



DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

[REDACTED]

VIA U.S. Mail & Electronic Mail

[REDACTED]
[REDACTED]
[REDACTED]
[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 [REDACTED] Public Charter School ([REDACTED] PCS) alleging violations in the special education program of [REDACTED] [REDACTED] (Student ID # [REDACTED] hereinafter "student" or "child.")

The complainant alleged that [REDACTED] 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 provide educational services and appropriately revise the student's IEP.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that [REDACTED] PCS complied with its obligation to revise the student's IEP but failed to provide all services required by the student's IEP. This Letter of Decision is the report of the final results of OSSE's investigation.

COMPLAINT ISSUES

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

1. **IEP revision requirements at 34 CFR §300.324(b)(1)(ii)**
 - a. Failure to revise the IEP, as appropriate, to address information about the child provided to, or by, the parents and the child's anticipated needs.

2. IEP implementation requirements at 34 CFR §300.323(a)

- a. Failure to have an individualized education program (IEP) in effect for the student, specifically a failure to provide specialized instruction and related services as required by the student's IEP.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

- 1. Complainant
- 2. [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):

- 1. [REDACTED]
- 2. [REDACTED]
- 3. [REDACTED]
- 4. [REDACTED]
- 5. [REDACTED]
- 6. [REDACTED]
- 7. [REDACTED]
- 8. [REDACTED]
- 9. [REDACTED]
- 10. [REDACTED]
- 11. [REDACTED]
- 12. [REDACTED]
- 13. [REDACTED]
- 14. [REDACTED]
- 15. [REDACTED]
- 16. [REDACTED]
- 17. [REDACTED]
- 18. [REDACTED]
- 19. [REDACTED]
- 20. [REDACTED]
- 21. [REDACTED]
- 22. [REDACTED]
- 23. [REDACTED]
- 24. [REDACTED]
- 25. [REDACTED]
- 26. [REDACTED]
- 27. [REDACTED]
- 28. [REDACTED]
- 29. [REDACTED]
- 30. [REDACTED]
- 31. [REDACTED]
- 32. [REDACTED]
- 33. [REDACTED]
- 34. [REDACTED]
- 35. [REDACTED]
- 36. [REDACTED]
- 37. [REDACTED]
- 38. [REDACTED]
- 39. [REDACTED]
- 40. [REDACTED]
- 41. [REDACTED]
- 42. [REDACTED]
- 43. [REDACTED]
- 44. [REDACTED]
- 45. [REDACTED]
- 46. [REDACTED]
- 47. [REDACTED]
- 48. [REDACTED]
- 49. [REDACTED]
- 50. [REDACTED]
- 51. [REDACTED]
- 52. [REDACTED]
- 53. [REDACTED]
- 54. [REDACTED]
- 55. [REDACTED]
- 56. [REDACTED]
- 57. [REDACTED]
- 58. [REDACTED]
- 59. [REDACTED]
- 60. [REDACTED]
- 61. [REDACTED]
- 62. [REDACTED]
- 63. [REDACTED]
- 64. [REDACTED]
- 65. [REDACTED]
- 66. [REDACTED]
- 67. [REDACTED]
- 68. [REDACTED]
- 69. [REDACTED]
- 70. [REDACTED]
- 71. [REDACTED]
- 72. [REDACTED]
- 73. [REDACTED]
- 74. [REDACTED]
- 75. [REDACTED]
- 76. [REDACTED]
- 77. [REDACTED]
- 78. [REDACTED]
- 79. [REDACTED]
- 80. [REDACTED]
- 81. [REDACTED]
- 82. [REDACTED]
- 83. [REDACTED]
- 84. [REDACTED]
- 85. [REDACTED]
- 86. [REDACTED]
- 87. [REDACTED]
- 88. [REDACTED]
- 89. [REDACTED]
- 90. [REDACTED]
- 91. [REDACTED]
- 92. [REDACTED]
- 93. [REDACTED]
- 94. [REDACTED]
- 95. [REDACTED]
- 96. [REDACTED]
- 97. [REDACTED]
- 98. [REDACTED]
- 99. [REDACTED]
- 100. [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. During the time period under investigation, the student's local educational agency (LEA) was [REDACTED] PCS.

ISSUE ONE: IEP REVISION

Findings of Fact

1. At the start of the [REDACTED] school year [REDACTED] PCS had a behavior intervention plan in place to address the student's non-compliant behaviors such as refusing or ignoring directives, getting out of [REDACTED] seat, leaving the classroom without permission, and disrupting the classroom.
 - a. The plan was based on the student's [REDACTED] functional behavior assessment.
2. The [REDACTED] IEP prescribed 25 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.
3. On [REDACTED] [REDACTED] PCS held an IEP Team meeting to review and revise the student's IEP.
 - a. The student's self-contained classroom teacher reported that the student avoids doing work and acts out on a daily basis.
 - b. The school reported that the student expressed an interest in being placed in a general education classroom that is co-taught by a general education and special education teachers.
 - c. The IEP Team agreed to move the student to the general education classroom with supports to see if [REDACTED] had more success there.
 - d. The IEP Team agreed to remove the dedicated aide from the student's IEP because it makes the student feel restricted and [REDACTED] becomes confrontational.
4. The [REDACTED] IEP prescribed 18 hours per week of specialized instruction in the general education setting, 5 hours per week of specialized instruction for reading intervention outside the general education setting, and 45 minutes per week of behavioral support services.
5. On [REDACTED] [REDACTED] PCS emailed the parent to check in about how the student was doing with [REDACTED] new schedule and the parent responded that the student appeared happier.
6. The [REDACTED] IEP progress report showed that the student was making no progress in [REDACTED] two (2) Mathematics goals, no progress in [REDACTED] two (2) Reading goals, no progress in [REDACTED] Written Expression goal, and making progress in [REDACTED] three (3) Emotional, Social, and Behavioral Development goals.
7. On [REDACTED] [REDACTED] PCS emailed the parent to schedule an IEP Team meeting to discuss the student's needs for the following school year.
8. [REDACTED] PCS held an IEP Team meeting on [REDACTED] [REDACTED].
 - a. The student's teachers reported that the student was not successful in the general education setting because [REDACTED] was disruptive, had negative interactions with peers and staff members, and had difficulty completing work and keeping pace with the other students.
 - b. The school recommended changing the student's placement back to the self-contained classroom because [REDACTED] needs a higher level of behavior and academic support, but the parent did not agree with the recommendation to return the student to the self-contained classroom.

- c. The school presented the option of placing the student in a nonpublic school and the parent agreed with this option.
 - d. The school promised to propose some options for delivering services for the first few weeks of school because the parent was concerned about the student returning to [REDACTED] PCS.
 - e. The IEP Team agreed to change the student's specialized instruction hours to outside the general education setting and add a dedicated aide to the student's IEP.
9. 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.
10. On [REDACTED] [REDACTED] PCS sent the parent prior written notice (PWN) that the IEP Team proposed to move the student to a therapeutic placement in order to address [REDACTED] needs.
11. From [REDACTED] [REDACTED] PCS and the parent communicated via email about the change in placement process, including preparing documents and the parent signing consent to share information about the student with OSSE and nonpublic schools.
 - a. On [REDACTED] [REDACTED] PCS provided the parent with a form for the parent to sign to provide consent for the school to speak with the student's outside therapist.
 - b. On [REDACTED] [REDACTED] PCS followed up about receiving information from the student's outside therapist. The parent gave the therapist's contact information to the school and reported that [REDACTED] already provided the signed form to the therapist.
 - c. On [REDACTED] [REDACTED] PCS contacted the student's outside therapist to discuss the student.
12. On [REDACTED] the student's outside therapist provided a letter describing [REDACTED] work with the student and recommendations for support to help the student manage [REDACTED] behavior.
 - a. The outside therapist did not provide a formal diagnosis nor specific strategies, but generally recommended that the student would be most successful with a support team that included the parent, that could implement strategies for symptom management and accommodations to support those strategies.
13. On [REDACTED] [REDACTED] PCS held a meeting to discuss a change in placement for the student.
 - a. At this meeting [REDACTED] PCS staff members reported that they thought the student needed a more restrictive setting.
 - b. The parent agreed that placement at [REDACTED] PCS was no longer appropriate for [REDACTED] [REDACTED] but that [REDACTED] would look at other public school options, which [REDACTED] preferred to a nonpublic placement. The parent stated that [REDACTED] also preferred the option of home-based services to the student returning to [REDACTED] PCS.

Discussion/Conclusion

██████████ PCS has complied with 34 CFR §300.324(b)(1)(ii), because it continuously revised the student's IEP in an attempt to help the student be successful in the classroom.

Pursuant to 34 CFR §300.324(b)(1)(ii), the public agency must revise the IEP, as appropriate, to address any lack of expected progress towards the annual goals and in the general education curriculum, the results of any reevaluation, information about the child provided to or by the parents, and the child's anticipated needs. The complainant alleges that the school failed to incorporate recommendations from the student's FBA into ██████ IEP and that ██████ disagreed with what was written in the IEP.

At the start of the ██████ school year ██████ PCS had a behavior intervention plan in place to address the student's non-compliant behaviors such as refusing or ignoring directives, getting out of ██████ seat, leaving the classroom without permission, and disrupting the classroom. The plan was based on the student's ██████ functional behavior assessment.¹ The ██████ IEP that was in effect at the start of the ██████ school year prescribed 25 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. ██████ PCS placed the student in a self-contained classroom with other special education students and provided the services as required by the IEP.

On ██████ ██████ PCS held an IEP Team meeting to review and revise the student's IEP. The student's self-contained classroom teacher reported that the student avoids doing work and acts out on a daily basis. The school reported that the student expressed an interest in being placed in a general education classroom that is co-taught by a general education and special education teachers. The IEP Team agreed to move the student to the general education classroom with supports to see if ██████ had more success there. The IEP Team agreed to remove the dedicated aide from the student's IEP because it makes the student feel restricted and ██████ becomes confrontational. ██████ PCS updated the ██████ IEP to prescribe 18 hours per week of specialized instruction in the general education setting, 5 hours per week of specialized instruction for reading intervention outside the general education setting, and 45 minutes per week of behavioral support services.

██████████ PCS monitored the student's progress in this new setting, including checking in with the parent via email. The ██████ IEP progress report, and the final progress report for the ██████ school year, showed that the student was making no progress in ██████ two (2) Mathematics goals, no progress in ██████ two (2) Reading goals, no progress in ██████ Written Expression goal, but was making progress in ██████ three (3) Emotional, Social, and Behavioral Development goals. On ██████ ██████ PCS emailed the parent to schedule an IEP Team meeting to discuss the student's needs for the following school year.

██████████ PCS held the IEP Team meeting on ██████. The student's teachers reported

¹ The behavior intervention plan and the functional behavior assessment were both developed outside of the one-year investigation timeline. (34 CFR §300.153(c))

that the student was not successful in the general education setting because [REDACTED] was disruptive, had negative interactions with peers and staff members, and had difficulty completing work and keeping pace with the other students. The school recommended changing the student's placement back to the self-contained classroom because [REDACTED] needs a higher level of behavior and academic support, but the parent did not agree with the recommendation to return the student to the self-contained classroom. The school presented the option of placing the student in a nonpublic school and the parent agreed with this option. The school promised to propose options for delivering services for the first few weeks of school because the parent was concerned about the student returning to [REDACTED] PCS. The IEP Team agreed to change the student's specialized instruction hours to outside the general education setting and add a dedicated aide to the student's IEP. Accordingly, [REDACTED] PCS updated the [REDACTED] IEP to prescribe 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] [REDACTED] PCS sent the parent prior written notice that the IEP Team proposed to move the student to a therapeutic placement in order to address [REDACTED] needs.

From [REDACTED] [REDACTED] PCS and the parent communicated via email about the change in placement process, including preparing documents and the parent signing consent to share information about the student with OSSE and nonpublic schools. On [REDACTED] [REDACTED] PCS provided the parent with a form for the parent to sign to provide consent for the school to speak with the student's outside therapist. On [REDACTED] [REDACTED] PCS followed up about receiving information from the student's outside therapist. The parent gave the therapist's contact information to the school and reported that [REDACTED] already provided the signed form to the therapist. On [REDACTED] [REDACTED] PCS contacted the student's outside therapist to discuss the student. On [REDACTED] [REDACTED] the student's outside therapist provided a letter describing [REDACTED] work with the student and recommendations for support to help the student manage [REDACTED] behavior. The outside therapist did not provide a formal diagnosis nor specific strategies, but generally recommended that the student would be most successful with a support team that included the parent that could implement strategies for symptom management and accommodations to support those strategies.

On [REDACTED] [REDACTED] PCS held a meeting to discuss a change in placement for the student. At this meeting [REDACTED] PCS staff members reported that they thought the student needed a more restrictive setting in order to be successful in the classroom. The parent agreed that placement at [REDACTED] PCS was no longer working for [REDACTED] [REDACTED] but that [REDACTED] would look at other public school options, which [REDACTED] preferred to a nonpublic placement. The parent stated that [REDACTED] preferred the home services to the student returning to [REDACTED] PCS for the start of the [REDACTED] school year.

OSSE finds that [REDACTED] PCS continuously reviewed and revised the student's IEP throughout the investigation timeline. The IEP Team based their decisions on classroom data, input from the student's teachers and parent, and sought additional input from the student's outside therapist. [REDACTED] PCS attempted a variety of settings and supports to help the

student be successful in the classroom, but the student continued to struggle academically and behaviorally throughout the school year. [REDACTED] PCS and the IEP Team ultimately decided that the student needed a nonpublic setting in order to be successful both academically and behaviorally. While the parent agreed that the student could not be successfully served at [REDACTED] PCS, [REDACTED] did not agree with the recommendation for the student to attend a nonpublic school and chose to enroll the student in another LEA. The parent's disagreement with the IEP Team's ultimate recommendation to place the student in a full-time special education setting at a nonpublic school does not negate [REDACTED] PCS' attempts throughout the [REDACTED] school year to accommodate the student in various settings to find a way to help the student be successful in the classroom. Despite trying various placements and supports throughout the school year, the student did not make academic progress and thus the IEP Team agreed to move the student to a more restrictive setting. [REDACTED] PCS revised and updated the student's IEP various times to reflect the outcome of IEP Team discussions, student data, and team-based decisions.

Therefore, [REDACTED] PCS has complied with 34 CFR §300.324(b)(1)(ii).

ISSUE TWO: IEP SERVICES

Findings of Fact

1. The student's [REDACTED]; [REDACTED] IEPs prescribed 45 minutes per week of behavioral support services.
2. The student's behavioral support service trackers for the [REDACTED] school year show that [REDACTED] PCS provided the related services required by the student's IEP.
3. On [REDACTED] [REDACTED] PCS proposed two options for the student to receive services: tutoring at home for two (2) hours per day and one (1) hour of counseling or attending school, including riding the bus, with a modified schedule.
 - a. The parent selected the tutoring and counseling services at home.
4. On [REDACTED] the service provider contacted the parent to schedule tutoring services.
5. The student received educational services (tutoring) in [REDACTED] home from [REDACTED] - [REDACTED].
6. On [REDACTED] the parent informed [REDACTED] PCS that [REDACTED] no longer needed the tutoring services.
7. On [REDACTED] the student enrolled in a new LEA.

Discussion/Conclusion

[REDACTED] PCS has not complied with 34 CFR §300.323(a), because it failed to provide counseling services from [REDACTED].

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 failed to provide an appropriate education.

As discussed under Issue One above, OSSE found that during the [REDACTED] school year [REDACTED] PCS provided specialized instruction in accordance with the student's IEP. A review of the

student's behavioral support services trackers found that [REDACTED] PCS also provided the related services required by the student's IEP.

At the [REDACTED] meeting when the school and the parent expressed concern about the student returning to [REDACTED] PCS, [REDACTED] PCS proposed two options for the student to receive services: tutoring at home for two (2) hours per day and one (1) hour of counseling per week or attending school, including riding the bus, with a modified schedule. The parent selected the tutoring and counseling services at home. The service provider contacted the parent to schedule tutoring services and provided the services in [REDACTED] home from [REDACTED] - [REDACTED]. OSSE's review of the record found that [REDACTED] PCS did not attempt to schedule counseling services for the student to receive in [REDACTED] home. On [REDACTED] the parent informed [REDACTED] PCS that [REDACTED] no longer needed the tutoring services and enrolled the student in a new LEA on [REDACTED]. OSSE finds that at the start of the [REDACTED] school year, from [REDACTED], [REDACTED] PCS provided tutoring services through home-based instruction as agreed upon by the parent until the parent enrolled the student in a new LEA, but did not provide the agreed upon counseling services.

Therefore, [REDACTED] PCS failed to comply with 34 CFR §300.323(a).

While it appears from OSSE's review of the facts that the parent and [REDACTED] PCS were working in good faith to identify an alternative arrangement for the student to receive instruction, OSSE reminds the LEA that the two (2) hours per day of home-based tutoring and one (1) hour per week of counseling services are neither similar nor equivalent to the student's IEP required services.

CONCLUSIONS

1. [REDACTED] PCS has complied with 34 CFR §300.324(b)(1)(ii), because it continuously revised the student's IEP in an attempt to help the student be successful in the classroom.
2. [REDACTED] PCS has not complied with 34 CFR §300.323(a), because it failed to provide counseling services through home-based instruction from [REDACTED] [REDACTED].

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.323(a), [REDACTED] PCS must do the following:
 - a. Authorize the parent to obtain two (2) hours of independent counseling services. Documentation of completion of this requirement is due to OSSE within 15 days of the date of this letter.

All corrective actions must be completed by the date specified above, but in no case later than one year from the date of this letter. If you have any questions regarding this decision, please

contact Victoria Glick, Manager, State Complaints at Victoria.Glick@dc.gov or 202-724-7860.

Sincerely,

A handwritten signature in blue ink that reads "Elisabeth M. Morse". The signature is written in a cursive style.

Elisabeth M. Morse

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

cc: [REDACTED], Complainant