



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

[REDACTED]

VIA U.S. Mail & Electronic Mail

[REDACTED]

[REDACTED]

Public Charter School

[REDACTED]

[REDACTED]

[REDACTED]

RE: State Complaint No. 018-021 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 (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 all of the student's IEP services, educate the student in the least restrictive environment, and allow parental access to educational records.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that [REDACTED] PCS has complied with its obligation to make available special education and related services in accordance with the child's IEP and educate the student in the least restrictive environment, but has not complied with its obligation to allow the parents of a child with a disability an opportunity to inspect and review all educational records. 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 IEP services at 34 CFR §300.323(c)(2)**
 - a. Failure to make available special education and related services in accordance with the child's IEP, specifically with regard to specialized instruction and testing accommodations on State assessments.
2. **Least restrictive environment requirements at 34 CFR §§300.114 and 300.116**
 - a. Failure to educate the student in the least restrictive environment, specifically with regard to specialized instruction outside of the general education setting.
3. **Educational records requirements at 34 CFR §300.501**
 - a. Failure to allow the parents of a child with a disability an opportunity to inspect and review all educational records with regard to the provision of FAPE to the child.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED] PCS [REDACTED]
3. [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]

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 specific learning disability.
3. The student's local educational agency (LEA) is [REDACTED] PCS.

ISSUE ONE: IEP SERVICES

Findings of Fact

1. The [REDACTED] IEP prescribed 5 hours per week of specialized instruction for reading inside the general education setting, 5 hours per week of specialized instruction for reading outside the general education setting, and 5 hours per week of specialized instruction for mathematics inside the general education setting.

- a. Under the other classroom aids and services section of the IEP states: "Chunking of information, extra-time on assignments, small-group instruction and use of manipulative. [sic] [Student] requires frequent check-ins, frequent structured breaks and positive reinforcements to encourage positive behaviors."
 - b. The IEP requires the following classroom accommodations: small group testing, flexibility in scheduling, and frequent breaks.
 - c. The IEP prescribes the following statewide assessment accommodations: "screen reader edition allows [REDACTED] the ability to gain sufficient comprehension of given information, extended time, and frequent breaks."
2. The [REDACTED] first quarter IEP progress report showed that the student was progressing in five (5) of [REDACTED] goals and two (2) goals were just introduced.
 - a. The comment for one of the student's mathematics goals states: "With fading support, [Student] is able to use vertical angles, angles on lines, and angles at a point, to solve multi-step problems with 72% accuracy."
 - b. The comment for one of the student's reading goals states: "[Student] is able to determine the author's point of view in a grade level text with minimal teacher assistance in 2 out of 3 trials with 60% accuracy."
3. The [REDACTED] second quarter IEP progress report showed that the student was progressing in five (5) of [REDACTED] goals and made no progress in two (2) goals.
 - a. The comment for one of the student's mathematics goals states: "With fading teacher support, [Student] is able to rewrite and simplify expressions using a variety of properties (associative, commutative, and distributive) and 70% accuracy in 3 out of 5 trials."
 - b. The comment for one of the student's reading goals states: "[Student] is making some progress towards meeting this goal. With fading teacher support [REDACTED] is able to compare and contrast two different grade level texts with 70% accuracy in 3 out of 5 trials."
 - c. The comment for the student's emotional, social, and behavioral development goal states: "[Student] continues to make progress practicing self-control in the classroom. [REDACTED] consistently completes classwork assignments."
4. The [REDACTED] third quarter IEP progress report showed that the student was progressing in five (5) of [REDACTED] goals, one (1) goal was not addressed that quarter, and made no progress in one (1) goal.
 - a. The comment for one of the student's reading goals states: "With fading teacher support, [Student] is able to draw inferences from a grade level text with 70% accuracy."
 - b. The student made no progress in [REDACTED] emotional, social, and behavioral development goal: "As [Student] has moved through [REDACTED] grade and begun getting ready for high school, [REDACTED] has shown increased struggles with staying in the classroom and completing work. [REDACTED] has increased social interactions with [REDACTED] peers and is not easily redirected. The therapist recommends push in support in the future."
5. [REDACTED] PCS reported that the student's specialized instruction is provided by push-in and pull-out services by a special education teacher, modified work and quizzes,

and extended time on tests.

- a. [REDACTED] PCS reported that the student refused pull-out or push-in services and would give back modified work when it was given to [REDACTED] instead choosing to complete the non-modified work.
 - b. [REDACTED] PCS reported that it encouraged the student to receive services and ask the teacher when [REDACTED] needed help.
 - c. [REDACTED] PCS reported that the student received testing accommodations according to [REDACTED] IEP.
6. [REDACTED] PCS holds quarterly parent-teacher conferences.
- a. [REDACTED] PCS reported that for the [REDACTED] school year, only the student's [REDACTED] attended the first and second quarter meetings because the student was living with only the [REDACTED] at the time.
 - b. At the first quarter meeting the student's [REDACTED] and teachers discussed the student's resistance to services and agreed to not force the student to receive services because [REDACTED] was doing well academically.
7. [REDACTED] PCS reported that the student's special education teacher continued to pull the student out of class for [REDACTED] outside the general education setting support, which the student sometimes accepted and sometimes refused, and was available in the student's classroom for inside the general education setting support when the student needed help.
8. [REDACTED] PCS reported that the student's behavior and class participation started to decline in the third quarter.
9. On [REDACTED] [REDACTED] PCS held an IEP Team meeting.
- a. The IEP Team discussed the student's need for academic support and the best way to engage the student in receiving services.
 - b. The IEP Team added the following language to the other classroom aids and services section of the IEP: "[Student] benefits from check-ins in the classroom however does not like to be singled out or having the teacher stand over [REDACTED] [REDACTED] prefers to be able to request the help from [REDACTED] teacher."

Discussion/Conclusion

[REDACTED] PCS has complied with 34 CFR §300.323(c)(2), because it made available the services and accommodations required by the student's IEP.

Pursuant to 34 CFR §300.323(c)(2), as soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP. The complainant alleges that the school is not providing the specialized instruction or testing accommodations required by the student's IEP.

Specialized Instruction

The complainant alleges that [REDACTED] learned that the student was refusing pull-out services for the first time at the third quarter parent-teacher conference. The [REDACTED] IEP prescribed 5 hours per week of specialized instruction for reading inside the general education setting, 5 hours per week of specialized instruction for reading outside the general education setting, and 5 hours per week of specialized instruction for mathematics inside the general education

setting.

██████████ PCS reported that the student's specialized instruction is provided by push-in and pull-out services by a special education teacher, modified work and quizzes, and extended time on tests. ██████████ PCS reported that at the beginning of the ██████████ school year the student refused pull-out or push-in services and would give back modified work when it was given to ██████████ instead choosing to complete the non-modified work. ██████████ PCS reported that it encouraged the student to receive services and ask the teacher when ██████████ needed help.

██████████ PCS holds quarterly parent-teacher conferences. ██████████ PCS reported that for the ██████████ school year, only the student's ██████████ attended the first and second quarter meetings because the student was living with only the ██████████ at the time. At the first quarter meeting the student's ██████████ and teachers discussed the student's resistance to services and agreed to not force the student to receive services because ██████████ was doing well academically, but allow ██████████ to request help when ██████████ needed it. The student's special education teacher continued to pull the student out of class for ██████████ outside the general education setting support, which the student sometimes accepted and sometimes refused, and was available in the student's classroom for inside the general education setting support when the student needed help. ██████████ PCS reported that this approach worked well until the student's behavior and class participation started to decline in the third quarter. On ██████████ ██████████ PCS held an IEP Team meeting. At this meeting the IEP Team discussed the student's need for academic support and the best way to engage the student in receiving services. The IEP Team added the following language to the other classroom aids and services section of the IEP: "[Student] benefits from check-ins in the classroom however does not like to be singled out or having the teacher stand over ██████████ ██████████ prefers to be able to request the help from ██████████ teacher."

The student's IEP progress reports show that the student made progress on most of ██████████ IEP goals throughout the ██████████ school year; however, there were instances of no progress made on IEP goals during the second and third quarter. The IEP progress reports contain teacher comments on the student's progress and show evidence of teacher support in the classroom for both mathematics and reading when the comments state that the student is able to complete tasks "with fading teacher support." The IEP progress reports also support ██████████ PCS' claim that the student's behavior began to decline towards the end of the school year. The ██████████ second quarter IEP progress report showed that the student was making progress on practicing self-control and completing classroom assignments, but by the ██████████ third quarter IEP progress report the student increasingly struggled with staying in the classroom and completing work.

OSSE finds that ██████████ PCS had specialized instruction in place in accordance with the student's IEP at the start of the ██████████ school year. When the student showed resistance to receiving those services, one of the student's parents and teachers discussed a plan to address the issue. ██████████ PCS continued to make the services available to the

student so that the student could take advantage of the support when needed. The student's special education teacher continued to monitor the student's progress on [REDACTED] IEP goals. When the student's behavior and classroom participation began to decline later in the school year, [REDACTED] PCS convened a meeting to discuss their concerns and updated the IEP accordingly. OSSE finds that [REDACTED] PCS made available to the student all specialized instruction required by [REDACTED] IEP.

Testing Accommodations

The complainant alleges that a conversation with a staff member regarding testing accommodations made [REDACTED] worried that the student was not receiving necessary supports. The [REDACTED] IEP requires the following classroom accommodations: small group testing, flexibility in scheduling, and frequent breaks. The IEP prescribes the following statewide assessment accommodations: screen reader edition allows [REDACTED] the ability to gain sufficient comprehension of given information, extended time, and frequent breaks. [REDACTED] PCS reported that the student received the classroom and testing accommodations according to [REDACTED] IEP. OSSE found no evidence that [REDACTED] PCS did not provide the testing accommodations required by the student's IEP.

Therefore, [REDACTED] PCS has complied with 34 CFR §300.323(c)(2).

ISSUE TWO: Least Restrictive Environment (LRE)

Findings of Fact

1. The [REDACTED] IEP prescribed 5 hours per week of specialized instruction for reading inside the general education setting, 5 hours per week of specialized instruction for reading outside the general education setting, and 5 hours per week of specialized instruction for mathematics inside the general education setting.
2. At the first quarter meeting the student's [REDACTED] and teachers discussed the student's resistance to services outside of the general education environment and agreed to not force the student to receive services in this setting because [REDACTED] was doing well academically.
 - a. The student's special education teacher continued to pull the student out of class for the hours listed on [REDACTED] IEP to be delivered outside of the general education environment, and sometimes the student accepted and sometimes [REDACTED] refused to receive services in this setting.

Discussion/Conclusion

[REDACTED] PCS has complied with 34 CFR §§300.114 and 300.116, because it maintained the student's placement in the general education setting with supports and services and did not remove the student to a more restrictive setting than was needed to help the student make progress towards [REDACTED] annual IEP goals.

Pursuant to 34 CFR §300.114, each public agency must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled and special classes or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in

regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The child's placement must be based on the child's IEP. (34 CFR §300.116) The complainant alleges that the school is not providing specialized instruction outside of the general education setting as required by the student's IEP, the least restrictive environment (LRE) required by the student's IEP.

The student's IEP that was in effect for the [REDACTED] school year prescribed 5 hours per week of specialized instruction for reading to be delivered in the outside the general education environment; the remainder of the specialized instruction hours were to be provided inside the general education environment. A special education teacher provided these hours in a combined general education and special education environment approach through push-in and pull-out services. As discussed above, the student was resistant to pull-out services, so at the first quarter parent-teacher conference the student's [REDACTED] and teachers discussed the student's resistance to services and agreed not to force the student to receive services in the environment outside of the general education setting because [REDACTED] was doing well academically. The student's special education teacher continued to pull the student out of class for the hours listed on [REDACTED] IEP to be delivered outside of the general education environment, and sometimes the student accepted and sometimes [REDACTED] refused to engage in services in this setting. [REDACTED] PCS continued to make the pull-out services available to the student if [REDACTED] needed the support.

Therefore, [REDACTED] PCS has complied with 34 CFR §§300.114 and 300.116.

ISSUE THREE: EDUCATION RECORDS

Findings of Fact

1. At a third quarter meeting with some of the student's teachers the parent requested to see the student's folder of modified classroom work and test data.
 - a. The student's special education teacher was absent and thus the requested documents were unavailable immediately.
 - b. A school staff member agreed to follow-up with the student's special education teacher, but this did not occur.
2. In its response [REDACTED] PCS reported that the student receives modifications and accommodations on [REDACTED] assignments, weekly quizzes, assessments, and states assessments in accordance with [REDACTED] IEP.
3. [REDACTED] PCS's special education policies and procedures manual states: "Parents may inspect and review any education records relating to their scholar that are collected, maintained or used by [REDACTED] pursuant to the IDEA...When a parent requests to inspect and review records, the [REDACTED] will ensure that the parent have [sic] the opportunity to inspect and review the special education file; any discipline file, if applicable; and the cumulative file, inclusive of report cards and attendance record."
4. The [REDACTED] analysis of existing data includes classwork, quizzes and assessments, and homework as information reviewed for the student's recent reevaluation.

Discussion/Conclusion

PCS has not complied with 34 CFR §300.501, because it failed to allow the complainant an opportunity to inspect and review all educational records.

Pursuant to 34 CFR §300.501(a), the parents of a child with a disability must be afforded, in accordance with the procedures of §300.613, an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education (FAPE) to that child. Pursuant to 34 CFR §300.613, each agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency. The complainant alleges that [REDACTED] requested to see the student's test data and classwork folder but the school never provided it.

At a third quarter meeting with some of the student's teachers, the complainant requested to see the student's folder of modified classwork and test data. The student's special education teacher was absent and thus the requested documents were unavailable immediately. A school staff member agreed to follow-up with the student's special education teacher, but this did not occur.

In its response, [REDACTED] PCS asserts that the student's modified classwork is not maintained as part of the student's educational record with regard to FAPE and thus if [REDACTED] PCS allowed the parent to see those records it would be a courtesy and not a requirement, as [REDACTED] PCS is only required to share special education records with parents of children with disabilities. [REDACTED] PCS' special education policies and procedures manual aligns with this stance: "Parents may inspect and review any education records relating to their scholar that are collected, maintained or used by [REDACTED] pursuant to the IDEA...When a parent requests to inspect and review records, the [REDACTED] [REDACTED] will ensure that the parent have [sic] the opportunity to inspect and review the special education file; any discipline file, if applicable; and the cumulative file, inclusive of report cards and attendance record."

[REDACTED] PCS' narrow view on which education records are subject to parental review and inspection under the IDEA does not comply with applicable regulations. The IDEA regulations use the Family Educational Rights and Privacy Act (FERPA) regulations' definition of education records. (34 CFR §300.611) The FERPA regulations define records generally as, "any information recorded in any way . . .," and defines education records as those that are, "1) [d]irectly related to a student; and 2) [m]aintained by an education agency or institution or by a party acting for the agency or institution." (34 CFR §99.3) The student's classwork and assessments meet this definition. In its response [REDACTED] PCS reported that the student receives modifications and accommodations on [REDACTED] assignments, weekly quizzes, assessments, and state assessments in accordance with [REDACTED] IEP. If the student's IEP governs the way classwork and assessments are provided to the student, then those records directly relate to [REDACTED] PCS' IEP implementation and delivery of FAPE to the student. Additionally, [REDACTED] PCS relied on classwork, quizzes and assessments, and homework in its review of existing data for the student's recent reevaluation.

OSSE finds that the student's modified classwork and assessments are included as education records that relate to the identification, evaluation, and educational placement of the child and the provision of FAPE to that child and the parent must be afforded an opportunity to inspect and review them.

Therefore, [REDACTED] PCS has not complied with 34 CFR §300.501(a).

CONCLUSIONS

1. [REDACTED] PCS has complied with 34 CFR §300.323(c)(2), because it made available the services and accommodations required by the student's IEP.
2. [REDACTED] PCS has complied with 34 CFR §§300.114 and 300.116, because it maintained the student's placement in the general education setting with supports and services and did not remove the student to a more restrictive setting than was needed to help the student make progress towards [REDACTED] annual IEP goals.
3. [REDACTED] PCS has not complied with 34 CFR §300.501, because it failed to allow the complainant an opportunity to inspect and review all educational records.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.501(a), [REDACTED] PCS must do the following:
 - a. Schedule a time for the complainant to inspect and review the student's classwork and assessments. Evidence of the completion of this action must be completed within 30 days of the date of this letter.
 - b. Update its special education policies and procedures manual to include all education records that relate to the identification, evaluation, and educational placement of the child and the provision of FAPE to that child, including classwork and assessments. Evidence of the completion of this action must be completed within 30 days of the date of this letter.
 - c. Train school staff, including all teaching staff and special education coordinators, on the updated special education policies and procedures manual required in corrective action b., specifically training on the availability of modified homework in students' education records for parent review. Evidence of completion of this action must be completed within 60 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,

A handwritten signature in blue ink, appearing to read 'V. Glick', with a stylized flourish at the end.

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

cc: [REDACTED], complainant