



August 7, 2015

[REDACTED]
Public Charter School
[REDACTED]

RE: State Complaint No. 014-024

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 the [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 consider the use of behavior supports and interventions, failure to make services available in accordance with the IEP, and failure to revise the IEP to address any lack of expected progress.

The State Complaint Office for OSSE has completed its investigation of the State Complaint. OSSE’s investigation found that [REDACTED] PCS is in compliance with the requirement to consider the use of positive behavioral interventions and supports when developing an IEP as required by 34 CFR §300.324(a)(2)(i); the requirement to provide special education services in accordance with the IEP as required by 34 CFR §300.323(c)(2); and the requirement to revise the student’s IEP s required by IEP 34 CFR §300.324(b)(1)(ii)(A). 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. **Behavior support requirements at 34 CFR §300.324(a)(2)(i)**



- 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.
2. **Requirement to provide IEP services at 34 CFR §300.323(c)(2)**
 - a. Failure to make services available in accordance with the IEP, specifically in regard to specialized instruction and transition services.
3. **IEP revision requirements at 34 CFR §300.324(b)(1)(ii)(A)**
 - a. Failure to revise the IEP to address any lack of expected progress toward the annual goals and in the general education curriculum.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. Parent

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 emotional disturbance.
3. The student's local educational agency (LEA) was [REDACTED] PCS for the [REDACTED] school year.

A complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. (34 CFR §300.153(c)) This complaint was submitted on [REDACTED], so the investigation timeline extends back to [REDACTED]. [REDACTED] PCS' last day of school for the [REDACTED] school year was [REDACTED]. Therefore, this investigation covered the student's attendance at [REDACTED] PCS from [REDACTED] to [REDACTED].

ISSUE ONE: BEHAVIOR SUPPORTS

Findings of Fact

1. The [REDACTED] IEP prescribed 2.5 hours per week of behavioral support

services and contained 5 goals related to emotional, social, and behavioral development.

2. On the [REDACTED] IEP, under the section regarding consideration of positive behavior interventions and supports, it states: "Prior to [REDACTED] enrollment, [REDACTED] attended [Nonpublic School] where there were reports of poor impulse control, difficulty following directions and difficulty managing [REDACTED] anger and frustration. [Student's] behaviors have continued during [REDACTED] time at [REDACTED] PCS. [REDACTED] often struggles to maintain self-control where [REDACTED] will get up from [REDACTED] seat and walk around the room or walk out of the classroom without permission. When confronted, [Student] will become defiant and disrespectful often requiring one-to-one intervention. [Student] also has difficulty with peer interactions. [REDACTED] will argue and call names when interacting with peers. These instances will at times lead to [Student] attempting to be physically aggressive with peers. [REDACTED] often requires multiple prompts from staff to comply as well as one-to-one intervention. [Student] is also easily agitated or angered. [REDACTED] will become defiant and disrespectful. [Student] will also present as verbally and physically disrespectful towards peers and staff. [REDACTED] has hit staff this school year resulting in suspension and a change in placement meeting to be scheduled. As an intervention/strategy/support the school has implemented PBIS, [Student] has two teachers in [REDACTED] classroom (special educator and general educator) to address [REDACTED] academic and behavioral needs. [REDACTED] is also assigned a Counselor to aid in minimizing [REDACTED] emotional/social struggles."

Discussion/Conclusion

Based on the analysis below, [REDACTED] PCS is in compliance with 34 CFR §300.324(a)(2)(i), due to its consideration of positive behavioral interventions and supports on the [REDACTED] IEP.

Pursuant to 34 CFR §300.324(a)(2)(i), 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. The complainant alleges that [REDACTED] PCS failed to consider the use of positive behavior interventions and supports and other strategies to address the behaviors when developing an IEP.

On the [REDACTED] IEP, under the section regarding consideration of positive behavior interventions and supports, it details the student's behavioral concerns and what interventions, strategies, and supports will be implemented to address them. It states specifically that [REDACTED] PCS will implement PBIS, that two classroom teachers will assist the student with [REDACTED] behavioral needs, and that the student is assigned a counselor. Additionally the IEP prescribes 2.5 hours per week of behavioral support services provided through individual or group therapy, and contains 5 goals related to emotional, social, and behavioral development. OSSE finds ample evidence in the record that [REDACTED] PCS considered the use of positive behavioral interventions and support services to address the student's identified behavioral concerns

when developing the [REDACTED] IEP.

ISSUE TWO: PROVIDE SERVICES

Findings of Fact

1. The [REDACTED] IEP prescribed 23 hours per week of specialized instruction and did not include postsecondary goals or transition services.
2. On the [REDACTED] IEP, under the section regarding consideration of positive behavior interventions and supports, it states “[Student] has two teachers in [REDACTED] classroom (special educator and general educator) to address [REDACTED] academic and behavioral needs.”
3. The [REDACTED] IEP progress report shows that, in regards to [REDACTED] Mathematics goals, the student had mastered 1 of [REDACTED] goals, was progressing in 2 goals, and 1 goal had not been introduced.
4. The [REDACTED] IEP progress report shows that, in regards to [REDACTED] Reading goals, the student was progressing in 2 of [REDACTED] goals, 1 goal had just been introduced, and 1 goal had not been introduced.
5. The [REDACTED] IEP progress report shows that, in regards to [REDACTED] Written Expression goals, the student had mastered 1 of [REDACTED] goals, was progressing in 1 goal, 1 goal had just been introduced, and 1 goal had not been introduced.

Discussion/Conclusion

Based on the analysis below, [REDACTED] PCS is in compliance with 34 CFR §300.323(c)(2), due to the provision of specialized instruction and the student not yet reaching the age for required transition services.

Pursuant to 34 CFR §300.323(c)(2), as soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with the IEP. The complainant alleges that [REDACTED] PCS failed to provide specially designed instruction and transition services.

Specialized Instruction

The [REDACTED] IEP prescribed 23 hours per week of specialized instruction. As indicated on the IEP, there was a special education teacher in the student’s classroom that was able to individualize instruction to address the student’s academic and behavioral concerns. A full-time special education teacher in the classroom allows for specially designed instruction that is adapted to the needs of the student and modification of assignments for all core academic areas throughout the school day. (34 CFR §300.39) As further evidence that the special education teacher was specially designing instruction and working with the student on [REDACTED] IEP goals, the [REDACTED] IEP progress report showed that the student had mastered 2 of [REDACTED] core academic IEP goals and was progressing in the other 5 goals that had been introduced. The complainant submitted no evidence, and OSSE’s investigation found no support, for the

allegation that the student was not receiving specialized instruction in accordance with [REDACTED] IEP.

Transition Services

Beginning not later than the first IEP to be in effect when the child turns 16, the IEP must include appropriate measurable postsecondary goals and the transition services needed to assist the child in reaching the goals. (34 CFR §300.320(b)) The [REDACTED] IEP did not include transition services. As the student was [REDACTED] and [REDACTED] years old during the time period for which the [REDACTED] IEP was in effect, the IEP was not required to include postsecondary goals and transition services. Therefore, OSSE finds that [REDACTED] PCS was not required to include transition services in the IEP or to provide transition services.

ISSUE THREE: REVISE IEP

Findings of Fact

1. The student's IEP that was in effect during the investigation period was created on [REDACTED].
2. The [REDACTED] IEP progress report contains the following information relevant to this investigation:
 - a. The student had mastered 1 of [REDACTED] Mathematics goals, was progressing in 2 goals, and 1 goal had not been introduced.
 - b. The student was progressing in 2 of [REDACTED] Reading goals, 1 goal had just been introduced, and 1 goal had not been introduced.
 - c. The student had mastered 1 of [REDACTED] Written Expression goals, was progressing in 1 goal, 1 goal had just been introduced, and 1 goal had not been introduced.
 - d. The student was progressing in 2 of [REDACTED] Speech and Language goals and 2 goals had just been introduced.
 - e. The student was progressing in all 5 of [REDACTED] Emotional, Social, and Behavioral Development goals.
 - f. The student had mastered 3 of [REDACTED] Motor Skills/Physical Development goals and was progressing in 1 goal.
3. In the interview with the OSSE state complaint investigator the parent expressed no concerns about the student's progress while at [REDACTED] PCS, stating that the student showed more academic progress while at [REDACTED] PCS than [REDACTED] did at later school placements.

Discussion/Conclusion

Based on the analysis below, [REDACTED] PCS is in compliance with 34 CFR §300.324(b)(1)(ii)(A), due to development of an IEP to address the student's lack of progress and anticipated needs. Pursuant to 34 CFR §300.324(b)(1)(ii)(A), the IEP team must revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum, information about the child provided by the parent, and the child's anticipated

needs. The complainant alleges that [REDACTED] PCS failed to revise the IEP to address the student's lack of progress and anticipated needs.

The student had a current IEP in effect during the investigation period of [REDACTED]. The [REDACTED] IEP progress report showed that the student had mastered 5 of [REDACTED] IEP goals and was progressing in the 13 other goals that had been introduced. During the interview with the OSSE state complaint investigator the parent expressed no concerns about the student's progress while at [REDACTED] PCS, stating that the student showed more academic progress while at [REDACTED] PCS than [REDACTED] did at later school placements. [REDACTED] PCS had positive behavioral interventions and supports in place to address the student's identified behavior concerns. The complainant submitted no evidence, and OSSE's investigation found no support, for the allegation that [REDACTED] PCS failed to update the IEP to address the student's lack of progress or anticipated needs.

CONCLUSIONS

1. [REDACTED] PCS is in compliance with the requirement to consider the use of positive behavioral interventions and supports when developing an IEP as required by 34 CFR §300.324(a)(2)(i).
2. [REDACTED] PCS is in compliance with the requirement to provide special education services in accordance with the IEP as required by 34 CFR §300.323(c)(2).
3. [REDACTED] PCS is in compliance with the requirement to revise the student's as required by IEP 34 CFR §300.324(b)(1)(ii)(A).

CORRECTIVE ACTION

There are no findings of noncompliance and therefore no corrective action is required.

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