



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

October 16, 2017

VIA U.S. Mail & Electronic Mail

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

RE: State Complaint No. 017-008 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 Systems and Supports, K-12 received a State complaint from [REDACTED] (complainant or parent) against [REDACTED] Public Charter School [REDACTED] alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED]), hereinafter "student" or "child."

The complainant alleged that [REDACTED] 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 reevaluate the student upon request, revise the student's IEP, address the student's behavior concerns, and follow the discipline requirements.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that [REDACTED] complied with its obligation to consider the use of positive behavioral interventions and supports but did not comply with its obligation to revise the student's IEP and follow all of the disciplinary requirements, and did not comply with its obligation to ensure the availability of a continuum of placements and the opportunity to be educated with the student's nondisabled peers. OSSE declines to make a finding with regard to whether [REDACTED] complied with its obligation to reevaluate the student. 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. **Reevaluation requirements at 34 CFR §300.303(a)(1) and (2)**
 - a. Failure to ensure that a reevaluation is conducted if it is determined that the educational or related services needs of the child warranted a reevaluation, or if the child's parent requests a reevaluation.
2. **Requirement to address behavior concerns 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. **Requirement to revise the IEP at 34 CFR §300.324(b)(1)(ii)**
 - a. Failure to review and revise the child's IEP to address lack of expected progress toward annual goals, the child's anticipated needs, or other matters.
4. **Discipline requirements at 34 CFR §§300.530 - 300.532**
 - a. Failure to provide educational services after a removal of more than 10 days and, as appropriate conduct a functional behavioral assessment and provide behavioral intervention, as required by 34 CFR §300.530(d)(1)(i) and (ii).
 - b. Failure to follow the proper disciplinary procedures with regard to notice of removal constituting a change in placement of a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, as required by 34 CFR §300.530(g) and (h).
 - c. Failure to ensure the student's IEP team determined an interim alternative educational setting for services, as required by 34 CFR §300.531.
 - d. Failure to follow the proper disciplinary procedures for the LEA to request a hearing to determine if the student should be returned to the placement from which the child was removed, as required by 34 CFR §300.532(a).

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. [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 for attention deficit hyperactivity disorder.
3. The student's local educational agency (LEA) was [REDACTED] during the time period under investigation.

ISSUE ONE: REEVALUATION

Findings of Fact

1. The parent reported that [REDACTED] requested an FBA be completed at a meeting with the school principal on [REDACTED].
2. At an IEP team meeting held on [REDACTED] at the request of the parent, the team agreed that a reevaluation was needed to determine if the student's disability classification was accurately identified.
 - a. The team agreed that a psycho-educational evaluation would be completed and an FBA would be completed once the student returned to school from [REDACTED] placement in an interim alternative educational setting (IAES).
3. The student withdrew from the LEA on [REDACTED].
4. [REDACTED] completed the psycho-educational evaluation on [REDACTED].

¹ Class Dojo is a point-based behavior tracking system used by classroom staff who input real-time information on positive and negative behaviors exhibited by students in the classroom.

Discussion/Conclusion

OSSE declines to make a finding with regard to 34 CFR §300.303(a)(1) and (2), because the student unenrolled from the LEA prior to completion of the reevaluation.

Pursuant to 34 CFR §300.303(a)(2), a public agency must ensure that a reevaluation is conducted if the child's parent requests a reevaluation. In any event, reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. (34 CFR §300.303(b)(2)) The complainant alleges that [REDACTED] failed to conduct an FBA as requested.

The parent reported that [REDACTED] requested that an FBA be completed at a meeting with the school principal on [REDACTED]. The school did not begin the FBA after this meeting. At an IEP meeting held on [REDACTED], the team agreed that a reevaluation was needed. The team agreed that a psycho-educational evaluation would be completed and an FBA would be completed once the student returned to school from [REDACTED] current placement in an IAES. The school began the psycho-educational evaluation, but did not complete it or begin the FBA before the student unenrolled from the LEA on [REDACTED]. The LEA completed the psycho-educational evaluation on [REDACTED] and provided it to the parent for use at the student's new LEA.

There is no allegation that the LEA failed to reevaluate the child within the three year timeline. Although the school did not initiate the FBA upon the parent's first request, OSSE finds that the LEA moved forward with the reevaluation process, including beginning a psycho-educational evaluation and planning to complete a planned FBA. However, the student unenrolled from the LEA before the LEA could complete all evaluations agreed upon by the IEP team and hold the reevaluation meeting. The delay to initiate the FBA will be addressed under Issues Two and Three below.

Therefore, OSSE declines to make a finding with regard to 34 CFR §300.303(a)(1) and (2).

ISSUES TWO AND THREE: POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS AND IEP REVISION

Findings of Fact

1. The [REDACTED] BIP targeted the following behaviors: inappropriate social interaction with peers, inappropriate responses to redirections and consequences, and deviant behavior such as lying and stealing.
 - a. The BIP addresses these behaviors by identifying the need to teach appropriate replacement behaviors through anger management, de-escalation techniques, feeling identification, decision-making lessons, social skills training, and stress management.
 - b. The BIP incorporates the following accommodations: clear directions, frequent reminders/prompts, proximity to teacher/staff, review rules and expectations, avoid strong criticism and reprimand the student in private, provide cooling off period, preferential seating, avoid physical contact, provide highly structured and predictable setting and routine.

- c. The BIP contains the following positive consequences for appropriate behavior: verbal praise, earned privileges, tangible rewards, computer time, positive call or note home, positive visit to office, immediate feedback, additions to the positive behavior intervention support paycheck tool ("paycheck"), and free time.
 - d. The BIP contains the following negative consequences for inappropriate behavior: deductions from paycheck, phone call home, send to office, loss of privileges such as recess, letter of apology to teacher or peer, in-school suspension, and out of school suspension.
- 2. The [REDACTED] IEP indicates that the student's behavior impedes [REDACTED] learning and that of others due to off-task and noncompliant behaviors, seeking negative attention from peers, and avoidance of undesirable or difficult tasks.
 - a. The IEP states that the student receives support through a behavior tracking system, the school-wide behavior management system, check-ins with adults throughout the day, earned rewards, and support from a social worker.
 - b. The IEP contains the following goals under the emotional, social, and behavioral development area of concern:
 - i. "[Student] will control [REDACTED] impulsive behavior by utilizing techniques that can help [REDACTED] control and regulate [REDACTED] impulsive behavior 80% of the time in at least 3 settings throughout the day."
 - ii. "[Student] will increase [REDACTED] social skill development by learning more prosocial ways to engage with others, particularly through role play. [REDACTED] will demonstrate prosocial behaviors in 3 of 4 opportunities across at least 2 environments during a school day."
 - iii. "[Student] will seek positive attention from others, particularly from adults, using appropriate strategies 80% of the time in 4 of 5 observations."
 - iv. "[Student] will appropriately regulate [REDACTED] difficult motions, by making use of self coping skills, particularly in the moment of distress in 3 of 4 moments of distress across all environments."
 - c. The IEP prescribes 30 minutes per week of behavioral support services outside the general education setting and 30 minutes per week of behavioral support services inside the general education setting.
- 3. The [REDACTED] school year began on [REDACTED].
- 4. The IEP team held a meeting on [REDACTED] to discuss the student's behavior.
 - a. The team discussed the student's progress using positive behavior supports during the [REDACTED] school year by reviewing data from the Class Dojo behavior tracking system that were aligned with the supports required by the student's IEP and BIP and teachers reference the use of individual supports.
 - b. The team reviewed the school's proposed behavior contract.
 - i. [REDACTED] reported that the behavior contract aligned with the student's IEP goals and that the school psychologist would support its implementation.
 - ii. The principal stated that if the behavior contract is violated in any way, the student would be recommended for expulsion.

- c. The school proposed amending the IEP to change the student's behavior support services from 30 minutes per week outside the general education setting and 30 minutes per week inside the general education setting to 60 minutes per week outside the general education setting to better support the student's behavior.
 - d. The parent refused to sign the behavior contract or the IEP amendment form.
5. The behavior contract contained the following expected behaviors:
 - a. "[Student] will comply with at least 80% of teacher or staff stated directions for volume, body position, work completion, material management, and movement throughout the classroom."
 - b. "[Student]" will speak to peers and adults using a respectful tone and appropriate language 100% of the time. [Student] will refrain from verbal and written insults directed toward another student."
 - c. "If given a redirection or consequence, [Student] will accept the redirection without talking back to the adult or eloping from [REDACTED] location at the time of the redirection or consequence."
6. The behavior contract contained the following twice-daily incentives:
 - a. A snack of [REDACTED] choice.
 - b. Choice time on a school computer.
7. The behavior contract contained the following consequences:
 - a. Failure to comply with three directions in a row will result in removal from the classroom for 20 minutes, requirement to write an apology letter, and loss of incentive.
 - b. Use of inappropriate language toward a peer will result in removal from class to in-school suspension and requirement to write an apology letter.
 - c. More than two infractions in a day will result in the student being required to be picked up from school until a parent conference the next day. The parent may be asked to sit with the student during the next day's classes to ensure appropriate behavior.
8. [REDACTED] reported that the school was not able to fully implement the behavior contract without the parent's signature and buy-in from the parent and student; however, the school held the student to the expectations outlined in the behavior contract and implemented what they could that did not require additional consent.
9. The Class Dojo system recorded infractions on the following dates: 2 incidents on [REDACTED]; 4 incidents on [REDACTED]; 4 incidents on [REDACTED]; and 2 incidents on [REDACTED].
10. On [REDACTED] [REDACTED] PCS notified the parent that the student was being recommended for expulsion.
 - a. The parent reported that the student continued to attend school from [REDACTED].
11. On [REDACTED] [REDACTED] notified the parent that the student would be suspended for 5 days from [REDACTED]. The student served four of the five proposed suspension days and returned to school on [REDACTED], attending until [REDACTED].

12. The student did not attend school for six days from [REDACTED] while awaiting a manifestation determination meeting.
13. On [REDACTED] the parent's attorney requested an IEP team meeting.
 - a. The meeting was scheduled for [REDACTED].
14. On [REDACTED] [REDACTED] notified the parent of the LEA's decision to expel the student and the student was not allowed to return to school.
15. On [REDACTED], the student was placed into an IAES.
16. At the [REDACTED] IEP team meeting, the team agreed that a reevaluation was needed in order to ensure that the student's disability category was accurately identified. The team agreed to maintain the student in an IAES until the reevaluation was completed to make sure that the LEA had adequate supports in place for the student's return to school.

Discussion/Conclusion

[REDACTED] has complied with 34 CFR §300.324(a)(2)(i), because it included positive behavioral interventions and supports on the [REDACTED] IEP, the IEP that was in effect during the investigation period. [REDACTED] has not complied with 34 CFR §300.324(b)(1)(ii), because it delayed in addressing the student's escalating behavioral concerns.

Pursuant to 34 CFR §300.324(a)(2)(i), the IEP team must 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. The IEP team must revise the child's IEP, as appropriate, to address any lack of expected progress toward the annual goals, the child's anticipated needs, or other matters. (34 CFR §300.324(b)(1)(ii)) The complainant alleges that the student continued to have behavior concerns and suspensions following the development of [REDACTED] IEP and that [REDACTED] failed to review and revise the IEP to address the student's escalating behaviors.

The student's initial IEP, created on [REDACTED], contains positive behavioral interventions and supports, behavioral support services, and behavior related goals to address the student's identified behavioral concerns. In addition to the supports provided in the IEP, the student had a BIP, created on [REDACTED], that further addressed the student's behavioral concerns through additional supports and strategies, incentives, and consequences. The [REDACTED] BIP and [REDACTED] IEP remained in effect at the start of the [REDACTED] school year when the IEP team met to discuss the student's behavior on [REDACTED]. At this meeting the team discussed the student's progress using positive behavior supports during the [REDACTED] school year by reviewing data from the Class Dojo behavior tracking system where supports are aligned with the student's IEP and BIP and teachers reference the use of individual supports. Despite these supports in the IEP and BIP, the student's behavioral concerns persisted and so [REDACTED] proposed a behavior contract be put in place. As the team reviewed the school's proposed behavior contract, a [REDACTED] staff member reported that the behavior contract aligned with the student's IEP goals and that the school psychologist would support its implementation. The principal stated that if the behavior contract is violated in any way, the

student would be recommended for expulsion.² In addition, the school proposed amending the IEP to change the student's 60 minutes per week of behavior support services from half outside the general education setting and half inside the general education setting to all outside the general education setting to better support the student's behavior. The parent had concerns about the proposed behavior contract and so refused to sign it or the IEP amendment form.

██████████ reported that the school was not able to fully implement the behavior contract without the parent's signature and buy-in from the parent and student where the contract required the parent to pick up the student if the student did not comply with the contract; however, the school held the student to the expectations outlined in the behavior contract and implemented what they could within the classroom. The student's behavioral concerns continued and the school discipline tracking system recorded infractions on the following dates: 2 incidents on ██████████; 4 incidents on ██████████; 4 incidents on ██████████; and 2 incidents on ██████████. On ██████████, PCS notified the parent that the student was being recommended for expulsion based on infractions from the ██████████ and ██████████ school years. The student continued to attend school from ██████████ but served a four-day suspension from ██████████. The student returned to school on ██████████. On ██████████, the parent's attorney requested an IEP team meeting, which was scheduled for ██████████. On ██████████, ██████████ notified the parent of the LEA's decision to expel the student and the student was not allowed to return to school. The student did not attend school for 6 days from ██████████ while awaiting a manifestation determination meeting. On ██████████, the student was placed into an IAES. On ██████████, the already scheduled IEP team meeting was combined with a manifestation determination meeting resulting from the expulsion. At this meeting the student's expulsion was rescinded and the team agreed that a reevaluation was needed in order to ensure that the student's disability category was accurately identified. The team agreed to maintain the student in an IAES until the reevaluation was completed to make sure that the LEA had adequate supports in place for the student's return to school. The team also agreed to conduct an FBA upon the student's return to school following completion of the psycho-educational evaluation. The parent withdrew the student from the LEA on ██████████, prior to the student's return to school.

The student's ██████████ IEP reflects the consideration and inclusion of the use of positive behavioral interventions and supports and other strategies to support the student's behavior concerns. However, OSSE finds that the supports in place were insufficient and the

² OSSE's review of the record finds that this statement by school administration is inconsistent with school practice as evidenced by the student's multiple subsequent infractions in ██████████ prior to the LEA's recommendation for expulsion. OSSE also finds that this statement is inconsistent with the ██████████ Public Charter School Scholar and Family Handbook, which outlines a four level behavior system and an escalation process, and the student's BIP. OSSE reminds the LEA of their responsibility to communicate clear expectations for student behavior that is consistent with school wide and student level behavior management systems.

student continued to have behavioral concerns at the start of the [REDACTED] school year.³ [REDACTED] reported that the proposed behavior contract at the start of the [REDACTED] school year was developed to address the student's ongoing behavioral concerns and aligned with the student's IEP goals. However, a review of the behavior related IEP goals and the behavior contract reveals a heightened expectation for the student's behavior. This contract was potentially heightened beyond that of any other student in the school and heightened beyond the requirements of the student's IEP and BIP, where perfect or near perfect behavior was expected in some instances. The [REDACTED] IEP goals set a target for the student to use appropriate behavior 75% or 80% of the time. The behavior contract requires the student to use appropriate behavior 80% or 100% of the time. The behavior contract utilizes updated incentives for the student, but does not identify any other supports that will be in place and used by school staff to help the student meet the expected behaviors. The behavior contract also states that infractions will result in removal from the classroom instead of the tiered consequences in the [REDACTED] BIP. OSSE additionally finds that after the parent's refusal to sign the behavior contract or IEP amendment, [REDACTED] took no steps to address the student's escalating behavior until the [REDACTED] meeting, including ignoring the parent's initial [REDACTED] request to conduct an updated FBA. During the more than two months at the beginning of the [REDACTED] school year the student continued to receive frequent disciplinary infractions, a suspension, and a recommendation for expulsion. OSSE finds that the [REDACTED] failed to revise the student's IEP and behavior supports to address the student's escalating behaviors.

Therefore, [REDACTED] has complied with 34 CFR §300.324(a)(2)(i), but has not complied with 34 CFR §300.324(b)(1)(ii).

Placement in the Least Restrictive Environment

[REDACTED] has not complied with 34 CFR §§300.114(a)(2)(i) and 300.115, because it failed to ensure the student was educated in the least restrictive environment with [REDACTED] nondisabled peers.

Pursuant to 34 CFR §300.115, each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. IDEA additionally requires that students are educated with their nondisabled peers to the maximum extent possible. (34 CFR §300.114(a)(2)(i)) OSSE's review of the record revealed that the LEA identified the student's escalating behavior concerns at the start of the [REDACTED] school year. The IEP team met on [REDACTED] to review the incident results from the previous school year and to develop a behavior contract to supplement the student's existing IEP and BIP. OSSE's review of the record additionally revealed that in the month following the [REDACTED] meeting, additional student behavior incidents occurred, resulting in the [REDACTED] recommendation for expulsion. OSSE finds that at no time

³ In accordance with the IDEA regulations at 34 CFR §300.153(c), a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. The period of investigation begins on [REDACTED], one year prior to the date on which the complaint was filed. As a result, any disciplinary infractions and the steps the LEA took to address them that occurred during the [REDACTED] school year fall outside the investigation timeline and will not be addressed in this letter of decision.

during the [REDACTED] or [REDACTED] meetings did the LEA make a continuum of placements available to the student beyond the student's classroom. The record reflects that if the student could not meet expectations in the classroom that the only option was expulsion. As a result, the LEA failed to ensure the student's had the opportunity to remain in the school building with access to [REDACTED] nondisabled peers.

Therefore, [REDACTED] has not complied with 34 CFR §§300.114(a)(2)(i) and 300.115.

ISSUE FOUR: DISCIPLINE

Findings of Fact

1. The [REDACTED] Public Charter School Scholar and Family Handbook includes information on a four level disciplinary infraction system resulting in the initiation of suspension and expulsion procedures for Level 3 and 4 behaviors.
2. On [REDACTED] [REDACTED] PCS notified the parent that the student was being recommended for expulsion.
 - a. The expulsion recommendation was based on the frequency of Level 3 and 4 incidents involving the student during the [REDACTED] school year.
 - b. The student's disciplinary record reflects incidents involving aggressive physical contact with other students, defiance of authority, and other noncompliant behaviors identified in the LEA Handbook as Level 3 incidents and qualifying as Level 4 incidents when repeated.
3. On [REDACTED] [REDACTED] notified the parent that the student would be suspended for 5 days from [REDACTED]. The student served only four (4) days of the suspension.
4. On [REDACTED], the disciplinary review panel voted to expel the student and the parent was notified by the principal via phone call.
5. On [REDACTED] [REDACTED] notified the parent in writing of the LEA's decision to expel the student.
 - a. The letter stated the reason was based on the student's pattern of Level 3 and Level 4 behaviors that create an unsafe environment for [REDACTED] students.
 - b. The letter listed 14 disciplinary incidents from [REDACTED] to [REDACTED]. Five of those incidents occurred during the [REDACTED] school year.
6. [REDACTED] proposed an IAES plan to begin on [REDACTED] that included the following services to be provided on-site at the LEA:
 - a. Two hours of 1:1 tutoring on Mondays, Tuesdays, Thursdays, and Fridays.
 - b. 90 minutes per day of blended learning through online programs to be completed at the student's home or public library.
 - c. 60 minutes per week of behavior therapy.
 - d. These services are consistent with the services required by the student's [REDACTED] IEP, which requires 8 hours per week of specialized instruction in the general education, 30 minutes per week of behavioral support services outside the general education, and 30 minutes per week of behavioral support services inside the general education.

7. The parent reported that the student began receiving educational services in the IAES on the eleventh day of removal, [REDACTED].
8. A manifestation determination meeting was held [REDACTED].
 - a. The IEP team determined that the student's behavior was a manifestation of [REDACTED] disability and the expulsion was rescinded.
 - b. The team agreed that a reevaluation of the student was necessary, that a psycho-educational evaluation would be completed, and an FBA would be completed once the student returned to school.
 - c. The team, including the parent, agreed that the student would remain in an IAES until the reevaluation was completed and the school had better supports in place to meet the student's behavior needs.
 - d. The team agreed to continue with the IAES plan already in place as other options were explored. The parent had concerns about the current plan because the student did not have access to the internet at home and the plan did not include a full day of services.
9. The parent's attorney proposed the following options for an alternative IAES:
 - a. Receive services at [REDACTED]. [REDACTED] did not have an open space to serve the student at their location at that time.
 - b. [REDACTED] did not want to pay for services that it could provide at the school and offered to increase the IAES services to 12.5 hours of 1:1 tutoring per week and add 30 minutes per day of independent reading in addition to the continued 90 minutes per day of blended learning through online programs and 60 minutes per week of behavior therapy.
 - c. Allow the student to return to school with the support of a dedicated aide. This option was rejected by the school.
 - d. Short-term placement at [REDACTED]. This option was not fully explored prior to the student's withdrawal from the LEA.
10. On [REDACTED] the parent, through her attorney, rescinded her agreement to maintain the student in the IAES proposed by [REDACTED].
11. On [REDACTED] [REDACTED] filed a due process complaint to maintain the student in the IAES, arguing that the student's return to school is substantially likely to result in injury to the student or others.
12. On [REDACTED] the hearing officer dismissed the due process complaint pursuant to a motion to withdraw filed by [REDACTED].
13. On this same date, the student withdrew from the LEA.

Discussion/Conclusion

[REDACTED] has not complied with 34 CFR §300.530(d)(5), because it failed to determine the appropriate services during removal through the IEP team. [REDACTED] has complied with the remaining disciplinary procedures identified under 34 CFR §§300.530 - 300.532.

Pursuant to 34 CFR §300.530(d)(1)(i), 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 educational services so as to enable the child

to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. These services may be provided in an IAES. (34 CFR §300.530(d)(2)). The public agency must conduct, as appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (34 CFR §300.530(d)(1)(ii)). If the removal is a change of placement, the child's IEP team determines the appropriate services. (34 CFR §300.530(d)(5)). For purposes of removals of a child with a disability, 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)). On the date on which the decision is made to make a removal that constitutes a change of placement, the LEA must notify the parents of that decision. (34 CFR §300.530(h)). If the IEP team determines that the conduct was a manifestation of the child's disability, the IEP team must either conduct an FBA or review and update an existing BIP and return the child to the placement from which the child was removed, unless the parent and LEA agree to a change of placement as part of the modification of the behavioral intervention plan. (34 CFR §300.530(f)). The child's IEP team determines the IAES for services. (34 CFR §300.531). If an LEA believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, the LEA may appeal the decision by requesting a hearing. (34 CFR §300.532). The complainant alleges that the LEA provided only verbal notice of the student's expulsion, the student was inappropriately placed in an IAES, the IAES was determined by the LEA without the parent's input, and [REDACTED] never completed an FBA as required.

OSSE's review of the LEA's Scholar and Family Handbook found that it includes information on a four level disciplinary infraction system potentially resulting in the initiation of suspension and expulsion procedures for Level 3 and 4 behaviors. On [REDACTED] [REDACTED] PCS notified the parent that the student was being recommended for expulsion. On [REDACTED], the disciplinary review panel voted to expel the student and the parent was notified by the principal via phone call. On [REDACTED] [REDACTED] notified the parent in writing of the LEA's decision to expel the student, including a list of all disciplinary infractions on which the decision was based.⁴ The student served a four-day suspension from [REDACTED]. On [REDACTED], [REDACTED] proposed an IAES plan to begin on the same day that included: two hours of 1:1 tutoring on Mondays, Tuesdays, Thursdays, and Fridays; 90 minutes per day of blended learning through online programs to be completed at the student's home or public library; and 60 minutes per week of behavior therapy. [REDACTED] was the eleventh day of removal for the [REDACTED] school year.

⁴ OSSE's review of the [REDACTED] letter notifying the parent of [REDACTED] PCS' decision to expel the student refers to the IDEA disciplinary safeguards but the record does not reflect whether or not the LEA provided a copy of these safeguards to the parent. Although the parent does not allege that the procedural safeguards provision of the notice requirement at 34 CFR §300.530(h) was violated, OSSE reminds the LEA of their obligation to provide parents with a copy of the procedural safeguards when providing notice of a decision to remove the student from their placement for a violation of the code of student conduct.

A manifestation determination meeting was held [REDACTED]. The IEP team determined that the student's behavior was a manifestation of [REDACTED] disability and the expulsion was rescinded. The team agreed that a reevaluation was necessary for the student, that a psycho-educational evaluation would be completed, and an FBA would be completed once the student returned to school. The team, including the parent, agreed to keep the student in an IAES until the reevaluation was completed and the school had better supports in place to address the student's behavior concerns. The team agreed to continue with the IAES plan already in place as other options were explored. The parent had concerns about the current plan because the student did not have access to the internet at home and the plan did not include a full day of services.

Following the manifestation determination meeting the parent's attorney proposed several alternative options for the IAES. These options were either declined or not yet fully explored by the LEA, and on [REDACTED] the parent, through her attorney, rescinded her agreement to maintain the student in the IAES proposed by [REDACTED]. On [REDACTED] [REDACTED] filed a due process complaint to maintain the student in the IAES, arguing that the student's return to school is substantially likely to result in injury to the student or others. Following the student's withdrawal from the LEA, on [REDACTED] the hearing officer dismissed the due process complaint pursuant to [REDACTED] motion to withdraw.

OSSE finds that [REDACTED] provided notice of all removals in writing through the [REDACTED] letter and held the manifestation determination meeting within 10 school days of the decision to change the student's placement on [REDACTED]. OSSE finds that the student began receiving educational services on the 11th day of removal as required; however, because the proposed expulsion constituted a change of placement because it was for more than 10 consecutive school days, the IEP team should have determined the appropriate services for the student instead of a one-sided decision by the LEA issued to the parent via the [REDACTED] letter.⁵ After this letter was issued to the parent and services were being provided to the student, the parent had an opportunity to provide input and express her concerns with the LEA's proposed IAES at the [REDACTED] meeting. At this meeting the team agreed to maintain the current IAES in the interim while other options were explored. If the IEP team had initially made the decision regarding what services would be provided to the student during removal, the parent's concerns could have been addressed at that meeting, instead of through later discussions that did not ultimately result in a team decision. OSSE finds that [REDACTED] failed to determine the appropriate services during removal through an IEP team, as required by 34 CFR §300.530(d)(5). Although OSSE finds that the LEA failed to meet the procedural requirements during removal, the parent confirms and the record reflects that the student received services commensurate with the student's IEP while in the IAES from [REDACTED]. As a result, OSSE declines to require compensatory education for this time

⁵ See U.S. Department Of Education Questions and Answers on Discipline Procedures (Revised June 2009) at p. 11. (Stating that an appropriate IAES must be selected by the student's IEP team and should not consist of only one option).

period.

OSSE finds that maintaining the student in an IAES and waiting to complete the FBA until the student returned to school were appropriately decided by the IEP team. The parent raised concerns in the complaint and during the course of the investigation that the LEA inappropriately filed a due process complaint to maintain the student's placement in the IAES. OSSE reminds the parties to the complaint that the LEA may utilize the due process complaint procedures to resolve their concerns regarding the student's continued placement in the IAES.

Therefore, [REDACTED] has not complied with 34 CFR §300.530(d)(5).

CONCLUSIONS

1. OSSE declines to make a finding with regard to 34 CFR §300.303(a)(1) and (2), because the student unenrolled from the LEA prior to completion of the reevaluation.
2. [REDACTED] has complied with 34 CFR §300.324(a)(2)(i), because it included positive behavioral interventions and supports on the [REDACTED] IEP, the IEP that was in effect during the investigation period.
3. [REDACTED] has not complied with 34 CFR §300.324(b)(1)(ii), because it failed to revise the student's IEP and supports to address the student's escalating behavioral concerns.
4. [REDACTED] has not complied with 34 CFR §§300.114(a)(2)(i) and 300.115, because it failed to ensure the student was educated in the least restrictive environment with [REDACTED] nondisabled peers.
5. [REDACTED] has not complied with 34 CFR §300.530(d)(5), because it failed to determine the appropriate services during removal through the IEP team.
6. [REDACTED] has complied with the remaining disciplinary procedures identified under 34 CFR §§300.530 - 300.532.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.324(b)(1)(ii), 34 CFR §300.530(d)(5), 34 CFR §§300.114(a)(2)(i) and 300.115, [REDACTED] must do the following:
 - a. Train all relevant [REDACTED] staff members, including the principal, on how to create, review, revise, and implement student IEPs, BIPs, and behavior contracts, to address escalating behavior. Documentation of completion is due to OSSE within 60 days of the date of this letter.
 - b. Develop a plan to ensure the availability of a continuum of placements for special education students requiring a more restrictive environment within the LEA than the general education classroom setting. Documentation of this plan is due to OSSE within 30 days of the date of this letter.
 - c. Cease using behavior contracts with students with disabilities until the training is complete.
 - d. Review and revise all behavior contracts currently in place for students with disabilities to ensure that they are consistent with each student's IEP and BIP and comply with the LEA's code of conduct for all students. Documentation of

completion is due to OSSE within 60 days of the date of this letter and shall include a list of impacted students, the date of the behavior contract that was reviewed, the date of the updated behavior contract, and a summary of changes made to each.

- e. Train all relevant [REDACTED] staff members on discipline procedures, when an IEP team must determine services for a student removed from their placement for more than ten school days. Documentation of completion is due to OSSE within 60 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,



Amy Maisterra, Ed.D., MSW

Assistant Superintendent, Division Systems and Supports, K-12

cc: [REDACTED] parent

Caroline Wick, Staff Attorney, Children's Law Center