



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. 018-020 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 include all individualized education program (IEP) Team members at an IEP meeting, failure to ensure parent participation at an IEP meeting, and failure to provide IEP required services to the student.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS has complied with requirements to include all IEP Team members at an IEP meeting and ensure the delivery of make-up services for missed IEP required services. OSSE additionally determined that DCPS failed to comply with the requirement to ensure parent participation at an IEP meeting. 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 Team meeting requirements at 34 CFR §300.321(a)(6)**
 - a. Failure to include all individualized education program (IEP) Team members at an IEP meeting, specifically with regard to related services personnel who have knowledge or special expertise regarding the child.
2. **Parent participation requirements at 34 CFR §300.322**
 - a. Failure to take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to attend.
3. **IEP requirements at 34 CFR §300.323(a)**
 - a. Failure to have an IEP in effect for the student, specifically a failure to provide physical therapy services from [REDACTED] to [REDACTED], a dedicated aide, and specialized instruction during the [REDACTED] school year.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals¹:

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 [REDACTED].
3. The student’s local educational agency (LEA) is DCPS.

ISSUE ONE: IEP TEAM

¹ The SCO attempted to interview and receive written response to questions regarding the complaint from the DCPS [REDACTED] without success.

Findings of Fact

1. On [REDACTED] DCPS held a meeting to update the student's IEP.
 - a. The student's speech therapist and physical therapist attended this meeting.
 - b. The team updated the present levels of academic achievement and functional performance for the student's communication/speech language and health/physical areas of concern.
2. On [REDACTED] DCPS held an IEP Team meeting to review and revise the student's IEP.
 - a. The student's speech therapist and physical therapist attended this meeting.
 - b. The team added parental input to the present levels of academic achievement and functional performance for the student's communication/speech language and health/physical areas of concern.
 - c. The team updated the annual goals for the student's communication/speech language and health/physical areas of concern.

Discussion/Conclusion

DCPS has complied with 34 CFR §300.321(a)(6), because the student's speech therapist and physical therapist attended all meetings where the student's communication/speech language and health/physical areas of concern were updated.

Pursuant to 34 CFR §300.321(a)(6), the public agency must ensure that the IEP Team for each child with a disability includes, at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. The complainant alleges that changes were made to the student's IEP at a meeting without the speech therapist and physical therapist in attendance.

On [REDACTED] DCPS held a meeting to update the student's IEP. The student's speech therapist and physical therapist attended this meeting. The team updated the present levels of academic achievement and functional performance for the student's communication/speech language and health/physical areas of concern. On [REDACTED] DCPS held an IEP Team meeting to review and revise the student's IEP. The student's speech therapist and physical therapist attended this meeting. The team added parental input to the present levels of academic achievement and functional performance for the student's communication/speech language and health/physical areas of concern. The team updated the annual goals for the student's communication/speech language and health/physical areas of concern. OSSE finds that the student's speech therapist and physical therapist attended all meetings where the student's communication/speech language and health/physical areas of concern were updated.

Therefore, DCPS has complied with 34 CFR §300.321(a)(6) in regard to related services personnel.

ISSUE TWO: PARENT PARTICIPATION

Findings of Fact

1. On [REDACTED] DCPS sent the parent a letter of invitation for an IEP Team meeting on [REDACTED].
 - a. The parent declined to accept the invitation because it did not contain the

- student's correct name.
2. On [REDACTED] the school sent the parent a letter of invitation to an IEP Team meeting on [REDACTED].
 3. On [REDACTED] DCPS updated the student's IEP.
 - a. DCPS issued written notice that it attempted to schedule the IEP Team meeting for [REDACTED], but the parent refused to attend an IEP Team meeting until the student's name was corrected in SEDS. The school team met on [REDACTED] to update the IEP and planned to reconvene on [REDACTED] for the annual IEP Team meeting.
 4. On [REDACTED] the school emailed the parent a copy of the procedural safeguards, a Medicaid consent form, an IEP for the student dated [REDACTED], and confirmation of the IEP Team meeting scheduled for [REDACTED].
 5. On [REDACTED] the school informed the parent via email that it updated the student's IEP on [REDACTED] to ensure there would be no lapse in services as the IEP was set to expire on [REDACTED].
 - a. School staff members met to update the student's present levels of performance, dates on the IEP, and demographic information.
 - b. The IEP goals, services, and supports would be discussed and updated at the [REDACTED] IEP Team meeting with the parent.
 6. On [REDACTED] DCPS held an IEP Team Meeting.
 - a. The parent attended this meeting.
 - b. The Team reviewed and updated the student's IEP goals.
 - c. The Team reviewed and updated the student's service hours.

Discussion/Conclusion

DCPS has not complied with 34 CFR §300.322, because it failed to include the parent in the [REDACTED] IEP meeting.

Pursuant to 34 CFR §300.322, each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to attend. In order to afford the parents an opportunity to attend, the public agency must notify parents of the meeting early enough to ensure that they will have an opportunity to attend and schedule the meeting at a mutually agreed on time and place. (34 CFR §300.322(a)(1)-(2)) The complainant alleges that DCPS held an IEP meeting on [REDACTED] without inviting the parent or giving [REDACTED] an opportunity to participate.

On [REDACTED] DCPS sent the parent a letter of invitation for an IEP Team meeting on [REDACTED]. The parent declined to accept the invitation because it did not contain the student's correct name. The parent refused to attend an IEP Team meeting until the student's name was corrected in SEDS. While DCPS worked on correcting the student's name, it scheduled an IEP Team meeting with the parent for [REDACTED]. However, the student's current IEP was set to expire on [REDACTED].

On [REDACTED] DCPS updated the student's IEP so that it would not be out of compliance with the requirement for annual review, but did not include the parent in this meeting. DCPS issued

written notice that it attempted to schedule the IEP Team meeting for [REDACTED], but the parent refused to attend an IEP Team meeting until the student's name was corrected in SEDS, so the school team met on [REDACTED] to update the IEP and planned to reconvene on [REDACTED] for the annual IEP Team meeting with the parent. On [REDACTED] the school emailed the parent a copy of the procedural safeguards, a Medicaid consent form, the updated [REDACTED] IEP, and confirmation of the IEP Team meeting scheduled for [REDACTED].

The parent objected to this new IEP that was created without [REDACTED] knowledge or participation. The school responded to the parent via email that it updated the student's IEP on [REDACTED] to ensure there would be no lapse in services as the IEP was set to expire on [REDACTED]. School staff members met to update the student's present levels of performance, dates on the IEP, and demographic information; but the IEP goals, services, and supports would be discussed and updated at the [REDACTED] IEP Team meeting with the parent.

On [REDACTED] DCPS held an IEP Team Meeting. The parent attended this meeting. The IEP Team reviewed and updated the student's IEP goals and services. The parent had an opportunity to provide input on all areas of the IEP and the IEP Team updated the IEP accordingly.

The record shows that DCPS took no steps to include the parent in the [REDACTED] IEP meeting where parts of the IEP were updated. IEPs do not expire and there is no evidence to suggest that the failure to timely conduct an annual IEP review causes a lapse in service delivery. Annual IEP review due dates exist for the purpose of ensuring timely implementation of annual IEP review requirements pursuant to IDEA at 34 CFR §300.324(b)(1). DCPS updated the IEP on [REDACTED] to prevent the LEA from being out of compliance with IEP review timelines. The parent showed [REDACTED] willingness to participate in the IEP review process as evidence by [REDACTED] plans to attend the meeting scheduled for [REDACTED].

Therefore, DCPS has not complied with 34 CFR §300.322.

Although DCPS failed to include the parent in the [REDACTED] IEP meeting, DCPS took steps to remedy the situation by reconvening on [REDACTED] and giving the parent the opportunity to participate and provide input. Thus the violation is procedural in nature and did not result in student harm. Therefore, OSSE's corrective action will address the procedural issue but provide no student-level remedy.

ISSUE THREE: IEP SERVICES

Findings of Fact

1. The [REDACTED] IEP prescribed 30 minutes per month of specialized instruction inside the general education setting, 120 minutes per month of adapted physical education, 1 hour per month of speech-language pathology, 120 minutes per month of physical therapy, 90 minutes per month of occupational therapy, and the support of a dedicated aide for 7.5 hours per day.
 - a. School staff reported that the dedicated aide was not intended to be a

permanent service, but no time constraint was written on the IEP.

- b. The parent responded that she believed the dedicated aide was intended for as long as the student had [REDACTED], which [REDACTED] still has.
2. The [REDACTED] IEP prescribes 30 minutes per month of specialized instruction outside the general education setting, 120 minutes per month of adapted physical education, 1 hour per month of speech-language pathology, 120 minutes per month of physical therapy, 45 minutes per month of occupational therapy, and support of a dedicated aide for 7.5 hours per day.
3. The [REDACTED] plan to make-up services stated that the student missed 600 minutes of physical therapy between [REDACTED] and [REDACTED] due to provider unavailability. The plan proposed to make-up the missed services by adding sessions on other days, to be completed by [REDACTED].
4. The [REDACTED] plan to make-up services stated that the student missed 210 minutes of specialized instruction between [REDACTED] and [REDACTED] due to no provider to cover the school. The plan proposed to make-up the missed services by adding sessions and incorporating the student into other students' sessions by [REDACTED].
5. The [REDACTED] IEP prescribes 30 minutes per month of specialized instruction outside the general education setting, 120 minutes per month of adapted physical education, 45 minutes per month of speech-language pathology, 120 minutes per month of physical therapy, 45 minutes per month of occupational therapy, and support of a dedicated nurse from [REDACTED] – [REDACTED].
6. At the [REDACTED] IEP team meeting, the Team discussed the inclusion of a dedicated aide on the student's prior IEP.
 - a. The parent requested a dedicated aide for when the student returned from surgery and the Team agreed the student needed a dedicated nurse from [REDACTED] return from surgery until the end of the school year on [REDACTED].
7. On [REDACTED] DCPS offered compensatory education for failure to provide a dedicated aide and issued independent service authorization for 50 hours of tutoring services on [REDACTED].
8. On [REDACTED] DCPS submitted paperwork to request a nurse to be assigned to the student.
9. The nurse began providing services to the student on [REDACTED].

Discussion/Conclusion

DCPS has complied with 34 CFR §300.323(a), because it took steps to make-up all missed services.

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 DCPS failed to provide physical therapy services from [REDACTED] to [REDACTED], a dedicated aide, and specialized instruction during the [REDACTED] school year.

Physical Therapy

The [REDACTED] IEP prescribed 120 minutes per month of physical therapy. DCPS admitted that it failed to provide all of the student's required physical therapy services due to provider

unavailability and proposed a make-up plan. The [REDACTED] plan to make-up services stated that the student missed 600 minutes of physical therapy between [REDACTED] and [REDACTED]. The plan proposed to make-up the missed services by adding sessions on other days by [REDACTED].

Specialized Instruction

The [REDACTED] IEP prescribed 30 minutes per month of specialized instruction inside the general education setting. DCPS admitted that it failed to provide all of the student's required specialized instruction due to no provider to cover the school and proposed a make-up plan. The [REDACTED] plan to make-up services stated that the student missed 210 minutes of specialized instruction between [REDACTED] and [REDACTED]. The plan proposed to make-up the missed services by adding sessions and incorporating the student into other students' sessions, to be completed by [REDACTED].

Dedicated Aide

The [REDACTED] IEP prescribed the support of a dedicated aide for 7.5 hours per day. However, school staff reported that the dedicated aide was not intended to be a permanent service, even though no time constraint was written on the IEP. The parent responded that she believed the dedicated aide was intended for as long as the student had [REDACTED], which [REDACTED] still has, but admitted that the student mostly needed a dedicated aide while [REDACTED] was recovering from surgery. On [REDACTED] DCPS offered to fund 35 hours of tutoring services as compensatory education for failure to provide a dedicated aide and issued independent service authorization for 50 hours of tutoring services on [REDACTED].

At the [REDACTED] IEP team meeting, the Team discussed the student's need for a dedicated aide. The parent requested a dedicated aide for when the student returned from surgery and the IEP Team agreed the student needed a dedicated nurse from [REDACTED] return from surgery until the end of the school year on [REDACTED]. The student returned to school on [REDACTED] and on [REDACTED] DCPS submitted paperwork to request a nurse to be assigned to the student. The nurse began on [REDACTED].

OSSE finds that although DCPS failed to provide all of the services required by the student's IEP, it took steps to remedy the missed services.

Therefore, DCPS has complied with 34 CFR §300.323(a).

CONCLUSIONS

1. DCPS has complied with 34 CFR §300.321(a)(6), because the student's speech therapist and physical therapist attended all meetings where the student's communication/speech language and health/physical areas of concern were updated.
2. DCPS has not complied with 34 CFR §300.322, because it failed to include the parent in the [REDACTED] IEP meeting.
3. DCPS has complied with 34 CFR §300.323(a), because it took steps to make-up all missed services.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.322, DCPS must do the following:
 - a. Train school staff members or issue a memorandum on parent participation. The training or memorandum must include acceptable situations in which the IEP Team is allowed to hold an IEP Team meeting without the parent and how to ensure parent participation when an IEP annual due date is approaching in the immediate future or has passed. Documentation of the completion of this corrective action is due to OSSE within 90 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]