

July 14, 2017

VIA U.S. Mail & Electronic Mail



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

LETTER OF DECISION

On 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 (complainant or parent) against the District of Columbia Public Schools (DCPS) alleging violations in the special education program of (Student ID # 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

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.
- The student's local educational agency (LEA) is DCPS.

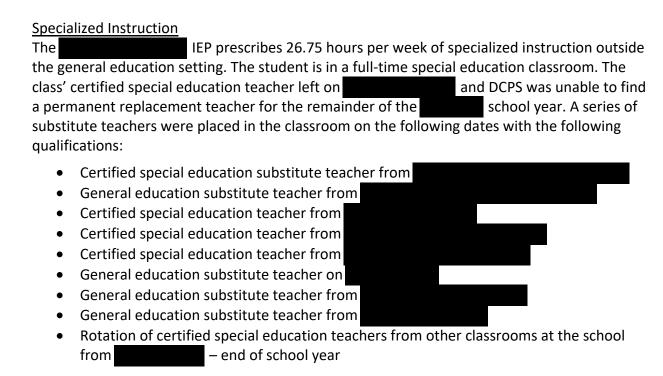
ISSUE: IEP SERVICES

Findings of Fact

- 1. The 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.
- The class' special education teacher left on find a replacement permanent teacher for the remainder of the A series of substitute teachers were placed in the classroom for the remainder of the year.
- 3. From through the end of school year teachers were placed in the class:

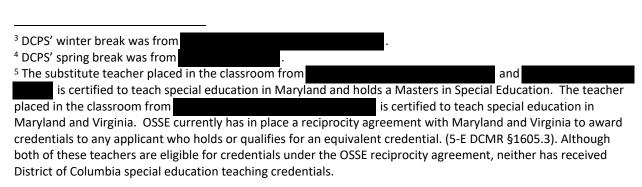
¹ According to DCPS, the May 2014 DCPS Guidelines for the Provision of Specialized Instruction is an internal document used to guide DCPS school staff on the LEA's expectations for the provision of special education services to students in compliance with IDEA requirements.

	a.	Certified special education substitute teacher from		
		general education substitute to		
		winter break from	; certified special	
		education substitute teacher from	; certified special	
		education teacher from	; certified special	
		education substitute teacher from	; general	
		education substitute teacher on	; general education substitute ; general education substitute teacher	
		from ; spring brea		
			rom other classrooms in the school from	
		– end of school year.	Tom other classicoms in the school from	
4.	The sc	•	who was employed during the entirety of	
••		· · · · · · · · · · · · · · · · · · ·	t all substitute teachers had access to the	
	-	<u> </u>	from other special education teachers for	
		planning and individualizing instruction	•	
5.			lassroom management and the delivery of	
		lly designed instruction.	,	
6.	The nr	incinal provided the parents of studer	its in the impacted classroom with updates	
0.	-	ling the absence of a permanent teach	•	
	r egar a	; and		
7.	The sc		e all required speech-language services in	
		onths of	, and	
	a.	The 60 minutes of services that were	attempted but missed in and	
		were made up in		
	b.	In , and	, the school provided 220 minutes of the	
		required 390 minutes of services and	attempted to provide an additional 90	
		minutes.		
D:	-: <i>1</i> 0 -	an almaian		
		onclusion complied with 24 CEP \$200 222(c)(2)	, because it failed to provide all of the	
			logy services required by the student's IEP.	
-		4 CFR §300.323(c)(2), as soon as possi		
			e available. The complaint alleged that	
-		n no special education teacher in the		
			ed no specialized instruction. During the	
	•	investigation the parents additionally		
	ss relat	· · · · · · · · · · · · · · · · · · ·	to receive these related services.	
		_		
² The te	acher pla	aced in the classroom from	was hired as a full time	
-			ipated to serve for the remainder of the school year	
but left school y		, resulting in the school principal	beginning the teacher hiring process again mid-	
JULIOUI Y	cui.			



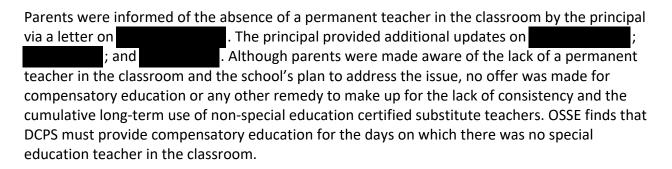
The special education coordinator reported that all substitute teachers had access to the school's curriculum and received assistance from a special education teacher for lesson planning and individualizing instruction for the students in the classroom. There was also an educational aide in the classroom 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 teaching credentials. As a result, from teaching credentials. As a result, from teaching credentials. As a result, from the classroom 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



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.



Speech-Language Pathology

The 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 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 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.

Month	Services Received	Services Not Received But Excused ⁷
August ⁸	70 min	none recorded
September	120 min	none recorded

⁶ January 5, 2010 OSSE Related Services Policy p. 10 – 11

⁸ The student was entitled to receive only 60 minutes of services in August.

⁷ Id. _

October	90 min	30 min
November	90 min	30 min
December ⁹	90 min	30 min
January	180 min	30 min
February	90 min	none recorded
March	120 min	30 min
April ¹⁰	30 min	30 min
May	100 min	30 min
June ¹¹	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 , and 60 minutes of services attempted but missed in were made and . In and , the school provided 220 up in 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. 12 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).

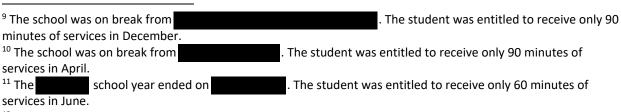
CONCLUSION

- 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:





¹² January 5, 2010 OSSE Related Services Policy p. 10.

one year contact V	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 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 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 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 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 (The plantation of the creation of compensatory education plans for each student in the classroom during the timeframe (The plantation of the creation of compensatory education plans for each student in the classroom during the timeframe (The plantation of the creation of compensatory education plans for each student in the classroom during the timeframe (The plantation of the creation of compensatory educati
Sincerely,	
-	sterra, Ed.D., MSW Superintendent for Elementary, Secondary, and Specialized Education
сс:	, complainant , DCPS anseul Kang, State Superintendent of Education, OSSE (under separate cover)