



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

October 2, 2017

VIA U.S. Mail & Electronic Mail

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

RE: State Complaint No. 017-006 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 Systems and Supports, K-12 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 conduct child find, timely complete the student's initial evaluation, and follow the required evaluation procedures.

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 the evaluation procedures, but failed to timely complete the student's initial evaluation. OSSE declines to make a finding with regard to [REDACTED] PCS' child find obligations. 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. **Child find requirements at 34 CFR §300.111 and OSSE's Comprehensive Child Find System Policy**
 - a. Failure to conduct child find.

2. **Initial evaluation timeline at 34 CFR §300.301(c) and D.C. Official Code §38-2561.02(a)**
 - a. Failure to timely complete the child's initial evaluation.
3. **Evaluation requirements at 34 CFR §§300.304 and 300.305**
 - a. Failure to follow the required evaluation procedures.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

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

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

- [illegible]

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

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 other health impairment.
3. The student's local educational agency (LEA) is [REDACTED] PCS.

ISSUE ONE: CHILD FIND

Findings of Fact

1. On [REDACTED] the parent first reported via phone to [REDACTED] PCS that the student was in the hospital, but was expected to return to school. However, the student continued to be absent.
2. [REDACTED] PCS staff called the parent to ask about the student's absences and request medical documentation to excuse the student's absences on [REDACTED]; [REDACTED].
3. [REDACTED] PCS staff requested documentation from the parent via phone and in person to support a medical diagnosis to determine eligibility for a 504 plan on [REDACTED]; [REDACTED].
4. On [REDACTED] the parent provided [REDACTED] PCS with a doctor's note via email to excuse the student's absences from [REDACTED] and requested information on requesting homebound instruction. Prior to this, the school had received documentation to excuse the student's absences from [REDACTED].
5. On [REDACTED]:
 - a. The parent requested homebound instruction to assist with the work packets the school had provided and [REDACTED] PCS responded that first eligibility for a 504 plan needed to be determined based on a medical diagnosis
 - b. [REDACTED] PCS staff contacted the student's doctor via phone to receive documentation to excuse the remaining absences and begin the 504 plan process, but the doctor could not provide the information because a release of information was not yet signed by the parent.
6. On [REDACTED] the parent notified the school that the student would be beginning a part-time hospital program starting [REDACTED].
7. On [REDACTED] [REDACTED] PCS provided make-up work to the parent for the student to complete.
8. [REDACTED] PCS staff directly contacted the student's doctor on [REDACTED] [REDACTED] in an attempt to

- obtain documentation of a medical diagnosis.
9. On [REDACTED] PCS staff communicated with the parent regarding ongoing school work and medical diagnosis documentation requests. The parent requested information on requesting homebound instruction and wanted to create a 504 plan to help the student transition back to school.
 10. On [REDACTED] PCS staff proposed scheduling a meeting date to begin the 504 plan process and proposed [REDACTED].
 - a. The parent requested a later date and a meeting was scheduled for [REDACTED], but that meeting was later rescheduled.
 - b. The parent reported that the student was suffering from anxiety and depression and thus was unable to complete much school work.
 11. On [REDACTED] PCS was notified by the student's doctor that the student was admitted to a full-time inpatient hospital program [REDACTED].
 12. [REDACTED] PCS staff communicated with the student's doctor on [REDACTED], but the student's doctor was unable to provide a discharge date or a diagnosis because the information remained unknown.
 13. On [REDACTED] a 504 plan eligibility meeting was held.
 - a. The parent provided documentation to support a medical diagnosis. [REDACTED] provided a [REDACTED] letter from the student's doctor that diagnosed the student with a mood disorder unspecified and recommended a 504 plan for the student based on [REDACTED] school history and the conditions underlying [REDACTED] admission to the hospital inpatient program.
 - b. The parent provided the recommendation pages from a [REDACTED] psychological evaluation that recommended individual and family counseling and classroom supports upon discharge from the hospital program.
 - c. The parent reported that the student was initially hospitalized for gastrointestinal issues which then led to mental health issues.
 - d. The team discussed the student's strong academic history and determined that no educational testing was needed.
 - e. The parent reported that the student did not currently have the mental capacity to do school work and that the doctor recommended that the student stop school work and focus on recovery. The student was expected to return to school at an unknown date and would need assistance to transition back to school.
 - f. The team found the student eligible for a 504 plan.
 14. On [REDACTED] the team met to create a 504 plan.
 - a. The parent reported that the student had moved from the inpatient program to the part-time hospitalization program and that the student was not yet ready to transition back to school.
 - b. The 504 plan stated that the student's disability: "has an extreme impact on [REDACTED] education due to [REDACTED] inability to attend school or complete academic work within the hospital outpatient setting."
 - c. The 504 plan included counseling and other supports for when the student returned to school.

15. On [REDACTED] the parent requested a special education evaluation in writing via email.

Discussion/Conclusion

OSSE declines to make a finding regarding [REDACTED] PCS' compliance with 34 CFR §§300.111 and 300.201, or OSSE's Comprehensive Child Find System Policy, because the LEA did not suspect that the child was a child with disability under IDEA and took steps to address the student's needs based on the best available data.

Pursuant to 34 CFR §300.111, the State must have in effect policies and procedures to ensure that all children with disabilities residing within the State and who are in need of special education and related services are identified, located, and evaluated; pursuant to 34 CFR §300.201 and OSSE's child find policy, LEAs are required to have policies and procedures to identify, locate, and evaluate all children with disabilities who are in need of special education and related services under IDEA.¹ Although no allegations have been made that [REDACTED] PCS lacks such policies, the complainant alleges that the LEA failed to conduct child find activities after the student became ill in [REDACTED] and was hospitalized for the majority of the [REDACTED] school year. The complaint further alleges that when the parent asked about an IEP the school said the student would not qualify.

On [REDACTED], the parent first reported via phone to [REDACTED] PCS that the student was in the hospital, but was expected to return to school. However, the student continued to be absent. The parent kept the school updated on the student's status via in person and email communications, but did not always provide the documentation needed to excuse the student's absences under the LEA's attendance policy. [REDACTED] PCS staff called the parent to ask about the student's absences and request medical documentation to excuse the student's absences on [REDACTED]. On [REDACTED], the parent provided [REDACTED] PCS with a doctor's note to excuse the student's absences from [REDACTED] and requested information on requesting homebound instruction. Prior to this, the school had received documentation to excuse the student's absences from [REDACTED].

Once it became apparent that the student would be absent for an extended period of time, the parent and school began to discuss a 504 plan.² On [REDACTED] the parent requested homebound instruction to assist with the work packets the school had provided and [REDACTED] PCS responded that first, eligibility for a 504 plan needed to be determined based on a medical diagnosis. [REDACTED] PCS staff contacted the student's doctor on [REDACTED] via phone to receive documentation to excuse the remaining absences and begin the 504 plan process, but

¹ OSSE Comprehensive Child Find System Policy p. 10 (March 22, 2010).

² OSSE SCO has no authority to investigate compliance with section 504 of the Americans With Disabilities Act (ADA). Facts contained in the records regarding the 504 process are included here solely as evidence that the LEA took action regarding the student's emerging medical condition. The recounting of facts established by the record is in no way an endorsement of the LEA's policies or practices regarding 504 or homebound instruction and may not be relied upon in regards to compliance with legal requirement outside of IDEA.

the doctor could not provide the information. On [REDACTED] the parent notified the school that the student would be beginning a part-time hospital program starting [REDACTED]. The school continued to work with the parent to obtain the documentation needed for an eligibility determination for a 504 plan. [REDACTED] PCS staff requested documentation to support a medical diagnosis to determine eligibility for a 504 plan on [REDACTED] [REDACTED] [REDACTED]. In addition, [REDACTED] PCS staff directly contacted the student's doctor via phone on [REDACTED] [REDACTED] in an attempt to obtain documentation of a medical diagnosis.

On [REDACTED] [REDACTED] PCS staff communicated with the parent about ongoing school work and medical diagnosis documentation requests. The parent again requested information on requesting homebound instruction and wanted to create a 504 plan to help the student transition back to school. On [REDACTED] [REDACTED] PCS staff proposed scheduling a meeting date to begin the 504 plan process and proposed [REDACTED]. The parent requested a later date and a meeting was scheduled for [REDACTED], but that meeting was later rescheduled. The parent reported that the student was suffering from anxiety and depression and thus was unable to complete much school work. On [REDACTED] [REDACTED] PCS was notified by the student's doctor that the student was admitted to a full-time inpatient hospital program on [REDACTED]. [REDACTED] PCS staff communicated with the student's doctor on [REDACTED], but the student's doctor was unable to provide a discharge date or a diagnosis because this information remained unknown at the time.

On [REDACTED] a 504 plan eligibility meeting was held. The parent provided documentation to support a medical diagnosis. [REDACTED] provided a [REDACTED] letter from the student's doctor that diagnosed the student with a mood disorder unspecified and recommended a 504 plan for the student based on [REDACTED] school history and the conditions underlying [REDACTED] admission to the hospital inpatient program. The parent provided the recommendation pages from a psychological evaluation that recommended individual and family counseling and classroom supports upon discharge from the hospital program. The parent reported that the student was initially hospitalized for gastrointestinal issues which then led to mental health issues. The team discussed the student's strong academic history and determined that no educational testing was needed. The parent reported that the student did not currently have the mental capacity to do school work and that the doctor recommended that the student stop school work and focus on recovery. The student was expected to return to school at unknown date and would need assistance to transition back to school. The team found the student eligible for a 504 plan.

On [REDACTED] the team met to create a 504 plan. The parent reported that the student had moved from the inpatient program to the part-time hospitalization program and that the student was not yet ready to transition back to school. The student's 504 eligibility documentation states that [REDACTED] has no academic concerns but [REDACTED] disability, "impacts [REDACTED] ability to come to school." The 504 plan included counseling and other supports for when the student returned to school.

On [REDACTED] the parent made a request for an IEP evaluation and [REDACTED] PCS moved forward with the IDEA evaluation process.

Throughout the record it is clear that [REDACTED] PCS was engaged with the parent as soon as the student began to be absent in [REDACTED] and consistently sought documentation on five (5) occasions to excuse the student's absences and document the reason for these absences as medically related. As early as [REDACTED], when the student's absences continued, [REDACTED] PCS offered to address the student's needs through a 504 plan. The record shows that [REDACTED] PCS actively worked with the parent and the student's doctor to obtain the documentation to determine student eligibility for a 504 plan, which they received on [REDACTED]. From the date of the parent and LEA's discussion to begin the process for a 504 plan on [REDACTED] through the receipt of the medical documentation on [REDACTED], [REDACTED] PCS contacted the student's doctor six (6) times and the parent eight (8) times seeking the medical documentation to move forward with a 504 plan.

While OSSE makes no findings regarding the LEA's 504 process or the appropriateness of requiring a 504 plan in order for a student to receive homebound services, the record established that the school initially attempted to address the student's medical needs through a 504 plan based on the recommendation from the student's doctor and the student's past academic performance. There is no information in the record suggesting that [REDACTED] PCS suspected that the student may be a child with a disability under IDEA and pursued the 504 evaluation process in lieu of or in order to delay initiating the IDEA evaluation process. While it may have been inadvisable to state to the parent at the [REDACTED] 504 plan related meetings that the student would likely be ineligible for IDEA services without at least discussing IDEA eligibility criteria with the parent and providing the parent with a copy of the IDEA procedural safeguards, the LEA did document and move forward with the parent's initial evaluation request as soon as it was made on [REDACTED]. The student's initial evaluation timeline is discussed below in Issue Two.

When the parent requested an IEP evaluation, the school moved forward with that request as discussed below in Issue Two. OSSE finds that [REDACTED] PCS took steps based on the best data available to address the student's needs.

Therefore, [REDACTED] PCS has complied with 34 CFR §300.111 and OSSE's Comprehensive Child Find System Policy.

ISSUE TWO: EVALUATION TIMELINE

Findings of Fact

1. The parent requested a special education evaluation in writing via email on [REDACTED]³.

³ The written complaint initially stated that an oral request for evaluation was made in [REDACTED]. This allegation was not supported by the record.

2. On [REDACTED] [REDACTED] PCS issued an acknowledgment of referral for a special education evaluation; the acknowledgement lists the referral date as [REDACTED], three days after the request for initial evaluation was made.
3. The eligibility meeting was held on [REDACTED] and the student was determined eligible for special education services.

Discussion/Conclusion

[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 required 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.⁴ The complaint alleged that after a meeting to review student data to initiate an evaluation, the school took no further action to evaluate and determine eligibility.

The parent requested a special education evaluation on [REDACTED]. According to an acknowledgement of referral to special education letter generated in SEDS by [REDACTED] PCS on [REDACTED], the LEA erroneously entered [REDACTED] as the referral date, three days after the request for initial evaluation was made.

The eligibility meeting was held on [REDACTED] and the student was determined eligible for special education services. The determination of eligibility was made 119 days after the referral date entered by the LEA in SEDS but 122 days after the parent's request, which falls two 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).

ISSUE THREE: EVALUATION PROCEDURES

Findings of Fact

1. The parent requested a special education evaluation on [REDACTED].
2. On [REDACTED] the parent informed [REDACTED] PCS via email that the student was scheduled for a psychoeducational evaluation through [REDACTED] medical provider.⁵
3. On [REDACTED] [REDACTED] PCS issued an acknowledgment of referral for a special education evaluation on [REDACTED].
4. On [REDACTED] [REDACTED] PCS convened a "Student Evaluation Plan" meeting to

⁴ OSSE Part B Initial Evaluation/Reevaluation Policy, p. 14 (March 22, 2010).

⁵ There is no evidence in the records that a psychoeducational evaluation was conducted by the child's medical provider or provided to the LEA. The parent confirmed that the evaluation scheduled to be completed at the time was an update to an existing psychological evaluation.

review student data and discuss an evaluation. According to [REDACTED] PCS meetings notes:

- a. The team reviewed a current progress report, assessments, student work samples, discipline record, input from the parent, and the doctor's letter and an excerpt of a [REDACTED] psychological evaluation previously provided by the parent.⁶
 - b. An LEA staff member committed to following up with the parent and the child's hospital program to arrange an observation.
 - c. The team determined that they would not move forward with any assessments until they received the pending psychological report, which was expected to be provided by the parent to the LEA on or around [REDACTED].
 - d. The team would review the psychological evaluation prior to determining whether further evaluations were needed.
5. On [REDACTED] the parent provided a copy of an updated [REDACTED] psychological evaluation.
 6. On [REDACTED] the parent gave a letter to [REDACTED] PCS stating that [REDACTED] had not received any response from [REDACTED] PCS after providing the completed [REDACTED] psychological evaluation on [REDACTED] and no progress had been made on determining the student's eligibility for special education services.
 7. On [REDACTED] [REDACTED] PCS staff contacted the parent to schedule an eligibility meeting for [REDACTED].
 8. On [REDACTED] [REDACTED] PCS received a letter from the student's medical provider recommending homebound instruction.
 9. On [REDACTED] two LEA staff members and the parent met to add homebound instruction to the student's 504 plan.
 10. On [REDACTED] a group of qualified professionals and the parent met to determine special education eligibility.
 - a. The group reviewed the [REDACTED] psychological evaluation, a [REDACTED] occupational therapy screening, and input from the parent and teachers.
 - b. The group decided to conduct a speech-language pathology screening.
 - c. The group found the student eligible as a student with a disability, with a disability category of other health impairment.

Discussion/Conclusion

[REDACTED] PCS has complied with 34 CFR §§300.304 and 300.305, because it appropriately followed the evaluation procedures.

Pursuant to 34 CFR §300.305, as part of any initial evaluation, the IEP team must review existing evaluation data on the child, including evaluations and information provided by the parent, current assessments, and classroom observations, in order to identify what additional data, if

⁶ During a [REDACTED] meeting the parent provided [REDACTED] PCS with two pages of a psychological evaluation dated [REDACTED]. The two pages, marked as pages 8 and 9, included the signature of a psychologist and a section titled "Recommendations" listing recommendations regarding continued hospitalization, medication, therapy, and the development of a 504 plan.

any, is needed to determine whether the child is a child with a disability. In conducting the evaluation the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child to assist in determining whether the child is a child with a disability. (34 CFR §300.304) The complainant alleges that after holding a meeting in [REDACTED] to review student data, the school took no further action in the evaluation process, including on the agreed upon follow-up items.

On [REDACTED], the parent requested a special education evaluation via email. After requesting an evaluation for special education services, the parent informed [REDACTED] PCS on [REDACTED] via email that the student was scheduled for a psychoeducational evaluation to be conducted by [REDACTED] medical provider to help provide data for [REDACTED] IEP. On [REDACTED] the team held a meeting to review student data and discuss an evaluation. The team reviewed a current progress report, assessments, student work samples, discipline record, input from the parent, and the doctor's letter and [REDACTED] psychological evaluation already provided by the parent. The team decided that they would wait to see what areas were being tested in the psychological evaluation that was currently underway before deciding whether any additional testing needed to be completed.

On [REDACTED] the parent provided a copy of an updated psychological evaluation dated [REDACTED] and including evaluation information from [REDACTED]. On [REDACTED] the parent gave a letter to [REDACTED] PCS stating that [REDACTED] had not received any response from [REDACTED] PCS after providing the completed psychological evaluation on [REDACTED] and no progress had been made on determining the student's eligibility for special education services. On [REDACTED] [REDACTED] PCS staff contacted the parent to schedule an eligibility meeting for [REDACTED].

On [REDACTED] the team held an eligibility meeting.⁷ The team reviewed the [REDACTED] psychological evaluation, an occupational therapy screening, and input from the parent and teachers. The team decided to conduct a speech-language pathology screening. The team found the student eligible as a student with a disability, with a disability category of other health impairment.

OSSE's review of the record reflects that there was a forty-nine (49) day delay from when the parent provided [REDACTED] PCS the [REDACTED] psychological report on [REDACTED] to when meeting scheduling began on [REDACTED]. Although the evaluation was completed untimely, as addressed in Issue Two, and [REDACTED] PCS offered no explanation for the delay between the parent's provision of the psychological evaluation report and the determination that no additional information or assessment were needed, [REDACTED] PCS otherwise followed IDEA's evaluation procedures by holding a meeting to review existing data and then relying on a

⁷ The LEA provided a copy of a signed consent to evaluate dated [REDACTED], the same day as the eligibility meeting. OSSE reminds [REDACTED] PCS of their responsibility to, "obtain informed consent . . . from the parent of the child before conducting the evaluation." (See OSSE's Part B Initial Evaluation/Reevaluation Policy (March 22,2010), Available at: <https://osse.dc.gov/publication/part-b-initial-evaluation-and-reevaluation-policy-final-march-22-2010>)

variety of sources of information when making the eligibility determination. OSSE strongly encourages [REDACTED] PCS to clearly communicate with parents throughout the evaluation process but finds that [REDACTED] PCS has complied with 34 CFR §§300.304 and 300.305.

CONCLUSIONS

1. OSSE declines to make a finding with regard to [REDACTED] PCS' compliance with 34 CFR §§300.111 and 300.201, or OSSE's Comprehensive Child Find System Policy, because the LEA did not suspect that the child was a child with a disability under IDEA and took steps to address the student's needs based on the best available data.
2. [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 required timeline.
3. [REDACTED] PCS has complied with 34 CFR §§300.304 and 300.305, because it appropriately followed the evaluation procedures.

CORRECTIVE ACTION

1. 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:
 - a. Train staff regarding how to accurately record evaluation referral dates in the system of record. Documentation of the completion of this item is due to OSSE within 30 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,

Handwritten signature of Amy Maisterra in cursive, with the initials "EMM" written at the end.

Amy Maisterra, Ed.D., MSW
Assistant Superintendent, Division of Systems and Supports, K-12

cc: [REDACTED], complainant