



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

[REDACTED]

*VIA U.S. Mail & Electronic Mail*

[REDACTED]

Public Charter School

[REDACTED]

RE: State Complaint No. 018-023 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] [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 the student’s individualized education plan (IEP) services and educate the student in the least restrictive environment (LRE).

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 provide the services required by the student’s IEP but did not comply with its obligation to educate the student in the LRE. 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 requirements at 34 CFR §300.323(c)(2)**
  - a. Failure to have an IEP in effect with regard to specialized instruction,

supplementary aids and services, and positive behavioral interventions and supports.

**2. LRE requirements at 34 CFR §300.114**

- a. Failure to educate the student in the LRE.

**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):

[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 developmental delay.
- 3. The student’s local educational agency (LEA) is [REDACTED] PCS.

**ISSUE ONE: IEP**

**Findings of Fact**

- 1. The student’s BIP includes the following interventions: provide student with perceived choices, clear and concise directives and expectations, shortened tasks, consistent reinforcement and positive praise and attention, clear and consistent consequences for noncompliant and aggressive behaviors, a visual or digital timer, leadership opportunities and class jobs, opportunity to communicate feelings and emotions when placed under unwanted social situations, daily frequency goal trackers to increase motivation, and have student chart performance on goals [REDACTED] increase [REDACTED] ability to independently self-regulate emotions and advocate when necessary, and utilize a break notebook to assist with recording feelings.
  - a. The BIP includes the following reinforcements and consequences for the interventions: planned praising in front of peers for positive behaviors, earn points for [REDACTED] tracker along with daily incentives, regular communication with parents, redirection when off task, provide breaks, assign a classroom job or duty, ignore disruptive behavior when appropriate, involve student in developing plans to deal with [REDACTED] behaviors, speak and interact with student in a neutral manner and calm tone, provide student with a highly structured routine, spend lunch time in Pathways when student engages in aggressive and noncompliant behaviors, set a timer for laptop usage, and provide student with choices on when and how to complete assignments.
  - b. The BIP notes that the school psychologist will meet with the student weekly to teach, model, and role play lessons on anger management, compromise, conflict resolution, coping skills, getting along with others, cause and effect, consequences of actions, communicating needs and frustrations, and taking a break before reaching excessive levels of anger.
  - c. The BIP states that data will be collected on the following problem behaviors: aggression toward peers, ignoring staff directives, and property destruction.
- 2. The student’s safety plan states that when the student exhibits identified indicators of physical aggression toward adults and peers and oppositional refusal, staff members will respond by acknowledging the trigger and the emotion the student may be feeling, providing calm instructions, and moving the student to an alternate location to assist

with deescalating.

- a. If the student does exhibit physically aggressive and injurious behaviors, the student will be removed to a less stimulating setting and administrative and behavioral support members will be contacted immediately.
  - b. The school will also contact the parents and the duration of the behavior will be tracked with a timer.
3. The [REDACTED] IEP prescribes 1.5 hours per week of specialized instruction for reading inside the general education setting, 1.5 hours per week of specialized instruction for mathematics inside the general education setting, 60 minutes per month of behavioral support services inside the general education setting, 60 minutes per month of behavioral support services outside the general education setting, and support of a dedicated aide for 8 hours per day.
4. The IEP team met on [REDACTED] to discuss the student's defiant and aggressive behaviors.
  - a. The Team decided to discontinue the use of a classroom-wide behavior chart because it acted as a trigger for the student and that the student would utilize [REDACTED] own behavior tracker, with daily school communication to the parent.
5. The IEP team met on [REDACTED] to discuss a disciplinary incident where the student physically injured [REDACTED] dedicated aide and determined that the behavior in question was not a manifestation of the student's disability.
6. The IEP team met on [REDACTED] to review the student's BIP and IEP.
  - a. The school reported that the student would have a substitute dedicated aide until a replacement was found.
  - b. The meeting notes state: "Each dedicated aide (there have been four of them) has been provided with [Student's] behavior trackers, safety plan, and behavior intervention plan. These items have been reviewed by [the school psychologist] with each new aide. [Student] has a check-in with [the school psychologist] and the DA in the morning. [Student] along with the DA keeps track of [Student's] behavior."
7. The IEP Team met on [REDACTED] to review the student's behavior.
  - a. The Team agreed to increase the student's specialized instruction hours to twenty hours in the resource setting.
8. On [REDACTED] the school amended the student's IEP to increase the specialized instruction hours as agreed upon at the [REDACTED] meeting.
9. On [REDACTED] the IEP Team met to review the student's BIP, safety plan, and IEP.
  - a. The parent's attorney stated that when the parent agreed to amend the student's IEP at the [REDACTED] meeting [REDACTED] did not realize that the student would have to change schools in order for the IEP to be implemented and the parent did not want the student to change schools.
  - b. The school noted that it is unable to provide the level of instruction on the student's IEP because there is no self-contained classroom at the school.
  - c. The parent agreed to visit another [REDACTED] PCS campus that could implement the student's IEP.

- d. The meeting notes mentioned that the parent would receive the student's completed behavior trackers on a weekly basis.
10. The IEP Team met on [REDACTED] to review the student's BIP and IEP.
    - a. The student's teachers and dedicated aide noted that recently the student had improved behavior.
    - b. The team agreed that the student's IEP would be amended to reduce the amount of specialized instruction hours outside the general education setting to 5 hours per week and 15 hours per week of specialized instruction inside the general education setting.
  11. On [REDACTED] the student's IEP was amended according to the IEP Team's agreement at the [REDACTED] meeting.
  12. The IEP Team met on [REDACTED] for the student's annual IEP team meeting.
    - a. The Team discussed the student's academic and behavior progress and updated the IEP goals.
    - b. The Team agreed to 14 hours per week of specialized instruction inside the general education setting and 6 hours per week of specialized instruction outside the general education setting.
    - c. The IEP Team agreed to 39 hours of tutoring as compensatory education for the missed specialized instruction.
    - d. The Team discussed edits to the student's safety plan.
  13. On [REDACTED] [REDACTED] PCS authorized 39 hours of tutoring as compensatory education for the missed math instruction.
  14. On [REDACTED] [REDACTED] PCS updated the student's IEP to prescribe 14 hours per week of specialized instruction inside the general education setting, 6 hours per week of specialized instruction outside the general education setting, 120 minutes per month of behavioral support services, and the support of a dedicated aide for 8 hours per day.

### Discussion/Conclusion

[REDACTED] PCS has complied with 34 CFR §300.323(c)(2), because it provided the behavior supports required by the student's IEP and remedied its failure to provide all of the specialized instruction 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 [REDACTED] PCS has failed to provide the services required by the student's IEP.

### Behavior Supports

The complainant alleges that [REDACTED] PCS did not implement the student's daily behavior trackers with fidelity nor follow other required classroom accommodations on the student's IEP. At the start of the [REDACTED] school year, [REDACTED] PCS had an extensive BIP in place for the student as well as a safety plan for when the student exhibited physically aggressive and injurious behaviors. Additionally, [REDACTED] PCS provided 60 minutes per month of behavioral support services inside the general education setting, 60 minutes per month of behavioral support services outside the general education setting, and support of a dedicated aide for 8

hours per day. [REDACTED] PCS reported that the primary method of monitoring the student's behavior and communicating with the parent about it was through the use of behavior trackers. The student and [REDACTED] dedicated aide would fill out the behavior tracker at the end of each day; trackers were then brought to special education coordinator's office and made available in the office for the parent when [REDACTED] picked-up the student from school. [REDACTED] PCS asserts that the behavior trackers were utilized throughout the school year.

The IEP Team discussed the student's behavior trackers at various points during the school year. On [REDACTED] the IEP Team decided to discontinue the use of a classroom-wide behavior chart for the student because it acted as a trigger for the student and instead the student would utilize [REDACTED] own behavior tracker, with daily communication to the parent. On [REDACTED] the IEP Team discussed that several dedicated aides had been assigned to the student so far that school year and noted that each had been provided with the student's behavior trackers, safety plan, and BIP and that the school psychologist reviewed these items with each new dedicated aide. The [REDACTED] meeting notes mentioned that the parent would receive the student's completed behavior trackers on a weekly basis.

At no point did the meeting notes record that the behavior trackers were not being implemented. OSSE finds no evidence that [REDACTED] PCS failed to implement the student's daily behavior trackers or the other required classroom accommodations on the student's IEP to support the student's behavior.

#### Specialized Instruction

The complainant alleges that [REDACTED] PCS did not provide all of the specialized instruction required by the student's IEP for several months during the school year. At the start of the [REDACTED] school year, the student's IEP required 1.5 hours per week of specialized instruction for reading and 1.5 hours per week of specialized instruction for mathematics inside the general education setting. [REDACTED] PCS reported that the student's specialized instruction was provided by a special education teacher as push-in (in the general education classroom) and pull-out (outside the general education classroom) services.

In order to support the student's behavioral needs, on [REDACTED] the school amended the student's IEP to increase the specialized instruction hours to twenty hours in the resource setting as agreed upon at the [REDACTED] meeting. [REDACTED] PCS reported that this change was made with the understanding that the school would request a change in placement through OSSE for a nonpublic day school location of services that could better meet the student's needs. However, at the [REDACTED] IEP Team meeting the parent stated that when [REDACTED] agreed to amend the student's IEP to increase the specialized instruction hours outside the general education setting [REDACTED] did not realize that the student would have to change schools in order for the IEP to be implemented and [REDACTED] did not want the student to change schools. The current school noted that it is unable to provide the level of instruction on the student's IEP because there is no self-contained classroom at the school location. The parent agreed to visit another [REDACTED] PCS campus location that could implement the student's IEP. [REDACTED] PCS did not move forward with a change in placement request to OSSE.

While [REDACTED] PCS and the parent were discussing a change in location of services, in order to add specialized instruction hours outside the general education setting, [REDACTED] PCS decided that the student would receive specialized instruction for mathematics in a resource room. However, due to a miscommunication the student did not receive the intended instruction. During this time the student continued to receive the same amount of specialized instruction inside the general education setting as [REDACTED] did prior to the [REDACTED] IEP amendment.

The parent visited the other [REDACTED] PCS campus, but decided that the classroom was not the right fit for the student and wanted the student to continue at the current [REDACTED] PCS location. The IEP Team met again on [REDACTED] and agreed to amend the IEP to include 15 hours per week of specialized instruction inside the general education setting and 5 hours per week of specialized instruction outside the general education setting, which could all be provided at the student's current location of services. In its response [REDACTED] PCS admits that the student did not receive 20 hours per week of specialized instruction outside the general education setting from [REDACTED]. In order to address this failure, at a [REDACTED] meeting [REDACTED] PCS and the parent agreed to 39 hours of tutoring as compensatory education for the missed specialized instruction. Although [REDACTED] PCS did not provide all of the required specialized instruction hours on the student's IEP from [REDACTED], OSSE finds that [REDACTED] PCS has already taken steps to address this failure.

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

## **ISSUE TWO: LRE**

### **Findings of Fact**

1. The [REDACTED] meeting notes state: "[Student] can be 'riled up' after lunch because of incidents that have occurred during lunch..." and the "general education teacher stated that [Student] likes to be away from [REDACTED] peers. [REDACTED] has asked [general education teacher] on occasions to have lunch with [REDACTED]"
2. On [REDACTED] the special education coordinator emailed the parent regarding the proposed amendment to the student's IEP to increase the specialized instruction hours outside the general education setting and stated: "Please note that [REDACTED] will not spend the entire day in the resource setting. [REDACTED] will have specials, lunch, recess, and one content subject with [REDACTED] general education peers."
3. On [REDACTED] the student was involved in a disciplinary incident where [REDACTED] [REDACTED] in the cafeteria.
4. On [REDACTED] the special education coordinator emailed the parent regarding an altercation with the student when the student requested to eat lunch with friends and was told no.
5. On [REDACTED] the special education coordinator emailed the parent stating that the student would continue to eat lunch in the resource room until [REDACTED] could demonstrate safe behavior.

6. The [redacted] meeting notes state: “[Parent] stated that [redacted] was informed that [Student] was prohibited from eating in the cafeteria. A conversation was not had with [Student] to let [redacted] know. [redacted] was informed that [Student] is not allowed to have peers eating lunch. [redacted] does not want [Student] to feel isolated and eating lunch alone. [Parent] would like for there to be a designated space for lunch where [redacted] will not be interrupted.”
  - a. The student’s dedicated aide reported that the student “has asked [redacted] when [redacted] would be able to have lunch with other students. [redacted] asked if [redacted] could have lunch three days per week in the cafeteria and then two days in the resource room... [redacted] hasn’t had a peer eat lunch with [redacted] since the [redacted] incident Friday, [redacted].”
  - b. The Team agreed that the student would continue to have lunch in the resource room with two peers.

### Discussion/Conclusion

**[redacted] PCS has not complied with 34 CFR §§300.114 and 300.117, because it unilaterally decided to restrict the student from eating lunch with [redacted] peers for nearly three months until the decision was discussed by the IEP Team.**

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 not disabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature of severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. IDEA further requires at 34 CFR §300.117 that, “in providing or arranging the provision of nonacademic and extracurricular services and activities, including meals, recess periods . . . each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child.” The complainant alleges that [redacted] PCS separated and secluded the student by preventing [redacted] from eating lunch with [redacted] peers for most of the school year.

On [redacted] the student was involved in a disciplinary incident where [redacted] [redacted] in the cafeteria. Following this incident, [redacted] PCS decided to have the student eat lunch in the resource room. The student had previously expressed that [redacted] often felt overwhelmed by the noise and crowds in the cafeteria and [redacted] PCS wanted to minimize triggers for the student for physically aggressive behavior. [redacted] PCS reported that after two weeks the student asked to have friends eat lunch with [redacted] and the school acquiesced. However, the parent reported that [redacted] believed the student did not have friends eat with [redacted] until the parent made that request at the [redacted] IEP Team meeting. The [redacted] and [redacted] email communications to the parent indicate that the student was not allowed to have friends eat with [redacted] through those dates, but the [redacted] meeting notes record that the student was allowed to have peers eat with [redacted] at some point prior to the meeting, but it was not allowed consistently. The student’s dedicated aide reported that the student “has asked [redacted] when [redacted] would be able to have lunch with other students.



█ asked if █ could have lunch three days per week in the cafeteria and then two days in the resource room... █ hasn't had a peer eat lunch with █ since the █ incident Friday, █.

The IEP Team discussed where the student would eat lunch at the █ meeting and the Team agreed that the student would continue to have lunch in the resource room with two peers. Although this decision was eventually agreed upon by the whole IEP Team, the discussion took place nearly three months after █ PCS's unilateral decision to not allow the student to eat lunch with █ peers in the cafeteria. The record reflects that occasionally the student was allowed to have friends eat with █ but this did not occur consistently. Even the █ IEP amendment to increase the student's specialized instruction hours outside the general education setting was not intended to remove the student from the general education setting for lunch as confirmed in a █ email to the parent. OSSE finds that █ PCS failed to educate the student in the LRE by its unilateral decision to restrict the student from eating with █ peers in the cafeteria.

Therefore, █ PCS has not complied with 34 CFR §§300.114 and 300.117.

### **CONCLUSIONS**

1. █ PCS has complied with 34 CFR §300.323(c)(2), because it provided the behavior supports required by the student's IEP and remedied its failure to provide all of the specialized instruction required by the student's IEP.
2. █ PCS has not complied with 34 CFR §§300.114 and 300.117, because it unilaterally decided to restrict the student from eating lunch with █ peers for nearly three months until the decision was discussed by the IEP Team.

### **CORRECTIVE ACTION**

1. In order to correct the noncompliance with 34 CFR §§300.114 and 300.117, █ PCS must do the following:
  - a. Consult with the parent to devise a remedy for restricting the student from eating lunch with █ peers from █. If the parties are unable to reach an agreement, █ PCS must revise, at a minimum, the student's behavior plan to include strategies to attend meals with the student's peers in a small or large group setting. Documentation of completion of this corrective action must be provided to OSSE within 30 days of the date of this letter.
  - b. Determine if the current lunch scheduling and peer-to-peer interaction requires convening of the IEP team to revise the student's IEP further. Documentation of completion of this corrective action must be provided to OSSE within 30 days of the date of this letter.
  - c. Train relevant staff members on the LRE requirements, including that placement decisions must be made by a group of persons, including the parent and other persons knowledgeable about the child. Training must specifically address that a change in placement occurs any time school staff makes a decision to limit any

special education student's access to their non-disabled peers throughout the school day. Documentation of completion of this corrective action must be provided 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](mailto: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] PCS