

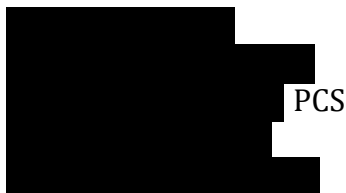


DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

April 24, 2017



RE: State Complaint No. 016-009

LETTER OF DECISION

PROCEDURAL BACKGROUND

On [REDACTED], the State Complaint Office of the Office (SCO) of the State Superintendent of Education (OSSE), Division of Elementary, Secondary, and Specialized Education received a State Complaint from [REDACTED] (complainant) alleging violations in the special education program of [REDACTED] [REDACTED] (Student ID # [REDACTED] hereinafter “student” or “child.” The complaint was filed against the student’s current local educational agency (LEA) and OSSE initiated an investigation. During the course of the investigation, OSSE determined that it was necessary to review actions taken by [REDACTED] Public Charter School ([REDACTED]), the student’s prior LEA, in order to appropriately review and address the alleged violations identified in the complaint.¹ On [REDACTED], OSSE notified [REDACTED] that allegations against the LEA were identified during the course of the investigation and would be further reviewed. [REDACTED] was provided with an opportunity to respond to the allegations and did so via letter to the SCO.

The issues identified are potential violations of 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 maintain valid and reliable data and complete the student’s initial evaluation.

The SCO for OSSE has completed its investigation of the State Complaint. During the course of the investigation OSSE determined that [REDACTED] has not complied with its obligation to document and include the parent’s request to evaluate and consent to evaluate in the student’s educational record. The SCO determined that [REDACTED]

¹ Pursuant to its general supervisory authority, in resolving State complaints, OSSE must identify and address the failure to provide appropriate services and ensure that corrective actions are taken by the public agency, “as soon as possible, and in no case later than one year after,” OSSE’s finding of noncompliance. (34 CFR §§300.149, 300.151(b), and 300.600(e)).

failed to meet its obligations to ensure the student received a full and timely initial evaluation. Under circumstances, present here, where a child enrolled in another public agency after the evaluation timeline began, but prior to the determination by the previous public agency's decision as to whether the child is a child with a disability, the law is clear as to the obligations of the previous public agency. 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. **Valid and reliable data requirements at 34 CFR §§300.211, 300.600(d), and 300.601(b)**
 - a. Failure to input valid and reliable data in the Special Education Data System (SEDS), as required by IDEA and OSSE's December 9, 2010 LEA Data Management Policy.
2. **Initial evaluation requirements at 34 CFR §§300.301 and 300.306**
 - a. Failure to ensure the initial evaluation is completed in compliance with IDEA.
 - b. Failure to determine whether the child is a child with a disability.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED] special education coordinator

The investigation also included review of the following documents which were either submitted by the complainant, submitted by [REDACTED], or accessible via the Special Education Data System (SEDS):

[REDACTED]

GENERAL FINDINGS OF FACT

1. The student's LEA for the [REDACTED] school year was [REDACTED].
2. The student is suspected of having a disability as defined by IDEA.

ISSUE ONE: VALID AND RELIABLE DATA

Findings of Fact

1. [REDACTED] staff reported that the parent provided consent to evaluate at the meeting where the parent requested the evaluation.
2. [REDACTED] staff reported that assessments are not uploaded to SEDS until they have been reviewed at an eligibility meeting.

3. The student enrolled in a new LEA on [REDACTED].
4. [REDACTED] reported that a student's paper records are sent to a student's new LEA upon request from the new LEA, but that such a request was not received from this student's new LEA.

Discussion/Conclusion

[REDACTED] has not complied with 34 CFR §300.211 and OSSE's December 9, 2010 LEA Data Management Policy because it failed to document and enter the parent's evaluation request or consent to evaluate into SEDS.

Pursuant to 34 CFR §300.211, the LEA must provide the SEA with information necessary to carry out its duties, including its monitoring obligations under 34 CFR §§300.600(d) and 300.601(b). LEAs are required to enter or update students' records in SEDS within 5 business days. (OSSE's LEA Data Management Policy p. 5 (December 9, 2010)).² During the course of its investigation, OSSE found that there is no documentation in SEDS of the parent's evaluation request.

[REDACTED] staff reported that the parent signed consent to evaluate at the [REDACTED] meeting where the parent requested the evaluation; however, [REDACTED] was unable to provide documentation of the initial referral date or of parent consent to begin the evaluation. Moreover, [REDACTED] reported that a student's paper records are sent to a student's new LEA upon request from the new LEA, but that no request was received from the student's new LEA. However, as [REDACTED] was unable to produce hard copy documentation of referral or consent, no such documentation would have been produced had the new LEA requested the files. Additionally, there is no record in SEDS of the evaluation request or of parent consent to evaluate. When asked why these records were not in SEDS, [REDACTED] staff reported that assessments and other evaluation documents are not uploaded to SEDS until they have been reviewed at an eligibility meeting. This is contrary to what is required by OSSE's Data Management Policy. OSSE finds that [REDACTED] failed to document a request for evaluation, failed to document parent consent to evaluate, and failed include the parent's request to evaluate and consent to evaluate in the student's educational record.

Therefore, [REDACTED] is out of compliance with 34 CFR §300.211 and OSSE's December 9, 2010 LEA Data Management Policy.

ISSUE TWO: INITIAL EVALUATION

Findings of Fact

1. On [REDACTED], the parent requested that the student be evaluated.
2. Testing for a psychological evaluation began [REDACTED], and the evaluation report was completed [REDACTED].
3. The last day of school was [REDACTED].
4. On [REDACTED], the school gave the parent a copy of the evaluation report to provide to the student's new LEA.

² OSSE's LEA Data Management Policy is available at:
[https://sled.osse.dc.gov/Docs/LEA%20Data%20Mgmt%20Policy%20\(Final\).pdf](https://sled.osse.dc.gov/Docs/LEA%20Data%20Mgmt%20Policy%20(Final).pdf)

5. The student was withdrawn from [REDACTED] on [REDACTED] due to completion of the 8th grade, the last grade available at the school, and matriculation into high school at a new LEA unknown to [REDACTED] staff.
6. The parent enrolled the student in a new LEA on [REDACTED].

Discussion/Conclusion

[REDACTED] has not complied with 34 CFR §§300.301 and 300.306 by failing to ensure that the parent's referral and consent were documented in the student's record, contributing to the student's delayed and incomplete initial evaluation.

Pursuant to 34 CFR §300.301(a) and (b), each public agency must conduct a full and individual initial evaluation upon request by the parent. Initial special education evaluations must be conducted within 60 days of receiving parental consent for the evaluation or within the timeframe established by the state. (34 CFR §300.301(c)). The District of Columbia has established a 120 day timeline from the date of referral for completing assessments or evaluations of students.³ (D.C. Official Code §38-2561.02(a)). In certain circumstances exceptions to the required timeline exist. (34 CFR §300.301(d)).

Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child determines whether the child is a child with a disability and the educational needs of the child, and the public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. (34 CFR §300.306). The complainant alleges that [REDACTED] initial request for an evaluation was made to [REDACTED].

[REDACTED] reports that the parent requested that the student be evaluated during a meeting that was held on [REDACTED]. [REDACTED] staff reported that testing began soon thereafter and a psychological evaluation report was completed on [REDACTED]. [REDACTED] also reported, and the parent corroborated, that since the [REDACTED] school year ended on [REDACTED], and the student would be enrolling in a new LEA for the [REDACTED] school year, the parent wanted the new LEA to hold the eligibility meeting and develop the IEP. As a result, [REDACTED] reports and the parent confirms that [REDACTED] provided the parent with a copy of the psychological evaluation report to give to the student's new LEA.

The parent enrolled the student in the new LEA on [REDACTED], prior to the expiration of the 120-day evaluation timeline on [REDACTED]. However, as of the date of the issuance of this LOD no eligibility determination has been made and no information has been provided to OSSE to suggest that any progress to complete the evaluation process is being made.⁴

³ OSSE Part B Initial Evaluation/Reevaluation Policy, p. 14 (March 22, 2010) ("The LEA must complete an initial evaluation, including the determination of the eligibility, of a child suspected of having a disability within 120 calendar days of receiving the written referral.").

⁴ The confidentiality of student information is protected by the Family Educational Rights and Privacy Act (FERPA) of 1974, 20 U.S.C. 1232(g) and regulations implementing FERPA at 34 CFR Part 99, and the IDEA at 34 CFR §§300.300.610 through 300.627. OSSE additionally recognizes the importance of protecting students' rights to a timely initial evaluation when transferring LEAs mid-evaluation process. As a result, OSSE policy

Exceptions to the required timeline exist, including when a child is enrolled in a school in another LEA after the initial evaluation timeline begins and prior to a determination of eligibility. (34 CFR §§300.301(d)(2)). However, that exception applies only if the subsequent LEA is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed. (34 CFR §§300.301(e)). In this case the subsequent LEA was not making sufficient progress to ensure a completion of the evaluation either because it was unaware that [REDACTED] had initiated the evaluation, or because it was made aware by the parent and then failed to take necessary steps to complete the process. Regardless of whether or not the student's new LEA proceeded, a record of the parent's referral and consent for evaluation were unavailable in SEDS for review upon the student's enrollment in the new LEA. [REDACTED] failure to document the parent's referral and consent to evaluate contributed to the delayed and incomplete initial evaluation and ultimately placed the burden on the parent to document the previously initiated evaluation process. OSSE finds that [REDACTED] failure to ensure the availability of student records to the receiving LEA contributed to a failure to ensure the student received a full and timely initial evaluation.

Therefore, [REDACTED] is not in compliance with 34 CFR §§300.301 and 300.306.

CONCLUSIONS

1. [REDACTED] has not complied with 34 CFR §300.211 and OSSE's December 9, 2010 LEA Data Management Policy because it failed to document and enter the parent's evaluation request or consent to evaluate into SEDS..
2. [REDACTED] has not complied with 34 CFR §§300.301 and 300.306 by failing to ensure that the parent's referral and consent were documented in the student's record, contributing to the student's delayed and incomplete initial evaluation.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §§300.211, 300.301, 300.306 and OSSE's December 9, 2010 LEA Data Management Policy, [REDACTED] must:
 - a. Update its policies and procedures to include entering all documents related to the evaluation process, including requests and consents to evaluate, into SEDS within 5 business days. Evidence of completion of this action must be provided to OSSE within 60 days of the date of this letter.
 - b. Provide a copy of the referral for evaluation receipt letter and student's signed consent to evaluate to the parent. If documentation is unavailable, provide a letter to the parent from the LEA outlining these events and the

requires that the student's previous LEA assist the new LEA with completing the evaluation. (OSSE Individualized Education Program (IEP) Implementation for Transfer Policy (December 17, 2014) at p. 3). This function necessitates that the student's previous LEA continue to receive student information after the student is no longer enrolled, until all information relevant to the evaluation is exchanged.

dates that these events took place according to LEA records.⁵ Evidence of completion of this action must be provided to OSSE within 10 days of the date of this letter.

- c. Contact the OSSE Help Desk for assistance uploading the documents into the student's file. Evidence of completion of this action must be provided to OSSE within 10 days of the date of this letter.
- d. Review all student records for the [REDACTED] school year to determine if any other initial evaluations were initiated prior to any student leaving the LEA and provide a list of these students to OSSE for review in SEDS. OSSE will review student records and notify [REDACTED] of required documentation to complete students' initial evaluation records, if necessary. A list of students must be provided to OSSE within 30 days of the date of this letter, if applicable. Supporting documentation of initial evaluation procedures must be uploaded into student SEDS records within 10 days of OSSE's request. If applicable, this documentation may include but is not limited to the LEA's referral receipt letter, consent to evaluate, analysis of existing student data, disability classification worksheet(s), prior written notice(s) (PWN), eligibility determination, student evaluations or other data, or other documents utilized during the evaluation process. The OSSE Help Desk will facilitate completion of the upload process.

All corrective actions must be completed by the dates 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 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], complainant

⁵ If required, OSSE staff will facilitate provision of the letter to the parent electronically or via mail with the parent's consent to release contact information.