



DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF

# EDUCATION

[REDACTED]

*VIA U.S. Mail & Electronic Mail*

[REDACTED]

District of Columbia Public Schools  
[REDACTED]  
[REDACTED]

RE: State Complaint No. 018-005 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] (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 timely complete the student's initial evaluation.

The complainant raised additional claims which the SCO did not investigate. The complainant raised concerns regarding Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. OSSE did not investigate these concerns because they did not allege a violation of Part B of the IDEA. In accordance with the IDEA regulations at 34 CFR §300.153(c), a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. The complainant also raised concerns with events that occurred prior to the [REDACTED] school year. OSSE did not investigate these concerns because they occurred more than one year prior to the date of the complaint.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS failed to complete the student's initial evaluation, failed to provide the parent with a copy of the procedural safeguards upon referral or request for initial evaluation, and failed to provide the State Education Agency (SEA) with accurate and reliable data. This Letter of Decision is the report of the final results of OSSE's investigation.

**COMPLAINT ISSUE**

The allegation raised in the complaint, further clarified by a review of documents and interviews revealed in the course of the investigation, raised the following issue under the jurisdiction of the OSSE SCO:

1. **Initial evaluation requirements at 34 CFR §300.301(c) and D.C. Official Code §38-2561.02(a)**
  - a. Failure to timely complete the student’s initial evaluation.

**INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. Complainant
2. 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):

1. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

**GENERAL FINDINGS OF FACT**

1. The child has not yet been determined to be a child with a disability as defined by 34 CFR §300.8.
2. The student’s local educational agency (LEA) is DCPS.

**ISSUE: INITIAL EVALUATION**

**Findings of Fact**

1. On [REDACTED] the parent requested a full evaluation for an IEP via email.
  - a. The [REDACTED] acknowledged the parent’s request for evaluation and asked the parent to share [REDACTED] specific concerns related to the student’s ability to learn and/or classroom behaviors.
  - b. On [REDACTED] the parent responded and elaborated on [REDACTED] concerns.
2. On [REDACTED] DCPS held a meeting to review the student’s 504 plan.
  - a. At this meeting the parent reiterated [REDACTED] request for an IEP evaluation.
  - b. The parent reported that the [REDACTED] was supposed to follow up with [REDACTED] about an evaluation after the meeting, but never did and at some point switched to another school.
  - c. The DCPS [REDACTED] reported that [REDACTED] did not recall the details of the discussion related to the parent’s evaluation request, but



confirmed that the [REDACTED] takes the lead on completing evaluations.

3. The DCPS [REDACTED] reported that the school staff members did not think the student needed an IEP because the student was academically performing on grade level and that students cannot have an IEP when this is the case.
4. As of the date of this letter of decision DCPS has not documented the parent's request for initial evaluation in SEDS.

### Discussion/Conclusion

**DCPS has not complied with 34 CFR §300.301(c) and D.C. Official Code §38-2561.02(a), because it failed to timely complete the student's initial evaluation. DCPS has not complied with 34 CFR §300.504(a)(1), because it failed to provide the parent with a copy of the procedural safeguards upon initial referral or parent request for evaluation. DCPS has not complied with 34 CFR §300.211, because it failed to provide the SEA with accurate and reliable data.**

Pursuant to 34 CFR §300.301(c), initial special education evaluations must be conducted within 60 days of receiving parental consent for the evaluation or within the timeframe established by the state. The District of Columbia established a 120 day timeline from the date of referral for completing assessments or evaluations of students. (D.C. Official Code §38-2561.02(a)(1)).<sup>1</sup> OSSE clarified that the 120 day timeline applies to the initial evaluation of all students with disabilities by LEAs in the District of Columbia and that initial evaluation includes the determination of eligibility.<sup>2</sup> The complainant alleges that DCPS failed to complete the student's initial evaluation as requested.

### *Initial evaluation*

On [REDACTED] the parent requested a full evaluation for an IEP via email. The [REDACTED] [REDACTED] acknowledged the parent's request for evaluation and asked the parent to share [REDACTED] specific concerns related to the student's ability to learn and/or classroom behaviors. On [REDACTED] the parent responded and elaborated on [REDACTED] concerns. On [REDACTED] DCPS held a meeting to review the student's 504 plan. At this meeting the parent reiterated [REDACTED] request for an IEP evaluation. The parent reported that the [REDACTED] was supposed to follow up with [REDACTED] about an evaluation after the meeting, but never did and at some point switched to another school. The DCPS [REDACTED] reported that [REDACTED] did not recall the details of the discussion related to the parent's evaluation request, but confirmed that the [REDACTED] takes the lead on completing evaluations. In addition, the DCPS [REDACTED] reported that the school staff members did not think the student needed an IEP because the student was academically performing on grade level and that students cannot have an IEP when this is the case.

If an LEA disagrees with a request for evaluation, it must issue written notice to the parents of a

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<sup>1</sup> The timelines related to initial evaluations changed on July 1, 2018. LEAs are now required to make reasonable efforts to obtain parent consent for evaluation within 30 days of the date of referral and to complete the initial evaluation within 60 days from the date the parent provides consent. (D.C. Official Code §38-2561.02(a)(2)(A)).

<sup>2</sup> OSSE Part B Initial Evaluation/Reevaluation Policy, p. 14 (March 22, 2010).

child with a disability a reasonable time before it refuses to initiate the evaluation.<sup>3</sup> In this case, DCPS did not issue notice of its refusal to complete an evaluation and failed to comply with the parent's [REDACTED] request for evaluation. The 120-day timeline to complete the evaluation expired on [REDACTED]. OSSE reminds DCPS that it cannot use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability<sup>4</sup> and that its child find responsibilities extend to children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade.<sup>5</sup> Regardless, in its response DCPS offered to complete an evaluation for the child, although it has not yet taken any action.

Therefore, DCPS failed to comply with 34 CFR §300.301(c) and D.C. Official Code §38-2561.02(a).

#### *Accurate and reliable Data & Procedural Safeguards*

Pursuant to 34 CFR §300.504(a)(1), the LEA must provide the parent with a copy of the procedural safeguards upon initial referral or parent request for evaluation. Additionally, 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.<sup>6</sup> OSSE's review of the student's SEDS record reveals that DCPS has not documented the parent's request for initial evaluation in SEDS or documented the parent's receipt of procedural safeguards.

Therefore, DCPS failed to comply with 34 CFR §§300.211 and 300.504(a)(1).

#### *Additional Note*

The complaint made a number of specific allegations regarding alleged gross misstatements of law and fact on the part of the school's [REDACTED]. The SCO was unable to determine from the record whether all of the statements were made. However, the totality of the circumstances surrounding the identified noncompliance strongly suggest that some version of many, if not all, of the following alleged statements were made:

- Telling the parent than a medical diagnosis was required before the school could consider eligibility for services.
- Telling the parent that a medical diagnosis of a specific page length or from a specific institution was required before the school could consider eligibility for services.
- Suggesting that one individual in the school building ([REDACTED]) decides what is necessary to meet the needs of a child suspected of being a child with a disability.
- Discouraging a parent from accessing services because it would become part of a child's

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<sup>3</sup> 34 CFR §300.503(a)(2).

<sup>4</sup> 34 CFR §300.304(b)(2).

<sup>5</sup> 34 CFR §300.111(c)(1).

<sup>6</sup> OSSE LEA Data Management Policy (Updated December 2017). (Available at: <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2017%20OSSE%20LEA%20Data%20Management%20Policy%20%28updated%20Dec%202017%29.pdf>)



- permanent record and impact future adult employment prospects.
- Predetermination of a student's eligibility for speech/language services.
  - Communicating that the LEA does not have the capacity to evaluate the student for a suspected disability.

In addition to the corrective actions included below, DCPS is strongly encouraged to consider whether the named [REDACTED] requires more intensive retraining on all IDEA requirements.

### **CONCLUSION**

1. DCPS has not complied with 34 CFR §300.301(c) and D.C. Official Code §38-2561.02(a), because it failed to timely complete the student's initial evaluation.
2. DCPS has not complied with 34 CFR §300.504(a)(1) because it failed to provide a copy of the procedural safeguards upon initial referral or parent request for evaluation.
3. DCPS has not complied with 34 CFR §300.211 because it failed to document a request for initial evaluation and receipt of procedural safeguards in SEDS.

### **CORRECTIVE ACTION**

1. In order to correct the noncompliance with 34 CFR §300.301(c) and D.C. Official Code §38-2561.02(a), 34 CFR §300.504(a)(1), and 34 CFR §300.211, DCPS must do the following:
  - a. Document the student's referral, referral acknowledgement, and parent receipt of procedural safeguards in SEDS. Documentation of correction must be provided to OSSE within 10 days of the date of this letter.
  - b. Obtain consent to evaluate from the parent within 10 days of the date of this letter. Documentation of correction must be provided to OSSE **within 15 days** of the date of this letter.
  - c. Complete the student's initial evaluation as soon as possible, but in no case later than 60 days after receiving signed consent from the parent. Documentation of correction must be provided to OSSE **within 75 days** of the date of this letter.
  - d. After the student's eligibility for special education services has been determined, discuss what compensatory education, if any, is owed to the student for the delay in evaluation. The timeframe to consider is from [REDACTED] through the date of the student's final eligibility determination. Documentation of correction must be provided to OSSE within 65 days of the date of this letter.
  - e. Train all special education school staff at the school named in the complaint on their responsibilities and the procedures related to child find and initial evaluations. In addition to school-wide special education staff training, provide at least one individualized technical assistance session to the school principal and [REDACTED] named in the complaint on the requirements of child find and initial evaluation requirements. Documentation of correction must be provided to OSSE **within 30 days** of the date of this letter.
  - f. Conduct a review in order to determine whether school staff failed to document

any other requests for initial evaluation during the [REDACTED] school year. The review may include interviewing relevant staff and any other steps necessary to determine the underlying information. Documentation of correction must be provided 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](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]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]