



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

July 8, 2016

Public Charter School

RE: State Complaint No. 015-022

### **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] (parent) 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 make special education services available and revise the IEP to address the parent’s concerns.

The complainant also raised additional claims which the State Complaint Office did not investigate. The complainant raised concerns regarding the student being recorded and the student’s teacher resigning. OSSE did not investigate these concerns as they do not allege a violation of Part B of the IDEA.

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] was in compliance with its obligation to provide services and revise the IEP. 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. **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.

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

- a. Failure to appropriately revise the IEP to address information about the child provided, to or by, the parent and the child’s anticipated needs.

**INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

- 1. Complainant

- 2. [REDACTED]
- 3. [REDACTED]
- 4. [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 developmental delay.
- 3. The student’s local educational agency (LEA) is [REDACTED] PCS.

**ISSUE ONE: IEP SERVICES**

**Findings of Fact**

- 1. The [REDACTED]; and [REDACTED] IEPs:

- a. Prescribe 120 minutes per month of occupational therapy and 120 minutes per month of behavioral support services.
  - b. The classroom aids and services section lists: “[noise] cancelling headphones, separate seat during whole-group instruction and independent work, seat resistance band, cube chair.”
  - c. The present levels of performance for the area of concern for motor skills and physical development it states: “[Student] becomes frustrated when tasks are difficult and needs extra tactile and verbal cues, or sensory strategies and tools. ■ has access to an air-filled cushion and cube chair in the classroom, movement/heavy work breaks, sensory brush, and ■ continues to work on strategies to calm ■ when excited.”
2. On the ■ and ■ IEPs in the present levels of performance for the area of concern for motor skills and physical development it states: “[Student] appears to benefit most from calming strategies, such as deep breathing techniques, tactile input via deep pressure or light touch, and heavy work (proprioceptive) input. Movement activities (vestibular input) appear to increase [Student’s] energy level and do not consistently show a calming effect.”
3. On the ■; and ■ BIPs:
  - a. Under replacement behaviors it states: “[Student] requires sensory based intervention supports in the classroom setting and behavioral support to address self-regulation skills and impulse-control skills. Introduce and teach [Student] how to utilize sensory-based intervention supports (as deemed appropriate by ■ Occupational Therapist) within the classroom setting.”
  - b. Under antecedent interventions it lists: “[u]se of sensory items as needed, such as a resistance band, cube chair, bracelet, or another appropriate sensory tool as deemed by ■ occupational therapist to support focusing during instructional lessons and independent work time.”
4. At the ■ meeting the parent expressed ■ concern that the student was not using all of ■ sensory tools. ■ staff members reported that the student has all the tools available to ■ but sometimes is resistant or uses them inappropriately. Staff reported that techniques such as heavy breathing were more effective for the student. The team agreed to keep the sensory tools on the IEP until the student grows out of wanting to use them.

### **Discussion/Conclusion**

**Based on the analysis below, ■ PCS is in compliance with 34 CFR §300.323(c)(2), due to providing all services 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 the school is not using all of the calming tools required by the student’s IEP. The complainant alleges that the student should have access to a calming brush, a chewable necklace, a chair resistance band, and other services within the school.

### Sensory Tools

The student's IEPs that were in effect during the [REDACTED] school year list various sensory strategies and tools, including noise cancelling headphones, separate seat during whole-group instruction and independent work, seat resistance band, air-filled cushion, cube chair, and sensory brush. The student's IEP is supplemented by a BIP which lists sensory-based intervention supports, such as a resistance band, cube chair, bracelet, or another appropriate sensory tool as deemed by [REDACTED] occupational therapist. [REDACTED] PCS staff members report that all of these sensory tools are available to the student during the school day and that the student is good at self-advocating for when [REDACTED] needs them. The sensory tools are used in conjunction with calming strategies, such as deep breathing. At the [REDACTED] meeting the parent expressed [REDACTED] concern that the student was not using all of [REDACTED] sensory tools. [REDACTED] staff members explained that the student has all the tools available to [REDACTED] but sometimes is resistant to using them or uses them inappropriately. Staff reported that techniques such as heavy breathing were more effective for the student. At the conclusion of the meeting, the IEP team agreed to keep the sensory tools on the IEP until the student grows out of wanting to use them. OSSE finds that [REDACTED] PCS makes available all sensory tools required by the student's IEP and BIP.

### Related Services

All of the student's IEPs that were in effect during the [REDACTED] school year prescribed 120 minutes per month of occupational therapy and 120 minutes per month of behavioral support services (BSS). Services that are missed due to the provider's absence must be made up.<sup>1</sup> Services that are attempted but missed due to the student's absence or school closure are not required to be made up.<sup>2</sup> OSSE reviewed service trackers to determine how many minutes of services were provided to the student each month from the beginning of the [REDACTED] school year until the filing of this complaint on [REDACTED]:

<b>Month</b>	<b>OT Received</b>	<b>OT Attempted</b>	<b>BSS Received</b>	<b>BSS Attempted</b>
<b>September<sup>3</sup></b>	120 minutes	none recorded	90 minutes	60 minutes
<b>October</b>	120 minutes	none recorded	120 minutes	60 minutes
<b>November</b>	120 minutes	none recorded	120 minutes	none recorded
<b>December<sup>4</sup></b>	90 minutes	none recorded	60 minutes	none recorded
<b>January</b>	90 minutes	60 minutes	120 minutes	none recorded
<b>February</b>	90 minutes	60 minutes	120 minutes	none recorded
<b>March</b>	105 minutes	30 minutes	120 minutes	none recorded
<b>April</b>	60 minutes	60 minutes	120 minutes	none recorded
<b>May</b>	120 minutes	30 minutes	120 minutes	none recorded

Based on the review of service trackers, for each month from [REDACTED] through [REDACTED], all related services were either provided to the student or attempted but missed due

<sup>1</sup> OSSE Related Services Policy at p. 10 (January 5, 2010).

<sup>2</sup> Id.

<sup>3</sup> The [REDACTED] school year started on September 2, [REDACTED].

<sup>4</sup> The school was closed for two weeks from December 21, [REDACTED] to January 1, [REDACTED] for winter break. Therefore the student was entitled to receive only 60 minutes of services in [REDACTED].

to an allowable reason such as school closure or the student's absence. OSSE finds that [REDACTED] provided all related services as required by the student's IEP.

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

## **ISSUE TWO: IEP REVISION**

### **Findings of Fact**

1. The [REDACTED] IEP prescribed 10 hours per week of specialized instruction inside the general education setting, 120 minutes per month of occupational therapy, and 120 minutes per month of behavioral support services.
2. The IEP team met to review the student's behavior plan on [REDACTED].
  - a. At the meeting the student's [REDACTED] reported that the student utilized a cube chair with a sit disc while seated at [REDACTED] table to reduce unsafe behavior and allow the student to move in less disruptive ways. The [REDACTED] also reported that the student had been introduced to an oral chew tool that helped [REDACTED] to calm [REDACTED] down, but use of the chew tool sometimes resulted in unsafe behaviors such as throwing it. The [REDACTED] additionally reported that teachers had begun using a calming brush that resulted in decreased disruptive behaviors and a calmer disposition for the student. Based on the discussion, the IEP team updated the BIP to implement new intervention supports, refocus goals, and revise the incentives and reinforcement system.
3. The IEP team met to review the student's IEP on [REDACTED].
  - a. At the meeting the team reviewed the student's test scores, grades, attendance record, and teachers' comments and discussed [REDACTED] progress. The IEP team agreed to change the setting for the student's specialized instruction from inside to outside the general education setting.
  - b. The [REDACTED] IEP prescribed 10 hours per week of specialized instruction outside the general education setting, 120 minutes per month of occupational therapy, and 120 minutes per month of behavioral support services.
4. The IEP team met to review the student's behavior plan on [REDACTED].
  - a. At the meeting the student's teacher reported that the student occasionally misused [REDACTED] cube chair and sit disc, but that the student self-advocated to use the sensory tools [REDACTED] needed.
5. A psychological reevaluation report was completed on [REDACTED].
6. An occupational therapy assessment report was completed on [REDACTED].
7. The IEP team met to review the student's IEP and behavior plan on [REDACTED].
  - a. At the meeting the IEP team reviewed the psychological and occupational therapy evaluations and discussed the student's academic progress. Based on the information reviewed, the team updated the student's IEP goals and present levels of performance. The team discussed the student's behavioral concerns and strategies to address them.
  - b. The [REDACTED] IEP prescribed 10 hours per week of specialized instruction outside the general education setting, 120 minutes per month of

occupational therapy, and 120 minutes per month of behavioral support services.

8. On [REDACTED] PCS sent an email to the parent offering three dates for an IEP team meeting: [REDACTED]; or [REDACTED].
9. On [REDACTED] PCS sent an LOI to the parent for an IEP team meeting on [REDACTED], but this meeting was cancelled because the parent could not attend.
10. On [REDACTED] PCS sent an LOI to the parent for an IEP team meeting on [REDACTED].
11. The IEP team met to review the student's IEP and behavior plan on [REDACTED].
  - a. At the meeting the team discussed the parent's concerns about the student's reading comprehension and decided to add pull-out services for reading instruction. Staff reported that techniques such as heavy breathing were more effective for the student, but the team agreed to keep the sensory tools on the IEP until the student grows out of wanting to use them.
  - b. The [REDACTED] IEP prescribes 11.25 hours per week of specialized instruction outside the general education setting, 120 minutes per month of occupational therapy, and 120 minutes per month of behavioral support services.

### **Discussion/Conclusion**

**Based on the analysis below, [REDACTED] PCS is in compliance with 34 CFR §300.324(b), due to revising the student's IEP as needed.**

Pursuant to 34 CFR §300.324(b), the LEA must revise the IEP, as appropriate, to address information about the child provided, to or by, the parent and the child's anticipated needs. The complainant alleges that the school has not responded to [REDACTED] concerns about the student.

The student's IEP team met five times during the [REDACTED] school year to review student data, discuss the student's progress, and update the student's IEP and BIP. At the [REDACTED] meeting the student's [REDACTED] reported that the student utilized a cube chair with a sit disc while seated at [REDACTED] table to reduce unsafe behavior and allow the student to move in less disruptive ways. The [REDACTED] also reported that the student had been introduced to an oral chew tool that helped [REDACTED] to self soothe, but use of the chew tool sometimes resulted in unsafe behaviors. The [REDACTED] additionally reported that teachers had begun using a calming brush that resulted in decreased disruptive behaviors and a calmer disposition for the student. Based on the discussion, the IEP team updated the BIP to implement new intervention supports, refocus goals, and revise the incentives and reinforcement system.

The IEP team met to review and revise the student's IEP on [REDACTED]. At the meeting the team reviewed the student's current data and discussed [REDACTED] progress. The IEP team agreed to change the setting for the student's specialized instruction from inside to outside the general education setting. The IEP team met again to review the student's BIP on [REDACTED]. At the meeting the student's teacher reported that the student occasionally misused [REDACTED] cube chair and sit disc, but that the student self-advocated to use the sensory tools. No changes were made to the BIP at this meeting.

A psychological reevaluation report was completed on [REDACTED] and an occupational therapy assessment report was completed on [REDACTED]. The IEP team met to review the evaluations on [REDACTED]. At the meeting the IEP team discussed the student's academic progress and updated the student's IEP goals and present levels of performance. The team discussed the student's behavioral concerns and continuing strategies to address them in the classroom.

The parent began to have concerns about the student's reading comprehension and behavior and raised [REDACTED] concerns to the student's teacher. [REDACTED] PCS reached out to the parent and proposed three meeting dates. After rescheduling an initially scheduled meeting due to parent unavailability, the team met on [REDACTED]. At the meeting the team discussed the parent's concerns and decided to add pull-out services for reading instruction. The IEP was revised accordingly to increase specialized instruction to 11.25 hours per week outside the general education setting. When the parent raised concerns that the student was not using [REDACTED] sensory tools, staff reported that the student has all the tools available to [REDACTED] but sometimes is resistant to using them or uses them inappropriately and that techniques such as heavy breathing were more effective for the student. However, the team agreed to keep the sensory tools on the IEP until the student grows out of wanting to use them.

The record shows that throughout the [REDACTED] school year [REDACTED] PCS continuously monitored the student's progress and revised the student's IEP to address current student data and the parent's concerns. OSSE finds that [REDACTED] PCS was responsive to the parent's concerns and made adjustments to the student's IEP and BIP to address issues that arose throughout the school year and enabled the student to continue to make progress.

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

### **CONCLUSIONS**

1. [REDACTED] PCS is in compliance with 34 CFR §300.323(c)(2), due to providing all services required by the student's IEP.
2. [REDACTED] PCS is in compliance with 34 CFR §300.324(b), due to revising the student's IEP as needed.

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