



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

December 9, 2016

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 016-002

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 or 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." On [REDACTED] the parties agreed to engage in mediation and agreed to extend the 60-day timeline for the resolution of the complaint. On [REDACTED] [REDACTED] the parties withdrew their agreement to mediate and the investigation continued.

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 provide IEP services, revise the IEP, provide access to records, and provide written notice before changing 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 provide IEP services, access to educational records, and prior written notice, but not in compliance with its obligation to 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 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 placement and classroom accommodations.

2. **Requirement to revise the IEP at 34 CFR §300.324(b)(1)(ii)**
 - a. Failure to appropriately revise the IEP to address information about the child provided by the parent and the child's anticipated needs.
3. **Requirement to provide access to records at 34 CFR §300.613**
 - a. Failure to afford the parent an opportunity to inspect and review all educational records relating to the child.
4. **Requirement to provide written notice at 34 CFR §300.503(a)(1)**
 - a. Failure to issue written notice to the parent of a child with a disability a reasonable time before changing services that affect the provision of FAPE to the student.

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 other health impairment.
3. The student's local educational agency (LEA) is DCPS.

ISSUES ONE & TWO: IEP SERVICES AND REVISION

Findings of Fact

1. The [REDACTED] amended IEP lists the following classroom accommodations: calculation device and mathematics tools on calculator sections of mathematics assessments, calculation device and mathematics tools on non-calculator sections of mathematics assessments, student should be slowed to write answers on test, [Student] requires extended time (2x) to demonstrate mastery of the content, and parent should be notified of missing homework and student provided with additional time to complete it without penalty.

2. A 30-day IEP review meeting was held on [REDACTED], in accordance with DCPS practice, where the student's IEP goals and class schedule were reviewed and no changes were made to the IEP.
3. During the investigation interview as well as in email communication with the parent, the math teacher reported that points can be taken off of homework assignments for being turned in late, not showing enough work, or incorrect answers and that information on assignments, such as the due date and grade, are tracked in an online gradebook, which the student and parent can access.
4. The parent and math teacher exchanged emails between [REDACTED] regarding a late homework assignment.
5. The parent and math teacher exchanged emails between [REDACTED] regarding missing homework.
6. At the [REDACTED] IEP team meeting the parent expressed concern that the student's accommodations were not being honored in [REDACTED] math class.
 - a. The student's math teacher reported that the student was doing academically well and recommended that the student attend office hours with [REDACTED] or the other math teacher when [REDACTED] had trouble completing homework assignments independently.
7. The [REDACTED] IEP lists the following classroom accommodations: when available paper test given over computer based [Student] can do better on paper exams than on computer based test, non-standard calculation device on calculator sections, calculation device on non-calculator sections, on a scantron test an adult will bubble in [REDACTED] responses due to [REDACTED] processing speed [REDACTED] has trouble with fine motor skills and focusing, and [Student] requires extended time (2x) to demonstrate mastery of the content.
8. The parent and math teacher exchanged emails between [REDACTED] regarding missing homework.
9. The parent and case manager exchanged emails between [REDACTED] regarding extended time for homework.
10. On [REDACTED] the parent emailed the math teacher about a missing class assignment.
11. The parent and math teacher exchanged emails between [REDACTED] regarding math class assignments.
12. On [REDACTED], the IEP team met to discuss the student's progress in [REDACTED] math class.
13. The parent and several school staff members exchanged emails between [REDACTED] [REDACTED] regarding the student's past homework assignments.

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.323(c)(2), due to providing accommodations required by the IEP. Based on the analysis below, DCPS is not in compliance with 34 CFR §300.324(b)(1)(ii), due to failing to finalize and record all accommodations in the IEP.

Pursuant to 34 CFR §300.324(b)(1)(ii), the LEA must revise the IEP, as appropriate, to address information about the child provided by the parents and the child's anticipated

needs. As soon as possible following development of the IEP, special education and related services must be made available in accordance with the IEP. (34 CFR §300.323(c)(2)) The complainant alleges that the student was not given extra time to complete [REDACTED] homework as required by [REDACTED] IEP and that the school did not respond to [REDACTED] emails about the student's difficulties completing homework assignments.

Beginning of [REDACTED] School Year

The student began attending [REDACTED] High School at the start of the [REDACTED] school year. When the school year started, the [REDACTED] amended IEP was in effect. This IEP was created by the student's prior middle school. The IEP listed various classroom accommodations including that the parent should be notified of missing homework and the student provided with additional time to complete it without penalty. A 30-day IEP review meeting was held on [REDACTED], in accordance with DCPS practice, where the student's IEP goals and class schedule were reviewed and no changes were made to the IEP. The parent attended this IEP review meeting but there was no discussion on the accommodations of notice to the parent of missing homework and the extra time to complete the homework.

Parent versus School Staff Members Interpretation of Homework Accommodation

The parent alleged that the student was routinely docked points for late homework assignments when [REDACTED] should not have been. In the investigation interview as well as in email communication with the parent, the math teacher reported that points can be taken off of homework assignments for being turned in late, not showing enough work, or incorrect answers and that information on assignments, such as the due date and grade, are tracked in an online gradebook, which the student and parent can access. Both the math teacher and case manager reported that the IEP accommodation did not specify how much extra time would be given to complete homework and because the accommodation was added by the student's previous school they were unaware of the expectations of the prior IEP team. The math teacher and case manager reported that the standard used at [REDACTED] High School is typically 100% extra time (e.g., if assignment allowed one day for completion, the student would be given two days for completion). This was not the parent's initial expectation and confusion over how much extra time should be given to complete homework persisted throughout the school year as shown by the following examples.

Initial Discussion of Extra Time to Complete Homework Accommodation

At the parent's first suspicion that the student was not receiving the extra time that [REDACTED] had expected would be allowed for completion of [REDACTED] homework, the parent emailed the math teacher and exchanged emails between [REDACTED]. The parent reminded the teacher that per [REDACTED] IEP the student was allowed extra time to complete homework. The math teacher responded that the IEP did not give unlimited time to complete homework assignments and proposed giving the student 100% extra time and agreed to remove the penalty for turning in late the assignment in question due to confusion. The parent acknowledged that the IEP did not provide for unlimited time and responded that [REDACTED] understood the IEP to give one extra week after the parent was notified of the missing assignment to complete it because the issue was often not that the student did not complete the homework but rather forgot to turn it in and asked for clarification on how

the student could turn in late homework. The math teacher responded that that sounded reasonable and clarified when and where the student could turn in late homework. Despite the apparent agreement, this email exchange did not settle the confusion over the homework accommodation.

Mid School Year Email Exchanges on Homework Accommodation

The following examples are pulled from email communication provided to OSSE for this investigation. The examples show that although all school staff members understood that the student should be given extra time to complete homework assignments, at times they gave conflicting responses on how much extra time would be provided. The parent and math teacher exchanged emails between [REDACTED] regarding missing homework. The parent asked for an update on missing homework assignments and the math teacher responded with which assignments were missing. The parent replied that the assignments were completed but the student forgot to turn them in. The parent and math teacher exchanged emails again between [REDACTED] regarding missing homework. The parent listed missing homework assignments from the online gradebook with accompanying questions and comments on [REDACTED] recollection of each assignment. The math teacher responded to each assignment with an explanation for the missing points or a concession to excuse the late penalty or assignment altogether and again proposed giving 100% extra time to complete homework assignments and promised to state why points were taken off of assignments in the online gradebook. This is the same proposal the math teacher gave in the [REDACTED] email exchange. It is not clear whether the teacher was reiterating what was already being practiced or proposing a change to how much extra time would be provided.

The parent and case manager exchanged emails on [REDACTED] regarding extended time for homework. The case manager stated that students with extended time are typically given time and a half above the regular due date. This is different from what the math teacher offered and from what the case manager reported as the school's general practice in the interview. The parent responded, as [REDACTED] had to the math teacher, that [REDACTED] expected the student would receive a week after the parent is notified of the missing assignment. On [REDACTED] the parent emailed the math teacher about a missing class assignment from [REDACTED] when the student was absent. The teacher responded that the testing window had closed but that [REDACTED] would mark the assignment as excused and encouraged the parent and student to try to make up work within a two-week window. Issues over math class assignments arose again between [REDACTED]. The parent verified that the student had completed all missing homework assignments as of that date and acknowledged that some of the incomplete work was due to the parent and student misreading the assignment or not understanding how to access the full assignment. The parent also inquired about missing in-class projects. The math teacher responded with an update on the graded late work and stated that [REDACTED] understanding was that the student was given until the following Monday to complete homework due Wednesday – Friday if the student showed that [REDACTED] had at least started the assignments by the day they were due. This is a change from the math teacher's previous proposal of 100% extra time. It is not clear when the change was made as it was not documented in the IEP, meeting notes, or email communication provided to OSSE. The math teacher referred the parent to the online

gradebook to know when assignments were given and due.

IEP Team Meeting Discussion of Homework Accommodation

In the midst of the back and forth emails, the student's IEP was reviewed and updated on [REDACTED]. At this meeting the parent expressed concern that the student's accommodations were not being honored in [REDACTED] math class and the math teacher suggested ways that the student could improve [REDACTED] class performance, but the issue of extra time to complete homework was not settled. The IEP team added testing accommodations suggested by the parent and removed the open-ended extra time to complete homework accommodation, but did not replace it with a specific time limit. As indicated by the email exchanges that occurred after the [REDACTED] meeting, confusion over this accommodation persisted and the IEP team met again on [REDACTED] to address it. As recorded in the meeting notes, the team, including the parent and student, agreed to a plan in which the student would meet with [REDACTED] math teacher every Wednesday after school to complete homework assignments and review any missing work, the student would use a tracker and folders to keep track of homework assignments, and the student was required to start or attempt a homework assignment by the date it was due in order to have an extra week to complete the assignment.

End of School Year Email Exchange on Homework Accommodation

Although a plan was agreed to moving forward, the parent still had questions about past homework assignments. In an email exchange among the parent and several school staff members between [REDACTED], the parent requested that the student receive full credit for all homework in the second and third advisories because the parent believed that nearly all of the student's homework had been completed within a two-week window. The case manager asked whether the late penalties were given after the student was afforded extended time and still did not turn in the homework or whether they were given because the student did not start the homework prior to the due date. The math teacher responded that the penalties were given after the full extended time (and more) had already been given and that in addition some homework assignments were docked points due to incorrect answers or the student not showing [REDACTED] work. The math teacher's email did not specify what [REDACTED] meant by the "full extended time" and the time period in question was prior to the [REDACTED] agreement. Although it was acknowledged that the student was given extra time to complete homework assignments, it is not clear which standard was being used. The school staff declined the parent's request to remove all penalties from the student's homework assignments.

Conclusion

The accommodation of extra time to complete homework was not clearly defined in the IEP and there were many different interpretations of what it meant. The parent and school staff members gave various interpretations on the timeframe, from 100% to time and a half to two weeks; when the extra time started—whether from the original due date of the assignment or from when the parent learned of a missing assignment; and the scope of the accommodation, such as extra time when the student starts an assignment but is unable to complete it by the due date or exemption from late penalties when the student forgets to turn in completed assignments. Although the parent insisted that the accommodation be

implemented in the same manner it was implemented when it was first added to the IEP by the student's previous school, the parent did not give consistent interpretations of the timelines and intent of the accommodation.¹ This should have been addressed at the 30-day review meeting held on [REDACTED], but was not. Although it was clear there was continued confusion over this accommodation by the time the IEP was reviewed and revised on [REDACTED], DCPS still did not set parameters and record them in the IEP. When a plan was finally agreed to at the [REDACTED] meeting, it was still not recorded in the IEP. The IEP team's failure to clearly define the parameters of the IEP accommodation of extra time to complete homework led to ongoing confusion throughout the school year.

Despite the ongoing confusion about the parameters of the IEP accommodation, there is ample evidence that the student was provided extra time to complete homework assignments. In the investigation interview and in email communication the math teacher reported that [REDACTED] gave the student extra time to complete and turn in homework assignments. There are multiple examples in the email exchanges of the math teacher rescinding late penalties once proof of completed homework assignments was provided. OSSE finds that DCPS did provide the IEP accommodation of extra time to complete homework; however, DCPS failed to set parameters on the accommodation and record it in the IEP.

Therefore, DCPS is in compliance with 34 CFR §300.323(c)(2), but not in compliance with 34 CFR §300.324(b)(1)(ii).

ISSUE THREE: EDUCATIONAL RECORDS

Findings of Fact

1. In the interview the complainant specified that [REDACTED] made a verbal request for information on what was happening in the classroom.
2. The complainant reported that classroom co-teaching model was explained to [REDACTED] at a meeting, but no written record was provided.
3. The school uses an online gradebook where grades on assignments, PDFs of worksheets, and test scores are logged directly and update in real time.
 - a. Parents have access to log in to the online gradebook and the complainant confirmed [REDACTED] had access and did log in.
4. The math teacher reported that completed homework assignments and tests were sent home with students.

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.613, due to providing the parent access to the student's educational records.

Pursuant to 34 CFR §300.613, the LEA must permit parents to inspect and review any

¹ For example, in the [REDACTED] email exchange the parent stated the student was to receive an extra week and in the [REDACTED] email exchange [REDACTED] requested a two-week timeframe. In the [REDACTED] email exchange [REDACTED] said the student required extra time because [REDACTED] forgot to turn in completed assignments and in the [REDACTED] email exchange [REDACTED] said the student required extra time because [REDACTED] did not understand the assignments.

education records relating to their children. The complainant alleges that [REDACTED] was not provided with all of the documents [REDACTED] requested.

In the investigation interview the complainant specified that [REDACTED] made a verbal request for general information on what was happening in the classroom in regard to the co-teaching model. The complainant reported that the co-teaching model was explained to [REDACTED] at a meeting, but no written record was provided. The math teacher reported that [REDACTED] did not create any written materials explaining the co-teaching model. DCPS is not required to provide records that do not exist and was not required to create a written record on the co-teaching model used by the school where information was provided to the parent at a meeting.

The parent confirmed that [REDACTED] has access to the online gradebook, which contains a record all of the student's homework assignments and tests. The math teacher reported that completed homework assignments and tests were sent home with students. OSSE found no evidence that DCPS refused or failed to provide the parent with access to educational records requested by the complainant.

Therefore, DCPS is in compliance with 34 CFR §300.613.

ISSUE FOUR: PRIOR WRITTEN NOTICE

Findings of Fact

1. The parent communicated via email with school staff members about the student's IEP accommodations throughout the school year.
2. The parent attended IEP team meetings on [REDACTED]; and [REDACTED].
3. The [REDACTED] amended IEP prescribed 2.5 hours per week of specialized instruction in the general education setting.
4. The [REDACTED] IEP prescribes 4 hours per week of specialized instruction inside the general education setting and 30 minutes per month of behavioral support services.
5. The student's classroom accommodations were revised during the [REDACTED] IEP meeting.

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.503(a)(1) because the IEP Team did not change the provision of FAPE to the student.

Pursuant to 34 CFR §300.503(a)(1), the LEA must provide written notice to the parents of a child with a disability before the LEA proposes to change services that affect the provision of FAPE to the student. The complainant alleges that the school changed the parameters of the IEP accommodation of extra time to complete homework without a conversation about it or the parent's consent.

The parent was in frequent communication with school staff members about the student's IEP accommodations and attended all IEP team meetings where the accommodations were discussed. The parent attended and provided input at the [REDACTED] meeting where

the IEP was reviewed and revised, and 1.5 more hours per week of specialized instruction and 30 minutes per month of behavioral support services were added to the IEP. No changes were made to the accommodation of extra time to complete homework. OSSE finds that there were no significant changes to the IEP or the student's services that impacted the provision of FAPE to the student and required prior written notice.

Therefore, DCPS is in compliance with 34 CFR §300.503(a)(1).

CONCLUSIONS

1. DCPS is in compliance with 34 CFR §300.323(c)(2), due to providing accommodations required by the IEP.
2. DCPS is not in compliance with 34 CFR §300.324(b)(1)(ii), due to failing to finalize and record all accommodations in the IEP.
3. DCPS is in compliance with 34 CFR §300.613, due to providing the parent access to the student's educational records.
4. DCPS is in compliance with 34 CFR §300.503(a)(1) because the IEP Team did not change the provision of FAPE to the student.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.324(b)(1)(ii), DCPS must:
 - a. Convene the IEP team to discuss and set specific parameters for the accommodation of extra time to complete homework. The parameters must include how much extra time will be given, when the extra time will start, what the extra time is given for, and anything the student is required to do in order to receive the extra time. The accommodation in full must be recorded in the IEP. Evidence of completion of this corrective action is due to OSSE within 60 days of the date of this letter.

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 Kirstin Hansen, Compliance Specialist, at kirstin.hansen@dc.gov or 202-741-0274.

Sincerely,

Amy Maisterra, Ed.D., MSW
Assistant Superintendent for Elementary, Secondary, and Specialized Education

cc: [REDACTED], Complainant