



DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

[REDACTED]

VIA Electronic Mail

[REDACTED]
[REDACTED] Public Charter School
[REDACTED]

RE: State Complaint No. 019-009 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 [REDACTED] Public Charter School ([REDACTED] PCS) alleging violations in the special education program of [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 conduct child find, timely complete the student's initial evaluation, and provide IEP services.

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 obligations related to child find, but did not comply with its obligations related to initial evaluations, provision of services, and maintaining valid and reliable data. 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. **Child find requirements at 34 CFR §300.111 and §300.201**
 - a. Failure to have and follow appropriate child find procedures to identify,

locate, and evaluate a student in need of special education and related services.

2. Initial evaluation requirements at 34 CFR §300.301(c) and D.C. Official Code §38-2561.02(a)

a. Failure to timely complete the student's initial evaluation.

3. Requirement to provide services at 34 CFR §300.323(c)(2)

a. Failure to make available special education in accordance with the child's IEP, specifically with regard to occupational therapy and speech therapy.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant parents

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 speech or language impairment.
3. The student's local educational agency (LEA) during the investigation timeline was [REDACTED] PCS.

ISSUE ONE: CHILD FIND

Findings of Fact

1. The parents and LEA discussed concerns and support for the student during the [REDACTED] school year.
2. The parents requested a special education evaluation on [REDACTED].
3. [REDACTED] PCS determined that the student had a suspected disability in the area of speech and language.
4. The parents signed consent to evaluate on [REDACTED].

Discussion/Conclusion

[REDACTED] PCS has complied with 34 CFR §300.111 and 34 CFR §300.201, because it had and followed appropriate child find procedures and responded to all evaluation requests within the one-year investigation timeline.

Pursuant to 34 CFR §300.111, the State must have in effect policies and procedures to ensure that all children with disabilities residing in the State and who are in need of special education and related services, are identified, located, and evaluated. Each LEA must have policies and procedures that are aligned with the State's child find policies and procedures. (34 CFR §300.201.) OSSE requires each LEA to have a set of policies, procedures, and public awareness activities designed to locate, identify, and evaluate children who may require special education and related services and provides resources for LEAs to create their own policies and procedures.¹ The complainant alleges that it took requests over two (2) years before [REDACTED] PCS agreed to evaluate the student for special education service eligibility.

[REDACTED] PCS reported that any requests prior to the [REDACTED] school year were related to gifted student support, not a special education evaluation. The parents disagree; however, all discussion regarding supports for the student during the [REDACTED] school year fall outside of the investigation timeline. State complaints must allege a violation that occurred not more than one year prior to the date that the complaint is filed. (34 CFR §300.153(c).) OSSE will not review communication that falls outside of the one-year timeline, prior to [REDACTED], as part of its investigation.

The parents requested a special education evaluation on [REDACTED]. [REDACTED] PCS acknowledged this request and moved forward with an evaluation, with the parents signing consent to evaluate on [REDACTED]. Accordingly, [REDACTED] PCS had and followed appropriate child find procedures. The timeliness of the evaluation will be discussed under Issue Two below. OSSE finds that [REDACTED] PCS appropriately responded to all evaluation requests within the one-year investigation timeline.

¹ See <https://osse.dc.gov/page/child-find-and-initial-evaluation-resources>.

Therefore, [REDACTED] PCS has complied with §300.111.

ISSUE TWO: INITIAL EVALUATION

Findings of Fact

1. The parents signed consent to evaluate on [REDACTED].
2. The LEA assessed the student in the areas of academic performance, speech and language, and occupational therapy.
 - a. The team included in its review a [REDACTED] speech and language assessment, including a clinical student observation.
 - b. The speech and language therapist who conducted the [REDACTED] speech and language assessment recommended a student classroom observation in order to determine if the student required supports in this area of concern.
 - c. No student classroom observations were conducted as part of the speech and language assessment.
3. The evaluation team found the student ineligible for special education and related services on [REDACTED].
4. Due to the parents' continued concerns about the student's speech, they made a new referral for evaluation on [REDACTED].
5. The evaluation team found the student eligible for speech services on [REDACTED].
 - a. The [REDACTED] final eligibility determination report includes a student classroom observation conducted on [REDACTED].
6. The IEP Team developed an IEP on [REDACTED].
 - a. The [REDACTED] IEP prescribes four (4) hours per month of speech-language services.

Discussion/Conclusion

[REDACTED] PCS has not complied with 34 CFR §300.301(c) and D.C. Official Code §38-2561.02(a), because it failed to complete the student's initial evaluation within 60 days of receiving parental consent to evaluate. [REDACTED] PCS has not complied with 34 CFR §300.304(c)(4) because it failed to assess the student in all areas related to the suspected disability.

Pursuant to 34 CFR §300.301, initial special education evaluations must be conducted within 60 days of receiving parental consent for the evaluation or within the timeframe established by the state. The District of Columbia requires LEAs to make reasonable efforts to obtain parent consent for evaluation within 30 days of the date of referral and to complete the initial evaluation within 60 days from the date the parent provides consent. (D.C. Official Code §38-2561.02(a)(2)(A)). The complainant alleges that it took [REDACTED] PCS 111 days after the parents signed consent to evaluate to complete the student's initial evaluation. IDEA additionally requires the LEA to ensure the child is assessed in all areas related to the suspected disability. (34 CFR §300.304(c)(4).)

The parents requested a special education evaluation on [REDACTED] and signed consent to evaluate on [REDACTED]. This meets the 30-day timeline to obtain consent to evaluate. The evaluation should have been completed by [REDACTED], but was not completed until [REDACTED], when the evaluation team found the student ineligible for

special education and related services. Accordingly, OSSE finds that [REDACTED] PCS failed to complete the student's initial evaluation within 60 days of receiving parental consent to evaluate.

Due to the parents' continued concerns about the student's speech, they made a referral for evaluation on [REDACTED]. Prior to this second referral, on [REDACTED], the student was assessed in the area of speech and language, including a clinical student observation. The speech and language therapist who conducted the [REDACTED] assessment further recommended a student classroom observation in order to determine if the student required supports in this area of concern. Despite this recommendation from the LEA's speech and language pathologist, the team proceeded with an ineligibility determination on [REDACTED]. OSSE's review of the record found that prior to the parent's second referral on [REDACTED], the LEA initiated the recommended student classroom observations. This additional data point is cited three days later in the student's [REDACTED] eligibility determination report as the only new piece of data resulting in the team's finding that the student is eligible to receive special education services. Accordingly, OSSE finds that [REDACTED] PCS failed to conduct a full review of the student's speech and language concerns and did not assess the students in all areas related to the suspected disability, as evidenced by the continued data-gathering and reversed eligibility determination.

Therefore, [REDACTED] PCS has not complied with 34 CFR §300.301(c) D.C. Official Code §38-2561.02(a), and 34 CFR §300.304(c)(4).

Although the student was not found eligible for special education and related services until the second evaluation, the delay of the first evaluation led to a delay in the parents requesting re-testing for their ongoing concerns and ultimately resulted in a delay of the student's receipt of services. Thus a student-level remedy is appropriate in this situation.

ISSUE THREE: IEP SERVICES

Findings of Fact

1. The [REDACTED] IEP prescribes four (4) hours per month of speech-language services.
2. The parents signed consent for services on [REDACTED].
3. The service provider did not track the speech therapy services in SEDS.
4. [REDACTED] PCS provided the notes kept by the speech therapy services provider.
 - a. The student received no services in [REDACTED].
 - b. The student received five (5) hours of speech therapy services in [REDACTED].
 - i. The service provider attempted to provide services on four (4) additional dates but the student was unavailable due to being tardy.
 - c. The student received three (3) hours of speech therapy services in [REDACTED].

Discussion/Conclusion

[REDACTED] PCS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all speech therapy services required by the student's IEP. [REDACTED] PCS has also not complied with 34 CFR §300.211 because it failed to maintain valid and reliable data with respect to speech

therapy service logs.

Pursuant to 34 CFR §300.323(c)(2), each public agency must ensure that as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. The complainant alleges that █████ PCS failed to provide the student with the required amount of speech-language pathology and occupational therapy services.

Speech Services

The IEP requires four (4) hours per month of speech-language services. The service provider did not track the speech therapy services in SEDS, but █████ PCS provided the notes kept by the speech therapy services provider which contained session date and length. The student received no services in █████. The student received five (5) hours of speech therapy services in █████. The service provider attempted to provide services on four (4) additional dates but the student was unavailable due to being tardy. The student received three (3) hours of speech therapy services in █████. From the date the parents signed consent for services on █████ until the last day of school on █████, the student was owed eleven (11) hours of speech therapy services. The student received eight (8) hours of speech therapy services for a deficit of three (3) hours.

█████ PCS must make up the missing three (3) hours. Although the service provider was unable to provide the speech therapy services on four (4) dates because of the student's tardiness, the IDEA requires the IEP team to consider the impact of a child's absence on the child's progress and performance, and determine appropriate next steps to ensure the provision of FAPE and that the child continues to progress towards meeting the annual goals in █████ or her IEP.²

In addition, █████ PCS has not complied with 34 CFR §300.211 and OSSE's LEA Data Management Policy³ due to its failure to maintain valid and reliable data with respect to speech therapy service logs.

Occupational Therapy Services

The parents allege that during the IEP Team meeting, the school agreed to provide informal occupation therapy services to help with the student's grip and grasp. However, there are no occupational therapy services or supports written into the student's IEP. █████ PCS is not required to provide special education services that are not included on the student's IEP.

CONCLUSIONS

1. █████ PCS has complied with 34 CFR §§300.111 and 300.201, because it had and followed appropriate child find procedures and appropriately responded to all

²See OSSE's Related Services Policy at p. 10 (January 5, 2010). Available at <https://osse.dc.gov/publication/related-services-policy-final-january-5-2010>.

³ OSSE LEA Data Management Policy (Updated December 2017). (Available at: <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2017%20OSSE%20LEA%20Data%20Management%20Policy%20%28updated%20Dec%202017%29.pdf>).

evaluation requests within the one-year investigation timeline.

2. [REDACTED] PCS has not complied with 34 CFR §300.301(c) and D.C. Official Code §38-2561.02(a), because it failed to complete the student's initial evaluation within 60 days of receiving parental consent to evaluate.
3. [REDACTED] PCS has not complied with 34 CFR §300.304(c)(4), because it failed to assess the student in all areas related to the suspected disability.
4. [REDACTED] PCS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all speech therapy services required by the student's IEP.
5. [REDACTED] PCS has not complied with 34 CFR §300.211 and OSSE's LEA Data Management Policy⁴ due to its failure to maintain service logs in the official database of record, SEDS.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.301(c), D.C. Official Code §38-2561.02(a), and 34 CFR §300.304(c)(4), [REDACTED] PCS must do the following:
 - a. Meet with the parents to determine appropriate compensatory education for its failure to timely complete the student's initial evaluation. If the parties cannot agree, [REDACTED] PCS must provide eight (8) hours of speech therapy services. [REDACTED] PCS must provide documentation to OSSE of the completion of this item within 45 days of the date of this letter of decision.
 - b. Train appropriate school staff members on its obligations to timely complete initial evaluations. [REDACTED] PCS must provide documentation to OSSE of the completion of this item within 60 days of the date of this letter of decision.
2. In order to correct the noncompliance with 34 CFR §300.323(c)(2), [REDACTED] PCS must do the following:
 - a. Provide three (3) hours of make-up speech therapy services. [REDACTED] PCS must provide documentation to OSSE of the completion of this item within 45 days of the date of this letter of decision.
3. In order to correct the noncompliance with 34 CFR §300.211 and OSSE's LEA Data Management Policy, [REDACTED] PCS must do the following:
 - a. Train relevant staff members on the LEA's obligation to maintain valid and reliable data with respect to related services logs and to ensure that those logs are input into the State database of record, SEDS. [REDACTED] PCS must provide documentation to OSSE of the completion of this item within 60 days of the date of this letter of decision.

⁴ OSSE LEA Data Management Policy (Updated December 2017). (Available at: <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2017%20OSSE%20LEA%20Data%20Management%20Policy%20%28updated%20Dec%202017%29.pdf>).

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 'Victoria Glick', with a stylized flourish at the end.

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

cc: [REDACTED], Complainant