



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

April 24, 2017

[REDACTED] PCS

RE: State Complaint No. 016-009

LETTER OF DECISION

PROCEDURAL BACKGROUND

On [REDACTED], the State Complaint Office (SCO) 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 [REDACTED] Public Charter School ([REDACTED]) alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED]), hereinafter “student” or “child.”

The complainant alleged that [REDACTED] 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 complete an initial evaluation and develop an IEP.

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 timely complete an initial evaluation and prematurely provided special education services. Notwithstanding, it is not yet required to develop an IEP for the student. Additionally, OSSE has 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. 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. Initial evaluation requirements at 34 CFR §§300.301(a), (d)(2), (e); and 300.211

- a. Failure to conduct an initial evaluation of a child who has enrolled in another public agency after the initial evaluation process has begun, but prior to the previous public agency's determination of whether the child is a child with a disability.
- b. Failure to conduct a full and individual initial evaluation before the initial provision of special education and related services to a child with a disability.
- c. 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. Requirement to develop an IEP at 34 CFR §300.323(c)

- a. Failure to ensure an IEP is developed within thirty (30) days of the determination that the child is eligible for special education and related services and that those services are implemented as soon as possible following the development of the IEP.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

- 1. Complainant
- 2. [REDACTED]
- 3. Previous LEA [REDACTED]

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]

[REDACTED]

GENERAL FINDINGS OF FACT

1. The student's local educational agency (LEA) is [REDACTED].
2. The student is suspected of having a disability as defined by IDEA.

ISSUE ONE: INITIAL EVALUATION

Findings of Fact

1. The parent requested an evaluation from the student's previous LEA on [REDACTED].
 - a. The previous LEA completed a psychological evaluation on [REDACTED], but did not hold an eligibility meeting because the student would not be returning to the LEA for the next school year and the parent wanted the new LEA to complete the evaluation process and develop an IEP.
2. The student enrolled at [REDACTED] at the start of the [REDACTED] school year on [REDACTED].
3. The complainant reported that in [REDACTED], the student provided a copy of the evaluation report to a staff member at the school.
 - a. The school has no record of receiving the evaluation report from the student.
4. On [REDACTED], the parent emailed [REDACTED] to ask about IEP services for the student and inquire whether the school had received the student's evaluation completed by [REDACTED] previous LEA.
5. On [REDACTED], the special education coordinator responded to the parent asking for clarification on the student's eligibility status.
 - a. The parent provided a copy of the psychological evaluation report.
 - b. The parent and special education coordinator scheduled a meeting to discuss the evaluation and IEP process.
6. On [REDACTED], a meeting was held with the parent, the special education coordinator, and a special education teacher to discuss the [REDACTED] comprehensive psychological evaluation for the student.
 - a. The special education coordinator and parent discussed that although a psychological evaluation had been completed for the student, an IEP had not been developed by the student's previous LEA.¹
7. The special education coordinator reported that after the November meeting, a special education teacher began providing support to the student, including pull-out instruction for four hours per week, small group instruction, and modification of assignments.
8. Before filing this complaint on [REDACTED], the parent emailed the special education coordinator for an update on the evaluation process on [REDACTED].

¹ The [REDACTED] meeting notes do not reflect and [REDACTED] staff did not confirm, if the team discussed if an eligibility determination was made by the student's previous LEA.

[REDACTED]; and [REDACTED].

Discussion/Conclusion

[REDACTED] has not complied with 34 CFR §300.301(a), (d)(2), and (e) because it failed to timely complete the student's initial evaluation and provided special education services prior to conducting a full and individual initial evaluation. [REDACTED] has also not complied with 34 CFR §300.211 and the December 9, 2010 OSSE LEA Data Management Policy because it failed to update the student's SEDS record to reflect the student's referral for evaluation for special education services.

Pursuant to 34 CFR §300.301(c), 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. The District of Columbia has established a 120 day timeline from the date of referral for completing assessments or evaluations of students. (D.C. Official Code §38-2561.02(a)). OSSE has clarified that the 120 day timeline applies to the initial evaluation of all students with disabilities by LEAs in the District of Columbia and that initial evaluation includes the determination of eligibility.² The established timeline does not apply when a child enrolls in a school of another public agency after the evaluation timeline has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability. (34 CFR §300.301(d)(2)). However, the exception applies only if the subsequent public agency 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)). Each public agency must conduct a full and individual initial evaluation before the provision of special education and related services to a child with a disability. (34 CFR §300.301(a)). The complainant alleges that the student's prior LEA began the evaluation process but [REDACTED] did not complete it.

The parent requested an evaluation from the student's previous LEA on [REDACTED]. The previous LEA completed a psychological evaluation on [REDACTED], but did not hold an eligibility meeting because the student would not be returning to the LEA for the next school year and the parent wanted the new LEA to complete the evaluation process and develop an IEP. The student enrolled at [REDACTED] at the start of the [REDACTED] school year on [REDACTED]. The parent reported that in [REDACTED] the student provided a copy of the evaluation report to a staff member at the school; however, the school has no record of receiving the evaluation report from the student. On [REDACTED] the parent emailed [REDACTED] to ask about IEP services for the student and inquire whether the school had received the student's evaluation completed by [REDACTED] previous LEA. On [REDACTED] the special education coordinator responded to the parent asking for clarification on the student's eligibility status. In an exchange of emails, the parent provided a copy of the psychological evaluation report and the parent and special education coordinator scheduled a meeting to discuss the evaluation and IEP process.

² OSSE Part B Initial Evaluation/Reevaluation Policy, p. 14 (March 22, 2010).

On [REDACTED] a meeting was held with the parent, the special education coordinator, and a special education teacher to discuss the [REDACTED] comprehensive psychological evaluation for the student. At this meeting, the parent and special education coordinator discussed that although a psychological evaluation had been completed for the student, an IEP had not been developed by the student's previous LEA. The [REDACTED] [REDACTED] reported that after the November meeting, a special education teacher began providing support to the student, including pull-out instruction in the special education resource room for four hours per week, small group instruction, and modification of assignments, but nothing was done to complete the evaluation process. The parent emailed the [REDACTED] for an update on the evaluation process on [REDACTED]; and [REDACTED] [REDACTED], without a response on when the evaluation process would be completed. The parent filed this complaint on [REDACTED].

Local law requires that an evaluation request made on [REDACTED] results in an eligibility determination completed by [REDACTED]. However, the student enrolled in a new LEA during the evaluation timeline and the student's new LEA was not informed that the evaluation process was underway until [REDACTED]. Upon learning of the evaluation request, the special education coordinator took steps to ascertain what steps had already been completed and scheduled a meeting with the parent.⁴ This is a situation where it would be appropriate for the parent and LEA to agree to extend the timeline in order to ensure a thorough and complete evaluation. However, after these initial steps, no plan was developed and nothing was done to complete the evaluation process beyond an initial meeting with the parent, despite repeated requests from the parent for a status update. From the date that [REDACTED] learned of the evaluation request on [REDACTED] [REDACTED], until this complaint was filed on [REDACTED], 120 days had passed – the full amount of time allowed for the initial evaluation process. Therefore, OSSE finds that [REDACTED] failed to timely complete the student's initial evaluation.

In addition, the school began to inappropriately provide special education services to the

³ The delayed availability of information to [REDACTED] on the student's referral for evaluation, as it relates to the availability of the student's special education records in SEDS, is addressed in a separate Letter of Decision to the student's previous LEA.

⁴ [REDACTED] reported that after meeting with the parent on [REDACTED], their LEA held a phone conference with staff from the student's previous LEA to request records and determine the status of the student's evaluation process. The student's previous LEA denies that this conference call took place and [REDACTED] cannot identify who participated in the call from the student's previous LEA. Meeting notes taken at the time of the call or reflecting the date of the call are unavailable. OSSE declines to make a finding of fact as to whether or not [REDACTED] PCS requested the student's records from the previous LEA because the record cannot be substantiated. However, OSSE reminds [REDACTED] of their responsibility to, "request any relevant evaluation data and documents within five (5) business days of the student's enrollment," and make, "reasonable efforts to obtain records from the previous LEA," by asking the "parents and the previous LEA whether the student has been referred previously as a potential 'child with a disability' and request such records documenting any prior written referral." (OSSE Individualized Education Program (IEP) Implementation for Transfer Students Policy (December 17, 2014) at p. 2-3).

student by pulling the student out of the classroom for four hours per week of instruction delivered by the special education teacher in the special education resource room before [REDACTED] was determined eligible and prior to receiving consent for services from the parent, as prohibited by 34 CFR §300.301(a).

The IDEA at 34 CFR §300.211 requires that a LEA provide the state educational agency (SEA) with information necessary to enable the SEA to carry out its duties under Part B of the IDEA. Pursuant to 34 CFR §§300.600(d) and 300.601(b), the State must monitor the LEAs located in the State using quantifiable indicators including collecting valid and reliable data. All LEAs are required to enter accurate and complete data into SEDS within five (5) business days for all aspects of special education practice.⁵ As of the date of this letter, the student's SEDS record does not contain any evaluation process documents other than the independent evaluation provided by the parent to the LEA and student report cards. [REDACTED] failure to properly document the student's status as a student referred for evaluation for special education services for over five months since the parent's notice on [REDACTED] inhibited the SEA's ability to monitor the LEA based on quantifiable indicators and constitutes a failure to provide valid and reliable data.

Therefore, [REDACTED] is out of compliance with 34 CFR §§300.301(a), (d)(2), and (e); 300.211, and the December 9, 2010 OSSE LEA Data Management Policy.

ISSUE TWO: IEP DEVELOPMENT

Findings of Fact

1. The parent requested an evaluation from the student's previous LEA on [REDACTED].
 - a. The previous LEA completed a psychological evaluation on [REDACTED], but did not hold an eligibility meeting because the student would not be returning to the LEA for the next school year and the parent wanted the new LEA to complete the evaluation process and develop an IEP.
2. The student has not yet been determined eligible for special education services as a student with a disability.

Discussion/Conclusion

[REDACTED] **has complied with 34 CFR §300.323(c) because the student has not yet been determined eligible as a student with a disability.**

Pursuant to 34 CFR §300.323(c), each public agency must ensure that a meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services. The complainant alleges that she requested an IEP for her [REDACTED] and the school did not take any action.

The student's previous LEA began the evaluation process following the parent's [REDACTED] request for evaluation, but did not hold an eligibility meeting. The student has not yet

⁵ OSSE LEA Data Management Policy (December 9, 2010) at p.3. 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)

been determined eligible as a student with a disability and therefore the LEA is not yet required to develop an IEP.

Therefore, [REDACTED] is in compliance with 34 CFR §300.323(c).

OSSE reminds [REDACTED] of its obligation to hold a meeting to develop an IEP for the student within 30 days of the eligibility determination date upon completion of the student's evaluation as required by the corrective actions below, if the student is determined eligible for special education services.

CONCLUSIONS

1. [REDACTED] has not complied with 34 CFR §§300.301(a), (d)(2), and (e); 300.211; and the December 9, 2010 OSSE LEA Data Management Policy because it failed to timely complete the student's initial evaluation, it provided special education services prior to conducting a full and individual initial evaluation, and it failed to update the student's SEDS record to reflect the student's referral for evaluation for special education services.
2. [REDACTED] is in compliance with 34 CFR §300.323(c) because the student has not yet been determined eligible as a student with a disability.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §§300.301(a), (d)(2), and (e); 300.211; and the OSSE's December 9, 2010 LEA Data Management Policy, [REDACTED] must do the following:
 - a. Complete the student's initial evaluation and hold an eligibility determination meeting as soon as possible but in no case later than 30 days from the date of this letter.
 - b. Determine what compensatory education, if any, is owed to the student for the delay in completing the initial evaluation, if upon completion of the student's eligibility meeting, the student is determined eligible for special education services. This decision must include input from the parent. Documentation of the completion of this item is due to OSSE within 60 days of the date of this letter.
 - c. Update the student's SEDS record to reflect the parent's request for evaluation for special education services and all subsequent action taken to initiate the evaluation process up to the date of this letter. Evidence of completion of this action must be provided to OSSE within 10 days of the date of this letter.
 - d. Update its policies and procedures to include entering all documents related to the evaluation process, including requests to evaluate 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.

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 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