policies regarding special education, that have occurred not more than one year prior to the date that the complaint is received. See District of Columbia Formal State Complaint Policy & Procedures, p. 2 (November 2009); see also 34 CFR § 300.149 – 300.153.



jurisdiction of the State Complaint Office:

**1. IEP revision requirements in 34 CFR §300.324(b)(1)(ii)(C) – (D)**

- a. Failure to revise the IEP, as appropriate, to address information about the child provided by the parent and the child’s anticipated needs, specifically with regard to transportation services and extended school year services (ESY).

**INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

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

The investigation also included review of the following documents which were either submitted by the complainant, submitted by [REDACTED] PCS, or accessible via the Special Education Data System (SEDS):

[REDACTED]

**GENERAL FINDINGS OF FACT**

- 1. The student is a child with a disability as defined by 34 CFR §300.8.
- 2. The student’s disability category is multiple disabilities.
- 3. The student’s LEA is [REDACTED].

## **ISSUE ONE: REVISE IEP**

### **Findings of Fact**

1. The student's [REDACTED], IEP did not include transportation or ESY services.
2. The IEP team met on [REDACTED], to review a psychological evaluation provided by the parent.
3. The student's IEP was amended on [REDACTED], to add transportation, ESY, and behavioral support services.
4. A meeting was held on [REDACTED], for an annual review the student's IEP.
5. At the [REDACTED], meeting, the IEP team reviewed student data and the eligibility worksheets for transportation and ESY services created by OSSE.
6. The student's IEP was updated on [REDACTED], and transportation and ESY services were removed.
7. [REDACTED] offered travel training assistance to the parent at the [REDACTED], IEP meeting.

### **Discussion/Conclusion**

[REDACTED] is in compliance with the IEP revision requirements of 34 CFR §300.324(b)(1)(ii)(C) – (D).

Pursuant to 34 CFR §300.324(b)(1)(ii)(C) – (D), the IEP team must revise the IEP, as appropriate, to address information about the child provided by the parent and the child's anticipated needs. The complainant alleges that the school inappropriately removed transportation and ESY services from the student's IEP.

The student began attending [REDACTED] at the beginning of the [REDACTED] school year. The student's [REDACTED] IEP from the previous LEA did not contain transportation or ESY services. The IEP team met on [REDACTED] to review the [REDACTED] psychological evaluation provided by the parent. The IEP team agreed to several changes to the IEP, including the addition of transportation and ESY services, and the IEP was amended accordingly. The IEP team met again on [REDACTED] to review and revise the IEP and transportation and ESY services were removed.

#### *Transportation*

At the [REDACTED] meeting, the IEP team reviewed the transportation eligibility category worksheets housed in OSSE's Special Education Data System (SEDS). The eligibility worksheets list the state-level criteria to determine eligibility for special education transportation services. OSSE's transportation policy requires that IEP teams review and determine a student's need for special education transportation at least once annually as part of the IEP process.<sup>2</sup> OSSE's transportation policy establishes three categories of eligibility for special education

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<sup>2</sup> OSSE Special Education Transportation Policy, p. 3 (November 6, 2013).

transportation services.<sup>3</sup> The first eligibility category is for medically fragile students requiring transportation to access a free and appropriate education (FAPE), which applies to students who cannot travel safely without a specialized or adapted vehicle due to a documented medical condition.<sup>4</sup> In this case, the student does not have a chronic or persistent medical condition that qualifies [REDACTED] for special education transportation under this category. The second category is for students requiring structured transportation supports to access FAPE.<sup>5</sup> This is the category for which the student was found eligible for transportation services on [REDACTED], as discussed below. The third category is for students accessing a specialized program to access FAPE, which applies to students travelling to a school site for the purposes of accessing a specialized program due to an IEP team placement decision.<sup>6</sup> Students who attend a school or program for non-FAPE reasons, *e.g.* parental choice, are not eligible for transportation services under this category.<sup>7</sup> In this case the student attends [REDACTED] due to the parent's choice of school enrollment, not an IEP team placement decision, and thus does not qualify for transportation services under the third category.

In order to be found eligible for special education transportation services under the category of students requiring structured transportation supports to access FAPE, the IEP team must consider the severity of the student's disability and whether the student requires constant supervision, the student's ability to assess risk or advocate for personal safety, the student's behavior as it relates to being unsafe to self and others, the student's ability to understand cues and instructions, and the student's need for structured transportation supports during travel outside of school.<sup>8</sup> On [REDACTED], the IEP team found the student eligible for transportation services due to the student's lack of skills needed to relate and interact with typical peers without adult supervision, citing the [REDACTED] psychological evaluation as supporting documentation. At the [REDACTED], meeting the IEP team discussed the student's progress in [REDACTED] classes and on IEP goals. [REDACTED] staff explained that the counseling services that were added to the student's IEP on [REDACTED], helped the student make significant improvement in [REDACTED] social skills. Staff reported that the student does well with structure and repetition and has the ability to remember the route to school. Staff stated that the student is able to ask for help and will report to staff anything that [REDACTED] believes is unfair or bothers [REDACTED] during the school day. The [REDACTED], IEP team reviewed OSSE's eligibility category worksheet and student data and determined that the student does not require constant adult supervision, does possess the ability to ask for help and read street signs, and does not exhibit unsafe behavior. Although [REDACTED] offered assistance on travel training at the [REDACTED] meeting in response to continued parent concerns, the record

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<sup>3</sup> *Id.* at p. 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at p. 5.

<sup>6</sup> *Id.* at p. 6.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

reflects that the parent declined these additional supports.

Aside from the student's ability to navigate public transportation on [REDACTED] own, the complainant raised additional concerns about the distance from home to the school and the cost of accompanying the student to and from school. Although the school is far from the student's home, distance is not an appropriate consideration when determining eligibility for special education transportation services.<sup>9</sup> When the complainant raised financial concerns the school responded that the student's DC One Card allowed [REDACTED] to use public transportation at no cost and that the IEP team believed the student is able to learn to navigate public transportation alone. Although the complainant disagrees with the IEP team consensus decision that the student can learn how to transport [REDACTED] to and from school, the [REDACTED], meeting notes confirm that the IEP team considered the parent's concerns in conjunction with a review of student data and the required transportation eligibility requirements. Therefore, the evidence does not support that the services were inappropriately removed from the IEP.

#### *ESY*

Extended school year (ESY) services are special education and related services that are provided to a student with a disability beyond an LEA's regularly scheduled school year. Eligibility for ESY must be considered at least annually as part of the IEP process.<sup>10</sup> When determining eligibility for ESY, IEP teams must consider the impact of a break in service on critical skills, the degree of regression of critical skill, and the time required for recoupment of critical skill.<sup>11</sup>

ESY services were added to the student's IEP on [REDACTED], but the student did not require any ESY services for breaks during the school year. At the [REDACTED] meeting the IEP team reviewed additional data on the student's academic progress by looking at the student's progress reports, work samples, and test scores and concluded that the student was not at risk for losing critical skills during the summer break. Accordingly, ESY services were removed from the IEP. [REDACTED] staff reported that the student has no emerging skills that are in danger of regression if [REDACTED] did not receive ESY services over the summer. The complainant asserts that the student's academic achievement is behind grade level and would benefit from further instruction during the summer. ESY services are not the same as summer school and are not intended to provide additional resources or maximize programming.<sup>12</sup> ESY services are intended for students whose educational gains during the school year would be significantly jeopardized if the student did not receive continuing services.<sup>13</sup> The IEP team reviewed student data to assess anticipated needs and concluded that the student would not experience significant regression without instruction during school breaks. The record indicates

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<sup>9</sup> *Id.* at p. 3 and 5.

<sup>10</sup> OSSE Extended School Year (ESY) Services Policy, p. 2 (March 10, 2011).

<sup>11</sup> *Id.* at p. 2 – 3.

<sup>12</sup> *Id.* at p. 2.

<sup>13</sup> *Id.* at p. 2.

that the IEP team properly relied on student data and OSSE’s eligibility criteria in determining that the student does not qualify for ESY services.

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

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,

Amy Maisterra, Ed.D., MSW  
Assistant Superintendent for Elementary, Secondary, and Specialized Education

cc: [REDACTED], Complainant  
Avni Patel, Public Charter School Board