



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

June 27, 2016

[REDACTED]
Public Charter School
[REDACTED]

RE: State Complaint No. 015-020

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 [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 provide IEP services.

The State Complaint Office (SCO) for OSSE has completed its investigation of the State Complaint. During the course of the investigation OSSE determined that [REDACTED] PCS failed to provide all services required by the student’s IEP. 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. **Requirement to provide services at 34 CFR §300.323(c)(2)**
 - a. Failure to make special education and related services available in accordance with the IEP.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

specialized instruction as required by the student’s IEP.

Pursuant to 34 CFR §300.323(c)(2), as soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the IEP. The complainant alleges that ██████ PCS has not maintained special education teachers and related services staffing to provide specialized instruction and related services with gaps in services throughout the school year.

Related Services

The student’s IEPs that were in effect during the ██████ school year prescribed four hours per month of speech-language pathology services. Services that are missed due to the provider’s absence must be made up.¹ Services that are attempted but missed due to the student’s absence or school closure are not required to be made up, but the IEP team should consider the impact of missed services on the child’s progress and receipt of FAPE.² OSSE reviewed service trackers to determine how many minutes of services were provided to the student each month from the beginning of the ██████ school year until the filing of this complaint on ██████ :

Month	Services Received	Services Missed due to School Closure	Services Missed due to Provider Unavailability	Services Owed
September	4.5 hours	Not Recorded	Not Recorded	0 hours
October	3 hours	Not Recorded	1 hour	1 hour
November	Not Recorded	Not Recorded	Not Recorded	4 hours
December³	Not Recorded	Not Recorded	Not Recorded	4 hours
January	1.8 hours	1.5 hours	Not Recorded	.7 hours
February	2 hours	Not Recorded	Not Recorded	2 hours
March⁴	1 hour	Not recorded	Not Recorded	3 hours
April	Not Recorded	Not Recorded	Not Recorded	4 hours

No speech-language pathology services were provided between ██████ and ██████. ██████ PCS reported that the reason for missed services was because there was a gap in service providers during this time period. All services missed during this time must be made up. Although services began again in January ██████ the student still did not receive all services required by his IEP from February to April ██████ The reasons that services were missed in these months were not documented and therefore must be made up as OSSE is unable to determine whether services were missed due to school closure or

¹ OSSE Related Services Policy at p. 10 (January 5, 2010).

² Id.

³ The school was closed from December 21, ██████ to January 1, ██████ due to winter break. No students received services during that time; however, the student’s services are prescribed on a monthly basis and there is insufficient service documentation to determine how ██████ PCS handles delivery of services delineated as delivered monthly during extended school breaks.

⁴ The school was closed from March 25, ██████ to April 1, ██████ due to spring break. No students received services during that time; however, the student’s services are prescribed on a monthly basis and there is insufficient service documentation to determine how ██████ PCS handles delivery of services delineated as delivered monthly during extended school breaks.

student unavailability. Therefore, [REDACTED] PCS must make up 18.7 hours of missed speech-language pathology services. The parent and [REDACTED] PCS staff discussed a plan to make up missed services, but no documentation of make-up services was made available to OSSE.

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

Due to the fact that there was no service provider available to provide services to the student from [REDACTED] to [REDACTED], OSSE investigated whether other students in the same grade as the student received services during that timeframe. OSSE used SEDS to generate a report of speech-language pathology services that were provided from [REDACTED] to [REDACTED] and compared this to a list of students in the same grade whose IEPs required those services. OSSE found that no students in the same grade as the student received speech-language pathology services during that timeframe and therefore [REDACTED] PCS must make up missed services for all students.

Specialized Instruction

The IEPs that were in effect for the student during the [REDACTED] school year prescribed three hours per week of specialized instruction outside the general education setting and two hours per week of specialized instruction inside the general education setting. The specialized instruction outside the general education is provided in the form of pull-out services in a resource room by a special education teacher. The special education teacher also provides the specialized instruction inside the general education classroom. [REDACTED] PCS reported that there was a two week gap between special education teachers for the student in March and April [REDACTED]. During this time the student did not receive any specialized instruction as there was no one available to provide pull-out services nor provide specialized instruction in the general education classroom. [REDACTED] PCS must make up the 10 hours of specialized instruction missed during this time.

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

Due to the fact that there was no service provider available to provide services to the student during the two week gap in March and April [REDACTED] OSSE investigated whether other students in the same grade as the student were entitled to specialized instruction during this timeframe. [REDACTED] PCS reported and OSSE review of SEDS confirmed that multiple students in the same grade had IEPs during the March and April [REDACTED] two week timeframe that require specialized instruction. [REDACTED] PCS must make up the missed delivery of specialized instruction for all students.

CONCLUSIONS

1. [REDACTED] PCS is not in compliance with 34 CFR §300.323(c)(2), due to failure to provide speech-language pathology services and specialized instruction as required by the student's IEP.
2. [REDACTED] PCS is not in compliance with 34 CFR §300.323(c)(2), due to failure to provide speech-language pathology services and specialized instruction to other students at the school as required in their respective IEPs.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2), [REDACTED] PCS must:
 - a. Convene a meeting with the parent to develop a written plan to make up the 18.7 hours of speech-language pathology services and 10 hours of specialized instruction that were missed during the school year. Documentation of the completion of this requirement is due to OSSE within 60 days of the date of this letter.
 - b. Develop a make-up plan for all students who missed speech language-pathology and specialized instruction services during the gap in service providers and special education teachers. [REDACTED] PCS must:
 - i. Provide a list to OSSE of all students who are or were enrolled at [REDACTED] PCS and missed speech language- pathology services between [REDACTED] and [REDACTED]; and all students who are or were enrolled at [REDACTED] PCS and missed specialized instruction during the two week period in March and April [REDACTED] when there was no special education teacher.
 - ii. Develop a written plan to make-up services for each student. Plans must account for students returning to [REDACTED] PCS for the [REDACTED] school year, students not returning to [REDACTED] PCS for the [REDACTED] school year, and students that were unenrolled from [REDACTED] PCS after the missed services period and prior to the end of the [REDACTED] school year. Documentation of the written plans is due to OSSE within 20 days of the date of this letter. For students that no longer attend [REDACTED] PCS, services must be provided or authorized to all eligible students prior to the start of the [REDACTED] school year. For students returning to [REDACTED] PCS, all makeup services must be provided to all eligible students within 60 calendar days from 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. Technical assistance is available through the State Complaints Office for school staff assistance with completion of correction actions. 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