



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

November 13, 2015

[REDACTED]
Public Charter School
[REDACTED]

RE: State Complaint No. 015-005

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 [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 Part B 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 afford the parent an opportunity to inspect and review all educational records, failure to revise the child’s individualized education program (IEP), and failure to make special education and related services available to the child.

The State Complaint Office for OSSE has completed its investigation of the State Complaint. OSSE found that [REDACTED] PCS is in compliance with its obligation to provide educational records, revise the IEP, and make services available. This Letter of Decision is the report of the final results of OSSE’s investigation.

The complainant raised additional claims which the State Complaint Office did not investigate. The complainant raised concerns regarding a three-day suspension that was issued on [REDACTED] but did not allege a violation of IDEA discipline procedures. The complainant also raised concerns regarding staffing issues, including high staff turnover and lack of professionalism, but did not allege that any IDEA violations occurred because of these issues. OSSE did not investigate these concerns as they did not allege IDEA violations.

COMPLAINT ISSUES

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

1. **Requirement to provide educational records at 34 CFR §300.501(a)(2)**
 - a. Failure to afford the parent an opportunity to inspect and review all educational records with respect to the provision of FAPE to the child, with regard to disciplinary records and service logs.
2. **Requirement to revise IEP at 34 CFR §300.324(b)(1)(i) and (ii)**
 - a. Failure to revise the IEP not less than annually and, as appropriate, to address the child’s anticipated needs.
3. **Requirement to provide IEP services at 34 CFR §300.323(c)(2)**
 - a. Failure to make special education and related services available to the child in accordance with the child’s IEP, with regard to behavior and transition interventions.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED] PCS [REDACTED]
3. [REDACTED] PCS [REDACTED]
4. [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]

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 autism spectrum disorder.
3. The investigation period of this State Complaint is [REDACTED] to [REDACTED].

4. During the investigation period the student's local educational agency (LEA) was [REDACTED] PCS.

ISSUE ONE: EDUCATIONAL RECORDS

Findings of Fact

1. [REDACTED] PCS's first day of school for the [REDACTED] school year was [REDACTED].
2. An IEP team meeting was held on [REDACTED]. At this meeting the complainant requested documentation of the services the student was receiving.
3. On [REDACTED], the student was suspended for three days. [REDACTED] PCS notified the parent of the suspension via a phone call and a letter. The [REDACTED] letter stated that the student, "displayed inappropriate behavior through physical contact with another student," and that this behavior violated the student code of conduct with regard to physical attacks.
4. On [REDACTED], [REDACTED] PCS sent a letter informing the parent of the results of the parent's request to reconsider the suspension. The suspension was upheld, but reduced from three to two days.
5. The student enrolled in a new LEA on [REDACTED].
6. There are service logs for the student's related services—behavioral support services, occupational therapy, speech language pathology—for the time the student attended [REDACTED] PCS in the [REDACTED] school year.

Discussion/Conclusion

Based on the analysis below, [REDACTED] PCS is in compliance with 34 CFR §300.501(a)(2), due to providing all available educational records requested by the parent.

Pursuant to 34 CFR §300.501(a)(2), the parents of a child with a disability must be afforded the opportunity to inspect and review all educational records with respect to the provision of FAPE to the child. 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. In this matter, the complainant alleges that [REDACTED] PCS refused to provide documents related to the student's suspension and receipt of related services.

On [REDACTED] the student was suspended for three days. The parent was notified of the suspension via a phone call and a letter that was sent home via U.S. mail. The [REDACTED] letter stated that the student, "displayed inappropriate behavior through physical contact with another student," and that this behavior violated the student code of conduct with regard to physical attacks. The parent was provided with an additional letter on [REDACTED], responding to [REDACTED] request to reconsider the suspension and stating that the suspension would be upheld, but the length of suspension would be reduced from three days to two days. The record indicates that the parent was provided with all documents pertaining to the suspension.

The parent also reported verbally requesting a list of the individuals providing related services to the student and sign-in sheets documenting when the services were provided. OSSE requires that LEAs ensure that service providers document all instances of service

delivery.¹ [REDACTED] PCS records delivery of related services in service logs generated by service providers in SEDS. In this case, OSSE reviewed [REDACTED] PCS SEDS records and confirmed that there were service logs for the student's related services for the time the student attended [REDACTED] PCS during the [REDACTED] school year. In addition, [REDACTED] PCS reported that service logs are provided to parents upon request and no staff member recalled receiving the request from the complainant. OSSE found no evidence that [REDACTED] PCS denied a request from the complainant to review service logs.

Therefore, [REDACTED] PCS is in compliance with 34 CFR §300.501(a)(2).

ISSUE TWO: REVISE IEP AT LEAST ANNUALLY AND AS APPROPRIATE

Findings of Fact

1. A meeting to review and revise the student's IEP was held on [REDACTED].
 - a. The IEP was finalized on [REDACTED].
 - b. The IEP specifies that the student requires a dedicated aide.
2. A PWN was issued on [REDACTED] to notify the parent of the development of new IEP for the student including the addition of a dedicated aide.
3. On [REDACTED] the IEP team met to develop a BIP.
 - a. The BIP lists three objectives: 1. "[Student] will transition to a non-preferred activity without complaint or tantrum." 2. "[Student] will demonstrate appropriate physical boundaries (refrain from hitting, kicking, spitting, etc.) with adults and students in the school building." 3. "[Student] will remain on task for at least 10 consecutive minutes with no more than two prompts."
 - b. The BIP lists various strategies to assist the student including visual cues, a token board, social stories, verbal prompting and praise, breaks, and being taught skills to deal with frustration.
4. A meeting to review and revise the student's IEP was held on [REDACTED]. The IEP was not finalized before the student began attending a new LEA on [REDACTED].²

Discussion/Conclusion

Based on the analysis below, [REDACTED] PCS is in compliance with 34 CFR §300.324(b)(1)(i) and (ii), due to revising the IEP not less than annually, to address the child's anticipated needs.

Pursuant to 34 CFR §300.324(b)(1)(i) and (ii), the IEP team must revise an IEP not less than annually, as appropriate, to address a child's anticipated needs. The complainant alleges that the IEP does not fully cover the student's needs and that the IEP was always in the revision process.

¹ OSSE Related Services Policy at p. 10 (January 5, 2010), *available at* <http://osse.dc.gov/publication/related-services-policy-final-january-5-2010>.

² Since the student's IEP was not finalized before the student transferred LEAs, OSSE will use the [REDACTED] IEP to determine whether [REDACTED] PCS annually reviewed, and revised as appropriate the IEP to address the student's needs. OSSE will also use the [REDACTED] BIP to determine whether [REDACTED] PCS properly implemented the student's transition and behavior interventions.

The complainant reported that the student needs help expressing [REDACTED] transitioning to new activities, and interacting with peers. The complainant would have liked to see the school prevent the student from acting out, as opposed to reacting to incidents through discipline. [REDACTED] PCS staff confirmed that the student required assistance with transitions and controlling [REDACTED] behavior. A BIP was developed on [REDACTED] that contained three objectives to help the student transition to a new activity, maintain appropriate physical boundaries with others, and remain on task. The strategies listed in the BIP included visual cues, a token board, social stories, verbal prompting and praise, breaks, and being taught skills to deal with frustration. The objectives and strategies listed in the BIP matched the student's needs as reported by the complainant and school staff. The strategies listed are preventative—visual schedule, warnings before transition, etc.—and appear designed to help the student build skills to appropriately deal with [REDACTED] emotions once [REDACTED] is upset or frustrated. Additionally, the student's last IEP at [REDACTED] PCS required a dedicated aide to assist the student throughout the school day. OSSE finds that the IEP and BIP developed by [REDACTED] PCS addressed the student's identified behavioral needs as required by 34 CFR §300.324(b)(1)(ii).

The complainant stated that [REDACTED] was given only a draft copy of the IEP, suggesting that [REDACTED] PCS did not have a finalized IEP in place for the student in violation of IDEA's requirement to revise a child's IEP at least annually. *See* 34 CFR §300.324(b)(1)(i). However, [REDACTED] PCS staff reported that the IEP meeting is a drafting session where the parent provides input with other staff members. IEP team members are given a draft copy of the IEP prior to the meeting and at the meeting the team discusses goals and reviews the student's present levels of performance. [REDACTED] PCS reported that IEPs are finalized within one business week after the meeting is held.

This description of this process appears to be consistent with the process for the two IEPs that occurred during the investigation timeline: For the [REDACTED] school year, an IEP meeting was held on [REDACTED], and the IEP was finalized on [REDACTED]. [REDACTED] PCS issued a PWN on [REDACTED], notifying the parent of the finalized IEP. At the beginning of the [REDACTED] school year, the parent was provided with a draft copy of the updated IEP prior to the [REDACTED] meeting; however, that IEP was not finalized prior to the student's enrollment in another LEA on [REDACTED]. Therefore, OSSE finds that [REDACTED] PCS had an IEP in effect for the time the student attended the school, and was in the process of finalizing an updated IEP for the [REDACTED] school year. Moreover, [REDACTED] PCS was still within the one year timeline to review and revise the student's IEP.

Therefore, [REDACTED] PCS is in compliance with 34 CFR §300.324(b)(1)(ii).

ISSUE THREE: IEP SERVICES

Findings of Fact

1. On the [REDACTED] IEP under the other classroom aids and services it lists: "modeled speech, repeated instructions, extra time to complete work, use of visuals in class, use of manipulatives in class, token economy board, behavior and event tracking log, time for transitioning. [Student] uses the picture schedule daily,

weighted blanket occasionally, cube chair for time out, pencil grip weekly, pressure vest as needed.”

2. From [REDACTED], to [REDACTED], there were ten disciplinary incidents recorded that resulted in a phone call to the parent.
3. The SEDS communication log records two phone calls home to discuss the student’s behavior on [REDACTED] and [REDACTED].
4. On [REDACTED] the IEP team met to develop a BIP.
 - a. The BIP lists three objectives: 1. “[Student] will transition to a non-preferred activity without complaint or tantrum.” 2. “[Student] will demonstrate appropriate physical boundaries (refrain from hitting, kicking, spitting, etc.) with adults and students in the school building.” 3. “[Student] will remain on task for at least 10 consecutive minutes with no more than two prompts.”
 - b. The BIP lists various strategies to assist the student with transition, including visual cues, a token board, social stories, verbal prompting and praise, breaks, and being taught skills to deal with frustration.
5. The BIP identifies specific staff responsible for implementation of incentives and skills development, and identifies specific locations for implementation. On [REDACTED] the student was suspended for three days. The suspension was later reduced to two days.

Discussion/Conclusion

Based on the analysis below, [REDACTED] PCS is in compliance with 34 CFR §300.323(c)(2), due to making services available in accordance with the student’s IEP.

Pursuant to 34 CFR §300.323(c)(2), the public agency must ensure that, as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the IEP. The complainant alleges that [REDACTED] PCS did not implement the behavior and transition interventions listed in the IEP.

The [REDACTED] IEP lists various services to help the student, including: “modeled speech, repeated instructions, extra time to complete work, use of visuals in class, use of manipulatives in class, token economy board, behavior and event tracking log, time for transitioning. [Student] uses the picture schedule daily, weighted blanket occasionally, cube chair for time out, pencil grip weekly, pressure vest as needed.” These strategies are consistent with what is listed in the student’s BIP. The student’s teacher reported that in order to help the student with transitions, [REDACTED] was given a picture schedule on [REDACTED] desk and staff let [REDACTED] know ahead of time to prepare [REDACTED] for transition between activities. To help the student control [REDACTED] behavior [REDACTED] was given periodic breaks, used a sticker-based reward chart, and received tokens for good behavior.

The parent’s allegation that the behavior and transition services were not being implemented is based on the fact that the student was suspended on [REDACTED] for inappropriate physical contact with another student. The parent contends that if the interventions had been implemented, then the incident that lead to the suspension would not have occurred. However, implementation of a BIP does not guarantee that a student will not have any disciplinary incidents. Compared to discipline data from the [REDACTED]

school year, the student had fewer behavior incidents following the development of the [REDACTED] BIP. From [REDACTED] to [REDACTED], there were ten disciplinary incidents recorded that resulted in a phone call to the parent. Two additional calls home to discuss the student's behavior on [REDACTED] and [REDACTED], are listed in the SEDS communication log. Only one of these incidents took place after the creation of the BIP. The student attended [REDACTED] PCS for three weeks at the start of the [REDACTED] school year and had only one recorded disciplinary incident. The record indicates that [REDACTED] PCS developed the student's BIP in response to repeated behavior incidents and the parent's concerns, and implemented the behavior and transition interventions listed in the student's IEP.

Therefore, [REDACTED] PCS is in compliance with 34 CFR §300.323(c)(2).

CONCLUSIONS

1. [REDACTED] PCS is in compliance with 34 CFR §300.501(a)(2), as there is no evidence in the record of refusal to provide all available educational records requested by the parent.
2. [REDACTED] PCS is in compliance with 34 CFR §300.324(b)(1)(i) and (ii), due to revising the IEP to address the child's anticipated needs.
3. [REDACTED] PCS is in compliance with 34 CFR §300.323(c)(2), due to making behavior and transition services available in accordance with the student's IEP.

CORRECTIVE ACTION

There are no findings of noncompliance; 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