



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

November 22, 2017

VIA U.S. Mail & Electronic Mail

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 017-012 Letter of Decision

LETTER OF DECISION

PROCEDURAL BACKGROUND

On [REDACTED], the State Complaint Office (SCO) of the Office of the State Superintendent of Education (OSSE), Division of Systems and Supports, K-12 received a State complaint from [REDACTED] (complainant) against the District of Columbia Public Schools (DCPS) alleging systemic violations of the Individuals with Disabilities Education Act, Part B, 20 USC § 1400 et seq. (IDEA) for students attending [REDACTED] (ES or [REDACTED]).

The complainant alleged that DCPS violated certain provisions of the IDEA and regulations promulgated at 34 CFR Part 300, specifically systemic failures to maintain valid and reliable data with regard to discipline records, follow disciplinary procedures, follow child find requirements, complete initial evaluations, and develop appropriate IEPs for students.

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 maintain valid and reliable discipline data, follow the discipline requirements, and individualize students' IEP services, but did not comply with its obligation to have a child find policy and follow all of the evaluation 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. Data requirements at 34 CFR §300.211**

- a. Failure to maintain valid and reliable data with regard to discipline records for students identified with, or suspected of having a disability at [REDACTED] ES from the start of the 2017-18 school year on August 21, 2017¹ through September 14, 2017, the complainant's last day as a social worker intern at the school.
2. **Discipline requirements at 34 CFR §§300.530 and 300.534**
 - a. Failure to ensure discipline requirements were appropriately applied to students identified with, or suspected of having a disability at [REDACTED] ES from the start of the 2017-18 school year on August 21, 2017 through September 14, 2017, the complainant's last day as a social worker intern at the school.
3. **Child find requirements at 34 CFR §300.111**
 - a. Failure to have policies and procedures in place to identify, locate, and evaluate students in need of special education and related services at [REDACTED] ES.
4. **Evaluation requirements at 34 CFR §300.301**
 - a. Upon receipt of a request for initial evaluation, failure to conduct a full and individual initial evaluation to determine if any referred [REDACTED] ES child is a child with a disability.
5. **IEP requirements at 34 CFR §300.324**
 - a. Failure to consider the appropriate needs of students in developing and revising each student's IEP at [REDACTED] ES.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. [REDACTED]
2. DCPS [REDACTED]
3. DCPS [REDACTED]

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

[REDACTED]

¹ The September 27, 2017 017-012 initiation letter incorrectly identified the first day of the DCPS 2017-18 school year as August 28, 2017. The allegations in this letter of decision have been corrected to reflect the DCPS 2017-18 school year start date of August 21, 2017. The corrected date of August 21, 2017 was also used in reviewing the student data sets identified below.

[REDACTED]

ISSUE ONE: VALID AND RELIABLE DATA

Findings of Fact

1. School staff reported that all disciplinary events, including detentions, suspensions, and other removals are recorded in the DCPS-wide student behavior tracker (SBT) system.
2. DCPS reported that attendance data is maintained in the ASPEN attendance system.
3. There are no discrepancies among the discipline and attendance data for students with a disability or suspected of having a disability at [REDACTED] ES from the start of the 2017-18 school year through September 14, 2017, the complainant's last day as a social worker intern at the school.

Discussion/Conclusion

DCPS has complied with 34 CFR §300.211, because it maintained valid and reliable discipline data.

Pursuant to 34 CFR §300.211, the LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under the IDEA. OSSE requires LEAs to maintain valid, reliable, and timely data.² The complainant alleges that she witnessed or was told about [REDACTED] ES' frequent and repeated exclusion of students with disabilities from the classroom without documenting it as a suspension, and provides an example of a named student who she alleges experienced undocumented exclusions.

OSSE reviewed SBT discipline records and ASPEN attendance records for all students with a disability or suspected of having a disability at [REDACTED] ES from the start of the 2017-18 school year on August 21, 2017 through September 14, 2017. This review included a comparison of discipline events and student absences to ensure that there were not any removals from school that were not reflected in the SBT. OSSE found no discrepancies in the data and no evidence that DCPS failed to maintain valid and reliable data in regard to discipline records.

Therefore, DCPS has complied with 34 CFR §300.211.

ISSUE TWO: DISCIPLINE

Findings of Fact

1. DCPS reported that no student with a disability or suspected of having a disability had out-of-school or in-school suspensions totaling more than 10 school days during the investigation timeline from the start of the 2017-18 school year on August 21, 2017 through September 14, 2017.
2. The complainant interned at the school from September 5, 2017 – September 14, 2017,

² OSSE LEA Data Management Policy (December 9, 2010).

for seven (7) school days.

3. The complainant reported that she observed the named student spend time outside of the classroom without receiving educational services on the day of a disciplinary incident that resulted in an out-of-school suspension the following day. The complainant reported that upon the student's return to school, the student was in and out of the classroom due to elopement.

Discussion/Conclusion

There is no data to support the allegation that DCPS was required to follow the IDEA disciplinary protections at 34 CFR §§300.530 and 300.534 for any student eligible to receive special education services or suspected of having a disability.

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 his or her 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 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 and the child's behavior is substantially similar to the child's behavior in previous instances.³ Pursuant to 34 CFR §300.530(d)(3), 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. A child who has not been determined to be eligible as a child with a disability 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.⁴ The complainant alleges that ██████ ES frequently and repeatedly excludes students with disabilities from the classroom without documenting it as a suspension.

DCPS reported that no student with a disability or suspected of having a disability had out-of-school or in-school suspensions totaling more than 10 school days during the investigation timeline from the start of the 2017-18 school year on August 21, 2017 through September 14, 2017. OSSE reviewed the SBT discipline data and ASPEN attendance data for all students with a disability or suspected of having a disability to verify this information. Although the complainant identified a student who she observed spending time outside the classroom, the time spent outside the classroom as reported by the complainant did not surpass 10 school days and therefore did not rise to the level of removals at which IDEA disciplinary protections may have been required. Accordingly, OSSE finds that there is no data showing that any student with a disability or suspected of having a disability was removed from his or her placement for

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

⁴ 34 CFR §300.534(a).

more than ten school days and thus there is no data to support the allegation that there was a requirement to follow the disciplinary protections under the IDEA. Additionally, OSSE finds that DCPS does not provide services to students without disabilities during removals of 10 days or less and therefore is not required to provide services to any student with a disability who is removed for ten days or less.

Therefore, DCPS has complied with 34 CFR §§300.530 and 300.534.

ISSUES THREE AND FOUR: CHILD FIND AND INITIAL EVALUATION

Findings of Fact

1. School staff reported that when a parent or a teacher raises concerns about a student's academic performance they fill out a referral form and the student is first required to complete the response to intervention (RTI) process.
2. DCPS' RTI Process Manual states: "If the student fails to respond to several well-implemented interventions, consider a referral to special education if: a) a series of research-based interventions have been attempted, b) there is documentation that the interventions were carried out as designed (treatment/intervention integrity), c) progress-monitoring data shows that the student failed to meet the goal set for his or her improvement (that is, the student shows a 'discrepancy in rate of learning' relative to grade-peers)."
3. The RTI process includes collecting student data, attempting different interventions and discussing their effectiveness, and reviewing student progress after these interventions are attempted.
 - a. The RTI process requires 6 to 8 weeks.
 - b. After the RTI process is completed, the team will discuss whether to move forward with a special education evaluation.
 - c. If the team decides to move forward with an evaluation following completion of the RTI process, the school begins the special education evaluation timeline, records the initial evaluation referral and uploads other documentation to SEDS, and tracks the evaluation process through SEDS.
 - d. The team relies on information gathered during the RTI process to determine which assessments to conduct during the initial evaluation process.
4. DCPS has no written child find policy.
5. During the time period from the start of the school year on August 21, 2017 until September 14, 2017, 44 ██████████ ES students were eligible for special education and services and one student who was suspected of having a disability was in the initial evaluation process.
6. During the investigation timeline from September 25, 2016 – September 25, 2017, ██████████ ES conducted 8 initial evaluations and 13 reevaluations.
7. The students who had an initial evaluation were determined eligible under three different eligibility categories: specific learning disability (5 students), speech language impairment (1 student), and developmental delay (2 students).

Discussion/Conclusion

DCPS has not complied with 34 CFR §300.111, because it does not have a written child find policy. DCPS has not complied with 34 CFR §300.301, because it requires students to complete the RTI process before conducting a special education evaluation.

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.⁵ Each public agency must conduct a full and individual initial evaluation before the initial provision of special education and related services to a child with a disability.⁶ The District of Columbia has established a 120 day timeline from the date of referral for completing assessments or evaluations of students.⁷ 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.⁸ The complainant alleges that the school psychologist does not evaluate all students referred by teachers as being suspected of having a disability, reportedly because if all referred students were evaluated it would result in over-identification.

School staff reported that when a parent or a teacher raises concerns about a student's academic performance they fill out a referral form and the student first completes the RTI process. This practice is consistent with what is described in the DCPS RTI Process Manual. The RTI process includes collecting student data, attempting different interventions and discussing their effectiveness, and reviewing student progress. The RTI process requires 6 to 8 weeks. After the RTI process is completed, the team will discuss whether to move forward with a special education evaluation. If the team decides to move forward with an initial evaluation following completion of the RTI process, the school begins the initial evaluation timeline, records the referral for special education evaluation and uploads other documentation to SEDS, and tracks the evaluation process through SEDS. The team relies on information gathered during the RTI process to determine which assessments to conduct during the initial evaluation process. Although the RTI process is connected to and may feed into the special education initial evaluation process, interviewed staff did not appear to understand, and DCPS has no written child find policy conveying the availability of immediate special education initial evaluation.

For its investigation, OSSE compiled a list of students at [REDACTED] ES who, during the investigation timeline from September 25, 2016 – September 25, 2017, were identified as eligible for special education services or who received an initial evaluation for services. During this period, [REDACTED] ES completed five (5) initial evaluations and Early Stages completed

⁵ OSSE Comprehensive Child Find System Policy p. 10 (March 22, 2010).

⁶ 34 CFR §300.301(a).

⁷ D.C. Official Code §38-2561.02(a)(1).

⁸ OSSE Part B Initial Evaluation/Reevaluation Policy, p. 14 (March 22, 2010).

three (3) initial evaluations. From a review of SEDS records for the five (5) students evaluated by ██████ ES staff, the SEDS record reflects that for each of the five (5) the school attempted RTI first. Although RTI may have been appropriate for each of these individual students, the data supports reports from staff that RTI is always a required step before proceeding to special education evaluation.

These eight (8) students were determined eligible under three different eligibility categories: specific learning disability, speech language impairment, and developmental delay. No students were evaluated and found to be ineligible during the investigation period. OSSE reviewed the SEDS record for the students who received an initial evaluation to confirm that the each student's parent signed consent to evaluate and consent to provide services upon being determined eligible for services. OSSE's review of these records found that each parent signed these consent forms in accordance with the initial evaluation process.

During the time period from the start of the school year on August 21, 2017 until September 14, 2017 44 ██████ ES students were eligible for special education and services, and one student who was in the initial evaluation process. OSSE reviewed the eligibility documentation for this student and found that DCPS correctly followed the evaluation process for this student.

DCPS has no written child find policy as required by 34 CFR §§300.111 and 300.201 and OSSE's child find policy. However, a review of ██████ ES' evaluation data shows that students are being identified and evaluated at the school. Referred students who are unsuccessful in the RTI process are funneled into the special education initial evaluation process. First attempting to address a student's academic concerns through the RTI process may be appropriate in many circumstances, but DCPS cannot require that students complete the RTI process before initiating the special education initial evaluation process.

This constitutes noncompliance with the initial evaluation requirements under 34 CFR §300.301. OSSE finds that the requirement to use the RTI process before initiating a special education evaluation could have caused some students' initial evaluations to be delayed. OSSE found no evidence that ██████ ES is refusing to evaluate students referred by teachers.

Therefore, DCPS has not complied with 34 CFR §§300.111 and 300.301.

ISSUE FIVE: IEPs

Findings of Fact

1. School staff reported that when developing initial IEPs, the IEP team relies on assessments and other data from the evaluation process, test scores, classroom work samples, teacher input and observations, and input from parents.
2. School staff reported that they utilize the continuum of special education services matrix, a resource provided by DCPS, as a guide in determining individualized hours of specialized instruction for each special education student.
3. ██████ ES has one self-contained special education classroom for emotional support for students in grades 3 – 5.

4. ██████ ES offers the following related services: occupational therapy, physical therapy, behavioral support services, and speech and language pathology.
5. During the investigation timeline from September 25, 2016 – September 25, 2017, ██████ ES developed, annually reviewed, or amended 94 IEPs for 55 students.
 - a. IEP service hours ranged from speech-language pathology only IEPs with no specialized instruction hours to 25.5 hours per week of specialized instruction, with services provided both inside and outside the general education setting.
 - b. IEPs contained the following related services: speech language pathology, occupational therapy, and behavioral support services.

Discussion/Conclusion

DCPS has complied with 34 CFR §300.324, because it individualized student’s services hours based on student data and individual related service needs.

Pursuant to 34 CFR §300.324(a)(1), in developing each child’s IEP, the IEP team must consider the academic, developmental, and functional needs of the child. The complainant alleges that all students at ██████ ES are given the same predetermined number of hours on their initial IEP regardless of disability and need.

School staff reported that when developing initial IEPs, the IEP team relies on assessments and other data from the initial evaluation process, test scores, classroom work samples, teacher input and observations, and input from parents. School staff reported that they utilize the continuum of special education services matrix, a resource provided by DCPS, as a guide in determining individualized hours of specialized instruction for each special education student. School staff reported that not all students receive the same services, and the following related services are available for students: occupational therapy, physical therapy, behavioral support services, and speech and language pathology. ██████ ES has one self-contained special education classroom for emotional support for students in grades 3 – 5.

For its investigation, OSSE reviewed the IEPs for all ██████ ES students who were eligible for special education services during the investigation timeline. During this time period, ██████ ES developed, updated, or amended 94 IEPs for 55 students. IEP service hours ranged from only speech-language pathology services to 25.5 hours per week of specialized instruction, with services provided both inside and outside the general education setting. IEPs contained the following related services in varying hour amounts and combinations: speech language pathology, occupational therapy, and behavioral support services. OSSE’s review of the student data for these 94 IEP events shows no evidence that students are given a predetermined number of service hours on their IEPs regardless of disability or need.

Therefore, DCPS has complied with 34 CFR §300.324.

CONCLUSIONS

1. DCPS has complied with 34 CFR §300.211, because it maintained valid and reliable discipline data.
2. There is no data to support the allegation that DCPS was required to follow the IDEA

disciplinary protections at 34 CFR §§300.530 and 300.534 for any student eligible to receive special education services or suspected of having a disability.

3. DCPS has not complied with 34 CFR §300.111, because it does not have a written child find policy as required.
4. DCPS has not complied with 34 CFR §300.301, because it requires students to go through the RTI process before conducting a special education evaluation.
5. DCPS has complied with 34 CFR §300.324, because it individualized student's services hours based on student data and need.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.111, DCPS must do the following:
 - a. Create a child find policy in compliance with IDEA and OSSE policy requirements. Completion of this action is due to OSSE within 90 days of the date of this letter.
 - b. Issue a memorandum to all [REDACTED] ES staff regarding the requirement to initiate a special education evaluation upon referral of any student suspected of having a disability. Documentation of completion of this requirement is due to OSSE within 90 days of the date of this letter.
2. In order to correct the noncompliance with 34 CFR §300.301, DCPS must do the following:
 - a. Include in the relevant policies and procedures that students may not be required to complete the RTI process prior to initiating a special education evaluation. Documentation of completion of this requirement is due to OSSE within 90 days of the date of this letter.

All corrective actions must be completed by the date specified above, but in no case later than one year from the date of this letter. If you have any questions regarding this decision, please contact Victoria Glick, Manager, State Complaints at Victoria.Glick@dc.gov or 202-724-7860.

Sincerely,

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

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