



August 7, 2015

[REDACTED]
District of Columbia Public Schools
[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 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 consider the use of positive behavioral interventions and supports, failure to make services available in accordance with the IEP, failure to provide educational services after a removal for more than ten school days, failure to follow proper disciplinary procedures with regard to manifestation determination meetings, failure to take steps to ensure parent participation at IEP team meetings, and failure to revise the IEP to address any lack of expected progress toward the annual goals and in the general education curriculum.

The complainant also raised a number of concerns that were previously the subject of a due process complaint that was filed on [REDACTED] (SHO# [REDACTED]) against DCPS. These concerns include removals for more than ten school days prior to [REDACTED]; the [REDACTED] manifestation determination; conducting a functional behavioral assessment (FBA) following the [REDACTED] manifestation determination; and provision of services during removal prior to [REDACTED]. A settlement agreement resulted from the due process resolution process and was executed on [REDACTED], to resolve the complaint. OSSE will not investigate these concerns as the [REDACTED] settlement agreement is binding on the parties as to the issues raised.¹

¹ U.S. Department of Education Office of Special Education and Rehabilitative Services (OSEP) Questions and Answers on IDEA Part B Dispute Resolution Procedures (Revised July 2013) at p. 29.

The State Complaint Office for OSSE has completed its investigation of the State Complaint. OSSE's investigation found that DCPS is in compliance with the requirements 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 ensure parent participation at IEP team meetings as required by 34 CFR §300.322(a); and the requirement to revise the IEP as appropriate as required by 34 CFR §300.324(b)(1)(ii)(A). OSSE's investigation additionally found that DCPS is out of compliance with the requirements to implement the student's behavior intervention plan (BIP) as required by 34 CFR §300.323(c)(2); and the requirements to provide educational services during suspension, to convene and timely hold manifestation determination meetings, and to ensure parent participation in these meetings as required by 34 CFR §300.530(d)-(e). 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. **Provision of services requirements at 34 CFR §300.323(c)(2)**
 - a. Failure to make services available in accordance with the IEP, specifically in regard to the behavior intervention plan, specialized instruction, transition services, and the provision of periodic reports on the child's progress toward annual goals.
3. **Discipline requirements at 34 CFR §300.530**
 - a. Failure to provide educational services after a removal for more than ten school days following the [REDACTED], suspension, as required by 34 CFR §300.530(d).
 - b. Failure to follow proper disciplinary procedures with regard to the [REDACTED] manifestation determination meeting, as required by 34 CFR §530(e).
4. **Parent participation requirements at 34 CFR §300.322(a)**
 - a. Failure to take steps to ensure parent participation at the [REDACTED] IEP team meeting.
5. **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
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]

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) is DCPS.

ISSUE ONE: BEHAVIOR SUPPORT

Findings of Fact

1. The [REDACTED] IEP prescribed 4 hours per month of behavioral support services and contained 3 goals related to emotional, social, and behavioral development.
2. On [REDACTED], the IEP was amended to change the student's placement to a behavior and education (BES) support program within DCPS.
 - a. The BES program is a self-contained classroom for students with severe behaviors who have not responded to supports in the general education setting.
 - b. Each BES program classroom has a certified special education teacher, an instructional paraprofessional, and a behavior technician.
 - c. BES classroom staff members are trained in a behavior management program and in de-escalation techniques.
3. A functional behavioral assessment (FBA) was completed on [REDACTED].
4. A BIP was created on [REDACTED].
 - a. The BIP was intended to target the student's oppositional and defiant behaviors, verbal and physical aggression, attendance issues, and poor interpersonal skills.
 - b. The BIP included supports and strategies such as behavior support services, positive feedback for appropriate behavior, opportunity to take breaks, reminders of classroom expectations and consequences, and use of behavior tracking sheets.
5. On the [REDACTED] IEP the behavioral support services were reduced to 2 hours per month.
6. On the [REDACTED] IEP the behavioral support services were increased to 4 hours per month.

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.324(a)(2)(i) because positive behavioral supports and interventions were considered when the IEP was developed. 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 the behavior. The complainant alleges that DCPS failed to consider the use of positive behavior interventions and supports, and other strategies, to address the behaviors when developing the student's IEP.

The [REDACTED] IEP prescribed 4 hours per month of behavioral support services and

contained 3 goals related to emotional, social, and behavioral development. On [REDACTED], the IEP was amended to change the student's placement to a behavior and education (BES) support program. The BES program is a self-contained classroom for students with severe behaviors who have not responded to supports in the general education setting. The classroom has a certified special education teacher, an instructional paraprofessional, and a behavior technician. Staff members are trained in a behavior management program and in de-escalation techniques. The student's behavior supports were further individualized by the completion of an FBA on [REDACTED] and completion of a behavior intervention plan (BIP) on [REDACTED]. The BIP was intended to target the student's oppositional and defiant behaviors, verbal and physical aggression, attendance issues, and poor interpersonal skills. The BIP included supports and strategies such as behavior support services, positive feedback for appropriate behavior, opportunity to take breaks, reminders of classroom expectations and consequences, and use of behavior tracking sheets. On the [REDACTED] IEP the behavioral support services were temporarily reduced to 2 hours per month, but were increased back to 4 hours per month on the [REDACTED] IEP. OSSE finds that DCPS considered the use of positive behavioral interventions and supports when developing the student's IEP and educational program and made revisions to the behavior supports as needed throughout the [REDACTED] school year. DCPS's implementation of the behavior supports will be addressed in Issue Two below.

ISSUE TWO: IEP SERVICES

Findings of Fact

1. A behavior intervention plan (BIP) was created on [REDACTED].
 - a. The BIP was intended to target the student's oppositional and defiant behaviors, verbal and physical aggression, attendance issues, and poor interpersonal skills.
 - b. The BIP included supports and strategies such as behavior support services, positive feedback for appropriate behavior, opportunity to take breaks, reminders of classroom expectations and consequences, and use of behavior tracking sheets.
 - c. The BIP states that "[b]ehavior tracking sheets will be utilized to maintain contact between student, parent, teachers, and provider."
2. On [REDACTED], the IEP was amended to change the student's placement to a behavior and education (BES) support program.
 - a. Each BES program classroom has a certified special education teacher, an instructional paraprofessional, and a behavior technician.
 - b. BES program instruction aligns to the Common Core State Standards.
 - c. Reading programs are available to BES program students.
3. The [REDACTED] IEP contains a postsecondary transition plan that includes long range goals, short term goals, and transition services for the areas of postsecondary education and training and employment.
 - a. The services to support these goals are for the student to meet quarterly with

the transition coordinator to receive transition supports in identifying three workforce development programs that offer childcare development courses.

4. DCPS issued IEP progress reports on [REDACTED]; and [REDACTED].
5. The [REDACTED] and [REDACTED] IEP progress reports show that the student made no progress on the postsecondary transition goals due to frequent absences.

Discussion/Conclusion

Based on the analysis below, DCPS is not in compliance with 34 CFR §300.323(c)(2) because it did not implement the student's BIP.

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 IEP. The complainant alleges that DCPS failed to implement the student's BIP, provide specialized instruction, provide transition services, and provide progress reports.

BIP Implementation

DCPS reported that it was not able to implement the student's BIP due to the student's frequent absences. However, one of the concerns that the BIP was designed to address was the student's attendance. The student's frequent absences prevented [REDACTED] from receiving other IEP services. Despite the student's frequent absences, the student was suspended 4 times between [REDACTED] and [REDACTED], for a total of 25 school days. The BIP called for use of behavior tracking sheets, but DCPS could produce no documentation of their use. Continuous suspensions, with no record of BIP implementation, indicate a failure to address the student's behavior issues. Despite continued absences and behavioral concerns, DCPS did not revise the BIP to find more effective ways to address the student's ongoing absences and [REDACTED] disruptive behavior when attending school. OSSE finds that DCPS's failure to implement the student's BIP contributed to continued behavioral concerns that impacted the student's ability to access the curriculum and educational progress.

Specialized Instruction

According to the student's [REDACTED] IEP, the student was placed in the BES program. The BES program classroom has a certified special education teacher, an instructional paraprofessional, and a behavior technician. The special education teacher is able to individualize instruction for the special education students in the class that aligns with the Common Core State Standards. OSSE finds that specialized instruction was made available to the student in the BES program classroom, although the student's receipt of behavioral support services was limited due to missed instruction time caused by frequent absences and suspensions.

Transition Services

The [REDACTED] IEP contains a postsecondary transition plan. The plan includes long range goals, short term goals, and transition services for the areas of postsecondary education

and training and employment. The services to support these goals are for the student to meet quarterly with the transition coordinator to receive transition supports in identifying three workforce development programs that offer childcare development courses. The [REDACTED] and [REDACTED] IEP progress reports show that the student made no progress on the postsecondary transition goals due to frequent absences. OSSE declines to make a finding that DCPS failed to provide transition services where the student was unavailable to receive the services. DCPS's failure to implement a BIP designed to address the student's absences is addressed above.

Progress Reports

The IDEA requires LEAs to provide periodic reports, such as quarterly reports, on child's progress toward meeting the annual goals. (34 CFR §300.320(a)(3)(ii)) OSSE's investigation revealed that DCPS provided IEP progress reports on [REDACTED], and [REDACTED], that detailed the student's progress on [REDACTED] IEP goals. As a result, OSSE finds that the LEA provided periodic reports on the student's progress through the IEP progress reports.

ISSUE THREE: DISCIPLINE

Findings of Fact

1. The parent filed a due process complaint against DCPS on [REDACTED] (SHO# [REDACTED]) regarding disciplinary incidents.
2. A settlement agreement resulted from the due process resolution process and was executed on [REDACTED], to resolve the complaint.
3. An [REDACTED] letter notified the parent of a 5 day suspension for an incident involving causing disruption on school properties on [REDACTED]. The student was suspended from [REDACTED].
4. A manifestation determination meeting was held on [REDACTED] to review the [REDACTED] incident.
 - a. The behavior was determined to be a manifestation of the student's disability.
 - b. The parent attended the meeting.
5. The IEP team met on [REDACTED] and made a decision regarding compensatory education owed to the student for the 3 suspensions that occurred prior to the date of the meeting.
6. A compensatory authorization letter was issued on [REDACTED], authorizing 50 hours of tutoring, 5 hours of counseling, 5 hours of speech-language pathology, and 5 hours of occupational therapy.
7. A [REDACTED] letter notified the parent of the student's 5 day suspension for an incident involving causing disruption on school properties on [REDACTED]. The student was suspended from [REDACTED].
8. A [REDACTED] letter notified the parent of a 10 day suspension for an incident involving causing disruption on school properties on [REDACTED]. The student was suspended from [REDACTED].

9. A manifestation determination meeting was held on [REDACTED] to review the [REDACTED] incident.
 - a. The behavior was determined to not be a manifestation of the student's disability.
 - b. The parent did not attend the meeting, but the student and complainant did attend.
10. A [REDACTED] letter notified the parent of the student's 5 day suspension for an incident involving causing disruption on school properties on [REDACTED]. The student was suspended from [REDACTED].

Discussion/Conclusion

Based on the analysis below, DCPS is not in compliance with 34 CFR §§300.530(d)-(e), due to its failure to provide educational services during suspension and failure to follow procedural requirements for manifestation determination meetings.

Pursuant to 34 CFR §300.530(d), a child with a disability who is removed from his or her current placement for more than 10 school days due to disciplinary action must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum and to progress toward meeting the IEP goals. Pursuant to 34 CFR §300.530(e), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, parent, and relevant members of the IEP team must review all relevant information in the student's file to determine if the conduct in question was caused by or had a substantial relationship to the child's disability. The complainant alleges that DCPS did not provide educational services during all suspensions and did not follow proper procedures for the [REDACTED] manifestation determination meeting.

The parent raised concerns regarding disciplinary incidents as part of a due process complaint that was filed on [REDACTED] (SHO# [REDACTED]) against DCPS. A settlement agreement resulted from the due process 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 raised.² OSSE's investigation included disciplinary incidents that occurred after [REDACTED].

Educational Services During Suspensions

Between [REDACTED] and [REDACTED], the student was suspended four times for a total of 25 school days. OSSE found no evidence that DCPS provided any educational services during the student's suspensions. On [REDACTED] the IEP team met and made a decision about compensatory education to address DCPS's failure to provide services during the three suspensions that occurred prior to the date of the meeting. That same day, DCPS issued a letter

² U.S. Department of Education Office of Special Education and Rehabilitative Services (OSEP) Questions and Answers on IDEA Part B Dispute Resolution Procedures (Revised July 2013) at p. 29.

authorizing compensatory education for the covered suspensions. OSSE finds that DCPS did not provide the student educational services during the fourth suspension, from [REDACTED], and the record does not reflect that DCPS issued authorization for compensatory education to remedy this denial of services. As a result, OSSE will require compensatory education as part of the corrective actions only for the fourth suspension that occurred after the [REDACTED] meeting.

Manifestation Determination

A manifestation determination meeting was held on [REDACTED] to review the [REDACTED] incident. This meeting occurred 13 school days after the incident. The parent attended the meeting and the behavior was determined to be a manifestation of the student's disability. A manifestation determination meeting was held on [REDACTED] to review the [REDACTED] incident. This meeting occurred 8 school days after the incident. The behavior was determined to not be a manifestation of the student's disability. The parent did not attend the meeting and there is no evidence that DCPS made any attempt to ensure the parent's participation at the meeting. There is no evidence that manifestation determination meetings were held for the [REDACTED] and [REDACTED] incidents. OSSE finds that DCPS failed to follow the procedural requirements for manifestation determination meetings by not holding a meeting within 10 school days of the decision to suspend the student ([REDACTED] incident), not holding meetings at all ([REDACTED] and [REDACTED] incidents), or not taking steps to ensure parent participation at the manifestation determination meeting held on [REDACTED].

For these reasons, DCPS is not in compliance with 34 CFR §§300.530(d)-(e) for failure to provide the student educational services during suspension, failure to convene and failure to timely hold manifestation determination meetings, and failure to ensure parent participation at these meetings.

ISSUE FOUR: PARENT PARTICIPATION IN IEP MEETINGS

Findings of Fact

1. On [REDACTED], DCPS mailed a letter of invitation to the parent for the [REDACTED] IEP team meeting through general United States Postal Service mail (U.S. mail) and via certified mail.
2. On [REDACTED], DCPS called the parent to inform [REDACTED] of the scheduled IEP team meeting, but was unable to reach the parent due to a wrong number.
3. On [REDACTED], DCPS contacted the parent to remind [REDACTED] of the IEP team meeting scheduled for the following day.
4. An IEP team meeting was held on [REDACTED]. The parent did not attend the meeting.

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.322(a), due to its reasonable efforts to ensure parent participation at the [REDACTED] IEP team meeting.

Pursuant to 34 CFR §300.322(a), an LEA must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, by notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and by scheduling the meeting at a mutually agreed upon time and place. The complainant alleges that DCPS failed to ensure that the parent had an opportunity to participate in the [REDACTED] annual review meeting.

As recorded in the SEDS communication log, DCPS mailed an invitation letter to the parent on [REDACTED], via certified and regular U.S. mail, for the IEP team meeting scheduled for [REDACTED]. On that same date, DCPS also attempted to reach the parent by phone, but was unsuccessful due to an incorrect phone number on file. DCPS was able to obtain the correct phone number and on [REDACTED] contacted the parent to remind [REDACTED] of the IEP team meeting the following day. In the phone call, the parent confirmed that [REDACTED] would attend the meeting. The IEP team meeting was held as scheduled on [REDACTED]; however, the parent was not in attendance. OSSE's IEP Process Policy permits an LEA to conduct a meeting without parent participation if the LEA exercises reasonable efforts to secure the parent's agreement to participate, and defines reasonable efforts as a minimum of three attempts using multiple modalities.³ OSSE finds that DCPS's efforts to contact the parent and provide notice of the meeting via two letters and a phone call were sufficient to satisfy the requirements present in the regulation and in OSSE's IEP Process Policy.

In its response, DCPS asserts that the complainant's allegation regarding parent participation at the [REDACTED] IEP team meeting is also barred by the terms of the [REDACTED] settlement agreement which provides that the parent, "fully releases and waives the claims asserted in the complaint or could have been asserted, including any and all relief that does or could result from these claims, as of the date of this signed and executed SA." While OSSE declined to review any issues raised as part of a due process complaint and subsequently resolved via a settlement agreement, OSSE does not take the stance that the settlement agreement is binding on OSSE as to prevent it from exercising its monitoring authority over all possible instances of noncompliance that occurred prior to the execution of the settlement agreement. (see 34 CFR §300.600) Pursuant to 34 CFR §300.151, OSSE is responsible for investigating complaints made by *any* party through the State complaint procedures, and in doing so must ensure the appropriate future provision of services for *all* children with disabilities. OSSE reminds DCPS that the SEA's authority extends beyond resolution of claims

³ OSSE IEP Process Policy p. 3 (August 30, 2011).

and requests for relief contemplated by the parties' [REDACTED] settlement agreement.

ISSUE FIVE: REVISE IEP

Findings of Fact

1. The [REDACTED] IEP prescribed 30 minutes per month of speech-language pathology and 2 hours per month of occupational therapy.
2. A speech and language reevaluation report was completed on [REDACTED]. The report recommended classroom accommodations but found that the student no longer met the eligibility criteria for speech and language pathology services.
3. An occupational therapy assessment report was completed on [REDACTED]. The report recommended classroom accommodations but did not recommend direct occupational therapy services.
4. An IEP team meeting was held on [REDACTED] where the speech and language and occupational therapy evaluations were reviewed.
5. The IEP was amended on [REDACTED] to remove speech-language pathology services and reduce occupational therapy services to 15 minutes per month.

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.324(b)(1)(ii)(A) due to revising the IEP as appropriate.

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 IEP goals and in the general education curriculum. The complainant alleges that DCPS improperly removed speech and language therapy and decreased occupational therapy from the IEP and failed to revise the IEP to address the student's lack of progress.

The [REDACTED] IEP prescribed 30 minutes per month of speech-language pathology and 2 hours per month of occupational therapy. A speech and language reevaluation report was completed on [REDACTED]. The report recommended classroom accommodations but found that the student no longer met the eligibility criteria for speech and language pathology services. An occupational therapy assessment report was completed on [REDACTED]. The report recommended classroom accommodations but did not recommend direct occupational therapy services. An IEP team meeting was held on [REDACTED] where the speech and language and occupational therapy evaluations were reviewed. The IEP team decided to remove speech-language pathology services and reduce occupational therapy services to 15 minutes per month and the IEP was amended accordingly on [REDACTED]. OSSE declines to overturn the IEP team's decision where the record reflects that the team followed required procedures by reviewing current student data.

Although the student may not have made academic progress during the [REDACTED] school year, the reason could be attributed to missed classroom instruction and services due to absences

and suspensions, rather than an inadequate IEP. OSSE declines to make a finding on DCPS's failure to revise the IEP where it is not clear that, if properly implemented, the IEP services would not enable the student to make progress in the general education curriculum and towards IEP goals. DCPS's failures to address the student's absences and behavioral concerns are addressed in Issue Two above.

CONCLUSIONS

1. DCPS is in compliance with the requirement to consider positive behavioral supports and interventions when developing the IEP as required by 34 CFR §300.324(a)(2)(i).
2. DCPS is not in compliance with its obligation to implement the student's BIP as required by 34 CFR §300.323(c)(2).
3. DCPS is not in compliance with the requirement to provide educational services during suspension and follow proper manifestation determination meeting procedures as required by 34 CFR §§300.530(d)-(e).
4. DCPS is in compliance with the requirement to ensure parent participation at IEP team meetings as required by 34 CFR §300.322(a).
5. DCPS is in compliance with the requirement to revise the IEP as appropriate as required by 34 CFR §300.324(b)(1)(ii)(A).

CORRECTIVE ACTION

1. In order to correct the noncompliance with §300.323(c)(2), DCPS must convene an IEP team to review and revise the student's BIP to address the student's attendance and behavioral concerns.
2. In order to correct the noncompliance with §§300.530(d)-(e), DCPS must:
 - a. Train ██████████ High School staff responsible for disciplinary incidents on the manifestation determination procedural requirements, including the obligation to provide educational services during suspension and to hold manifestation determination meetings. Documentation of this training must be submitted to OSSE within 90 days of the date of this letter.
 - b. Provide the student 2 hours of behavioral support services and 21 hours of tutoring services. Documentation of completion 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