



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

May 12, 2016

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 015-019

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) alleging violations in the special education program of [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Student ID # [REDACTED] hereinafter “student” or “child.”

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 timely evaluate and develop an IEP, provide a continuum of alternative placements, and revise the IEP as necessary.

The State Complaint Office (SCO) for OSSE has completed its investigation of the State Complaint. OSSE found that DCPS is in compliance with its obligation to timely evaluate the student and develop an IEP, offer a continuum of alternative placements, and revise the IEP as necessary. 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. **Evaluation and IEP development timelines at 34 CFR §§300.301 and 300.323**
 - a. Failure to respond to a request for evaluation, as required by 34 CFR §300.301(b).

- b. Failure to develop an IEP within 30 days of a determination that a child needs special education and related services, as required by 34 CFR §300.323(c)(1).
- 2. **Requirement to provide a continuum of alternative placements at 34 CFR §300.115(a)**
 - a. Failure to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- 3. **IEP revision requirements at 34 CFR §300.324(b)(1)(ii)**
 - a. Failure to revise the IEP, as appropriate, to address the child's anticipated needs, specifically with regard to attendance concerns.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

- 1. Complainant
- 2. DCPS [REDACTED]
- 3. 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 specific learning disability.
- 3. The student’s local educational agency (LEA) is DCPS.

ISSUE ONE: EVALUATION AND IEP DEVELOPMENT

Findings of Fact

- 1. On [REDACTED] the parent met with the student’s teacher and principal to discuss the student’s educational progress and the parent requested a special education evaluation.
 - a. The teacher emailed the parent that day to confirm what was discussed at the meeting.
 - b. The principal emailed the school psychologist that day confirming the parent’s request for evaluation and beginning the evaluation process.
- 2. On [REDACTED] the parent sent an email to the principal to say that [REDACTED] did not want the school to move forward with an evaluation for the student.
 - a. The principal responded that day confirming that current evaluations could be used to move forward with a meeting to identify additional supports for the student.
 - b. The parent responded that day declining to meet to review existing assessments and discuss supports.
- 3. On [REDACTED] the parent submitted a written request for evaluation.
- 4. On [REDACTED] the school sent the parent an acknowledgment of referral to special education letter.
- 5. On [REDACTED] the school reviewed existing student data, decided to proceed with the evaluation, and sent notice to the parent.
- 6. The parent signed consent to evaluate on [REDACTED].
- 7. The student was determined eligible for special education and related services on [REDACTED].
- 8. An IEP was developed on [REDACTED].

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §§300.301 and 300.323, due to completing the evaluation and developing the IEP within the required timeline.

Pursuant to 34 CFR §300.301, a parent may initiate a request for an initial evaluation to determine if the child is a child with a disability and the initial evaluation 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 the initial evaluation of students. (D.C. Official Code §38-2561.02(a)) An IEP must be developed within 30 days of the determination that the student needs special education and related services. (34 CFR §300.323(c)(1)) The complainant alleges that the school failed to identify the student as a student with a disability and timely develop and implement an IEP.

On [REDACTED] the parent met with the student's teacher and principal to discuss the student's educational progress and the parent requested a special education evaluation. Following the meeting, the teacher emailed the parent to confirm what was discussed and the principal emailed the school psychologist confirming the parent's referral and starting the evaluation process. On [REDACTED] the parent sent an email to the principal to say that [REDACTED] did not want the school to move forward with an evaluation for the student. The principal responded the same day confirming that current evaluations could be used to move forward with a meeting to identify additional supports for the student. The parent declined to meet to review existing assessments and discuss supports and repeated [REDACTED] decision not to proceed with the evaluation. As the parent withdrew [REDACTED] request to evaluate the student, DCPS was both not obligated to proceed and expressly prohibited from evaluating the student.

On [REDACTED] the parent submitted a written request for evaluation to which the school responded with an acknowledgment of referral letter the same day. The school moved forward with reviewing student data, had the parent sign consent to evaluate, and completed educational assessments. A team met to review the student data and completed assessments on [REDACTED] and the student was determined eligible for special education and related services with a disability category of specific learning disability. An IEP was developed for the student the same day, well within the required 120-day timeline.

Therefore, DCPS is in compliance with 34 CFR §§300.301 and 300.323.

ISSUE TWO: CONTINUUM OF ALTERNATIVE PLACEMENTS

Findings of Fact

1. The [REDACTED] IEP prescribed 5 hours per week of specialized instruction inside the general education setting, 3 hours per month of speech-language pathology outside the general education setting, 2 hours per month of occupational therapy outside the general education setting, and 15 minutes per month of occupational therapy consultation services.
 - a. The student's IEP was amended on [REDACTED] to increase the student's specialized instruction hours to 10 hours per week inside the

- general education setting.
2. DCPS offers specialized instruction in the general education classroom (push-in services) and pull-out services in a resource room at schools throughout the LEA.
 - a. For students who require more restrictive settings, DCPS offers self-contained classrooms at various locations throughout the LEA.
 - b. DCPS also offers specialized instruction and IEP services to students who are home or hospital bound.
 3. Push-in services in the classroom and pull-out services in a resource room are available at the student's school in each classroom, for any student who requires those services.
 - a. There are 3 self-contained autism classrooms at the school, which are the only wholly special education classrooms on site.
 - b. Students who require all of their specialized instruction to be delivered outside the general education setting and do not have a disability classification of autism are referred to DCPS's central office to identify a location that can serve the student.
 4. A special education teacher comes into the student's classroom to provide the specialized instruction prescribed by the student's IEP.
 5. The student's Term 2 report card for the [REDACTED] school year reflects progress in the academic areas of reading, writing and language, and math.

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.115(a), due to providing a continuum of alternative placements.

Pursuant to 34 CFR §300.115(a), each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities and the continuum must include alternative placements including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and schools. The complainant alleges that the school provides one-on-one or small group instruction only for students identified with specific disability categories.

The IDEA does not require that each school within an LEA offer the full continuum of placements specified in 34 CFR 300.115(b). Rather, the law requires that each public agency offer the full continuum of services. DCPS offers specialized instruction in the general education classroom (push-in services) and pull-out services in a resource room at schools throughout the LEA. For students who require more restrictive settings, DCPS offers self-contained classrooms at various locations throughout the LEA. DCPS also offers specialized instruction and IEP services to students who are home or hospital bound. At the school the student attends, push-in services in the classroom and pull-out services in a resource room are available to any student whose IEP requires those services. There are 3 self-contained autism classrooms at the school. These are the only separate special education classrooms on site. Students who require all of their specialized instruction to be delivered outside the general education setting and do not have a disability classification of autism are referred to DCPS's central office to identify a location that can serve the student.

The student's [REDACTED] IEP prescribed 5 hours per week of specialized instruction

inside the general education setting and 3 hours per month of speech-language pathology and 2 hours per month of occupational therapy outside the general education setting. The student's IEP was amended on [REDACTED] to increase the student's specialized instruction hours to 10 hours per week, still inside the general education setting. A special education teacher comes into the student's classroom to provide the specialized instruction prescribed by the student's IEP and a speech-language pathologist and occupational therapist provide the student's prescribed related services. The school is able to implement the student's IEP and thus had no need to refer the student to DCPS central office for a new location assignment.

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. (34 CFR §§300.114 and 300.116) School staff reported, and the student's term two report card for the [REDACTED] school year confirms, that the student is making progress with push-in services in the classroom and does not require a more restrictive setting of pull-out services or instruction in a separate classroom. OSSE finds that DCPS offers a continuum of alternative placements and is able to provide the student with an appropriate placement that is based on [REDACTED] IEP.

Therefore, DCPS is in compliance with 34 CFR §300.115(a).

ISSUE THREE: IEP REVISION

Findings of Fact

1. The student attends [REDACTED] current school as an out-of-boundary student.
2. DCPS has a district-wide attendance policy that requires all out-of-boundary students to return to their neighborhood school if they have excessive absences or tardies.
3. In the [REDACTED] school year the student had 19 excused and 1 unexcused absences, and 1 excused and 32 unexcused tardies.
4. From September [REDACTED] to April [REDACTED] the student had 14 excused and 1 unexcused absences, and 11 excused and 2 unexcused tardies.
5. Towards the end of the [REDACTED] and [REDACTED] school years the school sent the parent a letter stating that students with excessive absences and tardies would be required to return to their neighborhood school.
6. The [REDACTED] IEP prescribed services as stated in the first Finding of Fact listed under Issue Two, above.
 - a. The IEP also contained goals in the following areas of concern: mathematics, reading, written expression, communication/speech and language, and motor skills/physical development.
7. In November [REDACTED] the school scheduled a meeting with the parent to discuss the student's absences.
8. An IEP team meeting was held [REDACTED] to review student data.
 - a. The student's teachers reported that the student was making academic progress.
 - b. The parent requested an increase in specialized instruction hours on the IEP.

9. The IEP team met again on [REDACTED] and the IEP was amended to increase the student's specialized instruction hours to 10 hours per week inside the general education setting.
10. The student was determined eligible for ESY services on [REDACTED] and the IEP was amended accordingly.
11. The student's Term 2 report card for the [REDACTED] school year reflects progress in the academic areas of reading, writing and language, and math.

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.324(b)(1)(ii), due to revising the IEP as necessary to address all of the student's anticipated needs.

Pursuant to 34 CFR §300.324(b)(1)(ii), each public agency must revise the IEP, as appropriate, to address the child's anticipated needs. The complainant alleges that, following the filing of this complaint, the school sent [REDACTED] notice that the student would be removed from the school because of attendance.

In the [REDACTED] school year the student had 19 excused and 1 unexcused absences, and 1 excused and 32 unexcused tardies. Towards the end of the [REDACTED] school year the school sent the parent a letter stating that students with excessive absences and tardies would be required to return to their neighborhood school. This was pursuant to DCPS's district-wide attendance policy that applies to all out-of-boundary students. The student was ultimately allowed to reenroll at the school for the [REDACTED] school year, but the frequent absences and tardies persisted. From September [REDACTED] to April [REDACTED] the student had 14 excused and 1 unexcused absences, and 11 excused and 2 unexcused tardies. Recently the school sent another letter to the parent about students with excessive absences and tardies having to return to their neighborhood schools. School staff members reported that the student's absences and tardies are unrelated to the student's behavior or a refusal to attend school and thus not appropriately addressed through the IEP process. School staff additionally report, and the student's [REDACTED] school year report cards reflect, that the student has made progress in the academic areas of reading, writing and language, and math.

The school has taken steps to meet with the parent to discuss attendance issues. Additionally the record shows that the school has continuously monitored the student's academic progress throughout the school year and revised the IEP as needed by increasing the student's specialized instruction hours on [REDACTED] and adding ESY services on [REDACTED]. OSSE finds that the school revised the IEP as necessary to address all of the student's anticipated needs. OSSE finds that the attendance notices were sent to the parent due to a generally-applicable DCPS policy and not sent for retaliatory purposes due to the filing of this State complaint.

Therefore, DCPS is in compliance with 34 CFR §300.324(b)(1)(ii).

CONCLUSIONS

1. DCPS is in compliance with 34 CFR §§300.301 and 300.323, due to completing the evaluation and developing the IEP within the required timeline.
2. DCPS is in compliance with 34 CFR §300.115(a), due to providing a continuum of

alternative placements.

3. DCPS is in compliance with 34 CFR §300.324(b)(1)(ii), due to revising the IEP as necessary to address all of the student's anticipated needs.

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