



DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

May 11, 2016

[REDACTED]

District of Columbia Public Schools

[REDACTED]

[REDACTED] Public Charter School

RE: State Complaint No. 015-012

LETTER OF DECISION

PROCEDURAL BACKGROUND

On [REDACTED], the State Complaint Office of the Office of the State Superintendent of Education (OSSE), Division of Elementary, Secondary, and Specialized Education, received a State Complaint from [REDACTED] (complainant) against the District of Columbia Public Schools (DCPS) and [REDACTED] Public Charter School ([REDACTED] PCS) alleging violations in the special education program of [REDACTED] (Student ID [REDACTED] hereinafter “student” or “child.” During the time frame covered by this complaint, [REDACTED] PCS elected to be a part of DCPS for the purposes of the relevant provisions of the Individuals with Disabilities Education Act (IDEA).

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 provide information about where an independent educational evaluation (IEE) may be obtained and the applicable agency criteria; and failure to use the same criteria, including the qualifications of the examiner, for IEEs as the public agency uses when it initiates an evaluation.

The State Complaint Office (SCO) for OSSE has completed its investigation of the State

Complaint. OSSE found that DCPS is not in compliance with its obligation to provide information on the agency criteria for completing an IEE but is in compliance with its obligation to use the same criteria for independent educational evaluations. 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 SCO:

1. 34 CFR §300.502
 - a. Failure to provide information about where an independent educational evaluation may be obtained and the applicable agency criteria. (34 CFR §300.502(a)(2))
 - b. Failure to use the same criteria, including the qualifications of the examiner, for independent educational evaluations as the public agency uses when it initiates an evaluation. (34 CFR §300.502(e))

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. Complainant's advocate
3. DCPS [REDACTED]
4. DCPS [REDACTED]

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

[REDACTED]

GENERAL FINDINGS OF FACT

1. The student is a child with a disability as defined by 34 CFR §300.8.
2. The student's disability category is autism.
3. The student attends [REDACTED] PCS.
4. The student's local educational agency (LEA) is DCPS.

ISSUE: IEE

Findings of Fact

1. On [REDACTED], DCPS issued a letter authorizing the parent to obtain an

- independent functional behavioral assessment (FBA).
2. Along with the authorization letter, DCPS provided a copy of the Spring 2015 DCPS Office of Specialized Instruction parent guide (parent guide).
 - a. The parent guide states that an FBA must be conducted by a licensed social worker.
 - b. The parent guide lists two providers that can conduct FBAs.
 - c. The parent guide states that the parent, “may select a provider not on the list, as long as they are qualified to conduct the assessment . . . [and accepts] the prescribed OSSE rates.”
 3. The parent wanted the FBA completed by a board certified behavior analyst (BCBA) at a provider not listed in the parent guide.
 4. The [REDACTED] PCS positive behavior support plan was developed by a BCBA and incorporated by reference into the student’s [REDACTED] IEP.
 5. In a [REDACTED] email to the parent, DCPS confirmed that a licensed BCBA could conduct the independent FBA.

Discussion/Conclusion

Based on the analysis below, DCPS is not in compliance with 34 CFR §300.502(a)(2), due to not providing the parent with information on the criteria for completing the independent FBA. Based on the analysis below, DCPS is in compliance with 34 CFR §300.502(e), due to allowing the parent to have the independent FBA completed by a BCBA.

Pursuant to 34 CFR §300.502(a)(2), each public agency must provide to parents, upon request for an IEE, information about where an IEE may be obtained, and the agency criteria applicable for IEEs. If an IEE is to be conducted at public expense, the criteria under which the evaluation may be obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation. (34 CFR §300.502(e)) The complainant alleges that a DCPS case manager provided inaccurate information regarding the qualifications required by LEA to conduct an independent FBA and that [REDACTED] waited months for DCPS to provide accurate information.

An IEP team meeting was held [REDACTED], where the student’s behavior supports were discussed. The parent expressed concern regarding the student’s current behavior plan and the most recent FBA on which it was based. Pursuant to the parent’s request, DCPS issued a letter on [REDACTED] authorizing the parent to obtain an independent FBA. DCPS provided a copy of the parent guide along with the FBA. The parent guide listed two different service providers that could conduct the FBA, but the parent had been working with another service provider that [REDACTED] wanted to conduct the assessment. The parent guide states that the parent may select a provider not on the list as long as the provider is qualified to conduct the assessment and accepts the prescribed rates. The parent guide states that the FBA must be conducted by a licensed social worker; however, the service provider the parent had in mind was a BCBA, not a social worker.

The parent reported that after several communication attempts to the DCPS case manager

who sent the authorization letter, [REDACTED] spoke to the case manager on the phone and was told that the FBA could not be completed by a BCBA. The student's current positive behavior support plan was developed by a BCBA and incorporated into the student's [REDACTED] IEP. As a result, the parent sought approval for the independent FBA to be completed by a BCBA as well. The parent and [REDACTED] advocate reached out to other DCPS staff members they had a previous relationship with for confirmation without success and on [REDACTED] filed this complaint.

DCPS confirmed that the FBA could be completed by a BCBA on [REDACTED], after this complaint was filed. Although the DCPS case manager initially told the parent that a BCBA could not complete the FBA, this appears to be a misunderstanding on the part of the case manager and not a DCPS policy. However, full and complete information should be included in the parent guide that is provided along the authorization letter. The failure to include all criteria and qualifications of the examiner in the parent guide and DCPS's unresponsiveness to the complainant's request for clarification led to an unnecessary delay in the completion of the independent FBA.

Therefore DCPS is out of compliance with 34 CFR §300.502(a)(2) for failure to provide the parent with the needed information upon [REDACTED] request for the IEE. OSSE declines to make a finding under 34 CFR §300.502(e) where DCPS ultimately allowed the parent obtain an FBA completed by a BCBA.

CONCLUSIONS

1. DCPS is not in compliance with 34 CFR §300.502(a)(2), due to not providing the parent with information on the criteria for completing the independent FBA.
2. DCPS is in compliance with 34 CFR §300.502(e), due to allowing the parent to have the independent FBA completed by a BCBA.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 502(a)(2), DCPS must:
 - a. Update the parent guide to include all acceptable qualifications for all evaluators to ensure consistency with the criteria that DCPS uses when it initiates an agency conducted evaluation. Documentation demonstrating completion of this requirement is due to OSSE within 90 days of the date of this decision.
 - b. Upon completion of the independent FBA, schedule a meeting to review the evaluation results and discuss with the parent whether any compensatory education is owed to the student for the delay in completing the independent FBA. Documentation demonstrating completion of this requirement is due to OSSE within 60 days of DCPS receipt of the FBA.

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], parent