



Division of Elementary, Secondary, and Specialized Education

September 3, 2015

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 015-001

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 make available special education and related services, failure to include in the IEP a statement of measurable annual goals, failure to revise the IEP to address any lack of expected progress, and failure to follow discipline procedures.

The State Complaint Office for OSSE has completed its investigation of the State Complaint. OSSE found that DCPS is not in compliance with its obligation to provide behavioral support services according to the student's IEP, DCPS is in compliance with the requirement to rely on current evaluation data on the student when developing the student's IEP goals, and DCPS is in compliance with the requirement to revise the IEP according to the student's progress. OSSE also found that DCPS is not in compliance with the requirements to provide educational services during suspensions, hold manifestation determination meetings within 10 days of the decision to change the student's placement, and review the student's BIP following a removal that constitutes a change in placement. 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:

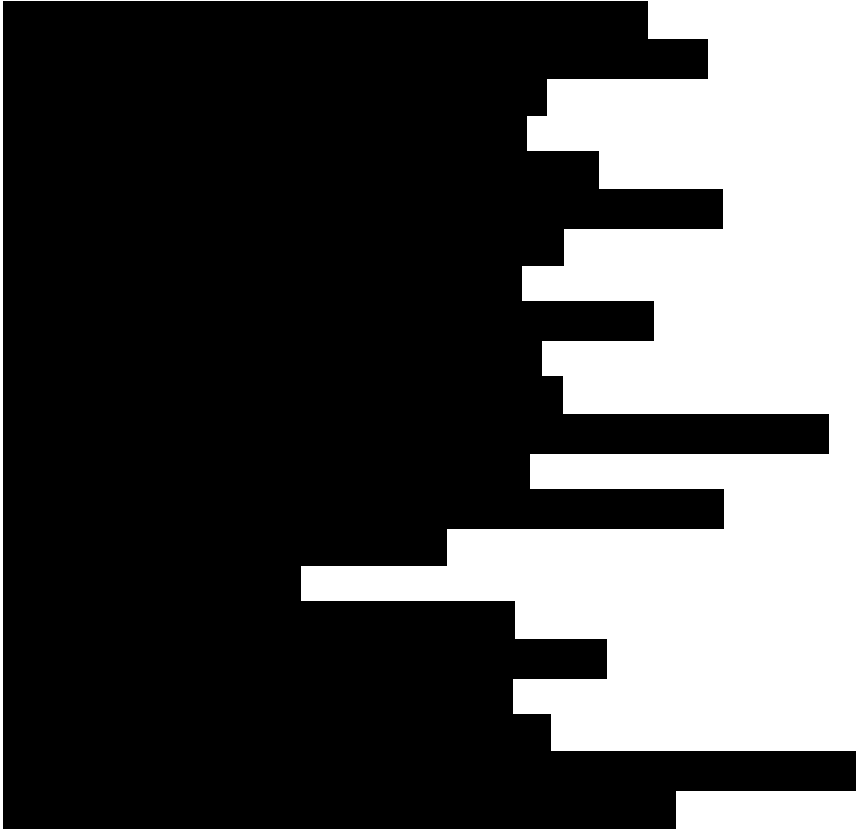
1. **Requirement to provide IEP services at 34 CFR §300.323(c)(2)**
 - a. Failure to ensure that special education and related services are made available to the child in accordance with the child's IEP, specifically with regard to specialized instruction, the provision of periodic reports on the child's progress toward annual goals, implementation of the student's behavior intervention plan, and behavioral support services.
2. **IEP goal requirements at 34 CFR §300.320(a)(2)(i)**
 - a. Failure to include in the IEP a statement of measurable annual goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.
3. **IEP revision requirements at 34 CFR §300.324(b)(1)(ii)**
 - a. Failure to revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum and the child's anticipated needs.
4. **Discipline requirements at 34 CFR §300.530**
 - a. Failure to continue to provide services to a child with a disability who is removed from the child's current placement for more than 10 school days (34 CFR §300.530(d)).
 - b. Failure to hold a manifestation determination meeting within 10 school days of any decision to change the placement of a child with a disability (34 CFR §300.530(e)).
 - c. Failure to conduct a functional behavioral assessment following a determination that the child's behavior was a manifestation of the child's disability (34 CFR §300.530(f)).

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Grandparent
2. Advocate
3. DCPS [REDACTED]
4. DCPS [REDACTED]
5. DCPS [REDACTED]
6. DCPS [REDACTED]

The investigation also included review of the following documents which were either submitted by the complainant, submitted by DCPS, or accessed via the Special Education Data System (SEDS):



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 local educational agency (LEA) is DCPS.

ISSUE ONE: PROVISION OF SERVICES

Findings of Fact

- 1. The [REDACTED] IEP prescribes 27 hours per week of specialized instruction outside the general education setting and 120 minutes per month of behavioral support services outside the general education setting.
 - a. The IEP contains one annual goal under the adaptive/daily living skills area of concern: “[Student] will follow and obey rules set by authority figures in order to assist both home and school community.”
 - b. The IEP contains one annual goal under the emotional, social, and behavioral development area of concern: “[Student] will comply with school wide and classroom rules to include decreasing making inappropriate comments to students and staff 50% of the time to increase to 75% of the time by [REDACTED] as measured in school by consultation with teachers and staff, observations, and data collection, i.e. student incident reports and suspension logs.”
- 2. At a [REDACTED] IEP team meeting the student’s behavioral and academic concerns were discussed. The IEP team agreed to update the student’s BIP to reflect [REDACTED] needs at the current school, refer the student to [REDACTED] for a

- community mentor to develop a plan to ensure the student takes ■ medication.
3. The BIP was updated on ■.
 - a. The BIP was created to target the following behaviors: verbal aggression, attendance/truancy, and academic disengagement.
 - b. The BIP included positive intervention strategies such as scheduled rest breaks, verbal encouragement, access to an identified support person, utilization of problem solving methods, relaxation strategies, pre-determined incentives, one-to-one assistance on difficult tasks, and assignments broken down into smaller tasks.
 - c. The BIP stated that the student's progress would be monitored by use of daily behavior tracker forms with corresponding incentives and consequences.
 4. At the ■ IEP team meeting the student's behavior and academic progress were discussed. The team acknowledged that the student was not picking up ■ daily behavior tracking sheets to provide to teachers for completion. The team decided that the sheet would be made available in ■ first period class and returned to ■ special education case manager at the end of each day. The BIP was reviewed, staff members were identified to support the student, and specific incentives and consequences were agreed upon.
 5. At the ■ meeting the IEP team reviewed the student's academic and behavior progress. Teachers gave inconsistent reports on the student's behavior. The team acknowledged that the student had not bought into using the behavior tracker and incentive sheet and considered different incentives to use going forward. The parent also identified that the student did not always take ■ medication.
 6. The ■ IEP prescribes 27 hours per week of specialized instruction outside the general education setting and 120 minutes per month of behavioral support services outside the general education setting.
 - a. The IEP contains one annual goal under the adaptive/daily living skills area of concern: "[Student] will follow and obey rules set by authority figures in both the home and school community."
 - b. The IEP contains four annual goals under the emotional, social, and behavioral development area of concern: 1) "Given supports (talk therapy, stress ball, etc.) student will improve ■ attention and concentration for consistently longer periods of time and increase the frequency of on task behaviors as evident by teacher report in all classes in 4 out of 5 occurrences. Each grading quarter it is anticipated that ■ time of concentration will increase by 10 min."; 2) Through self-reflections and expressive therapies [Student] will obtain strategies to use to eliminate ■ pattern of engaging in acting out, disruptive, attention seeking behaviors when confronted with difficulty or frustrations with learning w/80% 4 out of 5 trials."; 3) "[Student] will appropriately use verbal communication skills to express ■ feelings in 4 out of 5 challenging situations."; 4) "[Student] will improve ■ ability to verbalize ■ feelings and ask for help appropriately when ■ becomes frustrated with ■ difficulties with ■ academics, as it relates to ■ learning disability in 4 out of 5 trials."

7. During the [REDACTED] school year the student was suspended 3 times for a total of 19 school days.
8. During the [REDACTED] school year there were 11 disciplinary incidents that resulted in a phone call home to the parent.

Discussion/Conclusion

Based on the analysis below, DCPS is not in compliance with 34 CFR §300.323(c)(2), due to its failure to provide behavioral support services in June [REDACTED]

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 DCPS failed to specialize the student's instruction to meet [REDACTED] unique needs, maintain daily logs on the student's progress as stated in the IEP, implement the student's BIP, and provide behavioral support services.

Specialized Instruction

The student's [REDACTED] and [REDACTED] IEPs both prescribe 27 hours per week of specialized instruction outside the general education setting. The student was placed in a self-contained classroom with special education teachers. The teachers provided specialized instruction according to [REDACTED] needs and IEP goals. The complainant contends that, because the student is functioning below a 10th grade level, 10th grade instruction is inappropriate and does not qualify as instruction specialized to the student's unique needs.

The regulations state that specialized instruction is intended to "ensure access of the child to the *general curriculum*, so that the child can meet the *educational standards* within the jurisdiction of the public agency *that apply to all children*." (34 CFR 300.39(b)(3)(ii)) (emphasis added) In October 2013, OSSE issued the Standards-Based IEP Guide: A Resource for Local Educational Agencies, clarifying the requirement for school staff to, "provide specifically designed instruction that is linked to the general educational curriculum along with appropriate accommodations to support achievement of grade level expectations."¹ This guide additionally clarifies that, "goals should assist students in building skills that help them work toward mastery of the [Common Core State Standards]," and that in doing so, "[g]eneral and [s]pecial [e]ducation teachers will [e]liminate the use of separate curriculum for students with disabilities."²

Although the student's placement is outside the general education setting, instruction at a 10th grade level is appropriate because the student is in 10th grade and on a diploma track. The student's special education teachers make accommodations and modifications to the 10th grade curriculum to enable [REDACTED] to access it through the development of prerequisite skills. Examples of these modifications include allowing the use of a calculator to perform algebraic functions, using reading texts at the student's instructional level, providing graphic organizers and exemplar writing samples, and redirecting student behavioral.

¹ Standards-Based IEP Guide: A resource for Local Educational Agencies at p. 1-2 (October 2013). See [http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/DC%20Standards%20Based%20Individualized%20Education%20Program's%20\(IEP\)_v.10.24.2013.pdf](http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/DC%20Standards%20Based%20Individualized%20Education%20Program's%20(IEP)_v.10.24.2013.pdf)

² *Id* at p. 8-9.

Additionally, the DCPS [REDACTED] reported that she tutored the student in math, [REDACTED] lowest achieving subject. OSSE finds that DCPS provides specialized instruction to the student in accordance with [REDACTED] IEP.

Progress Logs

The complainant alleges that the student's IEP requires daily assessment and progress reports on the student's IEP goals. School staff reported that the student's progress on IEP goals is measured by daily classwork and assignments. DCPS reports the student's progress on IEP goals is measured in quarterly progress reports and through report cards. OSSE's review of the record finds that the student's academic progress and examples of classwork were reviewed at the [REDACTED]; [REDACTED]; and [REDACTED] IEP team meetings. Neither the [REDACTED] nor the [REDACTED] IEP contains a requirement to maintain a daily log on the student's progress on IEP goals. OSSE finds that DCPS assesses progress on IEP goals as required by the IEP.

BIP

Following a discussion of the student's needs on [REDACTED], the BIP was updated on [REDACTED]. The BIP includes tracking the student's behavior through daily behavior sheets that the student was required to obtain at the start of each day and deliver to teachers for completion. School staff admitted that the student's use of the daily behavior sheets is inconsistent and this issue was discussed at the [REDACTED] and [REDACTED] IEP team meetings. To address this issue, the IEP team revised the incentives, consequences, and strategies to encourage the student to use the behavior sheets and comply with the BIP goals. The BIP also included positive intervention strategies to be used by the student's teachers. School staff reported that all of the student's teachers had a copy of the BIP, but had varying levels of success at addressing the student's behavior. During the [REDACTED] school year, the student was suspended 3 times for a total of 19 school days, and there were 11 disciplinary incidents that resulted in a phone call home to the parent. The occurrence of disciplinary incidents does not necessarily mean that the school failed to take steps to address the student's behavior. In addition to the BIP, DCPS referred the student to [REDACTED] for a community mentor and reported improvements in the student's behavior after working with the mentor. The IEP team also discussed, and the parent agreed, that the student's behavior improved when [REDACTED] takes [REDACTED] medication. OSSE finds that the DCPS took sufficient steps throughout the school year to address the student's behavior, to implement the BIP, and to revise the BIP as needed.

Behavioral Support Services

The student's [REDACTED] and [REDACTED] IEPs prescribe 120 minutes per month of behavior support services outside the general education setting. OSSE reviewed service trackers for the [REDACTED] school year to determine how many minutes of services were provided to the student each month. OSSE included services that were delivered and services that were attempted but missed due to the student's absence or school closure:³

³ OSSE Related Services Policy at p. 10 (January 5, 2010).

Month	Behavioral Support Services (120 minutes/month)
Aug	No services recorded
Sep	315 min. received
Oct	No services recorded
Nov	180 min. received
Dec	90 min. received, 30 min. missed due to winter break
Jan	No services recorded
Feb	105 min. received, 60 min. missed due to student's absence
Mar	165 min. received
Apr	165 min. received, 30 min. missed due to spring break
May	75 min. received, 45 min. missed due to student's absence
Jun	No services recorded

No services were recorded for the first week of school in August but the 30 minutes of services owed to the student were made up in September when the student received 195 minutes beyond those required for the month. There were no services recorded for October but between the excess services delivered in September and 60 extra minutes delivered in November the student received the full amount of services was entitled to for those months. The student received all services was entitled to for the month of December. No services were delivered in January due to the provider's absence. Those services were made up through additional services provided or attempted in February through April. All required services were delivered or attempted for May. No services were recorded for June and the record does not reflect any attempt by the LEA to provide make-up services to the student to account for this lapse in service delivery. As a result, OSSE finds that the student is owed 90 minutes of services for the month of June.

The complainant alleges that the student is not always pulled out of class to receive one-on-one or small group services because she refuses to leave classroom. The DCPS social worker explained that when the student refuses services, she instead delivers the services in the classroom through observation and support to the student and classroom teachers. The IEP specifies that the services are to be provided outside of the general education setting. As the student's placement is outside the general education setting on a full-time basis, services delivered in the classroom are delivered outside the general education setting and service delivery was properly recorded in service logs.

OSSE finds that DCPS is out of compliance with 34 CFR §300.323(c)(2) for failure to provide behavioral support services to the student in June.

⁴ The first day of school was August . The student was required to receive 30 minutes of services for August .

⁵ The last day of school was June . The student was required to receive 90 minutes of services for June .

ISSUE TWO: IEP GOALS

Findings of Fact

1. An independent comprehensive psychological evaluation was completed on [REDACTED]. The evaluation included the administration of the Woodcock Johnson Tests of Achievement Third Edition.
2. DCPS completed a psychological initial adaptive evaluation on [REDACTED] that included a review of the [REDACTED] independent comprehensive psychological evaluation.
3. The [REDACTED] IEP present levels of academic achievement and functional performance for each of the academic areas of concern are drawn from the Woodcock Johnson Tests of Achievement Third Edition administered as part of the [REDACTED] independent comprehensive psychological evaluation.
4. The [REDACTED] IEP contains two goals in each of the academic areas of concern for Mathematics, Reading, and Written Expression.
5. The [REDACTED] IEP's present level of performance for emotional, social, and behavioral development comes from the [REDACTED] psychological initial adaptive evaluation and observations and interviews with the student's teachers.
6. The [REDACTED] IEP's present level of performance for Mathematics was updated based on the student's academic progress in [REDACTED] school year Geometry class. The two goals were changed to address new mathematical functions.
7. The [REDACTED] IEP's present level of performance for Reading was updated to include the results from an assessment completed in April [REDACTED]. The two goals were updated to focus on new but related skills.
8. The [REDACTED] IEP's present level of performance for Written Expression was also updated based on the student's current academic performance. The two goals were changed to incorporate a new strategy to assist the student's writing skills.
9. The [REDACTED] IEP's present level of performance for emotional, social, and behavioral development was updated to include information on the student's progress and teacher input from the [REDACTED] school year, and results from an assessment completed on [REDACTED]. Four new goals were added.

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.320(a)(2)(i), because DCPS relied on the student's current evaluation data when developing the student's IEP goals.

Pursuant to 34 CFR §300.320(a)(2)(i), the IEP must include a statement of measurable annual goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum. The complainant alleges that the student's IEP goals are not individualized and are not based on [REDACTED] present level of functioning.

The student's present levels of academic achievement and functional performance were recorded on the [REDACTED] IEP under each area of concern. The present levels of performance for each of the academic areas of concern are drawn from the Woodcock Johnson Tests of Achievement Third Edition administered as part of the [REDACTED] independent comprehensive psychological evaluation. The present level of

performance for emotional, social, and behavioral development is derived from the [REDACTED] psychological initial adaptive evaluation and observations and interviews with the student's teachers. The IEP contains the most up to date information available on the student's present levels of academic achievement and functional performance. The IEP goals are based on this data, are connected to Common Core Standards appropriate for the student's grade level, and identify priority skills for the student to develop and access the 10th grade curriculum.⁶

The student's IEP was updated on [REDACTED]. The present level of performance for Mathematics was updated based on the student's academic progress in [REDACTED] current Geometry class. The two goals were changed to address new mathematical functions. The present level of performance for Reading was updated to include the results from an assessment completed in April [REDACTED]. The two goals were updated to focus on new but related skills. The present level of performance for Written Expression was also updated based on the student's current academic performance. The two goals were changed to incorporate a new strategy to develop the student's writing skills. The present level of performance for emotional, social, and behavioral development was updated to include information on the student's progress and teacher input from the [REDACTED] school year, as well as results from an assessment completed on [REDACTED]. Four new goals were added to this section of the IEP. The information contained in the [REDACTED] IEP comes from the student's academic performance and assessments completed during the school year. The IEP goals were individualized to address skills and strategies the student was working on during the [REDACTED] school year.

OSSE finds that DCPS relied on current evaluation data for the student when developing the student's IEP goals.

ISSUE THREE: IEP REVISION

Findings of Fact

1. At a [REDACTED], IEP team meeting the student's behavioral and academic concerns were discussed. The meeting notes reflect that the IEP team agreed to update the student's BIP to reflect [REDACTED] needs at the current school, refer the student to [REDACTED] for a community mentor and implement a plan to ensure the student takes [REDACTED] medication, and complete a speech and language evaluation.
2. The BIP was updated on [REDACTED].
 - a. The BIP was intended to target the following behaviors: verbal aggression, attendance/truancy, and academic disengagement.
 - b. The BIP included positive intervention strategies such as scheduled rest breaks, verbal encouragement, access to an identified support person, utilization of problem solving methods, relaxation strategies, pre-determined incentives, one-to-one assistance on difficult tasks, and assignments broken down into smaller tasks.

⁶ See Standards-Based IEP Guide: A resource for Local Educational Agencies at (October 2013) for additional information on aligning IEP goals with Common Core State Standards (CCSS) and identifying prerequisite skills that will allow students to access grade level curriculum.

- c. The BIP stated that the student's progress would be monitored by use of daily behavior tracker forms with corresponding incentives and consequences.
3. The [REDACTED] IEP progress report showed that the student was making progress in five IEP goals and making no progress in five IEP goals.
4. At a [REDACTED] IEP team meeting the student's behavior and academic progress were discussed. The meeting notes reflect that the student was failing one class but making progress in [REDACTED] other classes. It was acknowledged that the student was not completing [REDACTED] daily behavior tracking sheets and the team decided that the sheet would be made available in [REDACTED] first period class and returned to [REDACTED] special education case manager at the end of each day. The BIP was reviewed and staff members who would provide support were identified and specific incentives and consequences were agreed upon.
5. The [REDACTED] IEP progress report showed that the student was making progress in 8 IEP goals and making no progress in two IEP goals.
6. A speech and language evaluation report was completed on [REDACTED]. The report recommended strategies to improve the student's vocabulary and comprehension but did not recommend direct speech and language services.
7. The speech and language evaluation report was reviewed at the [REDACTED] IEP team meeting.
8. At the [REDACTED] meeting the IEP team reviewed the student's academic and behavior progress. Teachers gave mixed reports on the student's behavior. The team acknowledged that the student had not bought into using the behavior tracker and incentive sheet and considered different incentives to use. The parent noted that the student did not always take [REDACTED] medication.
9. The [REDACTED] IEP's present level of performance for each of the academic areas of concern—Mathematics, Reading, and Written Expression—were updated from the [REDACTED] IEP based on the student's academic progress and assessments completed during the [REDACTED] school year.
10. The goals for [REDACTED] IEP's academic areas of concern were altered to address skills and strategies the student was working on during the [REDACTED] school year.
11. The [REDACTED] IEP's present level of performance for emotional, social, and behavioral development was updated to include information on the student's progress and teacher input from the [REDACTED] school year, and results from an assessment completed on [REDACTED].
12. The [REDACTED] IEP contains four goals under the emotional, social, and behavioral development area of concern.
13. The [REDACTED] IEP progress report showed that the student was making progress in seven IEP goals, making no progress in five IEP goals, one IEP goal had not been introduced, and one IEP goal had recently been introduced.
14. The student's report card for the [REDACTED] school year showed that the student's grades fluctuated throughout the school year and final grades reflected two B-, one C+, three C, and one failed class.

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.324(b)(1)(ii), due to its revision of the IEP according to the student's progress.

Pursuant to 34 CFR §300.324(b)(1)(ii), the public agency must revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum and the child's anticipated needs. The complainant alleges that DCPS failed to revise the IEP to address student's lack of progress towards goals and has not taken action to address the student's repeated suspensions and behavioral issues.

The student's behavioral and academic concerns were discussed at an IEP team meeting on [REDACTED]. The meeting notes reflect that the IEP team agreed to update the student's BIP to reflect [REDACTED] needs at the current school, refer the student to [REDACTED] for a community mentor to develop a plan to ensure the student takes [REDACTED] medication, and to complete a speech and language evaluation. The BIP was updated on [REDACTED] to address the student's verbal aggression, attendance/truancy, and academic disengagement. The BIP included positive intervention strategies to be used by staff and a daily behavior tracking system with incentives and consequences.

The IEP team met again on [REDACTED] IEP to discuss the student's behavior and academic progress. The meeting notes reflect that the student was failing one class but making progress in [REDACTED] other classes. It was acknowledged that the student was not completing [REDACTED] daily behavior tracking sheets as required by [REDACTED] BIP and the team decided that the sheet would be made available in [REDACTED] first period class and returned to [REDACTED] special education case manager at the end of each day. The BIP was reviewed and staff members were identified who would provide support when the student was feeling overwhelmed and specific incentives and consequences were agreed upon.

The IEP team met again on [REDACTED] to review and revise the student's IEP. At this meeting the team reviewed an [REDACTED] speech and language evaluation report that was completed pursuant to the parent's request. The report recommended strategies to improve the student's vocabulary and comprehension but did not recommend direct speech and language services. The IEP team declined to add those services to the IEP. The IEP team reviewed the student's academic and behavior progress. Teachers gave mixed reports on the student's behavior in their classrooms. The team acknowledged that the student had not bought into using the behavior tracker and incentive sheet and considered different incentives to use, specifically tying student interests to elective course participation. The parent confirmed that the student did not always take [REDACTED] medication. The team made meaningful changes to the IEP based on its discussion of the student's progress, including updates to the student's present levels of performance and modifications to the student's goals. The IEP's present levels of performance for each of the academic areas of concern—Mathematics, Reading, and Written Expression—were updated from the [REDACTED] IEP based on the student's academic progress and assessments completed during the [REDACTED] school year. The goals for the academic areas of concern were altered to address skills and strategies the student was working on during the [REDACTED] school year. The emotional, social, and behavioral development area of concern was significantly changed: the present level of performance was updated to

include information on the student's progress and teacher input from the [REDACTED] school year and results from an assessment completed on [REDACTED] and four new goals were added to the IEP.

OSSE review of the record reflects that DCPS continually monitored the student's academic and behavioral progress throughout the [REDACTED] school year and made changes to the student's IEP and educational program as needed. Although the student continued to have behavioral concerns in some classes, the IEP team changed strategies and incentives to encourage the student's compliance with the goals of the BIP. The IEP team additionally provided community resources to the parent to address repeated concerns raised by her regarding the student's medication management.⁷ The quarterly IEP progress reports showed the student made progress on the majority of [REDACTED] IEP goals. The student's report card for the [REDACTED] school year showed that the student's grades fluctuated throughout the school year and final grades reflected two B-, one C+, three C, and one failed class. OSSE finds that DCPS revised the IEP as appropriate according to the student's progress throughout the school year in an effort to address concerns raised by formal evaluation data, teacher and parent concerns, and academic achievement.

Therefore, DCPS is in compliance with 34 CFR §300.324(b)(1)(ii).

ISSUE FOUR: DISCIPLINE

Findings of Fact

1. The student was suspended for 5 school days for an incident that occurred on [REDACTED].
2. Following a [REDACTED] incident the report states, "[g]uardian was called and will return with [REDACTED] to speak with both teachers."
3. Following a [REDACTED] incident the report states "Must return with parent."
4. At a [REDACTED] IEP team meeting the team acknowledged that the student had been sent home early from school without an official suspension on four occasions.
5. The student was suspended for 8 school days for an incident that occurred on [REDACTED].
6. A manifestation determination meeting was held on [REDACTED] during which the student's behaviors were determined to be a manifestation of [REDACTED] disability. The team acknowledged that the student was not consistently handing in [REDACTED] daily behavior sheets and that the team would reconvene on [REDACTED] to update the student's IEP to address behavior concerns.
7. Following an [REDACTED] incident the report states, "[c]all was made [REDACTED] left for

⁷ OSSE's review of the record reflects that, while medication management was discussed at the student's IEP meetings, LEA staff did not require the student to obtain community based services for medication management prior to receiving special education services. See OSSE Prohibition on Mandatory Medication Guidance (June 2, 2010): "The IDEA prohibits state and local educational agency personnel from requiring any student to obtain a prescription for medication as a condition of attending school, receiving an evaluation, reevaluation, or receiving services under the IDEA. See also 34 CFR §300.174.

the day...Will return on tomorrow to serve a I.S.S.” [sic].

8. At the [REDACTED] IEP team meeting the team discussed the student’s inconsistent classroom behavior and acknowledged that the student had not bought into using the behavior tracker and incentive sheet. The IEP team considered different incentives to use to encourage the student’s compliance with the BIP goals.
9. The student was suspended for 6 school days for an incident that occurred on [REDACTED].
10. Following a [REDACTED] incident the report states that the student “Cannot return until parent comes back on [REDACTED].”

Discussion/Conclusion

Based on the analysis below, DCPS is not in compliance with 34 CFR §300.530(d), (e), and (f), due to its failure to provide educational services during suspensions, failure to hold manifestation determination meetings within 10 days of the decision to change the student’s placement, and failure to review the student’s BIP following a removal that constitutes a change in placement.

Pursuant to 34 CFR §300.530(b), school personnel may remove a child with a disability who violates a code of student conduct from [REDACTED] or [REDACTED] current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement. Pursuant to 34 CFR §300.530(d), a child with a disability who is removed from the child’s placement for more than 10 school days 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 goals set out in the child’s IEP. A manifestation determination meeting must be held 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. (34 CFR §300.530(e)) If the child’s conduct is determined to be a manifestation of the child’s disability, the IEP team must conduct a functional behavioral assessment (FBA), or if a BIP has already been developed, review the BIP and modify it as necessary to address the behavior. (34 CFR §300.530(f)) The complainant alleges that DCPS failed to hold a manifestation determination meeting and provide educational services after 10 days of suspension, and conduct an FBA and develop a BIP.

The student was suspended three times during the [REDACTED] school year. The first suspension was for 5 school days for an incident that occurred on [REDACTED]. The student was suspended again for 8 school days for an incident that occurred on [REDACTED]. The student’s third suspension was for 6 school days for an incident that occurred on [REDACTED].

Educational Services

School staff reported that work packets are made available to all students who are suspended, but could not confirm whether the student picked up and completed the packets made available to [REDACTED] during [REDACTED] suspensions. Staff reported that the student was allowed to make up work missed during suspensions and tutoring support was made

available to help [REDACTED] complete assignments. OSSE found no evidence that, at the time of the suspensions exceeding 10 school days, the IEP team made a decision about educational services to be provided to the student during these suspensions. As the student's IEP requires 27 hours per week of specialized instruction outside the general education setting, a work packet with no assistance to complete the assignments is inadequate to enable the student to continue to make progress. OSSE finds that DCPS failed to provide educational services to enable the child to continue to participate in the general education curriculum and to make progress on IEP goals in violation of 34 CFR §300.530(d).

Manifestation Determination

The student's second suspension on [REDACTED], increased the total number of suspension days for the school year to 13, which exceeds the ten days of removal allowed prior constituting a change in placement that requires a manifestation determination meeting. The IEP team convened on [REDACTED], and determined that the student's behaviors were a manifestation of [REDACTED] disability. This meeting occurred nearly two months after the decision to suspend that resulted in a change of placement and triggered the manifestation determination meeting requirement.

No manifestation determination meeting was held following the student's third suspension on [REDACTED], resulting in six additional days of suspension. OSSE finds that DCPS is out of compliance with 34 CFR §300.530(e) for failure to timely hold a manifestation determination meeting after the [REDACTED] suspension and failure to convene a manifestation meeting to address the student's suspension on [REDACTED].

BIP

A BIP was created for the student on [REDACTED]. At the [REDACTED] manifestation determination meeting, the team acknowledged that the student was not consistently handing in [REDACTED] daily behavior sheets and that the team would reconvene on [REDACTED] to update the student's IEP. At the [REDACTED] meeting the team discussed the student's inconsistent classroom behavior and acknowledged that the student had not bought into using the behavior tracker and incentive sheet. The IEP team considered different incentives to use to encourage the student's compliance with the BIP goals, including availability of elective courses of interest to the student. DCPS failed to hold a manifestation determination meeting following the [REDACTED] suspension and thus missed the opportunity to consider whether the BIP needed further revision in light of that disciplinary incident. The IDEA regulations at 34 CFR §300.530(f) contain a strict requirement to consider the student's BIP following any removal that constitutes a change in placement if the behavior is determined to be a manifestation of the student's disability. Although DCPS reviewed and revised the student's BIP throughout the school year, DCPS was not in compliance with 34 CFR §300.530(f) when it failed to review the BIP following this change in placement.

Suspension Days

During the investigation OSSE noted inconsistencies in how suspension days are counted by school staff. Only the three official short-term suspensions were recorded as suspension days; however, the student was sent home for partial school days on several occasions due

to disciplinary incidents. Based on a review of the record, OSSE identified at least 5 days where the student missed part of the school day due to being sent home early following a disciplinary incident. OSSE reminds DCPS that LEAs must accurately document all student suspensions, including all instances in which a student is sent home, in order to identify when a student is entitled to a manifestation determination meeting as required by 34 FR §300.530(d). OSSE finds that these days should have been recorded as suspensions.

The complainant also alleges that, in some instances, the student missed additional days of school after a disciplinary event because the parent was not able to accompany the student to school for a reentry meeting. School staff reported that, if a parent is not able to come to the school in person, a reentry meeting may be held through a phone conference. The suspension log entry for an incident on [REDACTED], indicates that the student would miss 6 school days until the parent could accompany the student back to school on [REDACTED]; however, the attendance report shows only 2 missed class periods during that time. Two other incident report entries indicate that the parent would accompany the student to school upon [REDACTED] return, but OSSE could not identify any missed school days associated with those incidents. OSSE reminds DCPS that a student cannot be prevented from attending school until the parent is available to accompany the student back to school following a disciplinary incident.

CONCLUSIONS

1. DCPS is not in compliance with 34 CFR §300.323(c)(2), due to its failure to provide behavioral support services in June [REDACTED]
2. DCPS is in compliance with 34 CFR §300.320(a)(2)(i), due to DCPS's reliance on current evaluation data on the student when developing the student's IEP goals.
3. DCPS is in compliance with 34 CFR §300.324(b)(1)(ii), due to its revision of the IEP according to the student's progress.
4. DCPS is not in compliance with 34 CFR §300.530(d), (e), and (f) due to its failure to provide educational services during suspensions, failure to hold manifestation determination meetings within 10 days of the decision to change the student's placement, and failure to review the BIP following a removal that constitutes a change in placement.

CORRECTIVE ACTION

1. In order to correct the noncompliance with §300.323(c)(2), DCPS must provide 90 minutes of behavioral support services. Documentation of completion is due to OSSE within 60 days of the date of this letter.
2. In order to correct the noncompliance with 34 CFR §300.530(d), (e), and (f) DCPS must:
 - a. Convene an IEP team meeting to determine compensatory education for the student for the 11 days the student was suspended without a manifestation determination meeting and the 5 days on which the students was sent home. If the parties cannot agree, DCPS must provide a minimum of 35 hours of tutoring services. Documentation of completion is due to OSSE within 60 days of the date of this letter.

- b. Train school staff on special education disciplinary procedures safeguards, including the requirement to provide educational services during suspensions beyond 10 school days, the requirement to hold a manifestation determination meeting within 10 school days of any decision to change the student's placement, and the requirement to document all removals due to disciplinary incidents as suspensions. Documentation of completion is due to OSSE within 90 days of the date of this letter.
- c. Convene an IEP team meeting to review the student's BIP in the context of behavior incidents that occurred during the [REDACTED] school year, and revise as appropriate. 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], grandmother