



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

December 23, 2015

[REDACTED]
Public Charter School
[REDACTED]

RE: State Complaint No. 015-007

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 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 include academic goals in the IEP, failure to follow disciplinary procedural requirements, failure to revise the IEP to address lack of expected progress, failure to obtain parental consent prior to conducting any reevaluation, and failure to make special education and related services available in accordance with the IEP.

On [REDACTED], a due process complaint was filed that raised multiple allegations also at issue in the state complaint and, under 34 CFR §300.152(c), OSSE held those issues in abeyance pending resolution of the due process complaint. The investigation of the remaining issues continued. The due process complaint was subsequently withdrawn on [REDACTED], and at that time OSSE resumed the investigation of all issues raised in the State Complaint.

The State Complaint Office for OSSE has now completed its investigation of the State Complaint. OSSE found that [REDACTED] PCS is in compliance with its obligation to include measurable annual goals in the IEP, review and revise the IEP, obtain parental consent prior to conducting an evaluation, and provide services in accordance with the IEP. OSSE found that [REDACTED] PCS is out of compliance with its obligation to provide education services after a removal of more than ten days, return the student to [REDACTED] current placement at the end of the disciplinary removal, and review the behavioral intervention plan

following a manifestation determination. 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. **IEP requirements at 34 CFR §300.320(a)(2)(i)**
 - a. Failure to include in the IEP a statement of measurable annual academic goals.
2. **Discipline requirements at 34 CFR §300.530**
 - a. Failure to provide educational services after a removal of more than 10 days. (§300.530(d))
 - b. Failure to review the behavioral intervention plan and modify it as necessary to address the behavior. (§300.530(f)(1)(ii))
3. **Requirement to revise the IEP at 34 CFR §300.324(b)(ii)**
 - a. Failure to revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and the child's anticipated needs.
4. **Requirement to obtain parental consent at 34 CFR §300.300(c)**
 - a. Failure to obtain parental consent prior to conducting any reevaluation.
5. **Requirement to provide IEP services at 34 CFR §300.323(c)(2)**
 - a. Failure to make special education and related services available in accordance with the IEP in regard to the behavior intervention plan, specialized instruction, speech language services, occupational therapy services, and behavioral support services.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

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

The investigation also included review of the following documents which were either submitted by the complainant, submitted by [REDACTED] PCS, or accessible via the Special Education Data System (SEDS):

[REDACTED]



GENERAL FINDINGS OF FACT

- 1. The student is a child with a disability as defined by 34 CFR §300.8.
- 2. The student’s disability category is developmental delay.
- 3. During the investigation period for the complaint the student’s local educational agency (LEA) was [REDACTED] PCS.

ISSUE ONE: IEP GOALS

Findings of Fact

- 1. The [REDACTED] IEP prescribes 30 minutes per month of specialized instruction inside the general education setting, 240 minutes per month of speech-language pathology inside the general education setting, 240 minutes per month of occupational therapy inside the general education setting, 120 minutes per month of occupational therapy outside the general education setting, and 240 minutes per month of behavioral support services inside the general education setting.
 - a. The IEP contains goals in the areas of concern for communication/ speech and language; emotional, social, and behavioral development; and motor skills/ physical development; but does not contain any academic goals.
 - b. Under the area of concern for emotional, social, and behavioral development it states: “[Student’s] significant delays in emotional, social, and behavioral development negatively impact [REDACTED] ability to engage appropriately in the classroom setting... [Student] does not respond well when given directions, which greatly prohibits [REDACTED] from accessing the curriculum... [Student] displays inattentive and off-task behaviors throughout the day, which affects [REDACTED] ability to progress in the classroom setting.”
 - c. The IEP contains five goals under the area of concern for emotional, social, and behavioral development: 1) “[Student] will communicate [REDACTED] wants and needs by learning and utilizing ‘I’ statements when upset, as well as during times of anger and/or frustration,” 2) “Given adult support and guidance, [Student] will learn and utilize self-soothing techniques in the classroom setting,” 3) “[Student] will follow basic 1-step directions during small group structured activities with no more than 2 repetitions,” 4) “Given adult

- support and guidance, [Student] will demonstrate improved frustration tolerance by reducing the duration and frequency of [redacted] display of maladaptive behaviors (i.e., screaming and head banging),” and 5) “[Student] will separate from attachments with adult staff in response to verbal prompts, as evidenced by engaging in classroom activities with peers.”
2. The [redacted] IEP prescribes 30 minutes per month of specialized instruction inside the general education setting, 180 minutes per month of speech-language pathology inside the general education setting, 240 minutes per month of occupational therapy outside the general education setting, 180 minutes per month of behavioral support services inside the general education setting, and 180 minutes per month of behavioral support services outside the general education setting.
 - a. The IEP contains goals in the areas of concern for communication/ speech and language; emotional, social, and behavioral development; and motor skills/ physical development; but does not contain any academic goals.
 - b. Under the area of concern for emotional, social, and behavioral development it states: “[Student’s] emotional, social, and behavioral delays affect [redacted] ability to progress in the general education setting, as demonstrated by [redacted] inability to follow directions, do [redacted] work, and get along with [redacted] classmates and teachers. [Student] displays inattentive and off-task behaviors throughout the day, which affects [redacted] ability to progress in the classroom setting.”
 - c. The IEP contains five goals under the area of concern for emotional, social, and behavioral development: 1) “When prompted, and with support, [Student] will verbally respond to adults to communicate [redacted] wants and needs, particularly during times of anger and/or frustration,” 2) “[Student] will learn and utilize self-calming strategies to help [redacted] calm down in times of frustration/anger,” 3) “[Student] will follow directions when asked without screaming, yelling, biting, or hitting,” 4) “With support, [Student] will show improved frustration tolerance by being willing to calm down using self-calming strategies that [redacted] has learned, particularly when [redacted] is performing maladaptive behaviors (i.e., biting, screaming, hitting),” and 5) “[Student] will learn to engage more appropriately with [redacted] peers by showing pro-social behaviors and engaging with them without being aggressive verbally or physically.”
 3. [redacted] PCS staff reported that the student performs well academically, but [redacted] behavior impedes [redacted] access to the curriculum.
 4. The [redacted] PCS [redacted] reported that she works with the student on [redacted] behavior goals in the classroom to help [redacted] complete classroom assignments and activities.

Discussion/Conclusion

Based on the analysis below, [redacted] PCS is in compliance with 34 CFR §300.320(a)(2)(i), due to including IEP goals that reflect the student’s needs.

Pursuant to 34 CFR §300.320(a)(2)(i), the IEP must include a statement of measurable annual goals, including academic and functional 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 has specialized instruction but no academic goals.

Both the [REDACTED] and [REDACTED] IEPs prescribe 30 minutes per month of specialized instruction and related services including speech language pathology, occupational therapy, and behavioral support services. The student's IEP requires behavioral support services to be delivered in the general education setting. Both IEPs contain goals in the areas of concern for communication/ speech and language; emotional, social, and behavioral development; and motor skills/ physical development; but do not contain any academic goals. [REDACTED] PCS staff reported that the student performs well academically, but [REDACTED] behavior impedes [REDACTED] access to the curriculum. The [REDACTED] [REDACTED] reported that she works with the student on [REDACTED] behavior goals in the classroom to help [REDACTED] complete classroom assignments and activities.

In order to qualify as a student with a disability, a child must need special education and related services. (34 CFR §300.8(a)(1)) Specially designed instruction means adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access of the child to the general education curriculum. (34 CFR §300.39(b)(3)) The student's IEP draws a direct connection between the student's behavior and [REDACTED] ability to access the curriculum by stating that the student's difficulty in following directions, paying attention, remaining on task, and getting along with peers and adults impedes [REDACTED] access to the curriculum. The student's behavior goals are designed to address these deficits and target classroom behavior, which are developmentally appropriate academic concerns at the kindergarten instructional level. The behavior goals allow the [REDACTED] to adapt lessons to fit the child's needs by modifying how directions are given, helping the student calm down to be able to participate in instruction, and assisting the student to appropriately engage with peers during group activities. The student's services and goals reflect [REDACTED] needs, including behavior support to allow [REDACTED] to participate in and learn from classroom instruction. OSSE finds that the student's IEP contains goals for all of the student's areas of concern and that the goals target what areas to address through specialized instruction delivered in the classroom.

Therefore, [REDACTED] PCS is in compliance with 34 CFR §300.320(a)(2)(i).

ISSUE TWO: DISCIPLINE

Findings of Fact

1. The student was suspended for 2 school days for an incident involving classroom disruption, throwing objects that may cause injury or damage property, and an attack on a student or staff that occurred on [REDACTED].
2. The student was suspended for 10 school days for an incident involving throwing objects that may cause injury or damage property and an attack on a student or staff that occurred on [REDACTED].
3. A manifestation determination meeting was held on [REDACTED]. The student's behavior was determined to be a manifestation of the student's disability.
4. A meeting was held on [REDACTED], to discuss the student's educational

services and placement.

5. On [REDACTED], [REDACTED] PCS sent the parents a letter stating that the student could not return to school and would continue to be provided with homebound services until a new placement was identified.
6. When the student's ten day suspension ended on [REDACTED], the parent brought the student to school but the student was denied entry and sent home.
7. On [REDACTED], the parent enrolled the student in a new LEA.
8. During the time the student was out of school [REDACTED] received no special education services.

Discussion/Conclusion

Based on the analysis below, [REDACTED] PCS is not in compliance with 34 CFR §§300.530(d), 300.530(f)(1)(ii), and 300.530(f)(2) due to its failure to provide services after ten days of removal, failure to review and modify the student's BIP, and failure to return the student to [REDACTED] current placement following a determination that the child's behavior was a manifestation of the child's disability.

Pursuant to 34 CFR §300.530(d), a child with a disability who is removed from [REDACTED] current 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.

Pursuant to 34 CFR §300.530(f)(1)(ii), if the child's conduct is determined to be a manifestation of [REDACTED] disability, the IEP team must conduct an FBA and implement a BIP, unless a BIP has already been developed. If a BIP has been developed then the IEP team must review and modify it to address the behavior. Pursuant to 34 CFR §300.530(f)(2), if the child's conduct is determined to be a manifestation of [REDACTED] disability, the child must be returned to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of BIP. The complainant alleges that the school did not provide educational services after 10 days of suspension, failed to conduct an FBA and develop a BIP that adequately addressed the child's behavior needs, and did not return the student to [REDACTED] placement.

Change in Placement and Provision of Services

The student was suspended for two school days for an incident involving classroom disruption, throwing objects that may cause injury or damage property, and an attack on a student or staff that occurred on [REDACTED]. The student was suspended again for ten school days for an incident involving throwing objects that may cause injury or damage property and an attack on a student or staff that occurred on [REDACTED]. A change of placement occurs if the child has been subjected to a series of removals that constitute a pattern because the series of removals total more than 10 school days in a school year, the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and additional factors such as the proximity of the removals to one another. (34 CFR §300.536(a)(2)) These two suspensions in a short period of time for substantially similar behavior that totaled twelve school days, constituted a change in placement and triggered [REDACTED] PCS' obligation to provide the student appropriate services as determined by the IEP team and to hold a manifestation determination meeting. (34 CFR §300.530(b)(5) and (e)(1)) [REDACTED] PCS should have

started providing educational services to the child on [REDACTED],¹ the eleventh cumulative day of suspension, which is when the removal became a change in placement.² There is no evidence that the student received services during the last two days of the ten day suspension, constituting a failure to provide services as required upon change of placement.

BIP Modification and Return to Placement

A manifestation determination meeting was held on [REDACTED], where it was determined that the student's behavior that resulted in the suspension was a manifestation of the student's disability. Upon determining that the child's conduct was manifestation of [REDACTED] disability and that the student already had a BIP in place, the IEP team was required to review and modify the BIP to address the relevant behavior. (34 CFR §300.530(f)(1)(ii)) [REDACTED] PCS was also required to return the child to the placement from which [REDACTED] was removed, unless the parent and the LEA agreed to a change of placement as part of the modification of the BIP.³ (34 CFR §300.530(f)(2)) The student's BIP was not reviewed or modified at the [REDACTED] meeting, in violation of 34 CFR §300.530(f)(1)(ii), and no change of placement decision was made.

In the [REDACTED] IEP meeting, [REDACTED] PCS and the parents discussed changing the student's placement to a more restrictive setting in a nonpublic school, and until that change in placement occurred, [REDACTED] PCS offered to provide homebound services to the child. Although the parties agreed that the student required a long-term change in placement, there is no evidence to indicate that an interim alternative educational setting (IAES) was appropriate where the student's behavior did not constitute an exception for emergency removal and the parents did not agree to IAES. The parents did not agree to homebound services as an IAES because, when not in school, the child had to stay with a relative in another city who could provide child care while both parents were at work, and thus the child was not available to receive homebound services. [REDACTED] PCS also did not offer a continuum of IAES options. Even when IAES is appropriate, OSEP has stated that LEAs may not offer home instruction as the sole IAES option.⁴ Despite that fact that the parents did not agree to homebound services as the IAES, [REDACTED] PCS sent the parents a letter on [REDACTED], stating that the administration had unilaterally decided that

¹ The student's first suspension was from [REDACTED]. The second suspension began on [REDACTED] and there was no school for student on [REDACTED] so this day was not counted towards the calculation of suspension days.

² A school may also remove a child to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability if the child carries a weapon to school, knowingly possesses or uses illegal drugs, or has inflicted serious bodily injury upon another person while at school. None of these exceptions apply to this situation.

³ A school may also remove a child to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability if the child carries a weapon to school, knowingly possesses or uses illegal drugs, or has inflicted serious bodily injury upon another person while at school. None of these exceptions apply to this situation. Although the student was suspended in part for physical aggression with staff and students, it does not rise to the level of serious bodily injury.

⁴ OSERS Questions and Answer on Discipline Procedures p. 11 (revised June 2009).

homebound services would be provided until a new placement was found.⁵

The parents returned the child to school on [REDACTED], but [REDACTED] PCS denied the child entry and the child sent home. [REDACTED] PCS continued to refuse to allow the child to return to [REDACTED] current placement and the child went without any educational services until the parents enrolled the child in a new LEA on [REDACTED]. [REDACTED] PCS' refusal to allow the child to return to [REDACTED] current placement following the tenth cumulative day of suspension and offer of only homebound services as an IAES constitutes a failure follow the requirements of 34 CFR §300.530(f)(2).

Therefore, [REDACTED] PCS is out of compliance with 34 CFR §§300.530(d), 300.530(f)(1)(ii), and 300.530(f)(2). [REDACTED] PCS must compensate the student for all services missed from the eleventh day of suspension on [REDACTED] until the student was enrolled in a new LEA on [REDACTED].

ISSUE THREE: REVISE IEP

Findings of Fact

1. The [REDACTED] IEP contains five goals under the area of concern for emotional, social, and behavioral development, as stated in Issue One: Finding of Fact, fact one.
2. From [REDACTED] through [REDACTED], [REDACTED] PCS recorded no disciplinary incidents for the student.
3. In [REDACTED] and [REDACTED] [REDACTED] PCS recorded 4 disciplinary incidents for the student.
4. The parent signed consent to evaluate on [REDACTED].
5. A BIP was created on [REDACTED].
 - a. The BIP contains three objectives: 1) “[Student] will complete academic tasks independently and in small groups as given by the teacher,” 2) “[Student] will decrease [REDACTED] recovery time from a crisis episode (i.e. tantrum, crying) not to exceed 5 minutes,” and 3) “[Student] will follow the directions given by [REDACTED] teacher(s) after no more than one verbal reminder or redirection if needed.”
 - b. The BIP contains three intervention strategies: 1) “When [Student] starts on an academic task or follows a given direction, the teacher should give specific verbal praise,” 2) “The teacher should verbally redirect [Student] by using a calm, firm tone and making eye-level contact,” and 3) “The teacher should provide [Student] with a picture schedule to assist [REDACTED] with daily transitions.”
 - c. The BIP contains three rewards/reinforcement: 1) “Time on computer/ipad,” 2) “Complete a job or help a staff member,” and 3) “Listen to music on a set of head phones.”
6. The [REDACTED] IEP contains five goals under the area of concern for emotional, social, and behavioral development, as stated in Issue One: Finding of Fact, fact two.

⁵ OSSE reminds [REDACTED] PCS that when an LEA believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, it may appeal the decision by requesting a hearing. (34 CFR §300.532(a))

⁶ This totals 14 school days. [REDACTED] was a holiday and there was no school that day.

7. An FBA was completed on [REDACTED].
8. An IEP team meeting was held and the BIP was revised on [REDACTED]. The child's father attended this meeting.
 - a. The BIP contains three objectives: 1) "[Student] will complete an academic task without protest," 2) "[Student] will follow the teacher's directions after two verbal prompts," and 3) "[Student] will utilize learned coping skills to reduce tantrums and physical aggression towards school staff and peers."
 - b. The BIP contains six intervention strategies: 1) "When [Student] starts on an academic task or follows a given direction, the teacher should give specific verbal praise," 2) "The teacher should verbally redirect [Student] by using a calm, firm tone and making eye-level contact," 3) "[Student] will use a break pass to communicate when [REDACTED] needs a break from the classroom. [REDACTED] will be allowed to have 1-2 breaks in the morning and 1-2 breaks in the afternoon," 4) "[Student] will utilize stress balls with different colors to indicate how [REDACTED] is feeling. Each color represents a different feeling," 5) "[Student] will be given classroom jobs and tasks to perform that allow [REDACTED] to move around the room. [REDACTED] may also be given errands to run outside of the classroom," 6) "A timer will be used when [Student] is doing a preferred activity to assist [REDACTED] in transitioning to a non-preferred task or activity."
 - c. The BIP contains four rewards/reinforcement: 1) "Playing with trains," 2) "Building with legos or blocks," 3) "Time outside on the playground," and 4) "Walks with a preferred staff."
9. From the start of the [REDACTED] school year until the student's suspension on [REDACTED], [REDACTED] PCS recorded 7 disciplinary incidents for the student, two of which resulted in suspension.

Discussion/Conclusion

Based on the analysis below, [REDACTED] PCS is in compliance with 34 CFR §300.324(b)(ii), due to revising the BIP following completion of the FBA and updating the IEP as needed.

Pursuant to 34 CFR §300.324(b)(ii), the IEP team must revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum and the child's anticipated needs. The complainant alleges that the student's IEP and BIP were not revised following completion of an FBA and that the IEP was not revised to address the student's lack of progress toward [REDACTED] social emotional goals.

Towards the end of the [REDACTED] school year, [REDACTED] PCS recorded four disciplinary incidents for the student. Following this increase in behavioral issues, a BIP was created for the student on [REDACTED]. At the same time the parent signed consent for [REDACTED] PCS to complete an FBA. The student's IEP was reviewed and revised on [REDACTED] and all five emotional, social, and behavioral development goals were updated and additional behavioral support services out the general education setting were added to the student's IEP. The FBA was completed on [REDACTED] and on [REDACTED] the IEP team met to review it. The BIP was revised based on information from the FBA, information provided by the parent, and IEP team discussion. The objectives, intervention strategies, and rewards/reinforcements were all updated. The [REDACTED] BIP was in place at the start

of the [REDACTED] school year. Implementation of a BIP does not guarantee that a student will not have any behavioral or disciplinary incidents and [REDACTED] PCS staff reported that the BIP was helping the student make progress by remaining in the classroom. OSSE finds that [REDACTED] PCS updated the student's BIP following the [REDACTED] FBA and revised the IEP as needed to address the student's ongoing behavior concerns.⁷

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

ISSUE FOUR: PARENTAL CONSENT

Findings of Fact

1. Due to an increase of disciplinary incidents for the student, [REDACTED] PCS requested consent to complete an FBA.
2. The parent signed consent to evaluate on [REDACTED].
3. An FBA was completed for the student on [REDACTED].
4. On [REDACTED], the IEP team met to review the FBA and create a BIP. The student's father attended this meeting.

Discussion/Conclusion

Based on the analysis below, [REDACTED] PCS is in compliance with 34 CFR §300.300(c), due to obtaining parental consent prior to completing an FBA.

Pursuant to 34 CFR §300.300(c), each public agency must obtain informed parental consent prior to conducting any reevaluation of a child with a disability. The complainant alleges that [REDACTED] PCS did not obtain parental consent prior to conducting an FBA on [REDACTED].

Due to an increase of disciplinary incidents for the student in the [REDACTED] school year, [REDACTED] PCS requested consent to complete an FBA. The parent signed consent to evaluate on [REDACTED], and the FBA was completed on [REDACTED]. The IEP team met on [REDACTED] to review the FBA and create a BIP. The student's father attended this meeting. OSSE finds that [REDACTED] PCS obtained consent to evaluate as required by IDEA.

Therefore, [REDACTED] PCS is in compliance with 34 CFR §300.300(c).

ISSUE FIVE: PROVISION OF SERVICES

Findings of Fact

1. The [REDACTED] IEP prescribes specialized instruction and related services as stated in Issue One: Finding of Fact, fact one.
2. The [REDACTED] IEP prescribes specialized instruction and related services as stated in Issue One: Finding of Fact, fact two.
3. [REDACTED] PCS provided all related services required by the student's IEP from [REDACTED] through [REDACTED].
4. The [REDACTED] PCS s [REDACTED] who is assigned to the student's classroom reported that she worked with the student on [REDACTED] IEP goals for at least 30

⁷ [REDACTED] PCS' failure to review and revise the BIP following the [REDACTED] manifestation determination was addressed in Issue Two above.

- minutes each month and provided academic support, worked with the student to express █ needs, provided assistance with transitions to other activities and classes, and provided behavior support so the student could access █ academics
5. The student's BIP was revised on █ to include objectives, intervention strategies, and rewards/reinforcement as stated in Issue Three: Finding of Fact, fact eight.
 6. The █ reported the strategies she worked on with the student: have student show her how █ was feeling that day by using a feelings chart, going over what they wanted to accomplish that day, reviewing that day's schedule in picture form, giving █ short breaks doing a preferred activity, and using a timer to count down in between transitions.
 7. From the start of the █ school year until the student's suspension on █, █ PCS recorded 7 disciplinary incidents for the student, two of which resulted in suspension.

Discussion/Conclusion

Based on the analysis below, █ PCS is in compliance with 34 CFR §300.323(c)(2), due to providing all services on the student's IEP and implementing the BIP.

Pursuant to 34 CFR §300.323(c)(2), 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 █ PCS lacked consistent staff to provide the child's IEP services and that the child's BIP is not being implemented.

Related Services

The █ IEP prescribes 240 minutes per month of speech-language pathology, 360 minutes per month of occupational therapy, and 240 minutes per month of behavioral support services. The █ IEP prescribes 180 minutes per month of speech-language pathology, 240 minutes per month of occupational therapy, and 360 minutes per month of behavioral support services. Delivery of related services is recorded on service trackers and input into SEDS. OSSE reviewed service trackers for all related services from October 2014 through October 2015 and found that █ PCS provided all services as required by the student's IEP.

Specialized Instruction

The █ and █ IEPs prescribe 30 minutes per month of specialized instruction inside the general education setting. Although delivery of specialized instruction is not recorded in service logs, the █ PCS █ who is assigned to the student's classroom reported that she worked with the student on █ IEP goals for at least 30 minutes each month. The █ reported that she provided academic support, worked with the student to express █ needs, provided assistance with transitions to other activities and classes, and provided behavior support so the student could access █ academics. OSSE finds that █ PCS provided specialized instruction as required by the student's IEP.

BIP

The student's BIP was revised on [REDACTED]. Both the social worker and special education teacher worked with the student to provide behavior support by working on the student's IEP goals and utilizing strategies from the BIP. The [REDACTED] described her morning routine with the student of having [REDACTED] show her how [REDACTED] was feeling that day by using a feelings chart, going over what they wanted to accomplish that day, such as communicating [REDACTED] needs instead of throwing a tantrum, and reviewing that day's schedule in picture form. The [REDACTED] reported strategies and rewards she used such as using a timer to count down to prepare student for transitions and giving [REDACTED] short breaks doing a preferred activity, like computer time. The student continued to have some behavioral issues at the start of the [REDACTED] school year, but [REDACTED] PCS staff reported that after an initial transition period with the revised BIP, the student began to make progress on controlling [REDACTED] behavior. Implementation of a BIP does not guarantee that a student will not have any behavioral or disciplinary incidents. OSSE finds that [REDACTED] PCS implemented the student's BIP as required.

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

CONCLUSIONS

1. [REDACTED] PCS is in compliance with 34 CFR §300.320(a)(2)(i), due to including IEP goals that reflect the student's needs.
2. [REDACTED] PCS is not in compliance with 34 CFR §§300.530(d), 300.530(f)(1)(ii), and 300.530(f)(2) due to its failure to provide services after ten days of removal, failure to review and modify the student's BIP and return the student to [REDACTED] current placement following a determination that the child's behavior was a manifestation of the child's disability.
3. [REDACTED] PCS is in compliance with 34 CFR §300.324(b)(ii), due to revising the BIP following completion of the FBA and updating the IEP as needed.
4. [REDACTED] PCS is in compliance with 34 CFR §300.300(c), due to obtaining parental consent prior to completing an FBA.
5. [REDACTED] PCS is in compliance with 34 CFR §300.323(c)(2), due to providing all services on the student's IEP and implementing the BIP.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §§300.530(d), 300.530(f)(1)(ii), and 300.530(f)(2), [REDACTED] PCS must:
 - a. Provide make-up services for the time the child was out of school by authorizing the following independent services to be paid for by [REDACTED] PCS: 2 hours of speech-language pathology, 3 hours of occupational therapy, 4 hours of behavioral support services, and 30 hours of tutoring services. [REDACTED] PCS may set service tracking and invoice submission requirements for service providers to receive payment. Documentation demonstrating completion of this requirement is due to OSSE within 30 days of the date of this decision.
 - b. Ensure that training on special education disciplinary requirements is provided to all special education staff and all administrators involved in the

disciplinary process and in making disciplinary decisions. The training must be provided by an outside organization that is recognized as an LEA training provider on discipline procedures. [REDACTED] PCS may alternatively seek and elect to receive training from OSSE to fulfill this requirement. Documentation demonstrating completion of this requirement is due to OSSE within 75 days of the date of this decision.

- c. Revise its policy and procedures to incorporate special education discipline requirements into the school's discipline procedures, including the requirement to return a student to [REDACTED] or [REDACTED] current placement following a determination that the student's behavior was a manifestation of [REDACTED] or [REDACTED] disability. Documentation of completion of this requirement is due to OSSE within 90 days of the date of this decision.

All corrective actions must be completed by the date specified above, but in no case later than one year from 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