



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

[REDACTED]

*VIA Electronic Mail*

[REDACTED]

[REDACTED]

Public Charter School

[REDACTED]

[REDACTED]

RE: State Complaint No. 019-018 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 IEP services and have the appropriate placement.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that [REDACTED] PCS failed to provide all of the required specialized instruction and occupational therapy services required by the student's IEP, and failed to provide specialized instruction in the least restrictive environment as required by the student's IEP. 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 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 specialized instruction, occupational therapy, and physical therapy.

2. **Placement requirements at 34 CFR §§300.116 and 300.114**

- a. Failure to follow the placement requirements.

**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 SERVICES**

**Findings of Fact**

1. The [REDACTED] IEP prescribes 22.5 hours per week of specialized instruction outside the general education setting, 60 minutes per month of physical therapy, and 180 minutes per month of occupational therapy.
2. The [REDACTED] amended IEP prescribes 10 hours per week of specialized instruction outside the general education setting, 10 hours per week of specialized instruction inside the general education setting, 60 minutes per month of physical therapy, and 180 minutes per month of occupational therapy.
3. [REDACTED] PCS reported that from [REDACTED] through [REDACTED] the student received specialized instruction through a combination of push-in instruction from a special education teacher in the general education setting and pull-out services from a special education teacher in a resource room.
4. [REDACTED] PCS reported that in [REDACTED] the student began receiving [REDACTED] specialized instruction in a partial outside of general education setting where [REDACTED] spent

half the day in the self-contained classroom with a special education teacher and the other half of the day in the general education setting with the inclusion special education teacher.

5. [REDACTED] PCS reported that there was a two-week transition between special education teachers from [REDACTED], [REDACTED] when the student received no specialized instruction.
6. [REDACTED] PCS and the parent met on [REDACTED] to discuss tutoring.
  - a. They agreed to outside tutoring services three days per week until the end of the school year, then would reevaluate what the student needed for summer based on [REDACTED] progress.
  - b. The tutoring plan did not begin due to the [REDACTED] that began on [REDACTED].

### Discussion/Conclusion

[REDACTED] PCS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all of the specialized instruction and occupational therapy services 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 not provided all of the specialized instruction, physical therapy, and occupational therapy services required by the student's IEP.

### Specialized Instruction

The [REDACTED] IEP prescribed 22.5 hours per week of specialized instruction outside the general education setting. The [REDACTED] amended IEP prescribes 10 hours per week of specialized instruction outside the general education setting and 10 hours per week of specialized instruction inside the general education setting. [REDACTED] PCS reported that from [REDACTED] through [REDACTED] the student received specialized instruction through a combination of push-in instruction from a special education teacher in the general education setting and pull-out services from a special education teacher in a resource room. In [REDACTED] [REDACTED] the student began receiving [REDACTED] specialized instruction in a partial outside of general education setting where [REDACTED] spent half the day receiving instruction from a special education teacher in the self-contained classroom and the other half of the day receiving instruction from the inclusion special education teacher in the general education setting. OSSE finds that through this combination of services, [REDACTED] PCS provided the specialized instruction hours required by the student's IEP. Whether the specialized instruction was provided in the correct setting is addressed under Issue Two below.

[REDACTED] PCS reported that there was a two-week transition between special education teachers from [REDACTED] when the student received no specialized instruction.

[REDACTED] PCS and the parent met on [REDACTED] and [REDACTED] to discuss tutoring to make-up for the missed specialized instruction. They agreed to outside tutoring services three days per week until the end of the school year, then would reevaluate what the student needed for

summer based on [REDACTED] progress. The tutoring did not begin as planned due to the [REDACTED] that began [REDACTED]. In the interview the parent confirmed that [REDACTED] agreed to the tutoring plan, but that the agreement did not specify how many hours of tutoring services the student would receive. OSSE finds that the steps [REDACTED] PCS has taken to address its failure to provide specialized instruction is a sufficient plan. OSSE specifies a number of tutoring hours in the corrective action below.

#### Physical Therapy

The [REDACTED] and [REDACTED] IEPs prescribe 60 minutes per month of physical therapy. OSSE reviewed the student's service trackers from [REDACTED] through the date this complaint was filed on [REDACTED]. OSSE finds that [REDACTED] PCS provided all of the physical therapy services required by the student's IEP each month.

#### Occupational Therapy

The [REDACTED] and [REDACTED] IEPs prescribe 180 minutes per month of occupational therapy. OSSE reviewed the student's service trackers from [REDACTED] through the date this complaint was filed on [REDACTED]. OSSE finds that [REDACTED] PCS provided or made available most of the occupational therapy services required by the student's IEP, but missed a few service sessions. [REDACTED] PCS fell short of providing or making available the required amount of services in the following months: 15 minutes in [REDACTED], 60 minutes in [REDACTED], and 90 minutes in [REDACTED], for a total of 165 minutes. In its response, [REDACTED] PCS agreed to make up the missed occupational therapy services.

Therefore, [REDACTED] PCS has not complied with §300.323(c)(2).

### **ISSUE TWO: PLACEMENT**

#### **Findings of Fact**

1. The [REDACTED] IEP from the previous LEA prescribes 22.5 hours per week of specialized instruction outside the general education setting.
2. The student enrolled at [REDACTED] PCS at the start of the [REDACTED] school year.
3. On [REDACTED] [REDACTED] PCS held a 30-day IEP review meeting.
4. On [REDACTED] the parent signed the IEP amendment form agreeing to the changes discussed at the [REDACTED] review meeting.
  - a. The IEP amendment form listed the proposed changes, including a change to specialized instruction hours.
5. On [REDACTED] [REDACTED] PCS amended the IEP to prescribe 10 hours per week of specialized instruction outside the general education setting and 10 hours per week of specialized instruction inside the general education setting.

#### **Discussion/Conclusion**

[REDACTED] PCS has not complied with 34 CFR §§300.116 and 300.114, because it failed to provide specialized instruction in the least restrictive environment required by the student's IEP from the start of the [REDACTED] school year until the [REDACTED] IEP amendment. Pursuant to 34 CFR §300.116, when determining the educational placement of a child with a

disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and is made in conformity with the least restrictive environment provisions including that the child's placement is based on the child's IEP. 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. (34 CFR §300.114(a)(2)) The complainant alleges that since the beginning of the school year, [REDACTED] PCS has not provided the amount of specialized instruction hours outside of the general education setting required by the student's IEP.

From the Start of the [REDACTED] School Year until the [REDACTED] IEP Amendment  
The [REDACTED] IEP from the previous LEA prescribed 22.5 hours per week of specialized instruction outside the general education setting. This is the IEP that was in effect at the start of the [REDACTED] school year when the student enrolled at [REDACTED] PCS. In its response, [REDACTED] PCS reported that the parent asked for the student to be placed in the general education setting upon the student's enrollment in the LEA. In the interview, the parent denied making this request. There is no record of this discussion. [REDACTED] PCS reported that the student received specialized instruction through push-in services from a special education teacher in the general education setting.

[REDACTED] PCS did not implement the student's [REDACTED] IEP as written by not providing the student's specialized instruction in the student's least restrictive environment, which was outside the general education setting. The student's prior IEP Team had determined that in order to receive FAPE, the student needed to receive specialized instruction outside of the general education setting. [REDACTED] PCS has no record that the decision to change the student's placement to the general education setting was made as required, namely, that the placement decision was made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. OSSE finds that [REDACTED] PCS failed to provide the specialized instruction in the least restrictive environment required by the student's IEP at the start of the [REDACTED] school year.

From the [REDACTED] IEP Amendment Onward  
On [REDACTED] [REDACTED] PCS held a 30-day IEP review meeting, which the parent attended. [REDACTED] PCS reported that the IEP Team discussed amending the student's IEP to adjust the amount of specialized instruction hours to be provided inside and outside the general education setting. When the State Complaints Office interviewed the parent on [REDACTED], the parent asserted that the IEP Team did not discuss placement at this meeting, but previously on [REDACTED] the parent signed the IEP amendment form agreeing to the changes discussed at the [REDACTED] review meeting. The IEP amendment form listed

the proposed changes, including the change to specialized instruction hours and the setting in which they would be provided.

Pursuant to the signed IEP amendment form, on [REDACTED], [REDACTED] PCS amended the IEP to prescribe 10 hours per week of specialized instruction outside the general education setting and 10 hours per week of specialized instruction inside the general education setting.

Following the [REDACTED] IEP amendment, the student received specialized instruction through a combination of push-in instruction from a special education teacher in the general education setting and pull-out services from a special education teacher in a resource room until [REDACTED]. In [REDACTED] the student began receiving [REDACTED] specialized instruction in a partial self-contained setting where [REDACTED] spent part of the day in the self-contained classroom where [REDACTED] received instruction from a special education teacher and the other part of the day in the general education setting where [REDACTED] continued to receive push-in instruction from the inclusion special education teacher. Both of these approaches allow for a combination of delivery of specialized instruction inside and outside of the general education setting as required by the student's IEP. Pull-out services from a special education teacher in a resource room and instruction from a special education teacher in the self-contained classroom are both outside the general education setting and switching between the two does not constitute a change in the student's placement. OSSE finds that [REDACTED] PCS provide the specialized instruction in the least restrictive environment required by the student's IEP following the [REDACTED] IEP amendment until this complaint was filed on [REDACTED].

Therefore, [REDACTED] PCS has not complied with 34 CFR §§300.116 and 300.114.

### **CONCLUSIONS**

1. [REDACTED] PCS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all of the specialized instruction and occupational therapy services required by the student's IEP.
2. [REDACTED] PCS has not complied with 34 CFR §§300.116 and 300.114, because it failed to provide specialized instruction in the least restrictive environment required by the student's IEP from the start of the [REDACTED] school year until the [REDACTED] IEP amendment.

### **CORRECTIVE ACTION**

1. In order to correct the noncompliance with §300.323(c)(2), [REDACTED] PCS must do the following:
  - a. Make-up the 165 minutes of missed occupational therapy services when circumstances permit. Documentation of the completion of this action is due to OSSE within 30 days of the date of when the make-up services are completed.
  - b. Begin the agreed upon tutoring plan when circumstances permit [REDACTED] PCS must provide at least 16 hours of tutoring services. Documentation of the completion of this action is due to OSSE within 60 days of when the tutoring services begin.

2. In order to correct the noncompliance with 34 CFR §§300.116 and 300.114, [REDACTED] PCS must do the following:
- a. Train relevant staff members on the placement decision requirements and procedures. Documentation of the completion of this action is due to OSSE within 90 days of the date of this letter.
  - b. Convene an IEP Team meeting, including the parent, to discuss what compensatory education is owed to the student for [REDACTED] PCS' failure to provide the student's specialized instruction in the setting required by the IEP at the beginning of the [REDACTED] school year. If the LEA and parent cannot reach an agreement as to how much compensatory education is owed to the student, the LEA must provide a minimum amount of 30 hours of tutoring services as compensatory education. Documentation of completion of this action is due to OSSE 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](mailto:Victoria.Glick@dc.gov) or 202-724-7860.

Sincerely,



Victoria Glick

Deputy Assistant Superintendent, Division of Systems and Supports, K-12

cc: [REDACTED], Complainant  
[REDACTED], Public Charter School Board