



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

[REDACTED]

VIA U.S. Mail & Electronic Mail

[REDACTED]

District of Columbia Public Schools

[REDACTED]

RE: State Complaint No. 018-009 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."

On [REDACTED] OSSE put the State complaint investigation into abeyance when the parent filed a due process complaint on the same issues. OSSE took the investigation out of abeyance on [REDACTED] following the parent's withdrawal of the due process complaint.

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 student's IEP for the new school setting, provide academic and behavioral support, and hold an IEP Team meeting at the parent's request.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS failed to provide behavioral support services to the student after the student's transfer to DCPS at the end of the [REDACTED] school year and failed to provide or appropriately document the student's behavior support services during the fall of the [REDACTED] school year. OSSE additionally determined that DCPS complied with requirements to adopt or revise the student's IEP following the transfer of the student to DCPS and to convene an IEP meeting upon the parent's request. 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 provide comparable services and to adopt or revise the IEP at 34 CFR §300.323(e)**
 - a. Failure to provide a free and appropriate public education (FAPE), including comparable services, to a child with an individualized education program (IEP) who transfers to a new public agency in the same State and enrolls in a new school within the same school year, until the new public agency either adopts the child's IEP from the previous public agency or develops, adopts, and implements a new IEP.
2. **Requirement to have an IEP in effect at 34 CFR §300.323(a)**
 - a. Failure to have an IEP in effect for each child with a disability at the beginning of each school year.
3. **Requirement to review IEP at 34 CFR §300.324(b)**
 - a. Failure to review the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved, and revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum, information about the child provided by the parent, and the child's anticipated needs.

INVESTIGATIVE PROCEDURE


The investigation included interviews with the following individuals:¹

1. 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]

¹ OSSE made several attempts to schedule an interview with the complainant, but received no response.



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.

ISSUE ONE: COMPARABLE SERVICES

Findings of Fact

1. The student's [REDACTED] amended IEP from the previous LEA prescribed 13 hours per week of specialized instruction outside the general education setting, 120 minutes per month of behavioral support services, and various classroom aids and services.
 - a. The IEP contained two goals in the area of concern for emotional, social, and behavioral development:
 - i. By the end of the IEP date, [Student] will be able to respond to [REDACTED] classroom teacher(s), remain in all classes as assigned, and will ask for assistance when frustrated in 4/5 opportunities.
 - ii. Through individual and/or group counseling, [Student] will learn and be able to utilize coping skills (self-regulation/monitoring, relaxation, mindfulness, etc.) to deal with emotional frustration in the classroom in 4 out of 5 situations as measured by teacher and/or provider observation.
2. The student enrolled in DCPS on [REDACTED].
3. On [REDACTED] the IEP Team met to review the student's IEP.
 - a. The IEP was revised to prescribe 50 minutes per day of specialized instruction for reading outside the general education setting, 50 minutes per day of specialized instruction for mathematics outside the general education setting, and 120 minutes per month of behavioral support services.
 - b. There were no changes to the IEP goals or other classroom aids and services.
4. There are no behavioral support service trackers in SEDS for the end of the [REDACTED] school year.
5. DCPS reported that the student stopped attending school around [REDACTED].
6. The [REDACTED] IEP progress report states that the student's two goals for emotional, social, and behavioral development were just introduced because the student recently transferred to the school.
7. The [REDACTED] IEP progress report states that the student is making no progress in any of [REDACTED] IEP goals except for one emotional, social, and behavioral development goal.

Discussion/Conclusion

DCPS has not complied with 34 CFR §300.323(e), because it failed to provide behavioral support services after the student's transfer to DCPS on [REDACTED].

Pursuant to 34 CFR §300.323(e), if a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) 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 complainant alleges that the school told [REDACTED] that they were still following the student's IEP from [REDACTED] previous school, which concerned the parent because student was in a new environment.

The student enrolled in DCPS on [REDACTED]. The student's [REDACTED] amended IEP from the previous LEA prescribed 13 hours per week of specialized instruction outside the general education setting, 120 minutes per month of behavioral support services, and various classroom aids and services. Within thirty (30) days of enrollment, the new LEA must decide to either adopt the student's IEP from the previous LEA or develop a new IEP, and if developing a new IEP, must finalize the new IEP within sixty (60) calendar days of enrollment.² On [REDACTED] [REDACTED] DCPS revised the student's IEP to prescribe 50 minutes per day of specialized instruction for reading outside the general education setting, 50 minutes per day of specialized instruction for mathematics outside the general education setting, and 120 minutes per month of behavioral support services, and adopted all goals and other classroom aids and services from the previous IEP. OSSE finds that DCPS reviewed and revised the student's IEP from [REDACTED] previous LEA as required because it decided to and ultimately completed revision of the student's IEP eighteen (18) days from the date of the student's enrollment on [REDACTED].

Notwithstanding the timely revision of the student's IEP, the absence of service trackers in SEDS demonstrates noncompliance. Service providers must document all instances of actual and attempted service delivery.³ There are no behavioral support service trackers in SEDS for the student for the end of the [REDACTED] school year, including no record of attempted services. DCPS reported that the student stopped attending school around [REDACTED]. When a student misses related services due to the student's absence, the IEP Team must consider the impact of a student's absence on the student's progress and performance, and determine whether the services need to be made up in order to provide a free appropriate public education (FAPE).⁴ There is no record of the IEP Team discussing the impact of the missed behavioral support services on the student's progress and performance. The student's behavioral support service goals concern the student's ability to remain in the classroom and cope with frustration and thus are an important part of the student's academic success. OSSE determines that DCPS must make up the missed behavioral support services from when the student enrolled on [REDACTED] until the end of the [REDACTED] school year.

² OSSE IEP Implementation for Transfer Students Policy p. 4 (December 17, 2014).

³ OSSE Related Services Policy p. 10 (January 5, 2010).

⁴ Id.

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

ISSUE TWO: IEP IN EFFECT

Findings of Fact

1. The student's [REDACTED] IEP was in effect at the start of the [REDACTED] school year.
2. The [REDACTED] IEP contains various classroom aids and services, including small group and one-on-one support, testing accommodations, additional time to complete assignments, breaks for movement, modified work and assessments, guided notes and lesson plan differentiation, positive reinforcement, instruction and directions provided in multiple modalities, re-teach opportunities, and visual or multisensory materials.
3. DCPS reported that the student has daily check-ins with the social worker in the morning and afternoon and a mid-day check-in with the behavior technician.
4. DCPS reported that there is a behavior intervention plan (BIP) in place for the student.
5. The [REDACTED] plan to make up missed services states that: "Behavior Support Services have been rendered for student; however, services have not been document[ed] in [the] SEDS database. All Behavior support notes and Service Trackers will be uploaded by [REDACTED]."

Discussion/Conclusion

DCPS has not complied with 34 CFR §300.323(a), because it failed to provide or appropriately document all of the student's behavioral support services for the [REDACTED] school year.

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 student is not receiving behavioral or academic support.

The student's [REDACTED] IEP was in effect at the start of the [REDACTED] school year. DCPS reported that the student receives specialized instruction from a special education teacher in a resource room setting. The [REDACTED] IEP contains various classroom aids and services, including small group and one-on-one support, testing accommodations, additional time to complete assignments, breaks for movement, modified work and assessments, guided notes and lesson plan differentiation, positive reinforcement, instruction and directions provided in multiple modalities, re-teach opportunities, and visual or multisensory materials. DCPS reported that in addition to these accommodations, the student has daily check-ins with the social worker in the morning and afternoon, and a mid-day check-in with the behavior technician. The school has a BIP in place for the student. OSSE reviewed the behavioral support service logs to ensure that the student was receiving [REDACTED] behavioral support services and found that service trackers are missing from [REDACTED]. There is a [REDACTED] plan to make up missed services in SEDS that states services have been provided but not documented in SEDS. The plan states all services will be documented by [REDACTED]. However, as of the date of this letter of decision the missing service trackers have not been uploaded to SEDS. Behavioral support services must be documented in order for OSSE to consider the services provided. OSSE finds that DCPS has failed to provide or appropriately

document all of the student's behavioral support services, but has implemented the specialized instruction and classroom aids and services required by the student's IEP.

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

ISSUE THREE: IEP REVIEW

Findings of Fact

1. Pursuant to the parent's request, the principal and other school staff members met with the parent in [REDACTED] to discuss the student's grade retention. DCPS reported that it believed that the meeting resolved all of the parent's concerns.
2. On [REDACTED] the parent came to the school to request copies of documents, but refused to discuss with staff the proposed IEP Team meeting date of [REDACTED] and stated that further communication would come from [REDACTED] legal counsel.
3. On [REDACTED] school staff emailed the parent to schedule an IEP Team meeting.
4. On [REDACTED] school staff emailed the parent to confirm the IEP Team meeting that was to occur on [REDACTED] as agreed upon in a conversation with the parent.
5. On [REDACTED] the IEP Team reviewed and revised the student's IEP.
 - a. The IEP prescribes 10 hours per week of specialized instruction outside the general education setting, 120 minutes per month of behavioral support services, and various classroom aids and services.
 - b. The parent and [REDACTED] attorney attended the meeting but refused to participate and left the meeting when another general education teacher was in attendance in place of one of the student's general education teachers.

Discussion/Conclusion

DCPS has complied with 34 CFR §300.324(b), because it convened an IEP team meeting following the parent's request.

Pursuant to 34 CFR §300.324(b), each public agency must ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved, and revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum, information about the child provided by the parent, and the child's anticipated needs. The complainant alleges that the school has ignored parent's request to hold an IEP Team meeting to address various concerns.

Pursuant to the parent's request, the principal and other school staff members met with the parent in [REDACTED] to discuss the student's grade retention. DCPS reported that it believed that the meeting resolved all of the parent's concerns. However, following the filing of this State complaint where the parent indicated [REDACTED] desire to hold an IEP Team meeting, DCPS attempted to schedule one. On [REDACTED] the parent came to the school to request copies of documents, but refused to discuss with staff the proposed IEP Team meeting date of [REDACTED] and stated that further communication would come from [REDACTED] legal counsel. On [REDACTED] school staff emailed the parent to schedule an IEP Team meeting. On [REDACTED]

██████████ school staff emailed the parent to confirm the IEP Team meeting on ██████████ as agreed upon in a conversation with the parent. However, this meeting was later rescheduled to provide the school with more time to produce documents requested by the parent a few days prior to the meeting.

On ██████████ the parent and ██████ attorney attended the rescheduled meeting but refused to participate and left the meeting when another general education teacher was in attendance in place of one of the student's general education teachers. DCPS continued to review and revise the student's IEP. The IEP prescribes 10 hours per week of specialized instruction outside the general education setting, 120 minutes per month of behavioral support services, and various classroom aids and services. DCPS reported that it remains interested in holding an IEP Team meeting with the parent to discuss all concerns related to the student.

OSSE finds that DCPS responded to the parent's ██████████ request to hold a meeting to discuss the student's grade retention and then worked with the parent to schedule an IEP Team meeting following the filing of ██████ State complaint. OSSE found no evidence of another request to hold an IEP Team meeting.

Therefore, DCPS has complied with 34 CFR §300.324(b).

CONCLUSIONS

1. DCPS has not complied with 34 CFR §300.323(e), because it failed to provide behavioral support services after the student's transfer to DCPS on ██████████.
2. DCPS has not complied with 34 CFR §300.323(a), because it failed to provide or appropriately document all of the student's behavioral support services.
3. DCPS has complied with 34 CFR §300.324(b), because it convened an IEP team meeting following the parent's request.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.323(e) for the ██████████ school year, DCPS must do the following:
 - a. Authorize or create a plan to make up 6 hours of behavioral support services. Documentation of the completion of this action is due to OSSE within 30 days of the date of this letter.
2. In order to correct the noncompliance with 34 CFR §300.323(a) associated with the ██████████ school year, DCPS must do the following:
 - a. Authorize or create a plan to make up 6 hours of behavioral support services, or upload documentation to SEDS showing that the services were provided. Documentation of the completion of this action is due 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 me at Victoria.Glick@dc.gov or 202-724-7860.

Sincerely,



Victoria Glick
State Complaints Manager, Division of Systems and Supports, K-12

cc: [REDACTED], Complainant

[REDACTED]