



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

January 13, 2017

[REDACTED]  
District of Columbia Public Schools  
[REDACTED]

RE: State Complaint No. 016-006

### **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] (complainants) 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 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 educational records.

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 not in compliance with its obligation to provide access to educational records. 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 issues under the jurisdiction of the SCO:

1. **Educational records requirements at 34 CFR §300.501(a)**
  - a. Failure to afford the parent an opportunity to inspect or review all educational records with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.

The complainant also raised this allegation under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (FERPA) and DCMR 5-E §2600.1, a District of Columbia regulation on access to all student records and not special education records in particular. OSSE's State Complaint process is limited to addressing alleged violations of the IDEA and its regulations or of District of Columbia special education law and regulations pertaining to students with disabilities. Therefore, OSSE investigated this allegation under the corresponding IDEA regulations.

**INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. Complainants
2. [REDACTED] Middle School (MS) [REDACTED]
3. [REDACTED] Elementary School (ES) [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 specific learning disability.
3. The student's local educational agency (LEA) is DCPS.

## **ISSUE: EDUCATIONAL RECORDS**

### **Findings of Fact**

1. Both the parent's counsel and the [REDACTED] ES [REDACTED] reported that the student was suspended twice during the [REDACTED] school year.
2. During the [REDACTED] school year no discipline incidents were recorded in DCPS's discipline tracking system.
3. The [REDACTED] ES [REDACTED] reported that disciplinary incidents are recorded in the DCPS discipline tracking system, but could not account for why the student's suspensions during the [REDACTED] school year were not recorded in the discipline tracking system.
4. The [REDACTED] ES [REDACTED] reported that disciplinary incidents may also be recorded in the educator's handbook, a personal notebook maintained by the school's principal for internal use. The [REDACTED] did not have access to the handbook from the prior school year, which may have included a record of the student's suspensions during the [REDACTED] school year.
5. On [REDACTED] [REDACTED] ES issued a prior written notice proposing to complete a comprehensive psychological and speech-language evaluation for the student.
6. The parent withdrew the student from [REDACTED] ES on [REDACTED].
7. On [REDACTED] [REDACTED] ES issued a prior written notice stating that DCPS had cancelled the student's evaluations due to non-response from the parent and parent's counsel following the parent withdrawing the student from the school.
8. The parent's counsel requested the student's educational records from [REDACTED] ES on [REDACTED] and made a follow-up request on [REDACTED].
9. On [REDACTED] the [REDACTED] ES [REDACTED] informed the parent's counsel that because the student had enrolled in a new school, [REDACTED] ES no longer had access to the student's educational records and the request would have to be made to the student's new school.
10. The parent's counsel requested the student's educational records from [REDACTED] MS on [REDACTED] and made a follow-up request on [REDACTED].
11. The student's educational records were made available for pick up on [REDACTED].
12. The parent's counsel picked up the educational records from the school on [REDACTED].
13. In a [REDACTED] email to the [REDACTED] MS [REDACTED], the parent's counsel stated that the following records were missing from the student's time at [REDACTED] ES: IEP meeting notes, discipline records, academic test scores, and evaluations.
14. On [REDACTED] the [REDACTED] MS [REDACTED] responded that the school provided all records received from [REDACTED] ES.
15. As of [REDACTED], five discipline incidents have been recorded so far in the [REDACTED] school year for the student.

### Discussion/Conclusion

**Based on the analysis below, DCPS is not in compliance with 34 CFR §300.613(a), due to failing to provide the educational records within 45 days and with 34 CFR §300.501(a), due to failing to provide all of the student's educational records with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.**

Pursuant to 34 CFR §300.501(a), the parents of a child with a disability must be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, educational placement, and provision of FAPE to the child. The public agency must comply with the request without unnecessary delay and "in no case more than 45 days after the request has been made." (34 CFR §300.613(a)) The complainants allege that DCPS denied the parent access to [REDACTED] child's education records.

The student attended [REDACTED] ES for the majority of the [REDACTED] school year and enrolled at [REDACTED] MS for the [REDACTED] school year. The parent's counsel requested the student's educational records from [REDACTED] ES on [REDACTED] and made a follow-up request on [REDACTED]. On [REDACTED] the [REDACTED] ES [REDACTED] informed the parent's counsel that because the student had enrolled in a new school, [REDACTED] ES no longer had access to the student's educational records and the request would have to be made to the student's new school. Thus, the [REDACTED] took 35 days to inform the parent that [REDACTED] request had to be directed to the student's new school, [REDACTED] MS. The 45-day timeline applies to DCPS regardless of which school received the initial request. The parent's counsel requested the student's educational records from [REDACTED] MS on [REDACTED] and made a follow-up request on [REDACTED]. The failure to respond promptly to the request resulted in additional delay in preparing the student's educational records. The student's educational records were made available for pick up on [REDACTED] and the parent's counsel picked them up from the school on [REDACTED]. The student's educational records were made available 86 days after the parent's counsel's initial request. OSSE finds that DCPS failed to provide access to the student's educational record within 45 days of the request.

In a [REDACTED] email to the [REDACTED] MS [REDACTED], the parent's counsel stated that the following records were missing from the student's time at [REDACTED] ES: meeting notes, discipline records, academic test scores, and evaluations. The [REDACTED] MS [REDACTED] responded that the school provided all records received from [REDACTED] ES. Through its investigation, OSSE determined that although [REDACTED] MS provided the parent's counsel with all educational records from the student's paper file, it failed to provide the educational records maintained in SEDS. The requirements of the IDEA regulations on access to educational records applies to all records with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student. OSSE identified documents that are in the student's SEDS file but were not provided pursuant to the request for educational records, including notes from the [REDACTED] and [REDACTED] IEP meetings, the 3<sup>rd</sup> grade – 5<sup>th</sup> grade Dibels test scores, and the [REDACTED] Woodcock Johnson III Achievement Test scores. Other than the Dibels and Woodcock Johnson academic assessments, no other

evaluations were completed by [REDACTED] ES.<sup>1</sup>

Both the parent's counsel and the [REDACTED] ES [REDACTED] reported that the student was suspended twice during the [REDACTED] school year. However, no record of these suspensions were provided as part of the educational records request and nor were these suspensions recorded in DCPS' discipline tracking system. The [REDACTED] ES [REDACTED] reported that disciplinary incidents are recorded in the DCPS discipline tracking system, but could not account for why the student's suspensions during the [REDACTED] school year were not recorded in the discipline tracking system. The [REDACTED] ES [REDACTED] reported that disciplinary incidents may also be recorded in the educator's handbook, a personal notebook maintained by the school's principal for internal use. The [REDACTED] did not have access to the handbook from the prior school year, which may have included a record of the student's suspensions during the [REDACTED] school year. Accordingly, OSSE could not confirm that an educational record regarding the student's suspensions during the [REDACTED] school year existed.

Due to [REDACTED] MS's failure to provide educational records maintained in SEDS, OSSE finds that DCPS failed to provide the parent with access to all educational records in the student's file as required by IDEA.

Therefore, DCPS is out of compliance with 34 CFR §§300.613(a) and 300.501(a).

### **CONCLUSIONS**

1. DCPS is not in compliance with 34 CFR §300.613(a), due to failing to provide the educational records without unnecessary delay and within 45 days.
2. DCPS is not in compliance with 34 CFR §300.501(a), due to failing to provide all of the student's educational records with respect to the identification, evaluation, educational placement, and provision of FAPE to the child.

### **CORRECTIVE ACTION**

1. In order to correct the noncompliance with 34 CFR §§300.613(a) and 300.501(a), DCPS must:
  - a. Provide the parent with all educational records in the student's SEDS file.
  - b. Train [REDACTED] ES and [REDACTED] MS staff members on the responsibility to provide access to educational records, including required timelines and the requirement to provide all educational records with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.

All corrective actions must be completed by the date specified above, but in no case later

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<sup>1</sup> In [REDACTED] ES started a comprehensive psychological and speech-language evaluation for the student, but was not able to finish due to the student's withdrawal from the school and a lack of response from the parent regarding completion of the evaluations.

than one year from the date of this letter. 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], complainants  
[REDACTED], parent