



DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF

# EDUCATION

June 18, 2018

*VIA U.S. Mail & Electronic Mail*

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

RE: State Complaint No. 017-025 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 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 IEP according to concerns raised by the parent, implement the services and supports required by the student's IEP, maintain valid and reliable data, educate the student in the least restrictive environment, and obtain parental consent to release personal information. During the course of the investigation, OSSE identified an additional allegation of the failure to ensure parent participation.

The complainant also raised additional claims which the SCO did not investigate. The complainant raised concerns regarding DCPS staff member behavior, DCPS grading practices, and OSSE implementation of requirements under the McKinney-Vento Homeless Assistance Act and the use of funds under the Elementary and Secondary Education Act (ESEA).<sup>1</sup> The SCO did not investigate these concerns because they did not specifically allege a violation of special education law.<sup>2</sup>

The SCO for OSSE has completed its investigation of the State complaint. During the course of

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<sup>1</sup> ESEA was reauthorized on December 10, 2015 as the Every Student Succeeds Act (ESSA).

<sup>2</sup> OSSE provided the complainant with information regarding how to raise these claims through other avenues.

the investigation OSSE determined that DCPS has complied with its obligation to revise the IEP, allow participation in nonacademic and extracurricular activities, educate the student in the least restrictive environment, maintain valid and reliable data, and obtain parental consent. DCPS has not complied with its obligation to issue prior written notice, have an IEP in effect with regards to the provision of specialized instruction, and ensure parent participation. 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. **Requirement to revise the IEP 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; specifically with respect to bullying occurring and the parent's request for assistive technology from [REDACTED] through [REDACTED].<sup>3</sup>
2. **Requirement to allow participation in nonacademic and extracurricular activities at 34 CFR §§300.107 and 300.117**
  - a. Failure to take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities, specifically with respect to the [REDACTED] [REDACTED] Study Abroad Program and field trips from [REDACTED] through [REDACTED].
3. **Requirement to educate in the least restrictive environment at 34 CFR §§300.114 and 300.116**
  - a. Failure to educate the student in the least restrictive environment, specifically with regard to specialized instruction outside of the general education setting from [REDACTED] through [REDACTED].
4. **Requirement to maintain valid and reliable data at 34 CFR §300.211**
  - a. Failure to maintain valid and reliable data with regard to discipline and attendance records from [REDACTED] through [REDACTED].
5. **Requirement to have an IEP in effect at 34 CFR §300.323(a)**
  - a. Failure to have an IEP in effect for the student, specifically with regard to specialized instruction at [REDACTED] from [REDACTED]

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<sup>3</sup> The SCO investigated all allegations with regard to the timeframe of [REDACTED] through [REDACTED]. [REDACTED] is the first day of the investigation period because the complaint was filed on [REDACTED] and the State complaints process may review allegations that occurred not more than one year prior to the date that the complaint is received. (34 CFR §300.153(c)) [REDACTED] is the last day of the investigation period because the complaint alleges all events took place while the student was enrolled at [REDACTED] until [REDACTED], at which time the student was transferred to another DCPS middle school beginning in [REDACTED].



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**6. Requirement to obtain consent at 34 CFR §300.622(a)**

- a. Failure to obtain consent before disclosing personally identifiable information to parties other than officials of participating agencies from [REDACTED] through [REDACTED]

7. Requirement to ensure parent participation at 34 CFR §300.501(b)

- a. Failure to ensure parent participation in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to the child; specifically with regard to a meeting held on [REDACTED].

## INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

- ## 1. Complainant

2. DCPS [REDACTED]

3. DCPS [REDACTED]

4. DCPS [REDACTED]

5. DCPS [REDACTED]

6. 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]  
[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 (OHI) for attention deficit hyperactivity disorder (ADHD).
3. The student's local educational agency (LEA) is DCPS.

### ISSUE ONE: IEP Revision

#### Findings of Fact

1. The school held a meeting on [REDACTED] where the student's IEP goals were reviewed and updated.
  - a. The parent did not attend this meeting as discussed in Issue Seven below.
  - b. The IEP indicates that the student's behavior does not impede [REDACTED] learning or that of other children.
  - c. The IEP prescribes five (5) hours per week of specialized instruction in the general education setting, two (2) hours per week of specialized instruction outside the general education setting, and two (2) hours per month of behavioral support services.
  - d. The IEP contains goals related to the following areas of concern: mathematics; reading; emotional, social, and behavioral development.
  - e. Under the present levels of academic achievement and functional performance for emotional, social, and behavioral development, the IEP states that the student "struggles with peer interactions," "is not consistently utilizing strategies for problem solving with [REDACTED] peers," and "will instigate the situation versus allowing adults to intervene on [REDACTED] behalf."
  - f. The IEP contains the following emotional, social, and behavioral development goals: 1) "[Student] will resolve conflict situations with authority figures in 3 out of 4 trials;" 2) "[Student] will develop appropriate social interaction skills and use the skills when interacting with others in 3 out of 4 trials;" 3) "[Student] will learn and utilize strategies for focus (ex: active listening, eye contact, etc.) and task completion in 3 out of 4 trials;" 4) "[Student] will make positive, informed decisions (representative of [REDACTED] best interest) to avoid harm to herself in 8/10 trials."
2. The student's teachers reported that although the student had some challenges with peer relationships, they did not believe that it amounted to the student being bullied.
3. The teachers reported that whenever an incident occurred, about every four (4) to six (6) weeks, it was referred to an administrator who helped resolve the conflict through facilitated communication and mediation between the students.
4. The school recorded the following disciplinary infractions from the start of the [REDACTED] school year until the student withdrew from the school:
  - a. On [REDACTED] the student exhibited disrespectful behavior toward a school staff member and instigated a physical altercation with another student.



- b. On [REDACTED] the student directed profanity towards peers.
  - c. On [REDACTED] the student instigated a fight with another student.
    - i. The school initially proposed a suspension from [REDACTED], but later rescinded it.
  - d. On [REDACTED] the student was involved in a fight initiated by another student.
  - e. On [REDACTED] the parent emailed the school to alert them of threats [REDACTED] received from another student.
5. On [REDACTED] the parent requested via email that the school conduct an FBA for the student in order to develop a behavior intervention plan (BIP).
6. The school held a meeting on [REDACTED] to analyze existing data and discuss the need for an FBA.
- a. The team discussed the student's behavior at school and at home, [REDACTED] refusal to take [REDACTED] medication for ADHD, and the possibility of community based services.
  - b. The school team personnel communicated that an FBA was not needed to identify the function of the student's behavior because the school believed the student was engaging in this behavior to seek attention and avoid academics.
7. The student's teachers reported that they used audio books with the student because they helped [REDACTED] remain engaged in learning, improved literacy and fluency, and helped [REDACTED] grasp grade level material, but did not consider audiobooks as an accommodation requiring IEP amendment.

### Discussion/Conclusion

**DCPS has complied with 34 CFR §300.324(b)(1)(ii)(C) and (D), because it considered information provided by the parent. DCPS has not complied with 34 CFR §300.503(a)(2), because it failed to issue written notice to the parent of its refusal to conduct an FBA.**

Pursuant to 34 CFR §300.324(b)(1)(ii)(C) and (D), the public agency must ensure that the IEP Team revises the IEP, as appropriate, to address information about the child provided by the parents and the child's anticipated needs. The complainant alleges that the school took no follow-up action after the parent raised concerns regarding bullying and did not honor the parent's request for audiobooks.

The school held a meeting on [REDACTED] where the student's IEP goals were reviewed and updated. The IEP indicates that the student's behavior does not impede [REDACTED] learning or that of other children, but does contain behavioral support services and goals related to [REDACTED] emotional, social, and behavioral development. The IEP notes the student's struggles with interactions and problem solving with peers. The student's teachers reported that although the student had some challenges with peer relationships, they did not believe that it amounted to the student being bullied. The school recorded five (5) disciplinary infractions between the start of the [REDACTED] school year and when the student withdrew from the school in [REDACTED] prior to the winter break. In some of these instances the student initiated the conflict and some instances were initiated by the other student involved in the conflict. The teachers reported that whenever an incident occurred, about every four (4) to six (6) weeks, it was referred to an administrator who helped resolve the conflict through facilitated communication

and mediation between the students.

On [REDACTED] the parent requested via email that the school conduct an FBA for the student in order to develop a behavior intervention plan (BIP) to address behavior concerns. The school held a meeting on [REDACTED] to analyze existing data and discuss the need for an FBA. The team discussed the student's behavior at school and at home, [REDACTED] refusal to take [REDACTED] medication for ADHD, and the possibility of community based services. The school staff communicated at this meeting that an FBA was not needed to identify the function of the student's behavior because they school believed the student's behavior was attention seeking and avoidance of academics. The school made no changes to the student's IEP, encouraged the student to take [REDACTED] medication, and planned to have the parent follow up with the school after the parent's scheduled meeting with a community organization about outside services.

OSSE finds that the student's IEP already identifies areas of concern and support related to the student's interactions with peers and that the school addressed the student's conflicts with peers when they occurred. The school held a meeting to discuss the parent's request for an FBA, but ultimately decided against conducting the evaluation. Although the school is not required to conduct specific assessments requested by parents, the public agency must provide written notice to the parents of a child with a disability a reasonable time before the public agency refuses to initiate the evaluation of the child. (34 CFR §300.503(a)(2)) OSSE finds that the school failed to provide written notice to the parent of its refusal to conduct an FBA. OSSE notes that much of the discussion in the [REDACTED] meeting focused on the student's behavior and how it would improve if the student took [REDACTED] medication. OSSE reminds DCPS that the provision of an evaluation or services may not be conditioned upon a parent's decision to medicate a student.<sup>4</sup>

The student's teachers reported that they used audio books with the student because they helped [REDACTED] remain engaged in learning, improved literacy and fluency, and helped [REDACTED] grasp grade level material, but did not consider audiobooks as an accommodation requiring IEP amendment. There is no indication in the record that the addition of audiobooks as an IEP accommodation has been discussed at an IEP Team meeting, and so DCPS should consider whether audiobooks should be added to the student's IEP as an accommodation currently in use by the classroom teacher and resulting in improved outcomes for the student.

Therefore, DCPS has complied with 34 CFR §300.324(b)(1)(ii)(C) and (D), but has not complied with 34 CFR §300.503(a)(2).

## **ISSUE TWO: PARTICIPATION IN NONACADMEIC AND EXTRACURRICULAR ACTIVITIES**

### **Findings of Fact**

1. The [REDACTED] IEP contains the following classroom aids and services: graphic organizers, summaries of chapters in literature, Frayer models for vocabulary, modified

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<sup>4</sup> OSSE Prohibition on Mandatory Medication Guidance p. 1 (June 2, 2010).



assignments, larger assignments broken into smaller more manageable parts, models and exemplars, visual aids, calculation device on non-calculator sections, location with minimal distractions, small group testing, extended time, flexibility in scheduling, and frequent breaks.

2. DCPS offers a Study Abroad program for interested students.
  - a. There are three (3) steps in the selection process: 1) students submit a written application, which is evaluated using a rubric, 2) students whose application score is equal to or higher than the average application for their school are invited to interview, and 3) students receive an overall score and ranking for placement in the program.
3. On [REDACTED] the parent emailed the DCPS Study Abroad program to inquire whether the student could apply with [REDACTED] IEP accommodations in place and to request that the student's application be reviewed by a staff member other than the school's Travel Ambassador due to [REDACTED] concerns about bias.
4. On [REDACTED] the DCPS Study Abroad program informed the parent via email that the student was entitled to apply for the DCPS Study Abroad program with [REDACTED] IEP accommodations in place and that the student's application could be scored by an independent party at DCPS Central Office instead of the school's Travel Ambassador.
5. On [REDACTED] the DCPS Study Abroad program confirmed for the parent via email that they reviewed the student's application independently of [REDACTED] school and provided a copy of the scored rubric.
6. On [REDACTED] the parent emailed the DCPS Study Abroad program to inform them that [REDACTED] was invited to interview for the program and request that the student be interviewed by an evaluator other than the school's Travel Ambassador.
7. On [REDACTED] the DCPS Study Abroad program informed the parent via email that the student would not receive an interview for the program because [REDACTED] application received a lower score than average score for the school, and thus the student should not have been invited to interview.
8. The student's teachers reported that the student was not allowed to attend a field trip to the movie theater because the parent did not sign the permission slip.
9. The student's teachers reported that the student attended an overnight trip last spring for garden club students.

#### Discussion/Conclusion

**DCPS has complied with 34 CFR §§300.107 and 300.117, because it did not prevent the student from participating in nonacademic and extracurricular activities due to [REDACTED] need for accommodations.**

Pursuant to 34 CFR §300.107, the State must ensure that each public agency must take steps, including provision of supplementary aids and services determined appropriate by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. In providing or arranging for the provision of nonacademic and extracurricular services and activities, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to



the maximum extent appropriate to the needs of that child. (34 CFR §300.117) The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings. (34 CFR §300.117) The IEP must include a statement of the supplementary aids and services to be provided to the child to enable the child to participate in extracurricular and other nonacademic activities. (34 CFR §300.320(a)(4)) The complainant alleges that the school did not allow the student to participate in a study abroad program or attend a field trip.

The student's [REDACTED] IEP contains various classroom aids and services to help [REDACTED] maintain focus and complete assignments and tests. The IEP contains goals and services related to the student's emotional, social, and behavioral development to help [REDACTED] positively interact and problem solve with peers and adults.

#### Study Abroad Program

DCPS offers a Study Abroad program for interested students with three (3) steps in the selection process: 1) students submit a written application, which is evaluated using a rubric, 2) students whose application score is equal to or higher than the average application for their school are invited to interview, and 3) students receive an overall score and ranking for placement in the program. On [REDACTED] the parent emailed the DCPS Study Abroad program to inquire whether the student could apply with [REDACTED] IEP accommodations in place and to request that the student's application be reviewed by a staff member other than the school's Travel Ambassador due to the parent's concerns about bias. On [REDACTED] the DCPS Study Abroad program responded via email that the student was entitled to apply for the DCPS Study Abroad program with [REDACTED] IEP accommodations in place and that the student's application could be scored by an independent party at DCPS Central Office instead of the school's Travel Ambassador.

The student submitted an application to the DCPS Study Abroad program. On [REDACTED] [REDACTED] the DCPS Study Abroad program confirmed for the parent via email that they reviewed the student's application independently of [REDACTED] school and provided the parent with a copy of the scored rubric. On [REDACTED] the parent emailed the DCPS Study Abroad program to inform them that [REDACTED] was invited to interview for the program and request that the student be interviewed by an evaluator other than the school's Travel Ambassador. On [REDACTED] the DCPS Study Abroad program informed the parent via email that the student would not receive an interview for the program because [REDACTED] application received a lower score than average score for the school, and thus the student should not have been invited to interview.

OSSE's review of the application process and communication between the parent and DCPS finds that the student's application was given the same consideration as other students and that DCPS honored the parent's request to have the student's application reviewed by an independent party. Although there was confusion at the school level that resulted in the student mistakenly being invited to interview, OSSE finds that rescinding the interview



invitation was not the result of discrimination related to the student's disability or need for accommodations. OSSE finds that the student was not prevented from participating in the DCPS Study Abroad program due to [REDACTED] disability.

#### Field Trip

The student's teachers reported that the student was not allowed to attend a field trip to the movie theater because the parent did not sign the permission slip; however, the student participated in field trips in the past, such as an overnight trip last spring for garden club students. OSSE finds no evidence that the school prevented the student from attending any field trips due to the student's disability or need for accommodations.

Therefore, DCPS has complied with 34 CFR §§300.107 and 300.117.

### **ISSUE THREE: LEAST RESTRICTIVE ENVIRONMENT**

#### **Findings of Fact**

1. The [REDACTED] IEP prescribes six (6) hours per week of specialized instruction in the general education setting, two (2) hours per week of specialized instruction outside the general education setting, and two (2) hours per month of behavioral support services.
2. The [REDACTED] IEP prescribes five (5) hours per week of specialized instruction in the general education setting, two (2) hours per week of specialized instruction outside the general education setting, and two (2) hours per month of behavioral support services.
  - a. Under the least restrictive environment section it states: "[Student] requires one on one or small group instruction in order to progress in school."
3. The student's teachers reported that sometimes the student would refuse to go to the resource room for pull-out services and school staff members met to develop strategies to get the student to be more receptive to receive services.
4. The [REDACTED] summary of performance states that the student prefers to be in the regular classroom and not receive additional attention because [REDACTED] feels uncomfortable when [REDACTED] receives extra help, and feels that pull out is not helpful for [REDACTED]

#### **Discussion/Conclusion**

DCPS has complied with 34 CFR §§300.114 and 300.116, because it provided the student's services in the least restrictive environment in accordance with [REDACTED] IEP.

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 education 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. In determining the educational placement of a child with a disability, the public agency must ensure that the placement decision is based on the child's IEP. (34 CFR §300.116) The complainant alleges that

the school sent the student to the resource room in reaction to behavior concerns, resulting in more time outside of the classroom than was prescribed by the student's IEP.

Both the [REDACTED] and [REDACTED] IEPs prescribe the majority of the student's specialized instruction hours in the general education setting and two (2) hours per week of specialized instruction outside the general education setting, which is provided in a resource room. In its response, DCPS denied sending the student to the resource room for additional time instead of addressing the student's behavior, and responded that if anything the student spent less time in the resource room due to [REDACTED] reluctance to receive outside of classroom services. The student's teachers reported that sometimes the student would refuse to go to the resource room for pull-out services and school staff members met to develop strategies to encourage the student to be more receptive to receive services. The [REDACTED] summary of performance confirms the student's disinterest in pull-out services and states that the student prefers to be in the regular classroom and not receive additional attention because [REDACTED] feels uncomfortable when [REDACTED] receives extra help, and feels that pull out is not helpful. When the student's IEP was updated at the [REDACTED] meeting, the two (2) hours per week of specialized instruction in the resource room were kept on the IEP because the student requires one-on-one or small group instruction in order to progress in school. OSSE finds that the student is receiving services in the least restrictive environment in accordance with [REDACTED] IEP.

Therefore, DCPS has complied with 34 CFR §300.114.

#### **ISSUE FOUR: VALID AND RELIABLE DATA**

##### **Findings of Fact**

1. The student's attendance record records 23 unexcused absences and 2 excused absences between [REDACTED] and [REDACTED].
2. On [REDACTED] the parent requested via email that the school correct the student's attendance record for [REDACTED]; and [REDACTED] because the parent believed that the student was not absent on those days.
3. On [REDACTED] the parent emailed the school about the 25 absences recorded on the student's attendance record, which the parent believed was inaccurate.
4. The school recorded five (5) disciplinary infractions between [REDACTED] and [REDACTED].
  - a. The school initially proposed a suspension from [REDACTED], but later rescinded it.
5. DCPS reported that the school accurately recorded all attendance and discipline data for the student.

##### **Discussion/Conclusion**

DCPS has complied with 34 CFR §300.211, because it accurately maintained the student's attendance and discipline record.

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 Part B of the IDEA. The complainant alleges that the



school did not accurately record a suspension or the student's unexcused absences.

The student's attendance record records 23 unexcused absences and 2 excused absences between [REDACTED] and [REDACTED]. On [REDACTED] the parent requested via email that the school correct the student's attendance record for [REDACTED]; [REDACTED] and [REDACTED] because the parent believed that the student was not absent on those days. On [REDACTED] the parent emailed the school about the 25 absences recorded on the student's attendance record, which the parent believed was inaccurate. The parent provided no supporting documentation to the school for why [REDACTED] believed the attendance record was inaccurate. The school did not change the student's attendance record according to the parent's request and maintains that it accurately recorded all attendance data for the student. OSSE's investigation included review of the student's attendance record and all available supporting documentation and found no evidence that the student's attendance was recorded inaccurately.

The school recorded five (5) disciplinary infractions between [REDACTED] and [REDACTED] that did not result in a suspension. The school initially proposed a suspension from [REDACTED], but later rescinded it. Because the suspension was rescinded, there was no suspension documentation to provide to the parent.

Therefore, DCPS has complied with 34 CFR §300.211.

#### **ISSUE FIVE: IEP IN EFFECT**

##### **Findings of Fact**

1. The [REDACTED] IEP prescribes six (6) hours per week of specialized instruction in the general education setting, two (2) hours per week of specialized instruction outside the general education setting, and two (2) hours per month of behavioral support services.
2. The [REDACTED] IEP prescribes five (5) hours per week of specialized instruction in the general education setting, two (2) hours per week of specialized instruction outside the general education setting, and two (2) hours per month of behavioral support services.
3. The [REDACTED] and [REDACTED] IEPs contain the following classroom aids and services: graphic organizers, summaries of chapters in literature, Frayer models for vocabulary, modified assignments, larger assignments broken into smaller more manageable parts, models and exemplars, visual aids, calculation device on non-calculator sections, location with minimal distractions, small group testing, extended time, flexibility in scheduling, and frequent breaks.
4. The [REDACTED] summary of performance states that the student, "likes graphic organizers and story summaries to help [REDACTED] access [REDACTED] work in ELA."
5. The student's teachers reported that the student's seat was carefully assigned in class so that [REDACTED] would have easy access to take a break and that they provided the other accommodations in the student's IEP.

6. DCPS reported that the student receives the specialized instruction in accordance with [REDACTED] IEP.
7. DCPS reported that the student's math teacher is a certified special education teacher, but failed to provide supporting documentation.

#### Discussion/Conclusion

**DCPS has not complied with 34 CFR §300.323(a), because it failed to confirm that the student's specialized instruction in math was provided by a certified special education teacher.**

Pursuant to 34 CFR §300.323(a), at the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP. The complainant alleges that the school did not implement the supports and services required by the student's IEP and that the student's math teacher was not properly qualified.

At the start of the [REDACTED] school year, the student's [REDACTED] IEP was in effect, which prescribed six (6) hours per week of specialized instruction in the general education setting, two (2) hours per week of specialized instruction outside the general education setting, and two (2) hours per month of behavioral support services. On [REDACTED] the school updated the student's IEP and reduced the specialized instruction in the general education setting to five (5) hours per week and kept the other services the same. Both IEPs contain the following classroom aids and services: graphic organizers, summaries of chapters in literature, Frayer models for vocabulary, modified assignments, larger assignments broken into smaller more manageable parts, models and exemplars, visual aids, calculation device on non-calculator sections, location with minimal distractions, small group testing, extended time, flexibility in scheduling, and frequent breaks.

The student's teachers reported that the student's seat was carefully assigned in class so that [REDACTED] would have easy access to take a break and that they provided the other accommodations in the student's IEP. DCPS reported that the student receives the specialized instruction in accordance with [REDACTED] IEP. The [REDACTED] summary of performance completed by the student confirms that the student utilizes graphic organizers and story summaries to help [REDACTED] access [REDACTED] work. DCPS reported that the student's math teacher is a certified special education teacher, but failed to provide supporting documentation. Although OSSE finds that DCPS provided the student's IEP services and supports as prescribed, it could not confirm that the student's specialized instruction hours in math were provided by a certified special education teacher.

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

#### ISSUE SIX: CONSENT

##### Findings of Fact

1. DCPS reported that the individual named by the parent in the complaint is employed by the school and thus has access to student and family information.
2. DCPS reported that the staff member has not released any student or family



information to other parties.

#### Discussion/Conclusion

**DCPS has complied with 34 CFR §300.622(a), because it securely maintained student and family information.**

Pursuant to 34 CFR §300.622(a), parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies. The complainant alleges that the parent of a school employee has unrestricted access to student information, which resulted in the parent's home address being shared with another party without [REDACTED] consent.

DCPS reported that the individual named by the parent in the complaint is employed by the school and thus has authorized access to student and family information. DCPS reported that the staff member has not released any student or family information to other parties. OSSE found no evidence that the school allowed unauthorized access to student and family information or that any school staff member released student or family information without consent.

Therefore, DCPS has complied with 34 CFR §300.622(a).

#### ISSUE SEVEN: PARENT PARTICIPATION

##### Findings of Fact

1. On [REDACTED] the school contacted the parent via phone to confirm the parent's attendance at a meeting scheduled for [REDACTED].
2. On [REDACTED] the school sent the parent a letter of invitation for the [REDACTED] IEP Team meeting.
3. On [REDACTED] the school contacted the parent via phone to remind [REDACTED] about the meeting scheduled for the next day.
  - a. The parent responded that [REDACTED] could not attend and asked to reschedule in two (2) weeks so that [REDACTED] could have an advocate and a facilitator attend the meeting.
  - b. The school responded that the student's IEP would expire and be out of compliance in two (2) weeks and so proposed holding the meeting to update the IEP and then schedule another meeting to accommodate the advocate and the facilitator.
  - c. The school asked if the parent could attend a meeting prior to [REDACTED], but the parent did not respond.
4. The school held the meeting on [REDACTED].
  - a. The parent did not attend this meeting.
5. On [REDACTED] the school contacted the parent via email to schedule a meeting.
6. The school held a meeting with the parent on [REDACTED].

#### Discussion/Conclusion

**DCPS has not complied with 34 CFR §300.501(b), because it failed to accommodate the**

**parent's request to reschedule an IEP Team meeting.**

Pursuant to 34 CFR §300.501(b), the parents of a child with a disability must be afforded the opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to the child. IDEA additionally states that a meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend and must keep a record of its attempts to arrange a mutually agreed on time and place. (34 CFR §300.322(d)) During the course of the investigation, the complainant raised an additional allegation regarding [REDACTED] opportunity to participate in an [REDACTED] IEP Team meeting.

On [REDACTED] the school contacted the parent via phone to schedule an IEP Team meeting for [REDACTED] and confirmed it via an [REDACTED] letter of invitation. On [REDACTED] the school contacted the parent via phone to remind [REDACTED] about the meeting scheduled for the next day. The parent responded that [REDACTED] could not attend and asked to reschedule in two (2) weeks so that [REDACTED] could have an advocate and a facilitator attend the meeting. The school responded that the student's IEP would expire and be out of compliance in two (2) weeks and so proposed holding the meeting to update the IEP and then schedule another meeting to accommodate the advocate and the facilitator. The school asked if the parent could attend a meeting prior to [REDACTED], but the parent did not respond. The school held the meeting on [REDACTED] and the parent did not attend. On [REDACTED] [REDACTED] the school contacted the parent via email to schedule a meeting and held a meeting with the parent on [REDACTED].

Although the school knew that the parent could not attend the meeting, they held the meeting anyway. A soon-to-expire IEP is not a valid reason to hold an IEP Team meeting without the parent, who is a required member of the IEP Team. OSSE's review of the evidence found that the IDEA exception to parent participation in the meeting under 34 CFR §300.322(d) does not apply where the parent requested to attend the meeting and the LEA did not further attempt to arrange a mutually agreed on time for the meeting to take place. The school should have waited to review and revise the IEP when it met with the parent two (2) weeks later on [REDACTED].

Therefore, DCPS has not complied with 34 CFR §300.501(b).

**CONCLUSIONS**

1. DCPS has complied with 34 CFR §300.324(b)(1)(ii)(C) and (D), because it considered information provided by the parent.
2. DCPS has not complied with 34 CFR §300.503(a)(2), because it failed to issue written notice to the parent of its refusal to conduct an FBA.
3. DCPS has complied with 34 CFR §§300.107 and 300.117, because it did not prevent the student from participating in nonacademic and extracurricular activities due to [REDACTED] need for accommodations.
4. DCPS has complied with 34 CFR §§300.114 and 300.116, because it provided the



- student's services in the least restrictive environment in accordance with [REDACTED] IEP.
5. DCPS has complied with 34 CFR §300.211, because it accurately maintained the student's attendance and discipline record.
  6. DCPS has not complied with 34 CFR §300.323(a), because it failed to confirm that the student's specialized instruction in math was provided by a certified special education teacher.
  7. DCPS has complied with 34 CFR §300.622(a), because it securely maintained student and family information.
  8. DCPS has not complied with 34 CFR §300.501(b), because it failed to accommodate the parent's request to reschedule an IEP Team meeting.

#### **CORRECTIVE ACTION**

1. In order to correct the noncompliance with 34 CFR §300.503(a)(2), DCPS must do the following:
  - a. Issue prior written notice of its refusal to conduct and FBA including the reasons for its decision.
  - b. If the reason for DCPS' refusal to conduct an FBA is that the student needs to take [REDACTED] medication, that reason is insufficient and DCPS must convene a meeting to consider behavior supports for the student. Documentation of completion is due to OSSE within 10 business days of this decision letter.
2. In order to correct the noncompliance with 34 CFR §300.323(a), DCPS must do the following:
  - a. Convene an IEP team meeting to discuss the educational impact of DCPS' failure to provide specialized instruction from the start of the [REDACTED] school year until the student withdrew from the school in [REDACTED], and determine the appropriate amount of compensatory education. Documentation of completion is due to OSSE within 30 days of this decision letter.
3. In order to correct the noncompliance with 34 CFR §300.501(b), DCPS must do the following:
  - a. Train school special education staff on the required IEP Team participants and the steps that must be taken in order to ensure parents have an opportunity to attend the IEP Team meeting. Documentation of completion is due to OSSE within 30 days of this decision 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](mailto: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

[REDACTED], DCPS

[REDACTED], DCPS

[REDACTED], DCPS

Hanseul Kang, State Superintendent of Education, OSSE (under separate cover)