



DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

[REDACTED]

VIA U.S. Mail & Electronic Mail

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

RE: State Complaint No. 018-006 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] [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 implement the student's IEP, make an appropriate placement, and reevaluate the student.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS did not comply with its obligation related to IEP implementation and did comply with its obligation related to placement and reevaluation. 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. **Transfer IEP requirements at 34 CFR §300.323(e)**
 - a. Failure to adopt an IEP from a previous public agency or develop, adopt and implement a new IEP for a child with a disability who transfers to a new

public agency in the same State, in consultation with the parents.

2. **Placement requirements at 34 CFR §300.116(b)(2)**
 - a. Failure to base the child's placement on the child's IEP.
3. **Reevaluation requirements at 34 CFR §300.303(a)(2)**
 - a. Failure to ensure that a reevaluation of each child with a disability is conducted if the child's parent requests a reevaluation.

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):

[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 for attention deficit disorder.
3. The student's local educational agency (LEA) is DCPS.

ISSUES ONE AND TWO: TRANSFER IEP REQUIREMENTS AND PLACEMENT

Findings of Fact

1. The [REDACTED] IEP prescribes 24 hours per week of specialized instruction outside the general education setting, 45 minutes per week of behavioral support services, and support of a dedicated aide for 8 hours per day.
2. The [REDACTED] justification and plan for dedicated aide states that the student needs a dedicated aide to maintain [REDACTED] safety and maintain [REDACTED] focus on academic assignments and assessments.
3. On [REDACTED] the student enrolled in DCPS at [REDACTED] neighborhood school, [REDACTED] Education Campus.
4. On [REDACTED] DCPS issued a letter that identified [REDACTED] Education Campus as the student's location of services.
 - a. The letter stated that the decision was based on the student's most recent IEP, availability of space in the appropriate program, and the proximity of the school to the student's home, and that the school was able to implement the student's

IEP.

5. On [REDACTED] DCPS issued a letter that identified [REDACTED] Middle School as the student's location of services.
 - a. The letter stated that the decision was based on the student's most recent IEP and that the school was able to implement the student's IEP.
6. On [REDACTED] the student began receiving the services of a dedicated aide.
7. On [REDACTED], the IEP team convened to review the student's progress.
 - a. DCPS elected to adopt the student's existing IEP at this meeting.
 - b. The parent and DCPS agreed to reevaluate the student and discuss IEP revision at an IEP meeting scheduled for [REDACTED].

Discussion/Conclusion

DCPS has not complied with 34 CFR §300.323(e), because it did not timely adopt the transfer IEP developed by a DC LEA although it provided comparable services. DCPS has complied with 34 CFR §300.116(b)(2), because it based the student's placement on the IEP.

Pursuant to 34 CFR §300.323(e), if a child with a disability transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency must provide FAPE to the child, including services comparable to those described in the child's IEP from the previous public agency, until the new public agency either adopts the child's IEP from the previous public agency or develops, adopts, and implements a new IEP. The new LEA is required to make the decision to adopt the existing IEP or develop a new IEP within thirty (30) calendar days of enrollment. An LEA that determines that it is appropriate to develop a new IEP is required to finalize the IEP within sixty (60) calendar days of enrollment.¹ Pursuant to 34 CFR §300.116(b)(2), each public agency must ensure that the child's placement is based on the child's IEP. The complainant alleges that upon enrollment DCPS placed the student in a self-contained classroom even though the parent informed DCPS that [REDACTED] disagreed with the IEP from the previous LEA.

The student's [REDACTED] IEP that was created by the student's prior DC LEA prescribes 24 hours per week of specialized instruction outside the general education setting, 45 minutes per week of behavioral support services, and support of a dedicated aide for 8 hours per day. On [REDACTED] the student enrolled in DCPS at [REDACTED] neighborhood school, [REDACTED] Education Campus. Pursuant to the student's IEP, the school placed [REDACTED] in the Behavior and Education Support (BES) classroom. The BES program is for students with disabilities who have challenging behaviors that interfere with learning. Each classroom has three (3) staff members: a certified special education teacher, an instructional paraprofessional, and a behavior technician. All staff members are trained in a behavior management program, de-escalation techniques, and instructional strategies.

Although DCPS believed that placement in that classroom was based on the student's IEP, the

¹ OSSE IEP Transfer Policy (Dec. 17, 2014) at pg. 4. (Available at: <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/IEP%20Implementation%20for%20Transfer%20Students%20Policy%20%2812-17-14%29.pdf>.)

classroom had only [REDACTED] students so DCPS transferred the student to another school with a BES classroom that had mixed genders. Accordingly, on [REDACTED] DCPS issued a letter that identified [REDACTED] Education Campus as the student's location of services. The letter stated that the decision was based on the student's most recent IEP, availability of space in the appropriate program, and the proximity of the school to the student's home, and that the school was able to implement the student's IEP.

In the [REDACTED] complaint, the parent stated that [REDACTED] wanted the student placed at [REDACTED] Middle School in order for the student to be near [REDACTED] brother who attends [REDACTED] High School. Because this school also has a BES classroom, pursuant to the parent's request, on [REDACTED] DCPS issued a letter that identified [REDACTED] Middle School as the student's location of services. The letter stated that the decision was based on the student's most recent IEP and that the school was able to implement the student's IEP. On [REDACTED], the student began receiving the services of a dedicated aide.

As a student transferring from another DC LEA with an IEP, DCPS was obligated to provide FAPE to the student, in this case including providing all specialized instruction outside the general education setting (or comparable services), even if the parent disagreed with the IEP. When DCPS reviews the IEP and decides whether to adopt it or develop a new one, the parent will be able to provide input as part of the IEP Team. Although DCPS did not provide a dedicated aide as required by the student's transfer IEP until [REDACTED]; it did place the student in a classroom with targeted behavior support. Although the U.S. Department of Education declined to define "comparable" in the 2006 regulations, it stated that "when used with respect to a child who transfers to a new public agency from a previous public agency in the same State (or from another State), 'comparable' services means services that are 'similar' or 'equivalent' to those that were described in the child's IEP from the previous public agency."² Placing the student in a classroom with targeted behavior support is similar to assigning the student a dedicated aide. The [REDACTED] justification and plan for dedicated aide states that the student needs a dedicated aide to maintain [REDACTED] safety and maintain [REDACTED] focus on academic assignments and assessments. The staff members' training in behavior management, de-escalation techniques, and instructional strategies allow them to assist the student in maintaining [REDACTED] safety and focus. Comparable services does not require LEAs to provide educational services and supports in the exact same way. OSSE finds that DCPS provided comparable services to the student's transfer IEP and based the student's placement on that IEP.

Adoption of Prior IEP or Development of New IEP

On [REDACTED], the IEP team convened to review the student's progress. The [REDACTED] meeting notes reflect and DCPS staff reported that DCPS elected to adopt the student's existing IEP at this meeting. The parent and DCPS staff both reported, and meeting notes reflect, that the parties additionally agreed to reevaluate the student and discuss IEP revision at an IEP meeting scheduled for [REDACTED]. DCPS was required to make the decision to

² 71 Fed. Reg. 46,681 (2006). (See also OSSE IEP Transfer Policy (Dec. 17, 2014) at pg. 3.)

adopt the existing IEP or develop a new IEP within thirty (30) calendar days of the student's enrollment. The student was enrolled in DCPS on [REDACTED] and DCPS elected to implement the student's existing IEP on [REDACTED], an additional twenty-seven (27) days after the thirty (30) calendar day due date on [REDACTED]. OSSE finds that DCPS did not comply with the requirement to adopt the student's existing IEP or develop a new IEP within thirty (30) calendar days of the student enrollment. Although DCPS failed to timely make the decision to adopt or revise the student's IEP, this delay did not impact the student's receipt of specialized instruction or related services.

Therefore, DCPS has not complied with 34 CFR §§300.323(e) but has complied with 300.116(b)(2).

ISSUE THREE: REEVALUATION

Findings of Fact

1. The parent reported that [REDACTED] asked the school to reevaluate the student and develop a new IEP when [REDACTED] enrolled the student.
2. In its response, DCPS asserted that it did not receive a request for reevaluation, but rather the parent expressed dissatisfaction with the student's previous school and their IEP development process.
3. In its response DCPS agreed to reevaluate the student due to the parent raising the issue in the complaint.

Discussion/Conclusion

DCPS has complied with 34 CFR §300.303(a)(2), because OSSE found no record of a request for reevaluation during the investigation timeline.

Pursuant to 34 CFR §300.303(a)(2), a public agency must ensure that a reevaluation of each child with a disability is conducted if the child's parent or teacher requests a reevaluation. The complainant alleges that [REDACTED] asked DCPS to reevaluate the student at the time of enrollment but DCPS failed to do so.

The parent reported that [REDACTED] asked the school to reevaluate the student and develop a new IEP when [REDACTED] enrolled the student. In its response, DCPS asserted that it did not receive a request for reevaluation, but rather the parent expressed dissatisfaction with the student's previous school and their IEP development process. OSSE found no record of a request for reevaluation. In its response DCPS agreed to reevaluate the student due to the parent raising the issue in the complaint. OSSE notes that the student's special education record reflects that the IEP team met on [REDACTED] and reviewed existing student data, and is scheduled to meet again on [REDACTED]. The parent and DCPS staff reported that the parent received a request for consent to evaluate the student and will review evaluation results and consider revising the student's IEP at the [REDACTED] IEP team meeting. Although OSSE found no record of the parent's request for evaluation, OSSE reminds DCPS of its obligation to complete the

reevaluation process or issue a prior written notice to the parent stating their decision and reasons for declining to evaluate the student.³

Regarding the parent's request to develop a new IEP, please refer to the discussion of Issue One above.

Therefore, DCPS has complied with 34 CFR §300.303(a)(2).

CONCLUSIONS

1. DCPS has not complied with 34 CFR §300.323(e), because it failed to make the decision to adopt the existing IEP or develop a new IEP within thirty (30) calendar days of enrollment.
2. DCPS has complied with 34 CFR §300.116(b)(2), because it based the student's placement on the IEP.
3. DCPS has complied with 34 CFR §300.303(a)(2), because OSSE found no record of a request for reevaluation during the investigation timeline.

CORRECTIVE ACTIONS

1. In order to correct noncompliance with 34 CFR §300.323(e), DCPS must:
 - a. Train special education case management staff at [REDACTED] Education Campus, [REDACTED] Education Campus, and [REDACTED] Middle School on the requirements for transfer students; specifically with regard to timelines for the LEA's decision to adopt or revise transfer student IEPs consistent with the OSSE Individualized Education Program (IEP) Implementation Transfer Student Policy. Documentation of completion of this requirement is due to OSSE within 90 days of the date of this decision.

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,



Elisabeth M. Morse
Interim Assistant Superintendent, Division of Systems and Supports, K-12

³ 34 CFR §§300.303(a)(2) and 300.503(a)(2).

cc: [REDACTED], Complainant

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]