



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

September 26, 2017

VIA U.S. Mail & Electronic Mail

[REDACTED]
[REDACTED]
[REDACTED] Public Charter School
[REDACTED]
[REDACTED]

RE: State Complaint No. 017-005 Letter of Decision

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 or parent) against [REDACTED] Public Charter School (PCS) alleging violations in the special education program of [REDACTED] [REDACTED] (Student ID # [REDACTED], hereinafter "student" or "child."

The complainant alleged that [REDACTED] PCS 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 obtain informed consent, follow the evaluation procedures, provide prior written notice, provide the parent with a copy of the procedural safeguards, and provide access to the student's educational records.

The SCO for OSSE has completed its investigation of the State Complaint. During the course of the investigation OSSE determined that [REDACTED] PCS complied with its obligation to obtain informed consent, draw upon information from a variety of sources during evaluation, provide written notice when required, and provide education records, but did not comply with its obligation to timely complete the student's initial evaluation or provide a copy of the procedural safeguards upon initial referral. 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 OSSE SCO:

1. **Requirement to obtain informed consent at 34 CFR §300.300(a)(1)(iii)**
 - a. Failure to make reasonable efforts to obtain the informed consent from the parent for an initial evaluation.
2. **Evaluation requirements at 34 CFR §300.306(c)(1)(i)**
 - a. Failure to draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior, for the purpose of determining if the child is a child with a disability.
3. **Requirement to provide prior written notice at 34 CFR §300.503(a)(2)**
 - a. Failure to provide written notice to the parents of a child with a disability a reasonable time before the public agency refuses to change the evaluation of the child.
4. **Procedural safeguard requirements at 34 CFR §300.504**
 - a. Failure to provide the parent with a copy of the procedural safeguards upon initial referral or parent request for evaluation, as required by 34 CFR §300.504(a)(1).
 - b. Failure to provide the parent notice of the procedural safeguards available to them, including the opportunity to present and resolve complaints through the due process complaint and State complaint procedures, as required by 34 CFR §300.504(c)(5).
5. **Access to educational records requirements at 34 CFR §§300.501(a) and 300.613(a)**
 - a. Failure to afford the parent an opportunity to inspect and review all educational records with respect to the identification, evaluation, educational placement, and provision of FAPE to the child.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED] PCS [REDACTED]

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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

GENERAL FINDINGS OF FACT

1. The student's local educational agency (LEA) was [REDACTED] PCS during the complaint investigation timeframe [REDACTED].
2. The student was evaluated pursuant to 34 CFR §§300.304 through 300.306 and was determined to be a child with a disability as defined by 34 CFR §300.8.
3. The parent declined consent for special education services.¹

ISSUE ONE: INFORMED CONSENT

Findings of Fact

1. On [REDACTED] [REDACTED] the student support team (SST), including the parent, held a meeting to discuss concerns regarding the student.
 - a. The SST discussed concerns about the student's academic performance in mathematics, English language arts, and social studies; as well as concerns regarding the student's ability to pay attention and focus, peer interactions, and anxiety.
 - b. The SST decided that the student should be evaluated for special education.
 - c. At the meeting the parent signed consent for an initial evaluation.
2. On [REDACTED] [REDACTED] PCS issued a PWN to the parent stating that the school would conduct a comprehensive psychological evaluation.
3. As part of the psychological evaluation, the school psychologist asked the parent to complete a questionnaire.
 - a. On [REDACTED] parent emailed the school psychologist about concerns [REDACTED] had with the questionnaire, including that [REDACTED] did not, "feel comfortable filling out some of the very personal questions surrounding [REDACTED] famil[y's] mental health history, etc." and a question regarding which questionnaire would be most age appropriate for the student.
 - b. The parent reported that the psychologist responded to the parent's concerns by confirming that [REDACTED] did not have to complete the questions that made [REDACTED] uncomfortable.
4. A comprehensive psychological evaluation report was completed on [REDACTED].
5. On [REDACTED] the parent emailed [REDACTED] PCS to say that [REDACTED] disagreed with the findings of the evaluation report, specifically with the evaluator's assessment that current supports have not been successful, that the student presented with symptoms of depression, the assessment of [REDACTED] ability to make and sustain friendships, and the recommendation for therapy and medication.

¹ The LEA memorialized the parent's refusal to consent for services in an email to the parent on [REDACTED].

6. On [REDACTED] the parent submitted a letter to [REDACTED] PCS stating [REDACTED] disagreement with the [REDACTED] psychological evaluation report and requesting that the evaluation be removed from the student's record.
7. On [REDACTED] the parent submitted a letter to [REDACTED] PCS revoking [REDACTED] consent for the psychological evaluation.
8. On [REDACTED] [REDACTED] PCS emailed the parent a summary of a phone call in which [REDACTED] PCS agreed to various actions, including having an additional teacher fill out the teacher rating scale if the parent agreed.
 - a. The parent never agreed and no additional testing was completed.

Discussion/Conclusion

[REDACTED] PCS has complied with 34 CFR §300.300(a)(1)(iii), because it obtained informed consent from the parent.

Pursuant to 34 CFR §300.300(a)(1)(iii), the public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability. Consent means that the parent has been fully informed of all information relevant to the activity for which consent is sought. (34 CFR §300.9(a)) If the parent revokes consent, that revocation is not retroactive, i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. (34 CFR §300.9(c)(2)) The complainant alleges that [REDACTED] was misinformed about the type of evaluation the student would be receiving and that a revised version of the evaluation was completed after [REDACTED] had withdrawn consent.

On [REDACTED] [REDACTED] the SST, including the parent, held a meeting to discuss concerns regarding the student. The SST discussed concerns about the student's academic performance in mathematics, English language arts, and social studies; as well as concerns regarding the student's ability to pay attention and focus, peer interactions, and anxiety. The SST decided that the student should be evaluated for special education and the parent signed consent for an initial evaluation. The team decided that a comprehensive psychological evaluation would be completed to gather data on the academic and social-emotional concerns discussed at the meeting. On [REDACTED] [REDACTED] PCS issued a PWN that the school would conduct a comprehensive psychological evaluation.

As part of the psychological evaluation, the school psychologist asked the parent to complete a questionnaire. On [REDACTED] the parent emailed the school psychologist about concerns [REDACTED] had with the questionnaire, including that [REDACTED] did not, "feel comfortable filling out some of the very personal questions surrounding [REDACTED] famil[y's] mental health history, etc." and a question regarding which questionnaire would be most age appropriate for the student. The parent reported that the psychologist responded to the parent's concerns by confirming that [REDACTED] did not have to complete the questions that made [REDACTED] uncomfortable. The evaluation report was completed on [REDACTED]. After reviewing the evaluation report, the parent emailed [REDACTED] PCS on [REDACTED] to say that [REDACTED] disagreed with the evaluation report, specifically with the evaluator's assessment that current supports have not been successful, that the student presented with symptoms of depression, the assessment of [REDACTED]

ability to make and sustain friendships, and the recommendation for therapy and medication. The parent reiterated [REDACTED] concerns in an [REDACTED] letter and in an [REDACTED] letter withdrew [REDACTED] consent for the evaluation. In response to the parent's concerns, the LEA offered to have an additional teacher fill out the teacher rating scale if the parent agreed. The parent never agreed and no additional evaluation was conducted.

OSSE finds that [REDACTED] PCS took all necessary steps to obtain informed consent from the parent. The type of evaluation that would be conducted to address the parent's and school's concerns about the student was discussed at the [REDACTED] meeting where the parent signed consent to evaluate. The LEA responded to the parent's questions and concerns during the evaluation process by confirming that the parent was not required to provide any information [REDACTED] did not deem applicable to [REDACTED] child. The parent objected to the completion of the psychological evaluation only after it was completed and [REDACTED] disagreed with the report. After the parent withdrew [REDACTED] consent the report was revised to address inaccuracies identified by the parent, but no additional testing was completed.²

Therefore, [REDACTED] PCS has complied with 34 CFR §300.300(a)(1)(iii).

ISSUES TWO & THREE: EVALUATION AND PRIOR WRITTEN NOTICE

Findings of Fact

1. On [REDACTED] the parent and school held a meeting to discuss concerns regarding the student and agreed to evaluate the student for special education services, beginning the 120-day timeline for initial evaluation.
2. On [REDACTED] [REDACTED] PCS emailed the parent a summary of a phone call in which [REDACTED] PCS agreed to correct factual errors in the evaluation, remove some language requested by the parent from the observation section, have an additional teacher fill out the teacher rating scale if the parent agreed, and provide authorization for an independent educational evaluation. [REDACTED] PCS stated that they could not delete any relevant findings, remove the teachers' ratings, or modify the diagnosis unless new information leads the psychologist to make a different conclusion.
3. A revised report was provided to the parent on [REDACTED].
 - a. This version corrected the student's name on the headers and revised language in the observation section to remove language that the student appeared depressed.
 - b. The original version of the report was removed from the student's record.
 - c. The parent reiterated [REDACTED] request that the evaluation be removed from the student's record.
4. Another revised report was created in June that corrected a graph contained in the [REDACTED] evaluation report.
5. An eligibility determination meeting was held [REDACTED].
 - a. The parent reported that [REDACTED] refused to attend the meeting because [REDACTED]

² OSSE's review of the record reflects that multiple revisions were made to the evaluation report at the parent's request. These revisions are addressed in Issues Two and Three below.

- requested removal of the comprehensive psychological evaluation report from the student's record.
- b. The team reviewed the psychological evaluation and the student's current progress report.
 - c. The team found the student eligible as a student with a disability with a classification as emotional disturbance.
6. The parent refused to sign consent for services and thus no services were provided by [REDACTED] PCS.

Discussion/Conclusion

[REDACTED] PCS has complied with 34 CFR §300.306(c)(1)(i), because it drew upon information from a variety of sources, including parent input, when evaluating the student. [REDACTED] PCS has complied with 34 CFR §300.503(a)(2), because it responded to the parent's concerns regarding the psychological evaluation report by making changes to the report. [REDACTED] PCS has not complied with 34 CFR §300.301(c) and D.C. Official Code §38-2561.02(a)(1) because it failed to timely complete the student's initial evaluation.

Pursuant to 34 CFR §300.306(c)(1)(i), in interpreting evaluation data for the purpose of determining if the child is a child with a disability, the public agency must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. Pursuant to 34 CFR §300.503(a)(2), a public agency must provide written notice to the parents of a child with a disability a reasonable time before the public agency refuses to change the evaluation of the child. The complainant alleges that [REDACTED] PCS refused to consider [REDACTED] dispute to the evaluation report content and comply with [REDACTED] request that the psychological evaluation be annulled, and instead issued revised copies without providing written notice.

At the [REDACTED] meeting the team reviewed student data and input from the parent and student's teachers in order to determine what evaluation should be conducted. After completion, the parent disagreed with the psychological evaluation report and raised [REDACTED] concerns in a [REDACTED] email and [REDACTED] and [REDACTED] letters. In response to the parent's concerns, a staff member had a phone call with the parent to discuss [REDACTED] concerns on [REDACTED]. The staff member emailed the parent a summary of the phone call in which [REDACTED] PCS agreed to correct factual errors in the evaluation, remove some language requested by the parent from the observation section, have an additional teacher fill out the teacher rating scale if the parent agreed, and provide authorization for an independent educational evaluation. The staff member stated that the LEA could not delete any relevant findings, remove the teachers' ratings, or modify the diagnosis unless new information leads the psychologist to make a different conclusion. The parent did not agree to have an additional teacher fill out the teacher rating scale, so the LEA moved forward with the other changes. A revised report was provided to the parent on [REDACTED]. This version corrected the student's name on the headers and revised language in the observation section to remove language that the student appeared depressed and the original version of the report was removed from the student's record.

An eligibility determination meeting was held [REDACTED]. The parent reported that [REDACTED] refused to attend the meeting because [REDACTED] requested removal of the comprehensive psychological evaluation report from the student's record. The team reviewed the psychological evaluation and the student's current progress report. The team found the student eligible as a student with a disability with a classification as emotional disturbance. The parent refused to sign consent for services and thus no services were provided.

OSSE finds that [REDACTED] PCS reviewed information from a variety of sources when evaluating the student. The student data, teacher and parent input, and the psychological evaluation covered various areas of performance, including academics and social-emotional functioning. OSSE finds that [REDACTED] PCS sought input from the parent at all stages of the evaluation process, including the initial meeting to discuss the evaluation, the parent questionnaire as part of the psychological evaluation, and following completion of the evaluation. The LEA did not refuse to issue written notice of its refusal to change the evaluation, but rather, pursuant to the parent's request, took steps to address the parent's concerns. [REDACTED] PCS addressed the parent's concerns when the LEA corrected factual errors as well as revised language in the evaluation report that concerned the parent, and told [REDACTED] that the remaining findings would not be removed from the report.

Therefore, [REDACTED] PCS complied with 34 CFR §§300.306(c)(1)(i) and 300.503(a)(2).

Initial Evaluation Timeline

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)(1)). 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.³ During the course of OSSE's investigation of the student's initial evaluation in Issue One above, OSSE found that on [REDACTED] the team agreed to evaluate the student for special education services and referred the student for initial evaluation. The eligibility meeting was held on [REDACTED] and the student was determined eligible for special education services. The eligibility meeting was held 125 days after the student's referral, which falls five (5) days outside of the required 120 day timeline.

Therefore, [REDACTED] PCS has not complied with 34 CFR §300.301(c) and D.C. Official Code §38-2561.02(a).

³ OSSE Part B Initial Evaluation/Reevaluation Policy, p. 14 (March 22, 2010).

ISSUE FOUR: PROCEDURAL SAFEGUARDS

Findings of Fact

1. When [REDACTED] PCS emailed the parent a copy of the [REDACTED] PWN, the body of the email referred to a copy of the procedural safeguards that was intended to be attached to the email but was not.
2. Neither the parent nor [REDACTED] PCS alerted each other to the oversight.
3. In the parent's [REDACTED] letter to the school [REDACTED] asked "what is the due process to remove this event from [REDACTED] school records" in regard to the [REDACTED] psychological evaluation. The parent reiterated this request in [REDACTED] letter.
4. [REDACTED] PCS provided the parent with a copy of the procedural safeguards on [REDACTED] [REDACTED] when it emailed the parent a letter of invitation to the student's eligibility determination meeting.
5. [REDACTED] PCS provided the parent with a copy of the procedural safeguards on [REDACTED] [REDACTED] when it emailed the parent a copy of the June 13, 2017 PWN.

Discussion/Conclusion

[REDACTED] PCS has not complied with 34 CFR §300.504, because it failed to provide the parent with a copy of the procedural safeguards upon the initial referral for evaluation. Pursuant to 34 CFR §300.504(a)(1), the public agency must provide the parent with a copy of the procedural safeguards upon initial referral or parent request for evaluation. The procedural safeguards notice must include a full explanation of all the procedural safeguards available to parents relating to the opportunity to present and resolve complaints through the due process complaint and State complaint procedures. (34 CFR §300.504(c)(5)) The complainant alleges that [REDACTED] PCS failed to provide [REDACTED] with a copy of the procedural safeguards during the initial evaluation process and did not give [REDACTED] information about the due process complaint system when [REDACTED] asked.

It is clear from the record that [REDACTED] PCS intended to send a copy of the procedural safeguards as an attachment to an email sent to the parent with a copy of the [REDACTED] PWN, because the procedural safeguards were referenced in the body of the email. However, the document was not attached to the email. Neither the LEA nor the parent alerted each other to the oversight. [REDACTED] PCS did provide the parent with the procedural safeguards on two other occasions on [REDACTED]. Although the parent eventually received a copy of the procedural safeguards and utilized the dispute resolution mechanisms as evidenced by the filing of this complaint on [REDACTED], OSSE finds that [REDACTED] PCS failed to provide them when required upon the initial referral for evaluation.

OSSE finds that the parent's references to "due process" were in relation to the procedure to have the [REDACTED] psychological evaluation removed from the student's record, not in reference to the due process complaint resolution system. As discussed under Issues Two and Three above, [REDACTED] PCS responded to the parent's concerns regarding the evaluation.

Therefore, [REDACTED] PCS has not complied with 34 CFR §300.504.

ISSUE FIVE: EDUCATION RECORDS

Findings of Fact

1. On [REDACTED] the parent emailed the [REDACTED] PCS registrar to schedule a time to review the student's education record. There is no record that the registrar responded to this request.
2. On [REDACTED] the parent's attorney submitted a request for the student's education records.
3. [REDACTED] PCS provided the parent's attorney with copies of all records contained in SEDS on [REDACTED] [REDACTED] and a copy of meeting notes maintained by the LEA on [REDACTED] [REDACTED].

Discussion/Conclusion

[REDACTED] PCS has complied with 34 CFR §§300.501(a) and 300.613(a), because it provided all requested records within the required timeline.

Pursuant to 34 CFR §300.501(a), the public agency must afford the parents of a child with a disability an opportunity to inspect and review all education records with respect to the identification, evaluation, educational placement, and provision of FAPE to the child. The public agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency. The public agency must comply with a request without unnecessary delay and in no case more than 45 days after the request has been made. (34 CFR §300.613(a)) The complainant alleges that [REDACTED] requested to see the student's records but was never given access.

On [REDACTED] the parent emailed the [REDACTED] PCS registrar to schedule a time to review the student's education record. There is no record that the registrar responded to this request. On [REDACTED] the parent's attorney submitted a request for the student's education records. [REDACTED] PCS provided the parent's attorney with copies of all records contained in SEDS on [REDACTED] and a copy of meeting notes maintained by the LEA on [REDACTED].

Although [REDACTED] PCS did not provide an explanation for why the parent received no response to [REDACTED] email request to review the student's education records, the school promptly responded to the parent's attorney's request and provided all requested records. The parent received all education records 41 days after [REDACTED] initial request. OSSE finds that [REDACTED] PCS provided all requested education records within the required timeline.

Therefore, [REDACTED] PCS has complied with 34 CFR §§300.501(a) and 300.613(a).

CONCLUSIONS

1. [REDACTED] PCS has complied with 34 CFR §300.300(a)(1)(iii), because it obtained informed consent form the parent.
2. [REDACTED] PCS has complied with 34 CFR §300.306(c)(1)(i), because it drew upon information from a variety of sources when evaluating the student.
3. [REDACTED] PCS has complied with 34 CFR §300.503(a)(2), because it responded to the

parent's concerns regarding the psychological evaluation report.

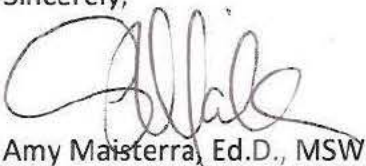
4. [REDACTED] PCS has not complied with 34 CFR §300.301(c) and D.C. Official Code §38-2561.02(a), because it failed to complete the student's initial evaluation within the 120 day timeline.
5. [REDACTED] PCS has not complied with 34 CFR §300.504, because it failed to provide the parent with a copy of the procedural safeguards upon the initial referral for evaluation.
6. [REDACTED] PCS has complied with 34 CFR §§300.501(a) and 300.613(a), because it provided all requested records within the required timeline.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.504, [REDACTED] PCS must do the following:
 - a. Train staff members responsible for the evaluation process on when the LEA must provide a copy of the procedural safeguards to parents. Documentation of the completion of this action is due to OSSE within 90 days of the date of this letter.
2. In order to correct the noncompliance with 34 CFR §300.301(c) and D.C. Official Code §38-2561.02(a), [REDACTED] PCS must do the following:⁴
 - a. Train staff members responsible for the evaluation process on evaluation procedures, including timelines for the completion of initial evaluations, as required by IDEA. Documentation of the completion of this action is due to OSSE within 90 days of the date of this letter.

The corrective action 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

⁴ OSSE declines to issue a student-level corrective action to [REDACTED] PCS for the failure to comply with the student's initial evaluation timeline because the parent declined consent for special education services and the student is no longer enrolled in the LEA.