



DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

January 30, 2018

VIA U.S. Mail & Electronic Mail

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

RE: State Complaint No. 017-015 Letter of Decision

LETTER OF DECISION

PROCEDURAL BACKGROUND

On November 8, 2017, 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 or parent) against the District of Columbia Public Schools (DCPS) alleging violations in the special education program of [REDACTED] [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 revise the student's IEP, provide IEP services, and maintain accurate records.

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 revise the IEP but failed to comply with its obligation to provide IEP services and maintain accurate data. 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. **IEP revision requirements at 34 CFR §300.324(b)(1)(ii)(C) and (D)**
 - a. Failure to revise the IEP, as appropriate, to address information about the child provided to, or by, the parents and the child's anticipated needs,

2. Requirement to provide services at 34 CFR §300.323(c)(2)

- ### 3. Data requirements at 34 CFR §300.211

- ## INVESTIGATIVE PROCEDURE

1. Complainant

-
- | Age Group | Gender | Percentage Vaccinated |
|-----------|--------|-----------------------|
| 18-24 | Male | ~15% |
| 18-24 | Female | ~10% |
| 25-34 | Male | ~25% |
| 25-34 | Female | ~20% |
| 35-44 | Male | ~35% |
| 35-44 | Female | ~30% |
| 45-54 | Male | ~45% |
| 45-54 | Female | ~40% |
| 55-64 | Male | ~55% |
| 55-64 | Female | ~50% |
| 65-74 | Male | ~65% |
| 65-74 | Female | ~60% |
| 75+ | Male | ~75% |
| 75+ | Female | ~70% |

1. The student is a child with a disability as defined by 34 CFR §300.8.
2. The student's disability category is other health impairment.
3. The student's local educational agency (LEA) is DCPS.

Findings of Fact

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2. The student began attending [REDACTED] Middle School at the start of the [REDACTED] school year.
 - a. An independent neuropsychological evaluation report, requested by the parent and funded by DCPS, was completed on [REDACTED].
3. The IEP team met on [REDACTED] to review student data and determine whether the team had enough data to proceed with the student's triennial reevaluation and eligibility determination.
 - a. At this meeting the parent reported that the student continued to struggle with organizational skills in the classroom, had trouble with timed and online testing, and needed support when re-entering the classroom after being absent from school.
 - b. The team reviewed the [REDACTED] independent neuropsychological evaluation report at the meeting.
 - c. The team decided that they did not have enough data to make a final eligibility determination, the parent would bring in an independent educational evaluation that was currently underway, and the team would meet again on [REDACTED] to review the evaluation and student records.
4. The school psychologist reported attempts to conduct a classroom observation but was unable to do so due to student absences.
5. The IEP team met again on [REDACTED].
 - a. The team reviewed the undated independent educational evaluation report provided by the parent.
 - b. The parent renewed [REDACTED] concerns that the student needed support to re-enter the classroom after being absent and raised concerns about the student's educational placement and challenges related to memory and emotional difficulties.
 - c. The team determined that the student continued to be eligible as a child with a disability under the classification of other health impairment for attention deficit hyperactivity disorder.
 - d. The team decided to reconvene at a later date to review and revise the student's IEP.
6. The parent withdrew the student from DCPS on [REDACTED].
7. On [REDACTED], DCPS issues a prior written notice (PWN) stating that, "[s]pecial education services are available until [student] turns 22 years old. You may re-enroll to receive FAPE that was offered in the IEP."

Discussion/Conclusion

DCPS has complied with 34 CFR §300.324(b)(1)(ii)(C) and (D), because it reviewed and was prepared to utilize information provided by the parent to revise the student's IEP prior to the parent's withdrawal of the student from DCPS.

Pursuant to 34 CFR §300.324(b)(1)(ii)(C) and (D), the IEP team must revise the IEP, as appropriate, to address information about the child provided by the parent and the child's anticipated needs. The complainant alleges that DCPS failed to update the IEP to effectively address the student's medical challenges and sensory related needs.

The student's elementary school updated the student's IEP on [REDACTED] prior to the student attending [REDACTED] Middle School at the start of the [REDACTED] school year. Upon the parent's request, DCPS authorized an independent neuropsychological evaluation that was completed on [REDACTED]. In preparation for the student's triannual reevaluation due on [REDACTED], the IEP team met on [REDACTED] to review student data and determine whether the team had enough data to proceed with the eligibility determination. At this meeting the team reviewed the [REDACTED] neuropsychological evaluation; and the parent reported that the student continued to struggle with organizational skills in the classroom, had trouble with timed and online testing, and needed support when re-entering the classroom after being absent. The team, including the parent, decided that they would wait to make a final eligibility determination until after the parent provided an outside educational evaluation that was underway and the team would meet again on [REDACTED] to review the evaluation. The school psychologist reported attempts to conduct a classroom observation to gather additional student data but was unable to do so due to the student's absences.

When the IEP team met again on [REDACTED], they reviewed the independent educational evaluation report provided by the parent. The parent renewed [REDACTED] concerns that the student needed support to re-enter the classroom after being absent and raised concerns about the student's educational placement and challenges related to memory and emotional difficulties. The team determined that the student continued to be eligible as a child with a disability under the classification of other health impairment for attention deficit hyperactivity disorder and would reconvene to review and revise the student's IEP to include information from the independent educational evaluation reviewed at the meeting. However, the parent withdrew the student from DCPS on [REDACTED] before the IEP team could meet again to update the student's IEP.

The record shows that DCPS reviewed the independent educational evaluation report provided by the parent and the independent neuropsychological evaluation report requested by the parent when making the student's eligibility determination and was prepared to use the evaluation report to update the student's IEP prior to the student's withdrawal from DCPS.¹ OSSE found no evidence that parent provided any other information to DCPS during the investigation timeline.²

Therefore, DCPS has complied with 34 CFR §300.324(b)(1)(ii)(C) and (D).

¹ DCPS issued a PWN on [REDACTED] with a continuing offer of service delivery under the student's [REDACTED] IEP, which remained in effect. The IEP team was in the process of reviewing concerns raised by the parent at the time the parent withdrew the student from DCPS on [REDACTED]. The parent raised a concern in the complaint that she was awaiting a revised IEP when she withdrew the student, but there was no obligation for DCPS to complete the IEP revision at the parent's request given the parent's withdrawal of the student from the LEA.

² The investigation timeline is from [REDACTED] until [REDACTED], the date when the complaint was filed. 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.

ISSUE TWO: IEP SERVICES

Findings of Fact

1. The [REDACTED] IEP prescribes 60 minutes per week of specialized instruction for written expression in the general education setting, 80 minutes per week of specialized instruction for mathematics in the general education setting, 60 minutes per month of behavioral support services in the general education setting, and 30 minutes per month of consultation behavioral support services.
 - a. Under consideration of special factors for positive behavior interventions and supports it states: "[Student] benefits from the support of a behavior plan that motivates [REDACTED] to be on task or to use strategies to help [REDACTED] return to the task, especially in the areas of reading and written comprehension."
 - b. Under other classroom aids and services it states: "Use of calculator in math. Benefits from guided notes to support note-taking process. Set of text books will be provided for home. A communication system between home and school should be established to support the completion or modification of work which is issued by repeated absences. Homework can be modified and reduced to a reasonable time limit as agreed in conference between home and school. Study guide (review sheet) will be provided prior to assessments. Repeating back directions and expectations. Peer buddy and pairing during independent work time. Sensory breaks between subjects and during independent work time as needed. Quiet place to work in classroom to be used upon request. [Student] may use partial dictation and illustration to express [REDACTED] thoughts in reading journal and other assignments for homework. Use of keyboarding upon request. [Student] benefits from having motion involved in [REDACTED] learning activity – body movement and manipulating materials should be used as applicable. Benefits from small group instruction. Homework and assignments will be available on line for parent and student access. Lexile book list will be provided to parent."
2. The IEP contained two goals for the emotional, social, and behavioral development area of concern:
 - a. "When participating in an activity, with no more than two (2) visual or verbal prompts, [Student] will actively work on the assigned tasks, use attentive posture (e.g., sitting up), and will refrain from off-task behaviors (e.g., disrupting other students, daydreaming, walking around) for the duration of the activity (e.g., 10 minutes), for 4 out of 5 activities."
 - b. "Given an organizational and monitoring system with weekly check-ins, [Student] will come prepared for class with material and work completed in 4 out of 5 trials."
3. DCPS reported that the student received specialized instruction from a special education teacher in co-taught classrooms for Mathematics and English Language Arts.
4. DCPS reported that the school social worker provided behavioral support services directly to the student and consultation services through frequent communication with the student's teacher about strategies to motivate the student and help [REDACTED] remain on

task.

5. The behavioral support service logs show that the student received 60 minutes of direct services on [REDACTED] and that services were attempted but missed due to the student's absence on [REDACTED] and [REDACTED].
 - a. The service log for [REDACTED] shows that the service provider worked with the student on [REDACTED] goal related to staying on task.
6. The [REDACTED] and [REDACTED] IEP progress reports show that the student's goal related to staying on task was worked on but that the goal related to an organizational system was not worked on.
7. DCPS reported that teachers would communicate with parents about missing assignments and that students who missed school could make up work and receive instruction during a designated period during the school day called GRIT that occurred during lunchtime and recess.
8. In the interview the parent reported concerns with the student making up work during the GRIT period because [REDACTED] believed the student needed the recess break during the school day.
9. In the interview DCPS clarified that Lexile is a reading inventory used to measure students' reading levels at three points during the school year, not a reading support program, and that the student participated in the benchmark testing along with the other students.

Discussion/Conclusion

DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide support related to an organizational system for the student to keep track of assignments.

Pursuant to 34 CFR §300.323(c)(2), as soon as possible following development of the IEP, special education and related services must be made available in accordance with the IEP. The complainant alleges that DCPS failed to implement the student's IEP.

The [REDACTED] IEP prescribes 60 minutes per week of specialized instruction for written expression in the general education setting, 80 minutes per week of specialized instruction for mathematics inside the general education setting, 60 minutes per month of behavioral support services in the general education setting, 30 minutes per month of consultation behavioral support services, and listed various classroom aids and services. DCPS reported that the student received specialized instruction from a special education teacher in co-taught classrooms for Mathematics and English Language Arts. The behavioral support service logs show that the student received 60 minutes of direct services on [REDACTED] and that services were attempted but missed due to the student's absence on [REDACTED] and [REDACTED] and [REDACTED]. OSSE finds that DCPS made available the specialized instruction and behavioral support services required by the student's IEP. However, OSSE reminds DCPS of the obligation to, "consider the impact of . . . a child's absence on the child's progress and performance, and

determine appropriate next steps to ensure the provision of FAPE and that the child continues to progress towards meeting the annual goals in [REDACTED] or her IEP.”³

In the interview the parent specified that [REDACTED] concerns about IEP services focused on the classroom aids and supports contained in the IEP, specifically a communication system between home and school for when the student missed school and an organizational system to help the student manage classroom and homework assignments. The parent also raised concerns that the Lexile reading program was not being used with the student.

The student’s [REDACTED] IEP requires that “[a] communication system between home and school should be established to support the completion or modification of work which is issued by repeated absences.” DCPS reported that teachers communicate directly with parents about missing assignments and that students who missed school could make up work and receive instruction during a designated period during the school day called GRIT that occurred during lunchtime and recess. In the interview the parent reported concerns with the student making up work during the GRIT period because [REDACTED] believed the student needed the recess break during the school day. Although the parent had concerns about the system used for making up work from missed days of school, the record shows that there was a system in place through the GRIT program and teacher to parent communication. The IEP does not specify what the communication system must be and therefore OSSE finds that the system in place for the student to make up assignments that were missed due to absences as available to the student meets the requirement to support the completion of work issued due to student absences.

The behavioral support service log for [REDACTED] shows that the service provider worked with the student on [REDACTED] goal related to staying on task. The [REDACTED] and [REDACTED] IEP progress reports show that the student’s goal related to staying on task was worked on during the time periods covered by the progress reports, but that the goal related to an organizational system was not worked on with the student. Although DCPS provided behavioral support to the student for concerns related to staying on task, the record shows that the student received no support related to an organizational system to keep track of assignments. The parent raised concerns about this at the [REDACTED] and [REDACTED] meetings but the record does not reflect any action taken by DCPS to address these concerns and the identified need on the student’s IEP. OSSE finds that DCPS failed to provide support to the student related to an organizational system.

In the interview DCPS clarified that Lexile is a reading inventory used to measure students’ reading levels at three points during the school year, not a reading support program, and that the student participated in the benchmark testing along with the other students.

OSSE finds that DCPS provided or attempted to provide the student’s specialized instruction and behavioral support services; however, DCPS failed to implement all of the classroom aids

³ OSSE Related Services Policy (January 5, 2010) at p. 10. (Available at: <https://osse.dc.gov/publication/related-services-policy-final-january-5-2010>)

and services listed on the IEP, specifically an organizational system to help the student manage classroom and homework assignments.

Therefore, DCPS has not complied with 34 CFR §300.323(c)(2).

ISSUE THREE: ATTENDANCE DATA

Findings of Fact

1. The student had seventeen (17) excused absences on the following dates: [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
2. The student had twelve (12) unexcused absences on the following dates: [REDACTED]
[REDACTED]
[REDACTED].
3. The DCPS winter break was from [REDACTED] until [REDACTED].
4. DCPS reported that the parent typically sent the reasons for the student's absences via email and that DCPS excused the absences when they received a reason from the parent.
5. On [REDACTED] OSSE issued a letter acknowledging the parent's notification of [REDACTED] intent to home school for the remainder of the [REDACTED] school year.
6. In a [REDACTED] email the parent provided the reasons for the student's absences on [REDACTED]. The email stated that the student attended a partial day on [REDACTED]
7. The parent withdrew the student from DCPS on [REDACTED].
8. On [REDACTED] DCPS issued written notice that the student was withdrawn due to the student being home schooled beginning on [REDACTED], but that special education services were available if the student re-enrolled in DCPS.

Discussion/Conclusion

DCPS has not complied with 34 CFR §300.211, because it failed to accurately record all of the student's absences.

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 IDEA. OSSE requires LEAs to maintain valid, reliable, and timely data.⁴ The complainant alleges that DCPS failed to address accuracy of sick days on the student's record and ongoing attendance issues as they increased with student's simultaneously increasing medical needs.

DCPS reported that the parent typically sent the reasons for the student's absences via email and that DCPS excused the absences when they received a reason from the parent. The majority of the student's absences during the period the student was attending school during the investigation timeline were excused. From [REDACTED] until the start of the winter break, on [REDACTED], the student had seven (7) excused absences and two (2) unexcused absences. The parent provided no documentation to OSSE to show that the

⁴ OSSE LEA Data Management Policy (December 9, 2010).

absences for [REDACTED] were incorrectly recorded as unexcused absences.

After the winter break the student did not return to school except for a partial day on [REDACTED]. On [REDACTED] OSSE issued a letter acknowledging the parent's notification of [REDACTED] intent to home school for the remainder of the [REDACTED] school year and the parent provided DCPS with a copy of this letter. In a [REDACTED] email the parent provided the reasons for the student's absences on [REDACTED]. The email additionally stated that the student attended a partial day on [REDACTED]. The student's attendance record reflects excused absences on these dates. Although the student attended a partial day on [REDACTED], according to DCPS' attendance policy a student must attend 80% of the school day in order to be marked present and thus this date is shown as an absence on the student's attendance record.⁵

After [REDACTED] the parent provided no documentation to excuse the student's absences other than the letter acknowledging the parent's notification of [REDACTED] intent to home school. All absences except for one after this date are marked as unexcused until the student was withdrawn on [REDACTED]. DCPS could not explain why the student's absence on [REDACTED] was excused when the surrounding dates were labeled as unexcused. This discrepancy must be addressed to ensure an accurate attendance record. As a result, OSSE finds that DCPS' failed to maintain accurate and reliable attendance data for the student despite the parent's attempts to notify the LEA of increasing absences due to medical concerns.

Therefore, DCPS has not complied with 34 CFR §300.211.

CONCLUSIONS

1. DCPS has complied with 34 CFR §300.324(b)(1)(ii)(C) and (D), because it reviewed and was prepared to utilize information provided by the parent to revise the student's IEP prior to the withdrawal of the student from the LEA.
2. DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide support related to an organizational system for the student to keep track of assignments.
3. DCPS has not complied with 34 CFR §300.211, because it failed to accurately record all of the student's absences.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2), DCPS must do the following:
 - a. Provide compensatory education services for the failure to provide support related to an organizational system for the student to keep track of assignments for the dates the student attended school from the start of the investigation timeline on [REDACTED] until the student stopped attending school on [REDACTED]. Documentation of completion is due to OSSE within 60 days of the date of this letter.

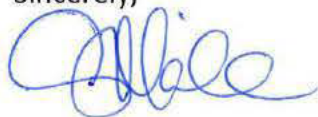
⁵ DCPS attendance policy information is available at: <https://dcps.dc.gov/attendance>.

2. In order to correct the noncompliance with 34 CFR §300.211, DCPS must do the following:

- a. Correct the absence on [REDACTED] to correlate with the absences on the surrounding dates. Documentation of completion is due to OSSE within 30 days of the date of this letter.

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

Sincerely,



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)