



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

September 13, 2016

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 015-024

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] (hereinafter “complainant”) against the District of Columbia Public Schools (DCPS) alleging violations in the special education program of [REDACTED] [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 revise the individualized education program (IEP) to address the student’s needs and failure to provide IEP services. The complainant also raised concerns regarding the LEA’s modification of the student’s class schedule without notice and the LEA’s failure to assign homework. OSSE did not investigate these concerns because they did not allege a violation of Part B of the IDEA.

During the course of the investigation, the complainant raised additional concerns regarding retaliation against the student resulting from filing this State Complaint. Complaints regarding discriminatory retaliation may be filed with the U.S. Department of Education, Office for Civil Rights (OCR) at 800-421-3481 or ocr@ed.gov. Additional information on the OCR complaint process may also be found on the U.S. Department of Education website at: <http://www2.ed.gov/about/offices/list/ocr/docs/howto.html>.

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 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)(1)(ii)**
 - a. Failure to appropriately revise the IEP to address any lack of expected progress toward the annual goals in the general education curriculum and the child's anticipated needs, specifically with regard to bullying and the ability to be involved in and make progress in the general education curriculum.
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 the provision of periodic reports on the child's progress toward annual related service 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 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. An IEP team meeting was held [redacted].
 - a. The IEP team reviewed the student’s educational program and discussed the student’s progress at the school.
 - b. It was reported that the student received specialized instruction for core academic subjects in a self-contained classroom and for elective subjects in the general education setting and the IEP team discussed the appropriateness of this program for the student.
 - c. The self-contained classroom consisted of twelve students, one special education teacher, two instructional aides, and two dedicated aides.
- 3. 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.
- 4. An IEP team meeting was held on [redacted].
 - a. At this meeting the IEP team reviewed an assistive technology assessment report and parent concerns regarding classroom communication. The IEP team made decisions regarding what assistive technology the student needed.
 - b. The IEP team also discussed the [redacted] incident and the school reported that a temporary aide had been assigned to the student to address the parent’s concerns.
- 5. The student’s [redacted] IEP Progress Report reflects progress or mastery of goals introduced in mathematics, reading, living skills, speech and language, and physical development.

6. The student's IEP was amended on [REDACTED] to add use of assistive technology.
7. The [REDACTED] amended IEP prescribes 27.5 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.
8. In response to the parent's request, on [REDACTED] the school emailed the parent a link to DCPS' policy on bullying prevention.
9. The [REDACTED] IEP prescribes 20 hours per week of specialized instruction 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 §300.324(b)(1)(ii), due to appropriately revising the IEP to address the student's anticipated needs.

Pursuant to 34 CFR §300.324(b)(1)(ii), the IEP team must revise the student's IEP, as appropriate, to address any lack of expected progress in the general education curriculum and the child's anticipated needs. The complainant alleges that the school has no policies in place that address bullying and the resulting unsafe environment prevents the student from having the opportunity to participate in academic general education classes. The complainant additionally alleged that the student's IEP was not revised to address the assistive technology needs of the student.

The student was involved in several incidents with another student throughout the [REDACTED] school year. In one incident, a report detailed how the student named in the complaint was harassed and hit by the other student. According to the report, a copy of which was given to the complainant, the school responded to the incident by having the school intervention specialist discuss the behavior with the students. This incident was also discussed at an IEP team meeting held on [REDACTED], in which the school reported that a new aide had been assigned to the student to address the departure of the previous aide, and the parent's continued concerns that the student requires this support in the classroom to monitor peer interaction. Other incidents that occurred between the students were isolated, occurred in response to student frustration with one another, and reported as initiated by the student on multiple occasions. The school reported that it followed the usual behavior process of making a disciplinary referral and giving consequences in the single instance of physical contact, and utilized restorative justice practices to resolve verbal conflict.

Bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of FAPE under IDEA. However, that is not the case here. In response to the parent's request, on [REDACTED] the school emailed the parent a link to DCPS' policy on bullying prevention. In response to the parent's concern that [REDACTED] was experiencing bullying, the specific incidents described above were

reviewed; the school determined that the incidents were individual incidents within expected student behavior and did not rise to the level of bullying. An isolated instance of physical conflict between students does not amount to bullying.¹ In addition, there is no indication that these incidents impacted the student's progress in the general education curriculum or resulted in the student not receiving meaningful educational benefit. The student attends core academic classes in a self-contained special education classroom and elective classes in the general education setting.² There is no evidence of student attendance issues or any other avoidance behavior from the student as a result of safety concerns; and the student's [REDACTED] IEP progress report reflects continued progress or mastery of all introduced annual goals. Therefore, the IEP team did not see a reason to revise the student's IEP to address bullying or other safety concerns.

There is evidence that DCPS was responsive to the student's needs and updated the IEP throughout the school year as needed. An IEP team meeting was held on [REDACTED] to review an assistive technology assessment report and make decisions regarding what assistive technology the student needed. The IEP was revised accordingly on [REDACTED]. The IEP was also reviewed and revised at an IEP team meeting on [REDACTED]. OSSE finds that DCPS appropriately revised the IEP to address the student's needs.

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

ISSUE TWO: IEP SERVICES

Findings of Fact

1. IEP progress reports were sent to the parent on [REDACTED] and [REDACTED].
2. On [REDACTED], the teacher sent the parent a draft IEP and copies of all service trackers in preparation for an IEP meeting scheduled to take place in two weeks, on [REDACTED].

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.323(c)(2), as evidenced by periodic reports on the student's progress toward the annual goals. 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 IEP must include a description of when periodic reports on the progress the child is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, will be provided. (34 CFR §300.320((a)(3)) The complainant alleges that the related service providers are not allowed to collect and do not collect data on the student's progress when providing services.

¹ See *A.L. v. Jackson County Sch. Bd.*, 66 IDELR 271 (11th Cir. 2015, unpublished).

² Although at the [REDACTED] meeting the IEP team discussed that the student would receive specialized instruction in core academic areas in a self-contained classroom and specialized instruction in elective classes in the general education setting, the IEP was not revised to reflect this split in specialized instruction hours until [REDACTED]. OSSE reminds DCPS of its obligation to promptly amend or revise the IEP to reflect changes in educational services proposed by the IEP team.

Receipt of related services and notes on the student's progress were recorded on service trackers that are available 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. Pursuant to the parent's request, on [REDACTED] the teacher sent copies of all services trackers in preparation for an upcoming IEP team meeting. Additionally, the parent received quarterly IEP progress reports along with regular report cards. IEP progress reports list each goal and whether or not the student is progressing, has made no progress, has mastered the goal, or the goal has not yet been introduced. School staff reported that all records maintained by the related service providers were shared with the parent. Based on the service logs reviewed and provided to the parent, the LEA meets the requirement to provide periodic reports on the child's progress toward meeting the annual goals.

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

CONCLUSIONS

1. DCPS is in compliance with 34 CFR §300.324(b)(1)(ii), due to appropriately revising the IEP to address the student's anticipated needs.
2. DCPS is in compliance with 34 CFR §300.323(c)(2), due to providing periodic reports on the student's progress toward the annual goals.

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