



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

October 5, 2017

VIA U.S. Mail & Electronic Mail

[REDACTED]
[REDACTED]
District of Columbia Public Schools
[REDACTED]
[REDACTED]

RE: State Complaint No. 017-004 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 Systems and Supports, K-12 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] ("student" or "child") (Student ID # [REDACTED]).

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 revise the IEP, use positive behavioral interventions and supports, and follow the disciplinary protections. On [REDACTED] OSSE extended the timeline for the final decision of the complaint due to exceptional and unexpected circumstances outside the control of the complainant.

OSSE has completed its investigation of the State complaint. As a result of the investigation OSSE determined that DCPS did not comply with the requirement to initiate an evaluation of the student and did not comply with its obligation to provide valid and reliable data. OSSE declines to make a finding with regard to DCPS' obligation to follow the IDEA disciplinary protections and obligation to revise the student's IEP and consider the use of positive behavioral interventions and support. This Letter of Decision memorializes OSSE's investigation and final results.

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 OSSE SCO:

1. **IEP revision requirements at 34 CFR §300.324(b)(1)(ii)**
 - a. Failure to revise the IEP as appropriate to address any lack of expected progress toward the annual goals and information about the child provided to, or by, the parents.
2. **Behavioral requirements at 34 CFR §300.324(a)(2)(i)**
 - a. Failure to consider the use of positive behavioral interventions and supports, and other strategies, in the case of a child whose behavior impedes the child's learning or that of others.
3. **Discipline requirements at 34 CFR §300.530**
 - a. Failure to follow the disciplinary protections required under §300.530.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Parent
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):

[REDACTED]

¹ While the document is titled "Section 504 Accommodation Plan," the contents of the document itself indicate that the student will no longer receive services under 504. [REDACTED] will receive services through an IEP/special education."

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: IEP REVISION

Findings of Fact

1. On [REDACTED], the student transferred to a DCPS school with an existing IEP from another state dated [REDACTED].
 - a. The IEP lists two eligibility categories: other health impairment and speech-language impairment.
 - b. The most recent eligibility date is listed as [REDACTED].
 - c. The IEP prescribed 15.4 hours per week of specialized instruction inside the general education setting provided by a general education teacher and special education teacher (co-teaching) in reading, language arts, and math; 12.5 hours per week of specialized instruction inside the general education provided by a general education teacher and paraprofessional (inclusion) in science, social studies, and specials; and one hour per week of speech-language pathology services.
 - d. Under the present levels of academic achievement and functional performance section the IEP states: "Behavior was positive in terms of behaviors typically associated with an autism spectrum disorder[.]"
 - e. Under the academic, developmental, and/or functional needs section the IEP states: "[Student] does not interact appropriately with [REDACTED] peers and does not consistently interact appropriately with adults..."
 - f. Under the impact of the disability on involvement and progress in the general education curriculum it states: "[Student] is diagnosed with Type 1 Diabetes and Autism ... Characteristics of Autism also impact [Student's] educational functioning, including [REDACTED] social/communication skills and behavior."
 - g. The IEP states that a BIP was added to the IEP on [REDACTED].
2. The student enrolled in DCPS on [REDACTED].
3. DCPS reports that the parents provided DCPS with a copy of the student's out-of-state IEP and BIP when the student was enrolled on [REDACTED].
4. DCPS documented a referral in SEDS on [REDACTED], and faxed the [REDACTED] out-of-state IEP into the student's SEDS file.
5. Based on the student's out-of-state IEP and informal teacher observations, on [REDACTED] DCPS adopted the student's out-of-state eligibility determination as eligible as a student with a disability with the classification of multiple disabilities for speech-language impairment and other health impairment for diabetes.
 - a. The final eligibility report lists [REDACTED], as the "Date Out-of-State Eligibility begins."
6. The IEP team met to develop a DCPS IEP on [REDACTED].
 - a. The IEP prescribes four hours per week of specialized instruction inside the

general education setting, one hour per week of specialized instruction outside the general education setting, and 240 minutes per month of speech-language pathology services.

- b. The meeting notes state: "Team agreed to reduce [Student's] hours to 5 total [hours] to ensure that [redacted] wouldn't miss too much time out of class."
 - c. The meeting notes state: "[Parent] also inquired about the presence of 'Dyslexia' in [Student]. [DCPS school psychologist] explained that Dyslexia is suspected when a student has difficulty with letter-sound relationships and is not always a function of 'letter or numeral reversal.' [redacted] went on to say that a screening may be warranted and that this would be decided at the 30 day review meeting."
 - d. The meeting notes state: "[Parent] inquired about occupational therapy for [Student]. [DCPS school psychologist] informed [redacted] that [redacted] would need a screening 1st prior to evaluation and that the Occupational Therapist (OT) would be invited to the next meeting to hear their concerns and determine if an OT screening is warranted."
 - e. The meeting notes state: "The parents were informed that [Student] is being classified as a Multiply *[sic]* Disabled (Other Health Impaired and Speech/Language Impaired). [DCPS school psychologist] explained that after a careful review of the documents from [out of state], the team determined that [redacted] can receive services under that classification. The parents were informed that [redacted] will not be classified as having 'Autism Spectrum Disorder' at this time, because it was not placed on [redacted] 'Out of State' IEP; though it was mentioned there and on [redacted] most recent Psychological [evaluation]. The parents were told that more testing would have to be done in order to get [redacted] classified as such. They were also told that this could be decided at [redacted] 30 day review meeting, which was proposed for a time toward the end of January."
7. At this meeting the IEP team discussed the student's autism spectrum disorder diagnosis as recorded on the student's out-of-state IEP and the need for additional review within thirty days to determine if the student required further evaluation.
 8. The IEP team met on [redacted] to review the student's progress and discuss the student's behavior.
 - a. The team agreed to continue to implement behavior tracking sheets and manage student behavior using interventions outlined in the student's BIP prior to making phone calls to the parent.
 - b. The team reviewed no new evaluations or screenings; the team did not discuss dyslexia, occupational therapy, or autism; and no changes were made to the student's IEP.
 9. The [redacted] IEP progress report showed that the student was progressing on all of [redacted] IEP goals throughout the [redacted] school year.

Discussion/Conclusion

OSSE declines to make a finding in regard to 34 CFR §300.324(b)(1)(ii) for failure to revise the IEP. DCPS has not complied with 34 CFR §300.323(f)(1), because it failed to initiate an evaluation of the student. DCPS has not complied with 34 CFR §300.211, because it did not

accurately record information regarding the student's out-of-state eligibility determination in SEDS.

Pursuant to 34 CFR §300.324(b)(1)(ii), the IEP team must revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and information about the child provided to, or by, the parents. The complainant alleges that the IEP team never met to update the student's IEP and disability classification as promised by the school.

When a student transfers from out of state, the new public agency may adopt the out of state eligibility determination and IEP or conduct a new evaluation and create a new IEP. (34 CFR §300.323(f).) When the new LEA receives information regarding the student's out-of-state IEP, it must treat the information as a referral and document it in SEDS and begin collecting student-level data immediately.² Within 30 days of the referral, the LEA must review the data it has collected to determine whether it is appropriate to conduct an evaluation of the student.³ If after reviewing the out-of-state IEP and other data, the LEA determines that it is unnecessary to conduct a new evaluation, the LEA must conduct an annual IEP review and update and finalize the IEP within 60 days of referral.⁴ If the LEA determines that it is necessary to conduct a new evaluation, the LEA must complete the evaluation and determine eligibility within 60 days of referral.⁵ If the student is determined eligible for special education services, the new LEA must develop and finalize a new IEP within 90 days of referral.⁶

The student enrolled in DCPS on [REDACTED]. DCPS reports that the parent provided a copy of the student's out-of-state IEP and BIP at the time of enrollment in the LEA but did not document the information and enter it as a referral in SEDS until [REDACTED].⁷ Based on the student's out-of-state IEP and informal teacher observations, DCPS adopted the student's out-of-state eligibility determination on [REDACTED] and completed a final eligibility determination report finding the student to be eligible as a student with a disability with the classification of multiple disabilities for speech-language impairment and other health impairment for diabetes. The IEP team met to develop a DCPS IEP on [REDACTED].⁸ The IEP team discussed the student's autism spectrum disorder diagnosis as recorded on the student's out-of-state IEP and most recent psychological evaluation and the parents requested that the student's disability classification be updated to reflect that diagnosis. However, DCPS informed the parents that the student would retain the out-of-state eligibility classification because more testing was needed to have the student classified as autism spectrum disorder. The team also discussed the possibility of screenings for dyslexia and occupational therapy services. DCPS stated that all of these items could be discussed at a 30-day reviewing meeting that would be scheduled at the end of January. The IEP team determined that the student would receive 240 minutes per month of speech-language pathology services and 5 hours per

² OSSE IEP Implementation for Transfer Students Policy p. 4 (December 17, 2014).

³ Id.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ [REDACTED] IEP meeting notes.

week of specialized instruction. OSSE finds that DCPS correctly followed the process for transfer students with out-of-state IEPs by treating the IEP as a referral; however, after reviewing available student data and input from the parents at the [REDACTED] meeting, the team identified three areas of concern for which more testing or screenings were needed in order to make a determination about the student's need for services in those areas. Therefore, an evaluation should have been completed prior to updating and finalizing the IEP.

The IEP team held a meeting on [REDACTED] to review the student's progress and discuss the student's behavior, which is discussed under Issue Two below. At this meeting the team reviewed no new evaluations or screenings. The team did not discuss the areas of concern raised at the [REDACTED] meeting: dyslexia, occupational therapy, or autism spectrum disorder. No changes were made to the student's IEP.

At the [REDACTED] meeting the IEP team acknowledged three areas of concern where additional data was needed and the parents requested an updated eligibility category from the student's out-of-state IEP. At this point DCPS should have determined that an evaluation of the student was necessary instead of moving forward with finalizing a new IEP. DCPS did not conduct any screenings or tests, but waited for the parents to provide additional information. It is not incumbent upon the parents of a child with a disability to provide evaluations—it is the responsibility of the LEA to evaluate the student in all areas of suspected disability. (34 CFR §300.304(c)(4) and (6).) OSSE finds that DCPS should have initiated an evaluation of the student at the [REDACTED] meeting as required by 34 CFR §300.323(f)(1) and OSSE's IEP Implementation for Transfer Students Policy. OSSE declines to make a finding in regard to 34 CFR §300.324(b)(1)(ii) because further investigation revealed that this allegation did not apply to the facts of the case because the student transferred to DCPS from another state and DCPS failed to revise the IEP after identifying additional areas of concern.

Therefore, DCPS has not complied with 34 CFR §300.323(f)(1).

Valid and Reliable Data

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). DCPS did not document a referral in SEDS until [REDACTED], twenty-nine (29) days after the student's enrollment in the LEA on [REDACTED]. OSSE policy requires DCPS to treat information regarding an out-of-state student's prior eligibility under IDEA as a referral, and to document that referral in writing in SEDS within two (2) business days of receipt.⁹ Although OSSE's investigation revealed that DCPS followed (though untimely) the process for transfer students with out-of-state IEPs by creating a referral in SEDS, DCPS did not properly document its, albeit procedurally improper, decision to accept the student's out-of-state eligibility determination. Instead of completing and finalizing the transfer student intake checklist document and accurately documenting the date on which the adopted out-of-state eligibility began ([REDACTED]), DCPS generated a new eligibility determination report which

⁹ OSSE IEP Implementation for Transfer Students Policy p. 4 (December 17, 2014).

inaccurately set the child's eligibility date as [REDACTED].¹⁰ The generation of a new eligibility determination report does not accurately reflect the process DCPS followed and the eligibility determination documentation reviewed on its own appears to record an improperly held eligibility determination meeting. As a result of these failures, SEDS currently indicates that reevaluation and a continued eligibility determination for this student is not due until [REDACTED], when both are required to be completed by [REDACTED] – less than two months from the date of this decision.

For these reasons, OSSE finds that this student has been captured incorrectly as a student receiving an initial eligibility determination by the LEA, resulting in unreliable data provided by the LEA to OSSE and unreliable data with regard to future annual IEP revision and reevaluation timelines. OSSE finds that DCPS must correct the student's educational record to accurately reflect DCPS' decision to accept the student's out-of-state eligibility decision.¹¹

Therefore, DCPS has not complied with 34 CFR §300.211.

ISSUE TWO: BEHAVIOR

Findings of Fact

1. DCPS reported that following the student's enrollment, DCPS implemented the student's out-of-state BIP by establishing a space for the student to de-escalate outside of the classroom and implementing classroom based de-escalation techniques.
2. The IEP team met on [REDACTED] to review the student's progress.
 - a. The student's teachers reported increased behavioral concerns with regard to the student following directions and completing work assignments but confirmed that the student responded to redirection and behavior modification.
 - b. The team decided that the school would continue to use behavior trackers, revise the BIP, and utilize a new de-escalation plan; and that the parents would provide rewards at home when the student brings home a positive report on [REDACTED] daily behavior tracker.
3. DCPS and the parent reported that the student received push-in services provided by a private ABA therapist at the parent's request.
4. On [REDACTED] the student's private ABA therapist created a BIP.

Discussion/Conclusion

¹⁰ Instructions on how to document an acceptance of a transfer student's out-of-state eligibility determination can be found at pages 95 – 107 (7-1-7-13) of the SEDS Training Manual found at:

<https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/SEDS%20Training%20Manual.pdf>

¹¹ Although OSSE did not investigate the provision of comparable services to the student prior to the [REDACTED] IEP, OSSE reminds DCPS of their responsibility to consider the impact of missed services on the child's progress and performance and ensure the continued provision of FAPE. (See OSSE Related Services Policy (January 5, 2010) at p. 10) OSEP has clarified that the IEP team must consider the impact of missed services on a child's progress and performance, and determine appropriate next steps to ensure the provision of FAPE and that the child continues to progress towards meeting the annual goals in [REDACTED] or her IEP. (OSEP Letter to Clarke, March 8, 2007 (48 IDELR 77))

DCPS has complied with 34 CFR §300.324(a)(2)(i), because it took steps to address the student's behavioral concerns.

Pursuant to 34 CFR §300.324(a)(2)(i), in the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior. The complainant alleges that the student was frequently disciplined for behavior related to ■■■ disability and that DCPS did not address the student's behavioral issues.

DCPS staff reported that following the student's enrollment, DCPS implemented the student's out-of-state BIP that was provided by the parents, including de-escalation techniques and use of behavior tracker sheets. Although the student's IEP indicates that the IEP team determined at the time that the child's behavior did not impede the child's learning or that of other children, it is clear from the record – and neither DCPS nor the parents dispute – that ■■■ behavior does impede ■■■ own learning. DCPS reported that staff members followed de-escalation techniques when needed, such as providing the student a place to calm down when agitated, but that the student's behavioral issues were limited and the student did not spend any time in in-school suspension.

The IEP team met on ■■■■■ to review the student's progress. The student's teachers reported increased behavioral concerns with regard to the student following directions and completing work assignments. The meeting notes reflect that multiple staff reported that the student responds to redirection and behavior modification in most cases. In response to the parent's concerns regarding consistency between home and incentives, the team decided that the school would continue to use behavior trackers, revise the BIP, and utilize a new de-escalation plan; and that the parents would provide rewards at home when the student brings home a positive report on ■■■ daily behavior tracker. DCPS reported that although the team agreed that the BIP would be revised at the next IEP meeting, on ■■■■■ the student's private ABA therapist created a BIP that DCPS adopted. OSSE finds that DCPS took steps to address the student's behavioral concerns.

Therefore, DCPS complied with 34 CFR §300.324(a)(2)(i).

ISSUE THREE: DISCIPLINE

Findings of Fact

1. The student spent time outside of the classroom deescalating with a DCPS staff member.
2. DCPS reported that the student had no out-of-school or in-school suspensions during the ■■■■■ school year.

Discussion/Conclusion

OSSE declines to make a finding in regard to 34 CFR §300.530, because the student was not removed from ■■■ placement.

Pursuant to 34 CFR §300.530(b)(1), school personnel may remove a child with a disability who violates a code of student conduct from ■■■ or ■■■ current placement for not more than 10

consecutive school days and for additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct, as long as those removals do not constitute a change in placement. For purposes of removals of a child with a disability, a change of placement occurs if the removal is for more than 10 consecutive school days or the child has been subjected to a series of removals that constitute a pattern because the series of removals total more than 10 cumulative school days in a school year; because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and because of additional factors.¹² (34 CFR §300.536(a)) The complainant alleges that the school continuously sent the student to in school suspension in the Dean of Students Office instead of addressing the issues underlying [REDACTED] behavior.

DCPS reported that the student had no out-of-school or in-school suspensions during the [REDACTED] school year and there is nothing in the record that suggests that time the student spent deescalating with a DCPS staff member amounted to unofficial or otherwise unrecorded suspensions. OSSE finds that the student was not removed from [REDACTED] placement for more than ten school days and thus there was no requirement to follow the disciplinary protections under the IDEA.

Therefore, OSSE declines to make a finding in regard to 34 CFR §300.530.

CONCLUSIONS

1. DCPS has not complied with 34 CFR §300.323(f)(1), because it failed to initiate an evaluation of the student.
2. DCPS has not complied with 34 CFR §300.211, because it did not accurately record information regarding the student's out-of-state eligibility determination in SEDS.
3. OSSE declines to make a finding in regard to 34 CFR §300.324(b)(1)(ii), because OSSE's investigation revealed that this allegation did not apply to the facts of the case.
4. DCPS has complied with 34 CFR §300.324(a)(2)(i), because it took steps to address the student's behavioral concerns.
5. OSSE declines to make a finding in regard to 34 CFR §300.530, because the student was not removed from [REDACTED] placement.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.323(f)(1), DCPS must do the following:
 - a. Conduct an evaluation of the student as soon as possible, but in no case later than 60 days from the date of this letter.
 - b. The evaluation must cover all areas of concern identified by the IEP team.
 - c. Following the eligibility determination, DCPS and the parent must discuss whether compensatory education is owed for the delay in updating the student's disability classification, if warranted. Documentation of the completion of

¹² Additional factors include the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. (34 CFR §300.536(a)(2)(iii))

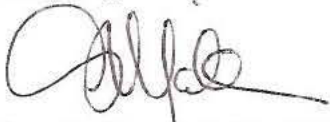
subsections a. – c. are due to OSSE within 90 days of the date of this letter.

2. In order to correct the noncompliance with 34 CFR §300.211, DCPS must do the following:
 - a. Work with OSSE's SEDS team to correct the student's SEDS record to reflect DCPS' decision to accept the student's out-of-state eligibility determination and revise the student's IEP. Documentation of completion of this action is due to OSSE within 60 days of the date of this letter.
 - b. Determine if this error resulted in DCPS' failure to provide, or failure to accurately record the provision of comparable services to the student prior to the DCPS [REDACTED] IEP. Documentation of completion of this action is due to OSSE within 15 days of the date of this letter.
 - c. Train school special education staff on how to properly record referrals of out-of-state student's eligible for IDEA services, and acceptance of out-of-state eligibility determinations in SEDS. Documentation of completion of this action 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. Concerns raised in this complaint may also be addressed through a due process hearing by filing a due process complaint with the OSSE Office of Dispute Resolution (ODR). Information regarding how to file a due process complaint can be found at: <https://osse.dc.gov/service/request-due-process-hearing>.

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, Division of Systems and Supports, K-12

cc: [REDACTED] Complainant
[REDACTED], DCPS
[REDACTED] DCPS
Hanseul Kang, State Superintendent of Education, OSSE (under separate cover)