



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

September 23, 2016

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 015-023

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 the District of Columbia Public Schools (DCPS) alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter "student" or "child." The parties agreed to mediation and to extend the timeline on [REDACTED]. On [REDACTED], OSSE was informed that the parties no longer agreed to mediation in this matter and the timeline and investigation resumed.

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 appropriately revise the IEP and 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 DCPS is in compliance with its obligation to revise the IEP and provide IEP services. 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 revise the IEP at 34 CFR §300.324(b)**
 - a. Failure to appropriately review and revise the student's IEP.

2. **Requirement to provide IEP services at 34 CFR §300.323(c)(2)**
 - a. Failure to ensure that special education and related services are made available to the child in accordance with the child's IEP, specifically with regard to behavioral support services and speech and language services, and the provision of periodic reports on the child's progress toward annual goals.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. DCPS [REDACTED]
3. DCPS [REDACTED]
4. 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 autism spectrum disorder.
3. The student's local educational agency (LEA) is DCPS.

ISSUE ONE: IEP REVISION

Findings of Fact

1. The [REDACTED] IEP contained five goals in the area of communication/speech and language: 1) [Student] will answer wh-questions (including why & how), sequencing and inference questions for activities and stories in complete sentences at 80% accuracy over 3 consecutive sessions; 2) [Student] will produce target sounds in sentences and conversational speech with 80% accuracy with fading prompts; 3) [Student] will follow multistep oral directions at 80% accuracy; 4) [Student] will improve [REDACTED] morphology and syntax skills with 80% with fading prompts; and 5) [Student] will increase social communication skills with fading models and prompts.
2. IEP progress reports were sent to the parent on [REDACTED] and [REDACTED] and included the following information on the student's progress for communication/speech and language goals:
 - a. The [REDACTED] IEP progress report showed that the student was progressing on goals one and four; and goals two, three, and five had not been introduced.
 - b. The [REDACTED] IEP progress report showed that the student continued to progress on goal one, was making no progress on goal four, had mastered goal two, and goals three and five had still not been introduced.
 - c. The [REDACTED] IEP progress report showed that the student continued to progress on goals one and two, and began to make progress on goal three; was making no progress on goal four, and goal five still had not been introduced.
3. On [REDACTED], the teacher sent the parent a draft IEP and copies of all service trackers in preparation for an upcoming IEP team meeting.
4. An IEP team meeting was held [REDACTED].
 - a. At the meeting the parent stated [REDACTED] was not prepared to discuss the student's speech and language services because [REDACTED] had not reviewed the service trackers; however, the school stated that the parent was provided with the draft IEP and service trackers well in advance of the meeting.
 - b. The school staff stated that the IEP had to be finalized because OSSE requires all IEPs to be completed by [REDACTED].
 - c. The speech therapist stated that the student had a large number of speech IEP goals that could not be mastered in one school year.
 - d. At the conclusion of the meeting the parent did not want the IEP to be finalized because [REDACTED] still had concerns and did not believe student data was appropriately tracked by service providers.
5. The [REDACTED] IEP was revised to contain fewer goals in the area of communication/speech and language. Two new goals were established and the team decided to retain the single goal where the student was not progressing on the prior IEP ([REDACTED] IEP goal five revised as [REDACTED] IEP goal three): 1) [Student] will increase [REDACTED] articulation productions of omissions and substitutions of target sounds with 80% accuracy for 3 consecutive sessions; 2) [Student] will demonstrate an understanding of sequential and temporal words with 80% accuracy for 3 consecutive sessions; and 3) [Student] will demonstrate improved

morphology skills through sentences structures with 80% accuracy for 3 consecutive sessions.

6. The parent confirmed availability and an IEP meeting was scheduled for [REDACTED].
7. On [REDACTED], the parent declined to attend the [REDACTED] meeting because [REDACTED] did not receive student data beyond the related service trackers.
8. On [REDACTED], the parent was sent two letters of invitation for proposed IEP team meetings on [REDACTED] and [REDACTED].
9. The parent did not respond to the letters of invitation.
10. An IEP Team meeting was held on [REDACTED].
11. The [REDACTED] IEP progress report showed that the student was progressing on the three communication/speech and language goals.

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.324(b), due to appropriately revising the IEP.

Pursuant to 34 CFR §300.324(b), the LEA must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and revise the IEP as appropriate. The complainant alleges that the school finalized a new IEP before the current IEP expired and that the speech pathologist claimed that there were too many speech-language goals to track. The complainant also alleges that there was no data to measure the student's progress on [REDACTED] speech-language goals.

The student's IEP that was in effect for the [REDACTED] school year was set to expire on [REDACTED]. An IEP review meeting was held on [REDACTED], to address the student's lack of progress toward meeting each of the five goals in the area of communication/speech and language and to ensure that annual review of the IEP was conducted before the end of the school year while school staff were still available. (See discussion on Issue Two below.) Although the IEP must be revised at least once a year, there is nothing that prohibits the IEP team from revising the IEP more often, and IEP team meetings may be held at any time during the year. At the meeting the parent stated [REDACTED] was not prepared to discuss the student's services because [REDACTED] had not reviewed the service trackers. School staff reminded the parent that nearly two weeks prior to the meeting, on [REDACTED], [REDACTED] was sent a draft IEP and copies of all services trackers for [REDACTED] review. The IEP team continued by reviewing the student's educational progress. The student's teachers and service providers gave information on how the student was doing in class and on tests. All IEP team members, including parents, must be allowed to participate in the IEP process, meaning they must have an opportunity to attend the meeting and provide input towards an IEP team consensus.¹ OSSE finds that the parent and all other IEP team members had the opportunity to participate at the [REDACTED] IEP meeting and that the IEP team appropriately relied on student data.

¹ OSSE IEP Process Policy (August 30, 2011) p. 2. (Available at: <http://osse.dc.gov/publication/individualized-education-program-process-policy>)

The speech therapist suggested reducing the number of speech-language goals because the current IEP had too many for the student to master in one school year. The parent objected to reducing the goals and alleged that there was no data to support that decision. The speech therapist recorded provision of speech-language services on service trackers with details on what was worked on each session throughout the school year. The quarterly IEP progress reports support the speech therapist's assertion that not all goals were able to be addressed.² All three of the IEP progress reports issued prior to the meeting showed goals two and three were not introduced until the second and third reporting periods, and that the student was not making progress on goal four despite introduction as early as the first reporting period. Goal five was not introduced because the student had mastered only goal two by the third reporting period. Progress reporting data reveals that the student required two to three reporting periods to master goals, and many goals remained un-introduced while the student worked toward mastering those introduced by the service provider. OSSE finds that the decision to reduce the number of speech-language goals is appropriately supported by progress data, showing that the student could not be reasonably expected to accomplish all five goals in one school year.³

At the conclusion of the meeting the parent did not want the IEP to be finalized because [REDACTED] still had concerns and believed service trackers were insufficient evidence of student data to inform the proposed changes.⁴ School staff claimed that OSSE required all IEPs to be finalized by May 31 prior to the end of the school year. OSSE has no such requirement. Regardless, in order to address the parent's outstanding concerns, school staff elected to schedule another IEP meeting at the parent's request for [REDACTED]. The parent confirmed availability for this meeting via email on [REDACTED], but declined to attend on [REDACTED], because [REDACTED] did not receive a response to [REDACTED] request for student data beyond the received service trackers. On [REDACTED], school staff emailed the parent confirming hand delivery of all service trackers for the student and issued two LOIs for proposed IEP team meetings on [REDACTED] and [REDACTED]. However, the parent did not respond to the proposed dates and did not attend the meeting held on [REDACTED]. IEP team

² See the OSSE Related Services Policy (January 5, 2010) at p. 9, stating that designating related services on a student's IEP must be based on relevant current data, including progress reports provided by related service providers." (Available at: http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/Related%20Services%20Policy%20%E2%80%93%20FINAL%20January%205%2C%202010_0.pdf)

³ OSSE Standards-Based IEP Guide: A Resource for Local educational Agencies (October 2013) p. 7. (Available at: http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/DC%20Standards%20Based%20Individualized%20Education%20Program%27s%20%28IEP%29_v.10.24.2013.pdf)

⁴ See the OSSE Non-Regulatory Guidance to the Related Services Policy (June 23, 2010) at II.1., stating that related service providers must complete service logs in order to capture data concerning the nature of each session. Service logs may include a description of the IEP goal and corresponding skill/functionality taught, and student progress indicators. However, in order to be deemed complete, service logs are required to include the date, start time, duration and location of the service, and the signature of the related service provider. (Available at: http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/Related%20Services%20Policy%20Guidance_Final_v.6.2010.pdf) The student's speech and language service trackers reviewed for the purpose of this investigation revealed that the service provider included information on the goal the student worked on and measurable progress data for each delivered service session.

decisions are made by a consensus of the team members. The parent did not attend the [REDACTED] meeting and hence did not avail [REDACTED] of the opportunity to participate in the decision-making process.⁵ After reviewing student data and discussing the student's progress, the IEP team agreed on the same revisions to the student's services and goals that were discussed with the parent at the [REDACTED] IEP team meeting and finalized the [REDACTED] IEP. OSSE's investigation found no evidence of noncompliance with the IEP review process.

The complaint suggested that it is improper for an LEA to finalize a new IEP prior to the expiration of an existing IEP. This is not the case. The LEA must review the IEP periodically, but not less than annually (34 CFR §300.324(b)) and must have an IEP in effect for each student at the start of the school year (34 CFR §300.323(a)). The IEP may be reviewed as many times as necessary to address the changing needs of an individual student. Although OSSE does not require IEPs to be finalized by May 31, it may also be necessary to hold an IEP team meeting prior to the end of the school year to ensure that all required IEP team members are present. School staff members may be unavailable over the summer break or may change schools at the end of the year and so by holding the IEP team meeting at the end of the school year, the LEA can make sure that IEP decisions are made by team members who are knowledgeable about the student. The LEA must have an IEP in effect for each student at the start of the school year and so waiting until the new school year began and after the current IEP expired for this student would not have been an appropriate alternative. (34 CFR §300.323(a))

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

ISSUE TWO: IEP SERVICES

Findings of Fact

1. The [REDACTED] IEP prescribes 25 hours per week of specialized instruction outside the general education setting, 4 hours per month of occupational therapy, 4 hours per month of speech-language pathology, 60 minutes per month of behavioral support consultation services.
2. A report was made for an incident between the student named in the complaint and another student on [REDACTED].
 - a. The report details how the student named in the complaint was harassed by another student and the school's response of having the school intervention specialist discuss the behavior with the students.
 - b. A copy of the incident report was provided to the parent.
3. The [REDACTED] IEP prescribes 20 hours per week of specialized instruction

⁵ See the 34 CFR §300.322(d) and the OSSE IEP Process Policy at p. 3, stating that reasonable efforts to secure parent participation in a meeting, "include a minimum of three attempts, using multiple modalities (e.g. phone, mailed correspondence, and in-person) by the LEA." The record reflects that the LEA emailed the parent regarding two proposed meeting dates on [REDACTED], and issued a letter of invitation (LOI) for each of the two proposed meeting dates. These attempts satisfy the requirement to make reasonable efforts to secure parent participation in the requested meeting.

outside the general education setting, 7.5 hours per week of specialized instruction inside the general education setting, 4 hours per month of occupational therapy, 4 hours per month of speech-language pathology, 60 minutes per month of behavioral support consultation services.

Discussion/Conclusion

Based on the analysis below, DCPS 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 in accordance with the IEP. The complainant alleges that the student is not receiving behavioral support services.

Both IEPs that were in effect during the [REDACTED] school year prescribed 4 hours per month of occupational therapy, 4 hours per month of speech-language pathology, and 60 minutes per month of behavioral support consultation services. Receipt of related services and notes on the student's progress are recorded on service trackers in SEDS. Each recorded session has a description of what was worked on during the session and whether or not the student is progressing. There are service trackers in SEDS for both direct related services listed on the student's IEP—speech-language pathology and occupational therapy. OSSE's review of service trackers showed that the student received all related services as required by [REDACTED] IEP. Copies of the service trackers were provided to the parent on [REDACTED]. DCPS reported that behavioral support consultation services are provided by the school social worker through consultations with other service providers, visits and observations to the student's classroom, and ongoing conversations with the student's teachers about the student's needs. Additionally the social worker met with the student as needed. Following an incident on [REDACTED] between the student named in the complaint and another student, the school social worker met with the students involved and worked on effective communication. OSSE finds that DCPS provided all services required by the student's IEP.

Therefore, DCPS is in compliance with 34 CFR §300.323(c)(2).

CONCLUSIONS

1. DCPS is in compliance with 34 CFR §300.324(b), due to appropriately revising the IEP.
2. DCPS is in compliance with 34 CFR §300.323(c)(2), due to providing all services required by the student's IEP.

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], parent