



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

December 2, 2015

[REDACTED] PCS

RE: State Complaint No. 015-003

### 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), an attorney with the Bazelon Center for Mental Health Law, against the [REDACTED] Charter School ([REDACTED] PCS) alleging systemic violations of the Individuals with Disabilities Education Act, Part B, 20 USC § 1400 et seq. (IDEA).

The complainant alleged that [REDACTED] PCS violated certain provisions of IDEA and regulations promulgated at 34 CFR Part 300. On [REDACTED], the parties agreed to engage in mediation. On [REDACTED], OSSE extended the timeline for the final decision of the complaint due to the breadth and complexity of the allegations. On [REDACTED], the parties informed OSSE that they reached an agreement resolving allegations 1 through 6 as identified by the [REDACTED] initiation letter, but that the parties were unable to resolve allegation seven (7). Therefore, OSSE closed the investigation of allegations 1 through 6, and continued to investigate allegation seven (7): failure to allow the parents of students with an emotional disturbance or other health impairment an opportunity to inspect or review all education records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child, without unnecessary delay.

The State Complaint Office for OSSE has completed its investigation of the State Complaint. OSSE found that [REDACTED] PCS is not in compliance with 34 CFR §§300.501(a) and 300.613, due to its failure to provide parents with an opportunity to inspect and review all education records. This Letter of Decision is the report of the final results of OSSE's investigation.

**COMPLAINT ISSUES**

The remaining allegation raised in the complaint, further clarified by a review of documents and interviews in the course of the investigation, raised the following issue under the jurisdiction of the State Complaint Office:

1. 34 CFR §§300.501(a) and 300.613
  - a. Failure to allow the parents of students with an emotional disturbance or other health impairment an opportunity to inspect or review all education records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child, without unnecessary delay.

**INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED] PCS [REDACTED]
3. [REDACTED] PCS [REDACTED]

The investigation also included a 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]

**ISSUE ONE: EDUCATIONAL RECORDS**

**Findings of Fact**

1. When a disciplinary incident occurs in an [REDACTED] PCS class, the teacher sends a written referral to a school dean.
2. For a more serious incident, the staff member witness(es) writes a report of what happened. The dean also requires that the involved students write their own statement of the incident.
3. For each disciplinary incident, the dean uses the teacher referral, witness statement(s), and student-written incident reports to determine a consequence.
4. After the dean decides the consequence, [REDACTED] PCS sends the parent a notification letter that includes the consequence and a description of the incident. The letter is also placed in the student’s file.
5. Students facing a long term suspension or expulsion are referred to the discipline

board for a final decision.

6. The dean maintains the teacher referral, witness statement(s), and student-written incident report(s) throughout the disciplinary proceedings. [REDACTED] does not provide these documents to parents.
7. On [REDACTED], [REDACTED] PCS sent a letter informing a parent that the parent was required to pay for a laptop damaged by the child and would not receive any of the child's records, including report cards, until the school received payment.
8. On [REDACTED], [REDACTED] PCS sent a letter informing a parent that the parent was required to pay for a sand timer damaged by the child and would not receive any of the child's records, including report cards, until the school received payment for the sand timer.
9. On [REDACTED], [REDACTED] PCS sent a letter informing a parent that the school had issued quarter three progress reports to the parents of other students but the parent was not receiving one for their child due to an outstanding financial obligation.
10. In a [REDACTED] email [REDACTED] PCS told the complainant that when a parent/student has an outstanding balance, copies of records would not be provided but would be made available for review with advance notice.
11. In an [REDACTED] email [REDACTED] PCS responded to repeated requests for documents by agreeing to make the students' special education files available to the parent's counsel for review.

### **Discussion/Conclusion**

**Based on the analysis below, [REDACTED] PCS is not in compliance with 34 CFR §§300.501(a) and 300.613, due to its failure to provide parents with an opportunity to inspect and review all education records.**

Pursuant to 34 CFR §300.501(a), the parents of a child with a disability must be afforded, in accordance with the procedures of §300.613, an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education (FAPE) to that child.

Pursuant to 34 CFR §300.613, each agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency. The agency must comply with a request without unnecessary delay and in no case later than 45 days after the request has been made. The complainant alleges that

[REDACTED] PCS will not provide all disciplinary records maintained by the school and withholds student records until parents pay for school property damaged by students.

#### *Discipline Records*

Discipline records meet the definition of "education records" under the IDEA, and therefore, a parent must be afforded the opportunity to inspect and review their child's discipline records. The complainant and [REDACTED] PCS disagree over which documents generated pursuant to a disciplinary incident qualify as student records and must be provided to parents. When a disciplinary incident occurs in class at [REDACTED] PCS, a teacher sends a written referral to a school dean. For a more serious incident, the staff member witness(es) writes a report of the incident and the dean also requires that the involved students write their own statement of the incident. The dean collects these

documents and uses them to determine a consequence for the incident. After the decision is made, [REDACTED] PCS sends the parent a notification letter that includes the consequence and a description of the incident. The parent notification letter is maintained in the student's file.

[REDACTED] PCS reported that the parent notification letter is the only document that is considered part of the student's educational record. The teacher referrals, witness statements, and incident reports are not put into the student's file, but are maintained by the dean throughout the disciplinary proceedings, including referral to the discipline board in cases where the student is facing long term suspension or expulsion. The complainant contends that all teacher referrals, witness statements, and incident reports should be considered part of the student's educational record and provided to parents upon request.

[REDACTED] PCS asserts that, because the referrals and documents detailing the incident are used only by the dean to determine a consequence and are not placed in the student's file, the parent is not entitled to review or receive copies of these documents.

The IDEA regulations use the Family Educational Rights and Privacy Act (FERPA) regulations' definition of education records. (34 CFR §300.611) The FERPA regulations define records generally as, "any information recorded in any way. . .," and defines education records as those that are, "1) [d]irectly related to a student; and 2) [m]aintained by an education agency or institution or by a party acting for the agency or institution." (34 CFR §99.3) FERPA regulations also define a disciplinary action or proceeding as, "the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students." (34 CFR §99.3)

Any student specific record of a disciplinary action or proceeding meets the FERPA regulations definition of educational records, and includes records pertaining to the investigation and imposition of sanctions for the violation of a school's code of conduct. In this case, [REDACTED] PCS uses teacher referrals, witness statements, and incident reports to investigate incidents and to determine disciplinary consequences for the student. The records are directly related to students, maintained by school staff at least through the conclusion of the disciplinary proceedings, and meet the definition of a disciplinary action under FERPA. Therefore, documents that are used by the LEA to determine disciplinary consequences for students qualify as educational records and should be kept by the LEA.

Additionally, disciplinary consequences such as suspension and expulsion can impact the student's placement and receipt of FAPE and thus educational records relating to those consequences must be made available for parents to inspect and review. OSSE finds that all documents pertaining to disciplinary incidents, including teacher referrals, witness statements, and incident reports, are educational records within the meaning of IDEA and FERPA, and must be provided to parents and maintained in the student's educational file.

### *Withholding Records*

██████████ PCS sent letters home to parents on at least three occasions with regard to three individual students, informing parents that they would not receive their child's educational records until the parents paid for school property damaged by the child. The IDEA regulations state that parents must be provided an opportunity to inspect and review all education records without unnecessary delay and in no case later than 45 days after the request has been made. DC law further requires that "the parent of a child with a disability shall be given the opportunity to inspect and review and to copy at no cost to the parent all of the child's records relating to the identification, evaluation, and educational placement, and the provision of FAPE." (5E DCMR §3021.1) The regulations do not provide an exception for when money is owed to the school for any reason. OSSE finds that ██████████ PCS inappropriately withheld access to student records due to money owed the school for damaged property.

The complainant further alleges that, after agreeing to provide the records contained in a student's special education file, ██████████ PCS would still not provide a student's academic and attendance records because it does not consider them special education records. Regardless of whether they are special education records or not, students academic records, such as report cards, and attendance records meet the FERPA regulations definition of educational records outlined above and must be provided to parents for inspection and review upon request.

Therefore, ██████████ PCS is out of compliance with 34 CFR §§300.501(a) and 300.613.

### **CONCLUSIONS**

1. ██████████ PCS is not in compliance with 34 CFR §§300.501(a) and 300.613, due to its failure to provide parents with an opportunity to inspect and review all education records.

### **CORRECTIVE ACTION**

1. In order to correct the noncompliance with 34 CFR §§300.501(a) and 300.613, ██████████ PCS must:
  - a. Update its policy and procedures to include as education records any records maintained by the LEA with regard to the student, including records of disciplinary actions or proceedings such as teacher referrals, witness statements, incident reports, or any other record used to determine disciplinary consequences; and academic records such as report cards, student behavior data, and attendance records.

If you have any questions regarding this decision, please contact Victoria Glick, Manager, State Complaints, at [Victoria.Glick@dc.gov](mailto: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