



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

June 3, 2016

[REDACTED] PCS

RE: State Complaint No. 015-017

LETTER OF DECISION

PROCEDURAL BACKGROUND

On [REDACTED], the State Complaint Office of the Office (SCO) of the State Superintendent of Education (OSSE), Division of Elementary, Secondary, and Specialized Education received a State Complaint from [REDACTED] (complainant or parent) against the [REDACTED] [REDACTED] Public Charter School (PCS) alleging violations in the special education program of [REDACTED] [REDACTED] [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 timely complete the student's initial evaluation.

The SCO for OSSE has completed its investigation of the State Complaint. OSSE found that [REDACTED] PCS is out of compliance with its obligation to timely complete the student's initial evaluation. This Letter of Decision is the report of the final results of OSSE's investigation.

COMPLAINT ISSUES

The allegation raised in the complaint, further clarified by a review of documents and interviews revealed in the course of the investigation, raised the following issue under the jurisdiction of the SCO:

1. 34 CFR §300.301(c)
 - a. Failure to timely complete the student's initial evaluation.

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 was determined ineligible for special education services on [REDACTED].
2. The student’s local educational agency (LEA) is [REDACTED] PCS.

ISSUE ONE: EVALUATION PROCEDURES

Findings of Fact

1. The independent speech and language evaluation report was completed [REDACTED] and was provided to [REDACTED] PCS on [REDACTED].
2. The student’s parent submitted a written request for evaluation via email on [REDACTED].
3. [REDACTED] PCS issued an acknowledgment of referral for special education evaluation letter to the parent on [REDACTED].

4. The Ages and Stages Questionnaire, 3rd Edition (ASQ-3) was completed on [REDACTED] and was provided to [REDACTED] PCS via email on [REDACTED].
5. The occupational therapy student observation report was completed [REDACTED].
6. [REDACTED] PCS generated in SEDS and issued a PWN to proceed with the evaluation process on [REDACTED].
7. The student's parent signed consent to evaluate the student on [REDACTED].
8. The FBA was completed [REDACTED].
9. The psychological evaluation report was completed [REDACTED].
10. The LEA performed speech and language evaluation report was completed [REDACTED].
11. The student's parent submitted a written request for a formal occupational therapy evaluation on [REDACTED].
12. [REDACTED] PCS generated in SEDS and issued a PWN to proceed with the occupational therapy evaluation on [REDACTED].
13. [REDACTED] PCS issued a letter of invitation to the parent on [REDACTED] for a [REDACTED] eligibility determination meeting.
14. The occupational therapy evaluation report was completed [REDACTED].
15. [REDACTED] PCS convened a meeting on [REDACTED] to determine the student's eligibility for special education where it reviewed an FBA, psychological evaluation, speech and language evaluation, and occupational therapy evaluation, test of early mathematics ability, Woodcock Johnson IV Achievement Test, Peabody Picture Vocabulary test. The team also reviewed student observations performed by special education and general education teachers, the speech therapist, occupational therapist, and psychologist.
16. The student did not meet the eligibility criteria for Specific Learning Disability, Emotional Disturbance, or Speech or Language Impairment, and was determined ineligible for special education at the [REDACTED] eligibility meeting.
17. [REDACTED] generated in SEDS and issued a PWN determination of special education eligibility or non-eligibility on [REDACTED].
18. On [REDACTED], [REDACTED] PCS recommended SST services.
19. The student was absent from school for five days during the evaluation timeline ([REDACTED]).

Discussion/Conclusion

Based on the analysis below, [REDACTED] PCS is not in compliance with 34 CFR §300.301(c), due to its failure to timely complete the student's initial evaluation, and is not in compliance with 34 CFR §300.304(b)(1)(i), due to its failure to use information provided by the parent in determining whether the child is a child with a disability.

Initial Evaluation

Pursuant to 34 CFR §300.301(c), initial special education evaluations must be conducted within 60 days of receiving parental consent for the evaluation or within the timeframe established by the state. The District of Columbia has established a 120 day timeline from the date of referral for completing assessments or evaluations of students. (D.C. Official

Code §38-2561.02(a)) OSSE has clarified that the 120 day timeline applies to the initial evaluation of all students with disabilities by LEAs in the District of Columbia and that initial evaluation includes the determination of eligibility.¹ The complainant alleges that [REDACTED] PCS failed to timely complete the student's initial evaluation.

The parent submitted a written request to evaluate the student to [REDACTED] PCS on [REDACTED]. The LEA issued an Acknowledgement of Referral to Special Education Letter on [REDACTED] and a PWN to proceed with evaluation on [REDACTED]. The student's parent signed consent to evaluate the student on [REDACTED]. The occupational therapy student observation, LEA conducted psychological evaluation, FBA, and speech and language evaluation reports were completed between [REDACTED] and [REDACTED]. The parent requested a full occupational therapy evaluation on [REDACTED] and the LEA issued a PWN to complete this evaluation on [REDACTED]. The student was absent from school for five days between during the 120 day evaluation period. At the eligibility meeting convened on [REDACTED], the student was found ineligible for special education services and the LEA issued a PWN confirming the student's ineligibility determination. After finding the student ineligible for special education services, SST services were recommended.

Based on the timeframe of 120 days from the referral made on [REDACTED], the student's eligibility determination should have been completed by [REDACTED]. OSSE's review of the record reflects the student's eligibility determination was not made until [REDACTED], 101 days after the 120 day timeline ended. [REDACTED] PCS staff reported that the student's eligibility decision was delayed by student absences and the parent's request for a full occupational therapy evaluation; the records provided to OSSE do not support these assertions. OSSE reviewed the student's attendance records; the student was absent only five days during the relevant timeframe. In addition, the parent's request for the additional evaluation occurred 21 days before the LOI was issued for the [REDACTED] eligibility meeting, long after the initial 120 evaluation timeline expired.

OSSE finds that the [REDACTED] eligibility determination occurred 221 days after the parent's referral. As a result the LEA failed to complete the evaluation within 120 days of receiving the written referral. [REDACTED] PCS affirms this failure in the [REDACTED] response to this complaint and proposes remedial action incorporated into the corrective actions below.

Therefore, [REDACTED] PCS is not in compliance with 34 CFR §300.301(c) for its failure to timely complete the student's initial evaluation.

Variety of Assessment Tools and Strategies

Pursuant to 34 CFR §300.304(b)(1)(i), public agencies must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent for the purpose of determining if the child is a child with a disability.

¹ OSSE Part B Initial Evaluation/Reevaluation Policy, p. 14 (March 22, 2010).

The student's parent referred the student for a special education evaluation on [REDACTED], requesting a full developmental assessment. Following the referral, [REDACTED] PCS completed an occupational therapy observation report, FBA, psychological evaluation, speech and language evaluation, and an occupational therapy evaluation for the student. In addition to those evaluations, an independent speech and language evaluation was completed [REDACTED] and provided to the LEA on [REDACTED], and an ASQ-3 was completed on [REDACTED] and provided to the LEA [REDACTED].

In determining the student's eligibility for special education on [REDACTED], [REDACTED] PCS reviewed the FBA, psychological evaluation, speech and language evaluation, and occupational therapy evaluation, as well as a test of early mathematics ability, Woodcock Johnson IV Achievement Test, Peabody Picture Vocabulary test. The team additionally reviewed student observations performed by special education and general education teachers, the speech therapist, occupational therapist, and psychologist.

OSSE's review of the record reflects no documentation that [REDACTED] PCS reviewed the ASQ-3 and independent speech and language evaluation in determining the student's eligibility for special education, despite having received this information seven months prior to the [REDACTED] meeting.

OSSE has the obligation to determine not only whether the public agency has followed the required Part B procedures to reach its determination, but also whether the public agency has reached a determination consistent with Part B requirements governing the evaluation and eligibility determination.² OSSE finds that while the evaluations conducted by [REDACTED] PCS used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, the LEA failed to use information provided by the parent for the purpose of determining if the student is a student with a disability.

Therefore [REDACTED] PCS is not in compliance with 34 CFR §300.304(b)(1)(i).

CONCLUSIONS

1. [REDACTED] PCS is not in compliance with 34 CFR §300.301(c), due to its failure to timely complete the student's initial evaluation.
2. [REDACTED] PCS is not in compliance with 34 CFR §300.304(b)(1)(i), due to its failure to use information provided by the parent in determining whether the child is a child with a disability.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.301(c), [REDACTED] PCS must:
 - a. Review and revise referral procedures to ensure delays do not occur at the commencement of the timeline to conduct an evaluation and determine eligibility. Documentation of completion is due to OSSE within 30 days of the

² Questions and Answers on IDEA Part B Dispute Resolution Procedures, p. 18 (July 23, 2013).

date of this letter.

- b. Provide training to school special education staff on their responsibility to complete the evaluation process, including the eligibility determination, within 120 days of a student's written referral for evaluation.

Documentation of completion, including training materials and staff attendance logs, are due to OSSE within 60 days of the date of this letter.

2. The student's SEDS record reflects that the parent withdrew consent for the special education evaluation and eligibility process on [REDACTED]. The parent reported a level of frustration with LEA causing [REDACTED] to seek enrollment in a new LEA for the [REDACTED] school year. In order to correct the noncompliance with 34 CFR §300.304(b)(1)(i), if the parent elects to re-enroll the student at the [REDACTED] PCS for the [REDACTED] school year, [REDACTED] PCS must:

- a. Invite the parent to a MDT meeting, to determine the student's eligibility for special education and related services under the IDEA. The MDT team must review and discuss all student progress information, and existing evaluation and assessment data including independent evaluation data collected by the parent since the [REDACTED] eligibility meeting. The team must determine the student's eligibility for special education services. The parent may decline the invitation to this meeting if [REDACTED] no longer seeks evaluation of the student. Documentation of the parent's declined invitation or the eligibility determination, whichever applicable, is due to OSSE within 30 days of the start of the [REDACTED] school year.

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