



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

April 24, 2018

VIA U.S. Mail & Electronic Mail

██████████
██████████
██████████ Public Charter School
██████████
██████████

RE: State Complaint No. 017-024 Letter of Decision

LETTER OF DECISION

PROCEDURAL BACKGROUND

On ██████████, 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 ██████████ (complainant or parent) against ██████████ Public Charter School (██████████ PCS) alleging violations in the special education program of ██████████ ██████████ (Student ID # ██████████ hereinafter "student" or "child.")

The complainant alleged that ██████████ PCS violated certain provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. and regulations promulgated at 34 CFR Part 300, specifically, failure to address the student's behavior concerns, educate the student in the least restrictive environment, and follow the disciplinary requirements.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that ██████████ PCS complied with its obligations related to IEP revision, least restrictive environment, maintaining valid and reliable data, and with its obligations related to discipline.¹ 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

¹ Although some of the facts referenced below occurred after the filing of the complaint, OSSE considered these facts in order to identify the student's current status with regard to behavior interventions and to identify if remedies were necessary in order to ensure behavior supports are in place for the student going forward.

jurisdiction of the OSSE SCO:

1. IEP requirements at 34 CFR §300.324(a)(2)

- a. In the case of a child whose behavior impedes the child's learning or that of others, failure to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

2. Least restrictive environment requirements at 34 CFR §§300.114 and 300.116

- a. Failure to educate the student in the least restrictive environment.

3. Discipline requirements at 34 CFR §§300.211 and 300.530

- a. Failure to maintain valid and reliable data with regard to documenting all disciplinary removals from the classroom. (34 CFR §300.211)
- b. Failure to provide services after the student has been removed from [REDACTED] current placement for 10 school days in the same school year. (34 CFR §300.530(b)(2))
- c. Failure to determine whether the conduct in question was a manifestation of the child's disability within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct. (34 CFR §300.530(e))

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

- ## 1. Complainant

2. [REDACTED] PCS [REDACTED]
3. [REDACTED] PCS [REDACTED]
4. [REDACTED] PCS [REDACTED]

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

[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 autism spectrum disorder.
3. The student's local educational agency (LEA) is [REDACTED] PCS.

ISSUE ONE: BEHAVIOR

Findings of Fact

1. On [REDACTED] [REDACTED] PCS developed the student's initial IEP.
 - a. The IEP did not contain any positive behavior interventions and supports.
2. On [REDACTED] [REDACTED] PCS held the student's annual IEP review meeting and developed a new IEP.
 - a. The IEP includes positive behavior interventions and supports: "[Student] requires additional behavioral supports in the classroom. [REDACTED] uses a break schedule to support [REDACTED] school routine and increase [REDACTED] stamina. [Student] will begin skills training on [REDACTED] which includes 5 minute mini lessons that teach scripted responses to problems that may arise throughout the day. For example, [Student] will work on what to do when [REDACTED] is frustrated or what to do when someone tries to get in front of [REDACTED] in line. These are just two examples of social skills [Student] will be focusing on in skills training. [Student] will also start a social story which will support [REDACTED] in making positive choices in class and support [REDACTED] learning."
 - b. Under other classroom aids and services it states: "[Student] receives positive behavior supports in the classroom as well as language modeling and opportunities to work with peers."
3. On [REDACTED] [REDACTED] PCS amended the student's IEP to add 30 minutes per week of behavioral support services and associated goals.
 - a. The IEP contains two goals related to emotional, social, and behavioral development: "Given adult support, [Student] will implement a self-management strategy during times of emotional upset on 3 out of 5 opportunities."
 - b. "With positive behavior supports, [Student] will reduce consequences related to inappropriate behavior and emotional responses by 50% as evidenced by behavior log entries and school data."
4. [REDACTED] PCS reported that they recently conducted a trial run of a dedicated aide, which drastically reduced the student's behavior concerns, and the LEA plans to propose amendment of the student's IEP to add the support of a dedicated aide.

Discussion/Conclusion

██████ PCS has complied with 34 CFR §300.324(a)(2), because it addressed the student's behavior concerns by adding the necessary supports and services to the student's IEP.

Pursuant to 34 CFR §300.324(a)(2), in the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. The complainant alleges that the student has behavior issues that the school is not addressing and the school called the parent multiple times per day about the student's behavior.

██████ PCS developed the student's initial IEP on ██████. The IEP did not contain any positive behavior interventions and supports because there were no concerns about the student's behavior at the time. ██████ PCS reported that the student had some trouble adjusting to a new routine at the start of the ██████ school year due to the school moving to a new building and the student's new school schedule that involved multiple transitions between classes throughout the school day, as opposed to remaining in the same class throughout the day as was the case the prior school year. The student received behavior supports as part of the school-wide positive behavior support system, which involved earning and losing points based on specified behavior expectations and is discussed in further detail under Issue Three below.

When ██████ PCS held the student's annual IEP review meeting on ██████, the IEP team added positive behavior interventions and supports, which included a break schedule to support ██████ school routine and increase ██████ stamina, daily skills training with a five-minute mini lesson to teach scripted responses to problems that may arise throughout the day, and a social story to support ██████ in making positive choices in class and support ██████ learning. ██████ PCS reported that the changes to the student's IEP were minimal because the student was beginning to adjust to the new routine by the time the meeting was held.

Prior to the winter break and upon returning to school, ██████ PCS reported an escalation in the student's behavior concerns, as confirmed by the student's behavior data where disciplinary infractions are tracked. ██████ PCS reported that they tried additional behavior supports through the response to intervention (RTI) process. The LEA amended the student's IEP to include only the successful interventions and discontinued supports that did not address the student's behavior concerns. On ██████, after the filing of this complaint, ██████ PCS amended the student's IEP to add 30 minutes per week of behavioral support services and associated goals related to utilizing a self-management strategy during times of emotional upset, and reducing consequences related to inappropriate behavior and emotional responses. During interviews ██████ PCS reported that they recently conducted a trial run of a dedicated aide, which drastically reduced the student's behavior concerns, and the LEA plans to propose amendment of the student's IEP to add the support of a dedicated aide.

OSSE finds that ██████ PCS has been responsive to the student's escalating behavior concerns. ██████ PCS added additional behavior supports and amended the student's IEP on several

occasions during the school year. [REDACTED] PCS worked with the student and attempted various supports in order to find what worked best for the student before revising the IEP to include only those supports resulting in behavioral progress. The recent behavior supports put in place have successfully reduced the student's behavior concerns as reported by [REDACTED] PCS and confirmed by the parent in interviews.

Therefore, [REDACTED] PCS has complied with 34 CFR §300.324(a)(2).

ISSUE TWO: LEAST RESTRICTIVE ENVIRONMENT

Findings of Fact

1. [REDACTED] PCS reported that field trips are considered an earned privilege for all students. Prior to a field trip parents and students are notified of the time period and expectations related to attendance, homework, and behavior that are required for attendance. Teachers keep a chart outside their classroom door where students use stickers to track daily meeting of the requirements.
2. [REDACTED] PCS reported that the student's class has participated in four field trips this school year on [REDACTED] on [REDACTED]; [REDACTED]; and [REDACTED]. The student was not permitted to attend the first three but was permitted to attend the most recent field trip on [REDACTED].
3. [REDACTED] PCS reported that when a teacher needs assistance in managing a student's behavior, the teacher calls the office and a school leader is sent to the classroom to support the student in the classroom or outside of the classroom if needed.
4. From the start of the school year until [REDACTED] PCS filed its response to the complaint on [REDACTED], the behavior log records that the student was removed from the classroom ten (10) times due to [REDACTED] behavior.
 - a. These behavior logs record numerous instances of the student running out of the classroom.

Discussion/Conclusion

[REDACTED] PCS has complied with 34 CFR §§300.114 and 300.116, because it has supports in place to help the student remain in the classroom and participate as much as possible with [REDACTED] nondisabled peers.

Pursuant to 34 CFR §300.114, each public agency must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and removal of children with disabilities from the regular educational environment occurs 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. The child's placement must be based on the child's IEP. (34 CFR §300.116) The complainant alleges that the student is excluded from any fun activities and field trips, and removed from the classroom due to [REDACTED] behavior.

Field Trips

[REDACTED] PCS reported that field trips are considered an earned privilege. Prior to a field trip parents and students are notified of the time period and expectations related to attendance,

homework, and behavior that are required in order to attend the field trip. Teachers keep a chart outside their classroom door where students use stickers to track daily meeting of the requirements. The expectations are the same for all students; however, [REDACTED] PCS reported that they have modified the expectations for particular students with IEPs that were not able to meet the expectations. The expectations were not modified for this student because the LEA was simultaneously implementing behavior supports through the RTI process, resulting in improved student behavior. The student was not permitted to attend the first three field trips of the school year because [REDACTED] did not meet behavior and homework completion expectations requiring no more than two third tier behavior infractions, or no more than two missed homework assignments. However, in interviews [REDACTED] PCS reported that the student met the requirements to attend the most recent field trip on [REDACTED]. OSSE's review of the facts indicate that the student began attending field trips after the addition of behavior supports to the student's programming and IEP, such as a one-to-one aide, and completion of homework requirements.

Classroom Removals

[REDACTED] PCS reported that when a teacher needs assistance in managing a student's behavior, the teacher calls the office and a school leader is sent to the classroom to support the student in the classroom or outside of the classroom if needed. From the start of the school year until the complaint was filed on [REDACTED], the behavior log records that the student was removed from the classroom ten (10) times due to [REDACTED] behavior. The length of time outside the classroom varies from a few minutes to the remainder of the class period, but school staff members work to return the student to the class as soon as possible. The student's teacher reported that she provides a copy of the assignment the class is working on so that the student can continue doing classwork until [REDACTED] is ready to return to the classroom. In addition, the behavior log records numerous instances of the student running out of the classroom. Whenever this occurs, the teacher and other staff members work to return the student back to the classroom as soon as possible for [REDACTED] personal safety as well as to minimize missed instruction time.

As discussed in Issue One, OSSE finds that [REDACTED] PCS has behavior supports in place to keep the student in the classroom as much as possible with [REDACTED] nondisabled peers. The student is removed from the classroom only when necessary and is returned as soon as [REDACTED] is emotionally available to reengage in the classroom. OSSE finds that [REDACTED] PCS utilizes the schoolwide behavior support system and incentives, as well as individualized behavior supports, to help the student meet the school's behavior expectations. The behavior supports allowed the student to meet the behavior expectations to participate in the most recent field trip.

Therefore, [REDACTED] PCS has complied with 34 CFR §§300.114 and 300.116.

ISSUE THREE: DISCIPLINE

Findings of Fact

1. The [REDACTED] PCS family handbook outlines five (5) tiers of behavior that are subject to discipline and the resulting consequences:

- a. Tier 1 infraction: deductions. As part of a school-wide positive behavioral support system, students can lose dollars according to an agreed upon structure of fines using [REDACTED] dollars.
 - b. Tier 2 infraction: end of day reflection. Based on behaviors during the day, students miss their end of day incentive time² to meet with dean of student support to reflect on their behavior.
 - c. Tier 3 infraction: mandatory parent meeting. When a student's behavior is unsafe to other students or is consistently disruptive, a parent is required to attend a meeting with an administrator to discuss the behavior and create a plan to help the student meet expectations before the student is permitted to return to school.
 - d. Tier 4 infraction: suspension. Students whose behavior is serious may be suspended. Kindergarten and first grade students can be suspended for one day only. Following a suspension, parents must attend a re-entry conference before the student can reenter the classroom.
 - e. Tier 5 infraction: expulsion. Students who engage in violent or illegal behavior may be recommended for expulsion.
2. [REDACTED] PCS suspended the student on [REDACTED] and on [REDACTED]. The parent had to pick up the student early from school and the student missed the remainder of each school day.
 3. The student's [REDACTED] behavior log entry reads: "[REDACTED] was encouraged to stay and support [Student's] transition for a little but declined to do so. [REDACTED] stated that [REDACTED] would be available via phone today. We explained to [Student] the locations in the school building [REDACTED] is allowed to visit and that running is not allowed. We set 2 goals with [Student] (stay in the classroom and keep [REDACTED] body safe)."
 4. [REDACTED] PCS held mandatory parent meetings for the student on the following dates as a result of Tier 3 infractions (see Fact 1.c. above): [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
 5. The student's attendance record reflect tardy on nine (9) days when a mandatory parent meeting or a suspension re-entry conference occurred during school hours and resulted in missed school time.
 6. From the start of the school year until [REDACTED] PCS filed its response to the complaint on [REDACTED], the behavior log record reflects that the student was removed from the classroom ten (10) times due to [REDACTED] behavior.

Discussion/Conclusion

[REDACTED] PCS has complied with 34 CFR §300.211, because it accurately recorded all of the

² End of the day incentive time is daily time during which students engage in self-selected activities intended to reward behavior consistent with the school's code of conduct. This practice is part of the school's school-wide behavior program.

student's discipline data. [REDACTED] PCS has complied with 34 CFR §300.530, because in this case, its policy prohibiting students from returning to class until a mandatory parent meeting or suspension re-entry meeting is held did not result in the student missing additional class time beyond the suspension period that triggered the requirement to hold a manifestation determination meeting or the provision of educational services during removal.

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.³ 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 ten (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 ten (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.⁴ (34 CFR §300.536(a)) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the IEP team must review all relevant information to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability, or if the conduct in question was the direct result of the LEA's failure to implement the IEP. (34 CFR §300.530(e)(1)) After a child with a disability has been removed from [REDACTED] or [REDACTED] current placement for ten (10) days in the same school year, during any subsequent days of removal the public agency must provide educational services. (34 CFR §300.530(b)(2)) The complainant alleges that [REDACTED] is frequently asked to pick up the student from school due to behavior issues.

[REDACTED] PCS' school-wide positive behavior support program has five (5) tiers of disciplinary consequences that include point deductions, end of day reflections, mandatory parent meetings, suspensions, and expulsion. Parents receive a phone call for any tier two through five infraction in order to engage parents and ensure they are aware of incidents involving their student at school. Students' behavior is recorded in a log with additional details on discipline tracking forms. When a student's behavior is unsafe to other students or is consistently disruptive, a parent is required to attend a meeting with an administrator to discuss the behavior and create a plan to help the student meet expectations before the student is permitted to return to school. Additionally, following a suspension parents must attend a re-entry conference before the student can re-enter the classroom.

From the start of the [REDACTED] school year until [REDACTED] PCS filed its response to the complaint on [REDACTED], the student had eighteen (18) mandatory parent meetings and two (2)

³ OSSE LEA Data Management Policy (Updated December 2017).

⁴ 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))

suspensions. For the suspensions on [REDACTED] and [REDACTED], the parent was required to pick up the student from school early and each was recorded as a one-day suspension. In the interview the parent asserted that the school has requested that [REDACTED] sit in class with the student to support [REDACTED] behavior. [REDACTED] PCS confirmed that on one occasion it has asked the parent to provide behavior support such as sitting in the classroom with the student in order to keep [REDACTED] calm, but that the student's ability to remain in the classroom is not dependent upon parent support. This was confirmed in the behavior log entry from [REDACTED] where the school asked the parent to support the student in the classroom but [REDACTED] declined and said [REDACTED] would be available via phone. The school set two safety goals for the student and the student remained in class. OSSE finds that [REDACTED] PCS extensively and accurately recorded the student's discipline data, including all suspensions and other disciplinary removals from the classroom. However, OSSE reminds the [REDACTED] PCS of their obligation to manage student behavior in the classroom without in-person participation of the parent during the school day.

The student missed a partial school day for each of [REDACTED] suspensions on [REDACTED] and [REDACTED]. The student additionally missed class time on the ten (10) occasions [REDACTED] was removed from the classroom due to [REDACTED] behavior and the nine (9) occasions [REDACTED] was tardy to class following a mandatory parent meeting or suspension re-entry conference. The exact length of these various removals was not recorded, but they were of short duration, lasting less than a class period. The sum of these times outside of class do not total more than 10 school days of removal.⁵ Therefore, the IDEA procedural protections have not been triggered and thus OSSE finds that no manifestation determination meeting or provision of educational services during removal was required.

Although OSSE found no student-level noncompliance due to the student not being removed for more than 10 school days, OSSE has concerns with [REDACTED] PCS' policy related to mandatory parent meetings and suspension re-entry conferences that potentially take place beyond the suspension timeframe. By not allowing students to return to class until these meetings are held, students may miss class time that is not part of a suspension, or beyond what was part of the initial suspension allotted for the infraction. [REDACTED] PCS reported that the LEA typically schedules these meetings in the morning before the school day starts, but makes every effort to accommodate parents' schedules, including holding the meetings after the start of the school day, holding the meetings the prior evening, or holding the meetings via phone. In the case of the student named in the complaint, a tardy entry to class occurred following nine (9) of the mandatory parent meetings or suspension re-entry conferences. Even if it is not part of the student's suspension, the time a student with disability is excluded from school must be recorded as a removal and tracked in order to ensure that the student receives all IDEA procedural protections. OSSE finds that [REDACTED] PCS' policy of not allowing students to return to class until after a mandatory parent meeting or suspension re-entry conference is held may lead to violations of 34 CFR §300.530(b), which requires LEAs to follow the IDEA procedural

⁵ OSEP Questions and Answers on Serving Children with Disabilities Eligible for Transportation (November 2009) at Question B-1.

protections following ten (10) days of removal. OSSE strongly encourages [REDACTED] PCS to review existing policies to determine if any revisions are required to ensure that such violations do not occur.

However, in this case, [REDACTED] PCS has complied with 34 CFR §§300.211 and 300.530.

CONCLUSIONS

1. [REDACTED] PCS has complied with 34 CFR §300.324(a)(2), because it addressed the student's behavior concerns through adding the necessary supports and services to the student's IEP.
2. [REDACTED] PCS has complied with 34 CFR §§300.114 and 300.116, because it has supports in place to help the student remain in the classroom and participate as much as possible with [REDACTED] nondisabled peers.
3. [REDACTED] PCS has complied with 34 CFR §300.211, because it accurately recorded all of the student's discipline data.
4. [REDACTED] PCS has complied with 34 CFR §300.530, because in this case, its policy prohibiting students from returning to class until a mandatory parent meeting or suspension re-entry meeting is held did not result in the student missing additional class time beyond the scope of a student's documented suspension that triggered the requirement to hold a manifestation determination meeting or provision of educational services during removal.

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,



Elisabeth M. Morse

Interim Assistant Superintendent, Division of Systems and Supports, K-12

cc: [REDACTED], Complainant