



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

May 13, 2016

[REDACTED]  
Public Charter School

RE: State Complaint No. 015-015

### **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 or parent) against [REDACTED] Public Charter School (PCS) alleging violations in the special education program of [REDACTED] [REDACTED] (Student ID [REDACTED] hereinafter "student" or "child.")

The complainant alleged that BASIS DC 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 revise the IEP, follow disciplinary procedural requirements, determine an appropriate placement, and provide access to educational records.

The State Complaint Office (SCO) for OSSE has completed its investigation of the State Complaint. OSSE found that [REDACTED] PCS is not in compliance with its obligation to provide access to educational records but is in compliance with its obligation to revise the IEP, follow disciplinary procedural requirements, and determine an appropriate 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 SCO:

**1. IEP revision requirements at 34 CFR §300.324(b)(ii)**

- a. Failure to revise the IEP to address any lack of expected progress towards the annual goals and in the general education curriculum, information about the child provided by the child's parents, and the child's anticipated

needs.

2. **Discipline procedural requirements at 34 CFR §300.530**
  - a. Failure to follow disciplinary procedures for removal of a child with a disability.
3. **Placement requirements at 34 CFR §300.116(a)(2)**
  - a. Failure to make the placement decision in conformity with the LRE provisions.
4. **Parental access to 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, specifically with regard to disciplinary records.

The complainant also raised additional claims which the SCO did not investigate. The complainant raised concerns regarding grade-level retention and the disclosure of confidential information about the student at an IEP meeting. OSSE did not investigate these concerns as they did not allege a violation of Part B of the IDEA. The complainant also raised concerns regarding the use of force against the student by school staff. OSSE referred the complainant to the District of Columbia Child and Family Services Agency (DC CFSA) to address this matter, as it is an allegation of child abuse. The SCO also reported this incident to DC CFSA directly.

At the time OSSE received this complaint, the parent reported that the student was being homeschooled and was not enrolled in a District school. OSSE referred the parent to the OSSE Homeschooling Program and provided information on how to complete the Notice of Intent to Home School form. On [REDACTED], the parent submitted a completed notice of intent to homeschool form to the OSSE Homeschooling Program.

#### **INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. Complainant
2. [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 other health impairment.
- 3. The student’s local educational agency (LEA) is ██████████ PCS.

A State complaint investigation can look back one year from the date of filing. (34 CFR §300.153(c)) Therefore, this investigation covers ██████████ until the end of the ██████████ school year on ██████████. The student was not reenrolled at ██████████ PCS for the ██████████ school year.

**ISSUE ONE: IEP REVISION**

**Findings of Fact**

- 1. An IEP team meeting was held on ██████████.
  - a. The parent expressed concern about the student’s ability to focus in the classroom and take notes.
  - b. The team reviewed the motivational techniques that are used to assist the student to focus in class and complete work, such as redirection, repeated and simplified directions, preferential seating, and opportunity to take breaks.
  - c. The team reviewed the student’s grades and academic progress and the teachers suggested that daily attendance and completion of homework assignments would help the student improve ██████████ grades.
  - d. The team reviewed the ██████████ occupational therapy assessment report and discussed each suggested accommodation. For each suggested accommodation, the IEP team determined whether it was already incorporated into the IEP or BIP, was not necessary, or would be incorporated as new student supports and services.
  - e. The team decided to add two new accommodations: teachers providing the student with notes at the end of each class and allowing the student to use a device to assist with note taking.
  - f. The team discussed the parent’s request for a one-to-one aide for the student but determined that the service was not necessary.
- 2. A PWN was issued on ██████████, summarizing the final outcomes of the ██████████

- meeting.
3. An IEP progress report was issued on [REDACTED].

### **Discussion/Conclusion**

**Based on the analysis below, [REDACTED] PCS is in compliance with 34 CFR §300.324(b)(ii), due to considering all information provided by the parent and revising the IEP to address the student's anticipated needs.**

Pursuant to 34 CFR §300.324(b)(ii), the IEP team must revise the IEP, as appropriate, to address information about the child provided to, or by, the parents and the child's anticipated needs. The complainant alleges that the IEP was not revised after the parent provided evaluations and information from the student's doctors to the school.

Pursuant to the parent's request, an IEP team meeting was held [REDACTED]. At the meeting the parent expressed concern about the student's ability to focus in the classroom and take notes. At this meeting the team reviewed the motivational techniques that are used to assist the student to focus in class and complete work, such as redirection, repeated and simplified directions, preferential seating, and opportunity to take breaks. The team reviewed the [REDACTED] occupational therapy assessment report and discussed each suggested accommodation.<sup>1</sup> For each suggested accommodation, the IEP team determined whether it was already incorporated into the IEP or BIP, was not necessary, or would be incorporated as new supports and services. The team decided to add two new accommodations: 1) teachers providing the student with notes at the end of each class, and 2) allowing the student to use a device to assist with note taking. The team discussed the parent's request for a one-to-one aide for the student but determined that the service was not necessary. OSSE finds that [REDACTED] PCS considered all information provided by the parent and revised the IEP to address the student's anticipated needs.

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

### **ISSUE TWO: DISCIPLINE**

#### **Findings of Fact**

1. On [REDACTED] the student was sent home early for a disciplinary incident and missed 2.5 hours of school.
2. On [REDACTED] the student was suspended for two school days.

### **Discussion/Conclusion**

**Based on the analysis below, [REDACTED] PCS is in compliance with 34 CFR §300.530, due to following the appropriate discipline procedures.**

Pursuant to 34 CFR §300.530, school personnel may remove a child with a disability who violates a code of student conduct from [REDACTED] current placement through suspension for not more than 10 consecutive school days or, in the case of multiple suspensions, for not more than 10 total school days in a school year, without determining whether the behavior was a manifestation of the child's disabilities and without providing services beginning after the

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<sup>1</sup> The parent also submitted a [REDACTED] independent psychological assessment to OSSE that was reviewed by the IEP team on [REDACTED]. This meeting falls outside of the investigation timeline.

10<sup>th</sup> day of suspension. The complainant alleges that the school told her that the student would be disciplined like any other student despite [REDACTED] status as a child with a disability.

On [REDACTED] the student was sent home early for a disciplinary incident and missed 2.5 hours of school. On [REDACTED], the student was suspended for two school days. There is no other record of other suspensions or days on which the student was sent home for disciplinary reasons. Therefore the student was not removed from [REDACTED] placement for more than 10 school days and procedural protections under IDEA did not apply during the relevant timeframe.

Therefore, [REDACTED] PCS is in compliance with 34 CFR §300.530.

### **ISSUE THREE: PLACEMENT**

#### **Findings of Fact**

1. The [REDACTED] and [REDACTED] IEPs prescribe 4 hours per week of specialized instruction inside the general education setting, 1 hour per week of specialized instruction outside the general education setting, 30 minutes per week of behavioral support services outside the general education setting, and 15 minutes per week of behavioral support services inside the general education setting.
2. The IEP team discussed the student's placement at the [REDACTED] IEP team meeting.
  - a. The team concluded that the student did not need increased service hours or a move to a more restrictive setting.
3. A PWN was issued on [REDACTED], summarizing the final outcomes of the [REDACTED] meeting.

#### **Discussion/Conclusion**

**Based on the analysis below, [REDACTED] PCS is in compliance with 34 CFR §300.116(a)(2), due to an appropriate placement for the student.**

Pursuant to 34 CFR §300.116(a)(2), a student's placement decision must be made in conformity with the least restrictive environment provisions, including that children with disabilities are educated with children who are nondisabled to the maximum extent appropriate, and must be based on the child's IEP. The complainant alleges that the school cannot meet the student's needs and refuses to change [REDACTED] placement.

Both IEPs that were in effect during the investigation timeline prescribe 4 hours per week of specialized instruction inside the general education setting, 1 hour per week of specialized instruction outside the general education setting, 30 minutes per week of behavioral support services outside the general education setting, and 15 minutes per week of behavioral support services inside the general education setting. The IEP team discussed the student's placement at the [REDACTED] IEP team meeting. The team concluded that the student did not need increased service hours or a move to a more restrictive setting. School staff reminded the parent that a nonpublic special education school is not an appropriate placement for the student as [REDACTED] does not have a full-time IEP and that the school could implement the student's IEP in the general education setting. OSSE finds that [REDACTED] PCS reviewed the student's placement and that the placement is

appropriately based on the student's IEP.

Therefore, [REDACTED] PCS is in compliance with 34 CFR §300.116(a)(2).

#### **ISSUE FOUR: EDUCATIONAL RECORDS**

##### **Findings of Fact**

1. On [REDACTED] the student was suspended for two school days.
2. On [REDACTED] the school sent the parent the notice of suspension.
3. On [REDACTED] the parent met with a school staff member to review an investigation report on the disciplinary incident that triggered the suspension.
4. [REDACTED] PCS maintains student incident reports in the disciplinary referral system.
  - a. The disciplinary referral system generates printable student summary reports.

##### **Discussion/Conclusion**

**Based on the analysis below, [REDACTED] PCS is not in compliance with 34 CFR §300.501(a)(2) and 300.613, due its failure to provide the parent an opportunity to review all education records requested.**

Pursuant to 34 CFR §300.501(a)(2), the parents of a child with a disability must be afforded an opportunity to inspect and review all education records with respect to the provision of FAPE to the 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 the school refused to provide [REDACTED] with a copy of the incident report following the student's suspension.

On [REDACTED], the student was suspended for two school days. On [REDACTED], the school sent the parent a notice of the suspension. As a follow up, the parent met with a school staff member on [REDACTED] to review an investigation report on the disciplinary incident that triggered the suspension. [REDACTED] PCS reported that the notice of suspension is the only document that is provided to the parent after a disciplinary event, and is provided only if the event results in suspension. [REDACTED] PCS also reported that discipline activity (incident) reports are not provided to parents because they are internal reports. Incident reports are maintained in the [REDACTED] PCS disciplinary referral system and student summaries, such as the one provided to OSSE during the course of the investigation, are printable for parent review.

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 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 specifically as those records 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, █████ PCS uses incident reports to investigate incidents and to determine disciplinary consequences for the student. The records are directly related to students, maintained by school staff maintained in the disciplinary referral system, 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, should be kept by the LEA in the student’s educational record, and should be made available for review by a student’s parent in accordance with FERPA requirements.

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 incident reports, are educational records within the meaning of IDEA and FERPA, and must be provided to parents upon request.

OSSE finds that █████ PCS did not provide the parent with all education records relating to the disciplinary incident and suspension; and that the LEA, as a matter of policy, does not permit parents to review incident reports maintained in the student disciplinary referral system.

Therefore, █████ PCS out of compliance with 34 CFR §§300.501(a)(2) and 300.613.

### **CONCLUSIONS**

1. █████ PCS is in compliance with 34 CFR §300.324(b)(ii), due to considering all information provided by the parent and revising the IEP to address the student’s anticipated needs.
2. █████ PCS is in compliance with 34 CFR §300.530, due to following the appropriate discipline procedures.
3. █████ PCS is in compliance with 34 CFR §300.116(a)(2), due to an appropriate placement for the student.
4. █████ PCS is not in compliance with 34 CFR §§300.501(a)(2) and 300.613, due to failing to provide the parent an opportunity to review all education records requested.

### **CORRECTIVE ACTION**

1. In order to correct the noncompliance with 34 CFR §§300.501(a) and 300.613, █████ PCS must:

- a. Provide the parent a copy of the [REDACTED] school year discipline activity (incident) report within 10 days of this decision letter.
- b. 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 incident reports generated by the disciplinary referral system, or any other record used to determine disciplinary consequences.

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](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