



July 13, 2015

[REDACTED] PCS

RE: State Complaint No. 014-022

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."

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 ensure student discipline is applied in conformance with IDEA, and failure to timely complete the student's initial evaluation. During the course of the investigation, OSSE identified an additional concern regarding the disclosure of the adult student's personally identifiable information without consent.

The State Complaint Office for OSSE has completed its investigation of the State Complaint. OSSE's investigation found that [REDACTED] is not in compliance with the requirement to obtain consent before disclosing personally identifiable information as required by 34 CFR §300.622(a). This Letter of Decision is the report of the final results of the investigation.

COMPLAINT ISSUES

The allegations raised in the complaint, further clarified by a review of documents and information from interviews conducted during the course of the investigation, raised the following issues under the jurisdiction of the State Complaint Office:

1. **Initial evaluation requirements at 34 CFR §300.301(b)-(c) and consent to disclose personally identifiable information requirements at 34 CFR §300.622(a)**



- a. Failure to respond to a request for evaluation and timely complete the student's initial evaluation.
- b. Failure to obtain consent before personally identifiable information is disclosed to parties other than officials of participating agencies.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED]

The investigation also included review of the following documents which were either submitted by the complainant, submitted by [REDACTED], 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 specific learning disability.
3. The student's local educational agency (LEA) is [REDACTED].
4. The student reached the age of majority on [REDACTED], and special education decision making rights transferred to [REDACTED] on this date.

ISSUE ONE: INITIAL EVALUATION & DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION

Findings of Fact

1. The student's parent submitted a written request for evaluation on [REDACTED].
2. [REDACTED] issued an acknowledgment of referral for special education evaluation letter to the parent on [REDACTED].
3. The adult student signed consent to evaluate on [REDACTED].
4. [REDACTED] ordered a psychological assessment for the student on [REDACTED].

5. The psychological assessment report was completed on [REDACTED].
6. The [REDACTED] [REDACTED] reported that on [REDACTED] she scheduled a meeting with the student in person to review the assessment on [REDACTED], but the student did not show up to the meeting.
7. [REDACTED] issued a letter of invitation to the student on [REDACTED] for a [REDACTED] eligibility determination meeting.
8. The student was found eligible for special education services under the disability category of specific learning disability on [REDACTED]. The student did not attend the eligibility meeting.
9. [REDACTED] issued written notice of determination of eligibility for special education services to the student on [REDACTED].

Discussion/Conclusion

Based on the analysis below, [REDACTED] is not in compliance with 34 CFR §300.622(a), due to its failure to obtain consent from the adult student before disclosing personally identifiable information.

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. 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 LEAs in the District of Columbia and that initial evaluation includes the determination of eligibility.¹ The complainant alleges that [REDACTED] failed to respond to a request to evaluate the student and subsequently failed to complete an evaluation within the required timeline.

Initial Evaluation

The parent submitted a written request to evaluate the student to [REDACTED] on [REDACTED]. In its response [REDACTED] asserts that because the student is an adult and the holder of [REDACTED] own educational rights, the parent had no right to request the evaluation. The student reached the age of majority on [REDACTED] and all educational rights transferred to [REDACTED] as required by 34 CFR §300.520(a)(1)(ii). OSSE's review of the record confirms that the parent did not have the right to request an evaluation on behalf of the adult student when it was submitted to the LEA on [REDACTED]. However, after receiving the referral from the parent, the [REDACTED] director of student supports discussed the evaluation with the student and the student signed the consent to evaluate on [REDACTED]. That same day, [REDACTED]

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

█████ ordered a psychological assessment for the student from the service provider and issued a letter acknowledging the request for evaluation. The acknowledgement letter also cited the referral date as █████. Because the parent did not have the right to request the evaluation, OSSE's review of the record finds that the referral date should have been █████, the date on which the adult student made the decision to be evaluated.

A psychological assessment report was completed on █████. The █████ reported that she spoke with the student on █████ and invited █████ to a meeting to review the assessment on █████, but the student did not show up to the meeting. On █████ █████ sent a letter of invitation to the student for a █████ eligibility meeting. The eligibility meeting was held as scheduled on █████. The student did not attend the meeting, but was found eligible for special education services under the disability category of specific learning disability. The eligibility meeting was held 2 days before the 120-day timeline ended on █████. Therefore, █████ completed the student's initial evaluation within the required timeframe.²

Consent for Disclosure of Personally Identifiable Information

OSSE's review of the record revealed that the █████ referral acknowledgment letter was issued by █████ to the parent instead of the adult student. Pursuant to 34 CFR §300.622(a), consent must be obtained before releasing personally identifiable information to parties other than officials of participating agencies. Neither the student's educational record, nor OSSE's investigation yielded evidence that the adult student provided consent for the disclosure of personally identifiable information to the parent after the transfer of rights occurred on █████. Therefore, OSSE finds that █████ violated 34 CFR §300.622(a) by releasing personally identifiable information to the parent in the █████ referral acknowledgment letter, without the adult student's consent.

State Complaint Procedures

In its response █████ asserts that the complainant, identifying herself as an advocate, had no right to file this complaint on behalf of the adult student. Pursuant to 34 CFR §300.153(a), *an organization or individual* may file a signed written complaint. OSSE reminds █████ that the State complaint procedures are open to anyone, not just to holders of students' education rights. If a complaint regarding a specific child is filed by someone other than the child's parent or an adult student to whom rights under Part B of the IDEA have transferred, the State Complaint Office will notify and provide copies of the complaint and any relevant correspondence to the parent of the child or eligible adult student.³

² The student graduated with a regular high school diploma on █████, before █████ was required to create an IEP for the student. An IEP must be developed within 30 days of the determination that the student is eligible for special education services. (34 CFR §300.323(c)(1)) LEAs are not obligated to provide FAPE to students who have graduated with a regular high school diploma. (5-E DCMR §3002.2(c))

³ District of Columbia Formal State Complaint Policy & Procedures, p. 4 (November, 2009).

CONCLUSIONS

1. [REDACTED] is not in compliance with the requirement to obtain consent before disclosing personally identifiable information as required by 34 CFR §300.622(a).

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.622(a), [REDACTED] must train school special education staff on when consent is required before releasing personally identifiable information. Documentation of this training must be submitted to OSSE within 90 days of 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 or 202-724-7860.

Sincerely,

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

cc: [REDACTED], adult student
[REDACTED], advocate