



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

February 15, 2017

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 016-007

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) 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 special education and related services and ensure that paraprofessionals who assist in the provision of specialized instruction services are appropriately qualified.

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 special education services and to ensure that paraprofessionals who assist in the provision of specialized instruction services are appropriately qualified. 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 ensure that special education and related services are made available to the child in accordance with the child’s IEP; specifically with regard to specialized instruction outside general education, specialized instruction inside general education, speech-language pathology, and

- occupational therapy services.
2. **Paraprofessional qualifications requirements at 34 CFR §300.156(b)**
 - a. Failure to ensure that paraprofessionals who assist in the provision of specialized instruction services are appropriately qualified.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. Parent
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):



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 multiple disabilities.
3. The student’s local educational agency (LEA) is DCPS.

ISSUE ONE: PROVISION OF SERVICES

Findings of Fact

1. The [REDACTED] IEP prescribes 5 hours per week of specialized instruction outside the general education setting, 8 hours per week of specialized instruction inside the general education setting, 6 hours per month of speech-language pathology, 6 hours per month of occupational therapy, 120 minutes per month of behavioral support services, and a dedicated aide for 7.25 hours per day.
2. An IEP team meeting was held on [REDACTED] to review the student’s progress.
 - a. The [REDACTED] reported that she works with the student for one hour daily outside of [REDACTED] general education classroom.

- b. The general education teachers described the supports provided to the student inside the general education setting and how [REDACTED] work is differentiated.
 - c. The parent brought up missed related services and expressed concern about whether the services would be made up effectively, stating that [REDACTED] did not want to rely on compensatory education to make up the missed services.
 - d. No related services were provided at the start of school; however, both services had begun by the meeting date.
 - e. The IEP team agreed to create missed services plans for the occupational therapy and speech-language pathology services that were not provided at the beginning of the school year.
3. A plan to make up missed occupational therapy services was created on [REDACTED] [REDACTED] to make up 275 minutes of services missed from [REDACTED]. Services would be made up by adding an additional 10 – 15 minutes at the end of services sessions on Mondays and Fridays and integrating services into classroom activities when extra time permitted.
4. Pursuant to the parent's request, an IEP team meeting was held [REDACTED] to discuss the parent's concerns.
 - a. At this meeting the school staff members explained that the special education teacher collaborates with the general education teacher and supervises the support provided to the student during specialized instruction provided in the general education setting.
5. A plan to make up missed speech-language pathology services was created on [REDACTED] to make up 360 minutes of services missed from [REDACTED]. Services would be made up by integrating services into classroom activities on Thursdays and scheduling additional services after school on Mondays.
6. The student's class schedule was updated on [REDACTED].
 - a. The schedule shows 5 hours and 25 minutes of pull-out services with the special education teacher.
 - b. The schedule shows 3 hours and 45 minutes of inclusion services with the special education teacher.
 - c. The school reported that although the class schedule does not account for transitions between classes, the extra 25 minutes of pull-out services listed on the schedule accounts for travel time between the student's regular classroom and the room where [REDACTED] receives pull-out services.
7. The [REDACTED] speech-language pathology missed services plan explanation stated that the IEP team agreed to a plan to make up the 360 minutes of missed services. As of the date of the letter 150 minutes had been made up with the remaining 210 minutes to be made up by [REDACTED].
8. The [REDACTED] occupational therapy missed services plan explanation stated that the IEP team agreed to a plan to make up the 360¹ minutes of missed services. As of the date of the letter 100 minutes had been made up with the remaining 260 minutes to be made up by [REDACTED].

¹ When the [REDACTED] make-up plan was created, 85 minutes of services had already been made up, that is why that plan lists only 275 minutes to be made up.

9. An IEP team meeting was held on [REDACTED] where the team reviewed the student's progress.
10. DCPS reported that the student receives specialized instruction in the general education setting through ongoing collaboration and co-planning between the special education teacher and the general education teachers.
 - a. The [REDACTED] reported that she meets with the general education teachers at least once a week to develop accommodations, modifications, or alterations to the teachers' lesson plans for the implementation of the student's specialized instruction.
 - b. She creates individualized activities that correlate with the general education curriculum.
 - c. She typically meets with the general education teachers midweek and at the end of the week to make adjustments as needed to the activities, work samples, or lesson structure.

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.323(c)(2), due to providing specialized instruction and related services in accordance with 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 DCPS is not providing specialized instruction, speech-language pathology, and occupational therapy as prescribed by the student's IEP.

Specialized Instruction

The [REDACTED] IEP prescribes 5 hours per week of specialized instruction outside the general education setting and 8 hours per week of specialized instruction inside the general education setting. At the [REDACTED] IEP team meeting, the [REDACTED] reported that she works with the student for one hour daily outside of [REDACTED] general education classroom. The [REDACTED] updated schedule shows that the student receives 5 hours and 25 minutes of pull-out services per week with the special education teacher. School staff reported that although the class schedule does not account for transitions between classes, the extra 25 minutes accounts for travel time between the student's regular classroom and the room where [REDACTED] receives pull-out services.

The [REDACTED] and [REDACTED] reported that the student receives specialized instruction in the general education setting through differentiated instruction and classroom accommodations, which is implemented through ongoing collaboration and co-planning between the special education teacher and the general education teachers. The special education teacher reported that she meets with the general education teachers at least once a week to develop accommodations, modifications, or alterations to the teachers' lesson plans for the implementation of the student's specialized instruction. She creates individualized activities that correlate with the general education curriculum. She typically meets with the general education teachers midweek and at the end of the week to make adjustments as needed to the activities, work samples, or lesson structure. This delivery model has been discussed at IEP team meetings. At the [REDACTED] IEP team meeting,

the general education teachers described the supports provided to the student and how work is differentiated. Pursuant to the parent's request, an IEP team meeting was held to discuss the parent's concerns, including delivery of specialized instruction in the general education setting. The school staff members explained that the special education teacher collaborates with the general education teacher and supervises the support provided to the student during specialized instruction provided in the general education setting. However, pursuant to the parent's request, on the student's schedule was adjusted to include direct instruction from the special education teacher inside the general education classroom for 3 hours and 45 minutes per week. OSSE finds that the combination of direct instruction from the special education teacher and the specialized instruction provided by the general education teacher, with the support and guidance of the special education teacher, fulfills the requirements of the student's IEP for specialized instruction inside the general education setting.

Speech-Language Pathology

The IEP prescribes 6 hours per month of speech-language pathology services. Due to a failure to have a service provider in place at the beginning of the school year, the student missed 360 minutes of speech-language pathology services from the beginning of the school year until . OSSE's review of service trackers confirms this amount of missed services. A plan to make up these services was created on . In accordance with the parent's concern that the services would be made up effectively and not wanting to rely on compensatory education, the IEP team agreed that services would be made up by integrating services into classroom activities on Thursdays and scheduling additional services after school on Mondays. Pursuant to this investigation, DCPS provided a written explanation from the speech-language pathology service provider, dated , which provided a status update on missed services plan. It stated that the IEP team agreed to a plan to make up the 360 minutes of missed services and that, as of the date of the explanation letter, 150 minutes had been made up with the remaining 210 minutes to be made up by . OSSE declines to make a finding for missed speech-language pathology services where the issue has already been addressed by DCPS and a plan to make up the missed services is underway.

Occupational Therapy

The IEP prescribes 6 hours per month of occupational therapy services. Due to a failure to have a service provider in place at the beginning of the school year, the student missed 360 minutes of occupational therapy services from the beginning of the school year until . OSSE's review of service trackers confirms this amount. A plan to make up the missed services was created on . In accordance with the parent's concern that the services would be made up effectively and not wanting to rely on compensatory education, the IEP team agreed that services would be made up by adding an additional 10 – 15 minutes at the end of services sessions on Mondays and Fridays and integrating services into classroom activities when extra time permitted. Pursuant to this investigation, DCPS provided an occupational therapy missed services plan explanation on , which stated that the IEP team agreed to a plan to make up the 360 minutes of missed services, and as of the date of the explanation letter, 100 minutes had been made up with the remaining 260 minutes to be made up by .

OSSE declines to make a finding for missed occupational therapy services where the issue has already been addressed by DCPS and a plan to make up the missed services is underway.

Therefore, DCPS is in compliance with 34 CFR §300.323(c)(2) with regards to the provision of specialized instruction and OSSE declines to make a finding for missed speech-language pathology services and missed occupational therapy services where plans to make up the missed services are already in place and missed service delivery has already begun. However, DCPS is strongly reminded of its obligations to provide special education and related services as soon as possible following development of the IEP and is strongly cautioned against relying upon missed services plans to meet the needs of students, especially a returning student such as this one who is well known to [REDACTED] school and whose related services needs did not change from the prior school year.

ISSUE TWO: PARAPROFESSIONAL QUALIFICATIONS

Findings of Fact

1. DCPS reported that the dedicated aide is with the student all day and supports the student while [REDACTED] receives instruction from the general education teacher and helps the student transition to and from the bus, the cafeteria, special classes (e.g., physical education), and specialized instruction outside the general education setting, but does not provide any direct instruction.
2. DCPS reported the dedicated aide's main role is behavior support and she receives support from the school social worker in implementing the student's behavior interventions.
3. At the [REDACTED] IEP team meeting, the behavior support services provider explained how the dedicated aide supported the student through transitions and staff changes.
4. At the [REDACTED] IEP team meeting, the parent expressed concern about the effectiveness of the student's dedicated aide as [REDACTED] felt that the student was not being redirected by the dedicated aide with sufficient frequency. The school agreed to provide parent with a description of the dedicated aide's role.
5. At the [REDACTED] IEP team meeting, the school staff members reported that the student was having fewer challenges with transitions due to the dedicated aide's assistance. School staff also reported the following example of support provided by the dedicated aide in the classroom: during writing activities the student provides an oral response to the dedicated aide, who then writes the response on a white board, and then the student copies it in [REDACTED] journal.

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.156(b), due to the dedicated aide not providing specialized instruction.

Pursuant to 34 CFR §300.156(b), related services personnel who deliver services in their discipline or profession must meet the qualifications recognized by the State. The complainant alleges that the student's dedicated aide is providing specialized instruction to the student, which she is not qualified to do.

DCPS reported that the dedicated aide does not provide any direct instruction, but supports the student while ■ receives instruction from the general education teacher and helps the student transition to and from the bus, the cafeteria, special classes (e.g., physical education), and specialized instruction outside the general education setting. The dedicated aide's main role is behavior support and she receives support from the school social worker in implementing the student's behavior interventions. The dedicated aide's role has been discussed at IEP team meetings throughout the school year. At the ■ IEP team meeting, the behavior support services provider explained how the dedicated aide supported the student through transitions and staff changes. At the ■ IEP team meeting, the parent expressed concern about the effectiveness of the student's dedicated aide as ■ felt that the student was not being redirected by the dedicated aide with sufficient frequency. The school agreed to provide parent with a description of the dedicated aide's role. At the ■ IEP team meeting, the school staff members reported that the student was having fewer challenges with transitions due to the dedicated aide's assistance. They also gave an example of support provided by the dedicated aide inside the classroom – during writing activities the student provides an oral response to the dedicated aide, who then writes the response on a white board, and then the student copies it in ■ journal. The record supports DCPS's assertion that the dedicated aide serves as a support to the student and does not directly provide specialized education services. As OSSE found no evidence that the dedicated aide provides specialized instruction to the student, the issue of the aide's qualifications was not investigated.

Therefore, DCPS is in compliance with 34 CFR §300.156(b).

CONCLUSIONS

1. DCPS is in compliance with 34 CFR §300.323(c)(2), due to providing specialized instruction in accordance with the student's IEP, and OSSE declines to make a finding for missed speech-language pathology services and missed occupational therapy services where plans to make up the missed services are already in place and missed service delivery has already begun.
2. DCPS is in compliance with 34 CFR §300.156(b), due to the dedicated aide not providing specialized instruction.

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: ■, Complainant