



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

October 2, 2017

*VIA U.S. Mail & Electronic Mail*

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

RE: State Complaint No. 017-007 Letter of Decision

### **LETTER OF DECISION**

#### **PROCEDURAL BACKGROUND**

On August 3, 2017, 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 the District of Columbia Public Schools (DCPS) alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter "student" or "child."

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 follow the disciplinary protections of the IDEA, make an appropriate placement decision, and convene an IEP team meeting at the parent's request.

The SCO for OSSE has completed its investigation of the State Complaint. During the course of the investigation OSSE determined that DCPS complied with its obligation to make an appropriate placement decision and convene an IEP team meeting at the parent's request. OSSE declines to make a finding with regard to the discipline requirements. 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. **Discipline requirements at 34 CFR §§300.530 and 300.534**
  - a. Failure to ensure student discipline requirements were appropriately applied to a student identified with, or suspected of having a disability, as required

by 34 CFR §300.534.

- b. Failure to follow discipline procedures for removal of a child suspected of having a disability, as required by 34 CFR §300.530.

## 2. Placement requirements at 34 CFR §300.116

- a. Failure to make a placement decision in conformity with least restrictive environment provisions, as required by 34 CFR §300.116(a)(2).
- b. Failure to base the child's placement on the child's IEP, as required by 34 CFR §300.116(b)(2).

**3. IEP team meeting requirements at 34 CFR §300.324(b)**

- a. Failure to convene an IEP team meeting at the parent's request.

## INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. DCPS [REDACTED]

The investigation also included review of the following documents which were either submitted by the complainant, submitted by DCPS, accessible via the Special Education Data System (SEDS), or publically available:

- [illegible]

## 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: DISCIPLINE**

### **Findings of Fact**

1. The student was referred for an evaluation on [REDACTED] and found eligible as a student with a disability on [REDACTED].
2. DCPS reported that the parent was contacted multiple times during the school year when the student's behavior was "extreme," and the school required assistance to de-escalate [REDACTED] and although the parent usually took the student home when this happened, [REDACTED] was not required to do so by school staff. On other occasions a phone call to the parent was sufficient to de-escalate the student.
3. The student received no documented formal in-school or out-of-school suspensions during the [REDACTED] school year.
4. By comparing the sign-out sheets with [REDACTED] calendar and phone record, the parent confirmed and reported seven dates that [REDACTED] was called to come to the school due to behavior concerns: [REDACTED]  
[REDACTED]. Two of those occasions were prior to the start of the IDEA evaluation process and the remaining five occasions were after the student was found eligible for special education and related services.

### **Discussion/Conclusion**

**OSSE declines to make a finding with regard to 34 CFR §§300.530 and 300.534, because there is insufficient evidence that the student was removed for more than 10 school days.**

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 [REDACTED] or [REDACTED] 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.<sup>1</sup> (34 CFR §300.536(a)). In addition, IDEA requires that after a child with a disability has been removed from [REDACTED] or [REDACTED] current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph 34 CFR §300.530(d).<sup>2</sup> (34 CFR §300.530(b)(2) and (d))

Regardless of whether a change in placement has occurred, local regulations require that,

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<sup>1</sup> Additional such 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))

<sup>2</sup> Paragraph (d) of this subsection distinguishes between a removal that constitutes a change in placement under 34 CFR §300.536 and a removal that does not constitute a change in placement. Paragraph (d)(3) of this subsection states that, "[a] public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed." (34 CFR §300.530(d)(3))

"[w]hen a student with a disability is removed from his or her current placement for more than ten (10) school days for disciplinary reasons, DCPS must continue to provide the specialized instruction and related services that are specified on the student's IEP." (5-B DCMR §2510.6)

IDEA requires a manifestation determination meeting to be held when discipline results in a change in placement.<sup>3</sup> The public agency must hold the manifestation determination meeting within 10 school days of the decision to change the placement of a student with a disability because of a violation of a code of student conduct. (34 CFR §300.530(e)) Local regulations that apply to DCPS and the discipline of students with disabilities provide an additional layer of protection and require a manifestation determination to be made whenever a student is removed from his or her placement for more than 10 days.<sup>4</sup>

A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct, may assert any of the disciplinary protections if the public agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. (34 CFR §300.534(a)) The complainant alleges that during the [REDACTED] school year the school called the parent to take the student home due to behavior issues on ten (10) to twenty (20) occasions.

The student was referred for an evaluation on [REDACTED] and found eligible as a student with a disability on [REDACTED]. DCPS reported that the parent was contacted multiple times during the school year when the student's behavior was extreme and the school required assistance with de-escalation. DCPS additionally reported that although the parent usually took the student home when this happened, [REDACTED] was not required to do so by school staff. DCPS reported that on other occasions a phone call to the parent was sufficient to de-escalate the student. The student received no formal in-school or out-of-school suspensions during the [REDACTED] school year. By comparing the sign-out sheets with [REDACTED] calendar and phone record, the parent confirmed and reported seven dates that [REDACTED] was called to come to the school due to behavior concerns: [REDACTED]

[REDACTED]. Two of those occasions were prior to the start of the IDEA evaluation process and the remaining five occasions were after the student was found eligible for special education and related services. The parent reported that there were additional days that [REDACTED] took the student home in addition to the confirmed seven (7) dates. OSSE was unable to confirm if these seven days constituted full days of removal and unable to confirm any of the additional days reported by the parent.

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<sup>3</sup> A change in placement occurs if a removal is for more than 10 consecutive days; or if the child has been subject to a series of removals that constitute a pattern because the removals total more than 10 school days in a school year, the child's behavior is substantially similar to the child's behavior in previous instances, and additional factors such as length of each removal, the total length of removals, and the proximity of the removals to each other. (34 CFR §536(a))

<sup>4</sup> 5-B DCMR §2510.3 ("The removal of a student with a disability from his or her current placement for more than ten (10) school days for disciplinary reasons shall require that a determination be made as to whether the subject behavior is related to the student's disability.")



IDEA disciplinary protections do not apply until a student has been removed from [REDACTED] placement for more than 10 school days unless a public agency provides services to a child without disabilities who is similarly situated.<sup>5</sup> Even if OSSE considers the days the parent was called to assist with deescalating the student as removals, OSSE could confirm only 7 partial days of removal. Although the parent alleges there were additional days, there is insufficient evidence that the student was removed from [REDACTED] placement for more than 10 school days and therefore entitled to disciplinary protections under IDEA. A discussion of DCPS' actions to address the student's behavior is included under Issue Two below.

Therefore, OSSE declines to make a finding with regard to 34 CFR §§300.530 and 534.

## **ISSUE TWO: PLACEMENT**

### **Findings of Fact**

1. The [REDACTED] IEP prescribes 15 hours per week of specialized instruction outside the general education setting, 5 hours per week of specialized instruction inside the general education setting, and 240 minutes per month of behavioral support services outside the general education setting.
  - a. The emotional, social, and behavioral development area of concern contains the following description of how the student's disability affects [REDACTED] access to the general education curriculum: "[Student's] struggle with impulse control, emotional regulation, and compliant behaviors makes it difficult for [REDACTED] to access the general education curriculum. [Student] needs a great deal of structure, routines, and a high degree of predictability to learn in the general education setting. [REDACTED] currently has structured lunch and recess to support safe social interactions, a behavior binder with fidgets, schedules, and behavior chart to help motivate and guide [REDACTED] in the classroom, as well as receives social-emotional learning for 30 minutes a week to better prop [REDACTED] up for success in the school environment. Without these supports, and arguably some additional supports, [Student] struggles to access the general education curriculum."
  - b. The emotional, social, and behavioral development area of concern contains the following description of how the student's disability affects [REDACTED] progress in the general education curriculum: "Because [Student] struggles with impulse control and defiant behaviors, [REDACTED] misses out on learning opportunities. When [REDACTED] becomes defiant or physically aggressive, [REDACTED] is often removed from the classroom for safety concerns. Thus missing additional learning opportunities and potentially impacting progress in [REDACTED] learning."
  - c. The IEP provides the following reason that the student's specialized instruction cannot be provided in the general education setting: "Because of [Student's] difficulty attending to instruction and the need for [REDACTED] to acquire the necessary skills in transitioning throughout the school day, [REDACTED] requires delivery of specialized instruction outside of the general education setting."

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<sup>5</sup> 34 CFR §300.530(d)(3).

- d. The IEP lists the following supports and services that were previously attempted in a general education setting: "A myriad of supplemental supports and services, including small-group instruction, token boards, visual schedules and one-on-one support have been previously attempted in the general education setting. Many of these supports and services will continue. During the RTI process, a temporary alternative schedule was developed that allowed for [Student] to receive one-on-one instruction for part of [redacted] day. This schedule proved to be more successful for [Student] than one in which [redacted] remained in [redacted] general education class all day."
2. The sampling of behavior logs provided by DCPS shows the student frequently engaged in disruptive and noncompliant behavior.
3. The [redacted] LRE classroom observation tool reported that the student was not successful in [redacted] current setting due to [redacted] inability to focus, escalating aggressive behaviors, and eloping.
4. DCPS created an elopement protocol in [redacted].
  - a. The protocol contained proactive measures such as reducing transitions, requiring staff escort between new locations, and providing student incentives.
  - b. The protocol contained reactive measures such as verbal commands and escalation to the main office and the police depending on the amount of time the student is missing.
5. The [redacted] FBA recommended development of a BIP, dissemination of the elopement plan to school staff members who work with the student, provision of educational services in a highly structured and more restrictive setting, continuation of behavioral and therapeutic support, and engagement with the parent and outside service providers to ensure consistency.
6. The [redacted] BIP contained strategies to target the student's physical aggression, elopement, and off-task behavior.
7. On [redacted], school staff texted the parent to schedule the [redacted] IEP team meeting and stated that the school received an email from DCPS Central Office with locations of service other than [redacted] ES.
8. On [redacted] the team amended the student's IEP to change the student's specialized instruction from 15 hours per week outside and 5 hours per week inside the general education setting to 20 hours per week outside the general education setting.
  - a. DCPS reported that the team reviewed the student's [redacted] FBA and [redacted] independent psychological evaluation.
  - b. DCPS reported that the student's specialized instruction hours were changed to all outside the general education setting because the student was not successful in accessing the curriculum when receiving instruction inside the general education setting with behavior supports. DCPS additionally reported that an alternative placement in a self-contained classroom was previously discussed with the parent on multiple occasions.
9. On [redacted] DCPS issued a letter notifying the parent of the student's new location assignment at [redacted] ES.
  - a. The letter stated that [redacted] ES has the programming in place to meet the



student's current IEP needs.

### Discussion/Conclusion

**DCPS has complied with 34 CFR §300.116, because the proposed location assignment and placement followed the placement requirements and were appropriately based on student data.**

Pursuant to 34 CFR §300.116(a)(2), in determining the educational placement of a child with a disability, the public agency must ensure that the placement decision is made in conformity with the LRE provisions of the IDEA. The LRE provisions require that to the maximum extent appropriate, children with disabilities must be educated with children who are nondisabled; special classes, separate schooling, or other removal of children with disabilities from the regular educational environment must occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR §300.114(a)(2)) The child's placement must be based on the child's IEP and be as close as possible to the child's home. (34 CFR §300.116(b)(2) and (3)) The complainant alleges that DCPS's proposed location assignment in a self-contained classroom at [REDACTED] ES is not appropriate for the student.

After the development of the student's initial IEP on [REDACTED], the student received 15 hours per week of specialized instruction outside the general education setting, 5 hours per week of specialized instruction inside the general education setting, and 240 minutes per month of behavioral support services outside the general education setting. Throughout the school year the student had behavioral concerns which DCPS attempted to address through classroom supports and a behavior intervention plan. The sampling of behavior logs provided by DCPS show the student frequently engaged in disruptive and noncompliant behavior.

As a result of continuing behavior concerns impacting the student's ability to access instruction in the general education and self-contained settings, school staff submitted a referral to the DCPS LRE Team in [REDACTED], who then conducted an observation of the student. The [REDACTED] LRE classroom observation tool confirmed that DCPS had concerns about the student's success in current setting and reported that the student was not being successful in [REDACTED] current setting due to [REDACTED] inability to focus, escalating aggressive behaviors, and eloping. DCPS created an elopement protocol in [REDACTED]. The protocol contained proactive measures such as reducing transitions, requiring staff escort between new locations, and providing student incentives. The protocol contained reactive measures such as verbal commands and escalation to the main office and the police depending on the amount of time the student is missing.

DCPS completed an FBA on [REDACTED]. The FBA recommended development of a BIP, dissemination of the elopement plan to school staff members who work with the student, provision of educational services in a highly structured and more restrictive setting, continuation of behavioral and therapeutic support, and engagement with the parent and outside service providers to ensure consistency. As recommended, DCPS created a BIP on [REDACTED], which contained strategies to target the student's physical aggression, elopement, and off-task behavior.



Despite these behavior interventions and supports, DCPS continued to have concerns about the student's success in the general education setting and on [REDACTED] the team amended the student's IEP to change the student's specialized instruction from 15 hours per week outside and 5 hours per week inside the general education setting to 20 hours per week outside the general education setting. DCPS reported that the student's specialized instruction hours were changed to all outside the general education setting because, "the student had difficulty staying in [the] classroom and [REDACTED] behavior created an unsafe environment for [REDACTED] and others." DCPS additionally reported that an alternative placement in a self-contained classroom was previously discussed with the parent on multiple occasions. The [REDACTED] and [REDACTED] IEPs both document that the student needs a great deal of structure, routines, and a high degree of predictability to learn in the general education setting and that on top of supports in the classroom, the student has structured lunch and recess to support safe social interactions.

The record reflects that the parent first learned on [REDACTED] that [REDACTED] ES would not be able to serve the student and that other location assignment options would be considered if [REDACTED] required a full-time self-contained setting. On this date, school staff texted the parent to schedule the [REDACTED] IEP team meeting and confirmed that the school received an email from DCPS Central Office suggesting locations of service other than [REDACTED] ES. On [REDACTED] [REDACTED] DCPS issued a letter notifying the parent of the student's new location assignment at [REDACTED] ES. The letter stated that [REDACTED] ES has the programming in place to meet the student's current IEP needs. The parent objected to this location assignment because [REDACTED] had previously visited the school and did not want [REDACTED] student to attend this DCPS location. The parent additionally reported that [REDACTED] was unaware that the change to the student's specialized instruction hours at the [REDACTED] IEP meeting meant the student's placement would be in a self-contained classroom.

OSSE finds that the student's IEP team convened on [REDACTED], including the parent, to amend the IEP to change all of the student's specialized instruction hours to outside the general education setting. The team relied on student data collected throughout the school year, including behavior logs and evaluation data; the [REDACTED] FBA and [REDACTED] independent psychological evaluation. Prior to this meeting, on [REDACTED], school staff communicated to the parent that if the student required a full-time self-contained setting, DCPS Central Office had provided location of service options, other than [REDACTED] ES, for consideration.

The [REDACTED] IEP amendment meant that the student would be removed from the general education setting entirely. DCPS reported and the record reflects that the student was not being successful in the general education or self-contained setting despite the interventions and supports put in place.

The location assignment issued by DCPS was based on the student's IEP, including the services prescribed and the need for a highly structured environment. The school is as close as possible to the student's home as it is the student's neighborhood school. The record reflects that the



student's school of enrollment at the time of this complaint, [REDACTED] ES, could not provide the setting determined least restrictive by the student's IEP team and that another location assignment within the LEA was required by the student's IEP. OSSE finds that DCPS' proposed location assignment and placement were in conformance with the placement requirements and were appropriately based on student data.

Therefore, DCPS is in compliance with 34 CFR §300.116.

### **ISSUE THREE: IEP TEAM MEETING**

#### **Findings of Fact**

1. On [REDACTED] the parent requested an IEP team meeting to amend the student's IEP to return the specialized instruction hours to what they were prior to the [REDACTED] amendment.
2. A meeting was held with available team members on [REDACTED] to discuss the parent's concerns regarding the new location of service recommendation.
  - a. The team agreed to contact DCPS central office to request other location assignment options for the student.
  - b. DCPS reported that the parent did not make a request to update the student's IEP at the meeting and no changes were made to the IEP.
3. An IEP team meeting was held [REDACTED] to discuss the parent's concerns regarding placement and assigned location of services.
  - a. The team discussed the placement options and supports available to the student at [REDACTED] ES.
  - b. The team discussed placement options at [REDACTED] ES, [REDACTED] ES, and [REDACTED] ES. The parent agreed to visit the programs at [REDACTED] ES and [REDACTED] ES.
  - c. Meeting notes reflect that the team agreed to collect additional student behavior data and reconvene to discuss the student's performance in thirty (30) days. The team additionally agreed to facilitate the parent's visits to potential location of service assignments at [REDACTED] ES and [REDACTED] ES.
  - d. The team agreed to collect behavior data for the next 30 days to assess the student's performance in the general education setting at [REDACTED].

#### **Discussion/Conclusion**

**DCPS has complied with 34 CFR §300.324(b), because it convened an IEP team meeting as requested by the parent.**

Pursuant to 34 CFR §300.324(b)(1), the LEA must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and revise the IEP as appropriate. The LEA must revise the IEP, as appropriate, to address information about the child provided, to or by, the parent and the child's anticipated needs. (34 CFR §300.324(b)(1)) Although an LEA is not required to convene the IEP team meeting every time a parent requests it, the LEA should honor a reasonable request to update a student's IEP.<sup>6</sup> The complainant

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<sup>6</sup> In 1999 OSEP provided guidance regarding the LEA's duty to convene the IEP at the request of the parent:

alleges that [REDACTED] request to revise the student's IEP was ignored.

Due to [REDACTED] concerns with the [REDACTED] location assignment issued by DCPS, on [REDACTED] [REDACTED] the parent requested an IEP team meeting to amend the student's IEP to return the specialized instruction hours to what they were prior to the [REDACTED] amendment. A meeting was held on [REDACTED] to discuss the parent's concerns regarding the new location of service recommendation. Although not required to do so under IDEA, the team agreed to contact DCPS central office to request other location assignment options for the student. DCPS reported that the parent did not make a request to update the student's IEP at the meeting and no changes were made to the IEP. The student's full IEP team met on [REDACTED] to continue discussion of the parent's concerns. The team discussed the placement option and supports available to the student at [REDACTED] ES as well as the placement options at [REDACTED] ES, [REDACTED] ES, and [REDACTED] ES. The parent agreed to visit the programs at [REDACTED] ES and [REDACTED] ES. The team agreed to collect behavior data for the next 30 days to assess the student's performance in the general education setting at [REDACTED] and reconvene to further discuss the student's placement.

The record shows that DCPS complied with the parent's request to convene an IEP team meeting when one was held on [REDACTED], and although the IEP was not amended as requested, DCPS was responsive to the parent's concerns regarding the student's placement and location assignment. The student continues in [REDACTED] prior placement at [REDACTED] ES while the school collects data. DCPS provided additional location assignment options that offer the placement required by the student's IEP and believed by DCPS to be what the student needs. At the end of the [REDACTED] [REDACTED] meeting the IEP team agreed to reconvene to discuss the student's placement.<sup>7</sup> OSSE finds that DCPS convened an IEP team meeting as requested by the parent and has taken steps to address the parent's concerns.

Therefore, DCPS has complied with 34 CFR §300.324(b).

## **CONCLUSIONS**

1. OSSE declines to make a finding with regard to 34 CFR §§300.530 and 300.534, because there is insufficient evidence that the student was removed for more than 10 school days.

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"Although the public agency is responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with a disability have the right to request an IEP meeting at any time. For example, if the parents believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. . . . The legislative history of Public Law 94-142 makes it clear that there should be as many meetings a year as any one child may need. (121 Cong. Rec. S20428-29 (Nov. 19, 1975) (remarks of Senator Stafford)). Public agencies should grant any reasonable parent request for an IEP meeting." (34 CFR §300: Appendix A, Question 20, OSEP, 1999)

<sup>7</sup> OSSE's review of the record reflects that the student remains at [REDACTED] ES, a school that DCPS has determined cannot serve the student by providing the services required by [REDACTED] IEP. OSSE applauds the LEA and complainant's attempts to resolve the parent's concerns by extending the student's timeframe at [REDACTED] ES, but reminds DCPS of their responsibility to ensure compliance with the student's IEP.



2. DCPS has complied with 34 CFR §300.116, because the proposed location assignment and placement followed the placement requirements and were appropriately based on student data.
3. DCPS has complied with 34 CFR §300.324(b), because it convened an IEP team meeting as requested by the parent.

If you have any questions regarding this decision, please contact Victoria Glick, Manager, State Complaints, at [Victoria.Glick@dc.gov](mailto:Victoria.Glick@dc.gov) or 202-724-7860.

Sincerely,

Handwritten signature of Amy Maisterra in cursive, followed by the text "/EMM".

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)