



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

July 14, 2017

*VIA U.S. Mail & Electronic Mail*



District of Columbia Public Schools



RE: State Complaint No. 016-014 Letter of Decision

### **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 the District of Columbia Public Schools (DCPS) alleging violations in the special education program of [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Student ID # [REDACTED] hereinafter “student” or “child,” and all students in the classroom.

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 specialized instruction to the named student and all students in the classroom.

OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS failed to comply with its obligation to provide the specialized instruction and related services required by the student’s IEP, and IEPs of other students in the classroom. 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 issue under the jurisdiction of the OSSE SCO:

**1. Requirement to provide services at 34 CFR §300.323(c)(2)**

- a. Failure to make special education and related services available in accordance with the IEP in regard to specialized instruction for the named student and all students in the class.

**INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

- 1. Parents
- 2. 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 local educational agency (LEA) is DCPS.

**ISSUE: IEP SERVICES**

**Findings of Fact**

- 1. The [REDACTED] IEP prescribes 26.75 hours per week of specialized instruction outside the general education setting and 2 hours per month of speech-language pathology services.
- 2. The class’ special education teacher left on [REDACTED] and DCPS was unable to find a replacement permanent teacher for the remainder of the [REDACTED] school year. A series of substitute teachers were placed in the classroom for the remainder of the year.
- 3. From [REDACTED] through the end of school year [REDACTED], the following substitute teachers were placed in the class:

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<sup>1</sup> According to DCPS, the May 2014 DCPS Guidelines for the Provision of Specialized Instruction is an internal document used to guide DCPS school staff on the LEA’s expectations for the provision of special education services to students in compliance with IDEA requirements.

- a. Certified special education substitute teacher from [REDACTED]; [REDACTED] general education substitute teacher from [REDACTED]; [REDACTED] winter break from [REDACTED]; certified special education substitute teacher from [REDACTED]; certified special education teacher from [REDACTED]; certified special education substitute teacher from [REDACTED]; general education substitute teacher on [REDACTED]; general education substitute teacher from [REDACTED]; general education substitute teacher from [REDACTED]; spring break from [REDACTED]; and a rotation of certified special education teachers from other classrooms in the school from [REDACTED] – end of school year.
4. The school's special education coordinator, who was employed during the entirety of the period under investigation, reported that all substitute teachers had access to the school's curriculum and received assistance from other special education teachers for lesson planning and individualizing instruction for the students in the classroom.
5. The substitute teachers struggled with the classroom management and the delivery of specially designed instruction.
6. The principal provided the parents of students in the impacted classroom with updates regarding the absence of a permanent teacher in the classroom via letters dated [REDACTED]; and [REDACTED].
7. The school provided or attempted to provide all required speech-language services in the months of [REDACTED] – [REDACTED], and [REDACTED].
  - a. The 60 minutes of services that were attempted but missed in [REDACTED] and [REDACTED] were made up in [REDACTED].
  - b. In [REDACTED], and [REDACTED], the school provided 220 minutes of the required 390 minutes of services and attempted to provide an additional 90 minutes.

### **Discussion/Conclusion**

**DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all of the specialized instruction and speech-language pathology services required by 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. The complaint alleged that there has been no special education teacher in the student's classroom since [REDACTED]. As a result, the student and [REDACTED] classmates have received no specialized instruction. During the course of the investigation the parents additionally raised concerns about the student's progress related to [REDACTED] speech due to alleged failure to receive these related services.

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<sup>2</sup> The teacher placed in the classroom from [REDACTED] – [REDACTED] was hired as a full time permanent teacher for this classroom. This teacher was anticipated to serve for the remainder of the school year but left on [REDACTED], resulting in the school principal beginning the teacher hiring process again mid-school year.

### Specialized Instruction

The [REDACTED] IEP prescribes 26.75 hours per week of specialized instruction outside the general education setting. The student is in a full-time special education classroom. The class' certified special education teacher left on [REDACTED] and DCPS was unable to find a permanent replacement teacher for the remainder of the [REDACTED] school year. A series of substitute teachers were placed in the classroom on the following dates with the following qualifications:

- Certified special education substitute teacher from [REDACTED]
- General education substitute teacher from [REDACTED]
- Certified special education teacher from [REDACTED]
- Certified special education teacher from [REDACTED]
- Certified special education teacher from [REDACTED]
- General education substitute teacher on [REDACTED]
- General education substitute teacher from [REDACTED]
- General education substitute teacher from [REDACTED]
- Rotation of certified special education teachers from other classrooms at the school from [REDACTED] – end of school year

The special education coordinator reported that all substitute teachers had access to the school's curriculum and received assistance from a special education teacher for lesson planning and individualizing instruction for the students in the classroom. There was also an educational aide in the classroom that remained consistent throughout the school year and provided support to the teacher.

In its response, DCPS voluntarily reported that there were 50 school days without a certified special education teacher in the classroom. OSSE's review confirmed this number. However, OSSE Teacher Licensure and DCPS records indicate that two teachers, placed in the classroom from [REDACTED], do not hold District of Columbia special education teaching credentials.<sup>5</sup> As a result, from [REDACTED], there were an additional 41 school days without a certified special education teacher in the classroom. In total, there were 91 school days without a certified special education teacher in the classroom. As also acknowledged by DCPS, with very few exceptions, the provision of specialized instruction in an elementary school full-time separate classroom requires a certified special education teacher and this requirement was not met during the period of time under

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<sup>3</sup> DCPS' winter break was from [REDACTED].

<sup>4</sup> DCPS' spring break was from [REDACTED].

<sup>5</sup> The substitute teacher placed in the classroom from [REDACTED] and [REDACTED] is certified to teach special education in Maryland and holds a Masters in Special Education. The teacher placed in the classroom from [REDACTED] is certified to teach special education in Maryland and Virginia. OSSE currently has in place a reciprocity agreement with Maryland and Virginia to award credentials to any applicant who holds or qualifies for an equivalent credential. (5-E DCMR §1605.3). Although both of these teachers are eligible for credentials under the OSSE reciprocity agreement, neither has received District of Columbia special education teaching credentials.

investigation. While there are understandably instances where a general education substitute teacher may be needed to take over a separate classroom because of occasional sick days or absences, those are not the types of circumstances present in this case.

Although the general education substitute teachers were provided support from a special education teacher when creating lesson plans, DCPS acknowledges that was not sufficient and also reported that, as a group, the substitute teachers struggled with the classroom management and the delivery of specially designed instruction. DCPS reported that the students' behavioral issues were exacerbated by not having a consistent teacher. Due to low success with successive substitute teachers, following spring break the principal decided to have the other special education teachers at the school rotate through the classroom to provide instruction for different subjects. The special education coordinator reported that this yielded better results in delivery of special education services and classroom management than the substitute teachers.

Parents were informed of the absence of a permanent teacher in the classroom by the principal via a letter on [REDACTED]. The principal provided additional updates on [REDACTED]; [REDACTED]; and [REDACTED]. Although parents were made aware of the lack of a permanent teacher in the classroom and the school's plan to address the issue, no offer was made for compensatory education or any other remedy to make up for the lack of consistency and the cumulative long-term use of non-special education certified substitute teachers. OSSE finds that DCPS must provide compensatory education for the days on which there was no special education teacher in the classroom.

#### Speech-Language Pathology

The [REDACTED] IEP prescribes 2 hours per month of speech-language pathology services. The complaint did not allege that related services were not provided; however, in interviews the parents raised concerns about the student's progress related to [REDACTED] speech. In its response DCPS asserted that all related services were made available and not impacted by the lack of a permanent teacher in the classroom. OSSE reviewed the student's service trackers to determine the amount of speech-language pathology services provided and attempted during the [REDACTED] school year. The "Services Attempted" column includes services that were missed due to student absence or school closure; services missed due to service provider unavailability were not included.<sup>6</sup>

<b>Month</b>	<b>Services Received</b>	<b>Services Not Received But Excused<sup>7</sup></b>
August <sup>8</sup>	70 min	none recorded
September	120 min	none recorded

<sup>6</sup> January 5, 2010 OSSE Related Services Policy p. 10 – 11

<sup>7</sup> *Id.*

<sup>8</sup> The [REDACTED] school year began [REDACTED]. The student was entitled to receive only 60 minutes of services in August.

October	90 min	30 min
November	90 min	30 min
December <sup>9</sup>	90 min	30 min
January	180 min	30 min
February	90 min	none recorded
March	120 min	30 min
April <sup>10</sup>	30 min	30 min
May	100 min	30 min
June <sup>11</sup>	0 min	30 min
Totals	872 min	240 min

A review of the service trackers indicates that speech-language pathology services were made available to the student throughout the school year, although the school did not provide all of the services required by the student’s IEP. The school provided or attempted to provide all required services in the months of [REDACTED], [REDACTED], and [REDACTED]. The 60 minutes of services attempted but missed in [REDACTED] and [REDACTED] were made up in [REDACTED]. In [REDACTED] and [REDACTED], the school provided 220 minutes of the required 390 minutes of services and attempted to provide an additional 90 minutes of services. The record reflects that 80 minutes of services were unaccounted for and these services must be made up. The IEP team should consider the impact of the 90 minutes of services that were attempted but missed due to the student’s unavailability or school closure.<sup>12</sup> There is no indication in the information reported by DCPS with regard to agency procedures or OSSE’s investigation of the named student that there was a systemic failure to provide related services to all students in the classroom.

Therefore, DCPS has not complied with 34 CFR §300.323(c)(2).

**CONCLUSION**

1. DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide specialized instruction to all students in the class on 50 school days.
2. DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide at least 80 minutes of speech-language pathology services as required by the student’s IEP.

**CORRECTIVE ACTION**

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2), DCPS must do the following:
  - a. Convene an IEP team meeting to create a compensatory education plan for the

<sup>9</sup> The school was on break from [REDACTED]. The student was entitled to receive only 90 minutes of services in December.

<sup>10</sup> The school was on break from [REDACTED]. The student was entitled to receive only 90 minutes of services in April.

<sup>11</sup> The [REDACTED] school year ended on [REDACTED]. The student was entitled to receive only 60 minutes of services in June.

<sup>12</sup> January 5, 2010 OSSE Related Services Policy p. 10.

student. The plan must include, at a minimum, one hundred and eight (108) hours of specialized instruction. When developing the plan, the IEP team must consider the impact on the student of the absence of District of Columbia credentialed special education teachers from [REDACTED]. The plan must also include the 80 minutes of missed speech-language pathology services and consideration of whether the 90 minutes of attempted but missed services should be made up. DCPS may modify the minimum number of hours based on any student absences from [REDACTED] through [REDACTED]. Documentation of agreement upon a compensatory education plan is due to OSSE within 60 days of the date of this letter.

- b. Convene separate IEP team meetings to create compensatory education plans for all other children in the student's class from [REDACTED] through [REDACTED]. For students who were enrolled the full period of time, these plans must include, at a minimum, one hundred and eight (108) hours of specialized instruction, in order to account for the full-time special education setting each student was entitled to for the fifty (50) days of missed specialized instruction services. When developing these plans, the IEP teams must consider the impact on the students of the absence of District of Columbia credentialed special education teachers from [REDACTED]. For students who were not enrolled for the full period of time, DCPS may take into account actual dates of enrollment and any student absences, and modify the minimum number of required compensatory specialized instruction accordingly. Documentation of the creation of compensatory education plans for each student in the classroom during the timeframe ([REDACTED]), is due to OSSE within 90 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](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], complainant  
[REDACTED], DCPS  
Hanseul Kang, State Superintendent of Education, OSSE (under separate cover)