



August 4, 2015

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 014-023

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) 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 ensure student discipline is applied in conformance with 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. OSSE finds that DCPS failed to complete a reevaluation within the 120-day timeline, issue written notice to the parent of its refusal to complete an evaluation, and provide specialized instruction in accordance with the student’s IEP.

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. Reevaluation requirements at 34 CFR §300.303(a)(2), written notice requirements at 34 CFR §300.503(a)(2), and IEP implementation requirements at 34 CFR §300.323(c)(2)**



- a. Failure to respond to a parent’s request for reevaluation.
- b. Failure to issue written notice of refusal to complete evaluation.
- c. 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 the provision of periodic reports on the child’s progress toward annual goals.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

- 1. Complainant
- 2. Parent
- 3. DCPS [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]

[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 DCPS.

ISSUE ONE A AND B: REEVALUATION

Findings of Fact

1. The student was found eligible for special education services on [REDACTED] under the disability category of specific learning disability.
2. A psychological evaluation and social history assessment were completed as part of the student's initial evaluation.
3. The parent requested completion of speech language and occupational therapy evaluations on [REDACTED].
4. An occupational therapy screening report was completed on [REDACTED].
5. A speech language informal observation was completed on [REDACTED] and the report was completed on [REDACTED].
6. At the [REDACTED] meeting, the IEP team reviewed the occupational therapy screening and speech language observation and determined that further evaluation was unnecessary.
7. DCPS did not issue written notice of its refusal to complete the speech language and occupational therapy evaluations following the [REDACTED] IEP team meeting.

Discussion/Conclusion

Based on the analysis below, DCPS is not in compliance with 34 CFR §§300.303(a)(2) and 300.503(a)(2), and D.C. Official Code §38-2561.02(a), due to DCPS' delay in determining whether to complete the requested evaluations and failure to issue written notice of its refusal to complete the evaluations.

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 or teacher requests a reevaluation. IDEA additionally requires at 34 CFR §300.503(a)(2) that written notice must be given to the parents of a child with a disability a reasonable time before the public agency refuses to initiate the evaluation of the child. The complainant alleges that the parent requested speech language and occupational therapy evaluations but DCPS did not complete them and did not issue written notice of its refusal to complete the evaluations.

The student's initial evaluation was completed on [REDACTED] and the student was found eligible for special education under the disability category of specific learning disability. As part of the initial evaluation, a psychological evaluation and social history assessment were

completed. The parent did not request any other assessments at that time. On [REDACTED] [REDACTED] the parent requested completion of speech language and occupational therapy evaluations. An occupational therapy screening was completed on [REDACTED] and a speech language informal observation was completed on [REDACTED]. The screening and observation were discussed at the [REDACTED] IEP team meeting and the IEP team determined that further evaluation was unwarranted. OSSE's review of the record reflects that DCPS did not issue written notice to the parent of its refusal to complete the requested evaluations at any time before or after the IEP team meeting.

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 timeline includes the determination of eligibility for special education services. (OSSE Part B Initial Evaluation/Reevaluation Policy, p. 14 (March 22, 2010)). The evaluation timeline began on [REDACTED] when the parent requested speech language and occupational therapy evaluations. The 120-day evaluation timeline ended on [REDACTED]. From the date of the parent's request to complete the evaluations to the IEP team's decision that the evaluations were unnecessary, 194 days, or more than six months, passed. OSSE finds that, where the IEP team ultimately determined that further evaluation was unnecessary, there was no resulting educational harm to the student. However, failure to complete the evaluations or provide written notice to the parents of the decision not to complete the evaluations, within the required timeline, constitutes a procedural violation of the required 120-day timeframe. OSSE additionally finds that the DCPS failed to issue written notice to the parent of its refusal to complete the requested evaluations after the [REDACTED] IEP meeting.

Therefore, OSSE finds that DCPS is out of compliance with 34 CFR §§300.303(a)(2) and D.C. Official Code §38-2561.02(a). DCPS is also out of compliance with 34 CFR §300.503(a)(2).

ISSUE ONE C: IEP SERVICES

Findings of Fact

1. The [REDACTED] IEP prescribes 12.5 hours per week of specialized instruction in reading outside the general education setting and 5 hours per week of specialized instruction in mathematics outside the general education setting.
2. The student is in an inclusion classroom that has both a general education and a special education teacher. The student also receives pull out services from a special education teacher.
3. The student's schedule has seven class periods: 1) English Language Arts, 2) Math, 3) Art, 4) Math Resource, 5) lunch, 6) Science, 7) Social Studies. Each class period is 53 minutes long.
4. The parent was provided quarterly report cards during the [REDACTED] school year.
5. The school tested the student's academic performance three times throughout the school year and reviewed with test scores with the parent at the [REDACTED] IEP team

meeting.

Discussion/Conclusion

Based on the analysis below, DCPS is not in compliance with 34 CFR §300.323(c)(2), due to a failure to provide specialized instruction in reading outside the general education setting in accordance with the student's IEP.

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 in accordance with the IEP. The complainant alleges that the student is not receiving the required amount of specialized instruction hours each week, DCPS has not evaluated the student's progress, and DCPS has not provided IEP progress reports.

Specialized Instruction

The [REDACTED] IEP that was in effect for the majority of the [REDACTED] school year prescribes 12.5 hours per week of specialized instruction in reading outside the general education setting and 5 hours per week of specialized instruction in mathematics outside the general education setting. The complainant alleges that at an IEP team meeting, the [REDACTED] stated that she does not pull the student out of class for the required number of hours per week. DCPS reports that the student is in an inclusion classroom that has both a general education and a special education teacher. The school reported that the student is also pulled out of class for additional instruction from the special education teacher. OSSE's investigation could not confirm for how many hours per week the student is pulled out of class for additional instruction because the special education teacher is no longer employed by DCPS and was unavailable for an interview, and delivery of specialized instruction is not recorded in service logs. The student's class schedule is divided into seven periods: 1) English Language Arts, 2) Math, 3) Art, 4) Math resource, 5) lunch, 6) Science, and 7) Social Studies. Each class period is approximately one hour long. According to the schedule and in accordance with the IEP, the student received 5 hours per week of specialized instruction in mathematics outside the general education setting in the Math resource class. The school did not report that the student receives pull out services for any entire class period during the week and there is no class period dedicated entirely to reading instruction outside the general education setting.

OSSE finds that the student's schedule does not identify time when the student could receive 12.5 hours per week of specialized instruction in reading outside the general education setting, as required by the IEP and DCPS has not provided any information that shows that it was delivered. Although the student was receiving specialized instruction in all core academic classes in an inclusion setting, it was not delivered outside the general education setting as required by the student's IEP. In order to implement the student's IEP, the school had to provide 17.5 hours per week of specialized instruction outside the general education setting, including 5 hours of math and 12.5 hours of reading. The student received 5 hours of

mathematics instruction in a resource class and an additional few hours per week of pull out services in reading, falling short the of 12.5 hours required by the IEP. Therefore, OSSE finds that DCPS failed to provide specialized instruction in reading outside of the general education setting as prescribed by the student's IEP.

Evaluating and Reporting on Student's Progress

The IDEA requires LEAs to provide periodic reports, such as quarterly reports, on the child's progress toward meeting the annual goals. (34 CFR §300.320(a)(3)(ii)) The complainant alleges that DCPS did not provide the parent with IEP progress reports; however OSSE's investigation revealed that DCPS provided quarterly report cards during the [REDACTED] school year that contained information on the student's academic progress. The parent confirmed receiving the report cards. The school also tested the student's academic performance three times throughout the school year and reviewed the test scores at the [REDACTED] IEP team meeting that the parent attended. As a result, OSSE finds that the LEA provided periodic reports on the student's progress through report cards and evaluated the student's progress throughout the school year.

Therefore, DCPS is out of compliance with 34 CFR §300.323(c)(2).

CONCLUSIONS

1. DCPS is not in compliance with the requirement to complete the requested reevaluations within the 120-day timeline and issue written notice of its refusal to complete an evaluation as required by 34 CFR §§300.303(a)(2) and 300.503(a)(2), and D.C. Official Code §38-2561.02(a).
2. DCPS is not in compliance with the requirement to provide specialized instruction in accordance with the student's IEP as required by 34 CFR §300.323(c)(2).

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §§300.303(a)(2) and 300.503(a)(2), and D.C. Official Code §38-2561.02(a), DCPS must:
 - a. Train school special education staff on evaluation timelines and written notice requirements. Documentation of completion of this corrective action is due to OSSE within 90 days of the date of this letter.
2. In order to correct the noncompliance with 34 CFR §300.323(c)(2), DCPS must:
 - a. Convene an IEP team meeting to determine how many hours of compensatory education is owed for failure to provide specialized instruction in accordance with the student's IEP. If the parties can not agree to how many hours of compensatory education are owed to the student, DCPS must issue authorization for no less than 80 hours of compensatory education services. Documentation of completion of this corrective action 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,

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

cc: [REDACTED], complainant
[REDACTED], parent