



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

August 25, 2020

*VIA Electronic Mail*

[REDACTED] Public Charter School

RE: State Complaint No. 020-001 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 make decisions about ESY services that meet the student's needs and with the IEP Team, provide specialized instruction by a special education teacher, provide the specialized instruction and dedicated aide required by the student's IEP, and maintain confidentiality of student information.

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 obligations related to making decisions about ESY services that meet the student's needs and with the IEP Team, providing specialized instruction by a special education teacher, providing the specialized instruction and dedicated aide required by the student's IEP, and maintaining confidentiality of student information. 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 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, specifically with regard to specialized instruction and a dedicated aide.
2. **IEP revision requirements at 34 CFR §300.324(b)**
  - a. Failure to revise the IEP, as appropriate, to address information about the child provided to, or by, the parents and the child's anticipated needs with regard to extended school year (ESY) services.
3. **IEP Team member requirements at 34 CFR §300.321**
  - a. Failure to include all required members of the IEP Team when making decisions about ESY services.
4. **Requirement to protect student information at 34 CFR §300.622**
  - a. Failure to maintain confidentiality of personally identifiable information.

**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):

1. [REDACTED]

[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 autism spectrum disorder.
3. The student's local educational agency (LEA) is [REDACTED] PCS.

**ISSUE ONE: IEP SERVICES**

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 [REDACTED] PCS failed to provide specialized instruction by a special education teacher during the regular [REDACTED] school year and failed to provide the specialized instruction and dedicated aide required by the student's IEP during distance learning.

**Findings of Fact and Discussion**

**[REDACTED] School Year In-Person Learning**

The student's [REDACTED] IEP prescribes 5 hours per week of specialized instruction in the general education setting and 7.5 hours per week of specialized instruction outside the general education setting. [REDACTED] PCS provides the student's specialized instruction via pull-out services and collaboration between the general education teacher and special education teacher.

The complainant alleges that the teacher assigned as the student's special education teacher and case manager lacks a special education teaching credential. The teacher in question is licensed by OSSE as an elementary school teacher and was hired by [REDACTED] PCS as a special education teacher at the beginning of the [REDACTED] school year. 34 CFR §300.156(c)(1)(i) requires that any teacher teaching in a public charter school meet the certification or licensing requirements, if any, set forth in the State's public charter school law. There is no requirement in DC law that public charter school teachers have a special education teaching credential to teach special education. Thus, the teacher is not required to have a special education credential to teach as a special education teacher at [REDACTED] PCS. OSSE finds that the student's special education teacher meets all criteria to teach at [REDACTED] PCS.

**[REDACTED] School Year Distance Learning**

The student's [REDACTED] IEP prescribes 5 hours per week of specialized instruction in the general education setting, 7.5 hours per week of specialized instruction outside the general education setting, 240 minutes per month of speech language pathology, 240 minutes per month of occupational therapy, and 2.75 hours per week of behavioral support services. This IEP was in effect when DC declared a public health emergency on [REDACTED], requiring schools to suspend in-person learning and instead provide instruction to students through distance learning. [REDACTED] PCS's distance learning implementation plan included use

of Google Classroom to provide instruction and assignments.<sup>1</sup> Teachers provided several video lessons each week, gave assignments, and assessed and provided feedback on student work. [REDACTED] PCS sought and received a waiver of the requirement that the school year contain a minimum of 180, six-hour instructional days because the distance learning program had fewer than six hours per day of instruction for students. [REDACTED] PCS tracked student progress during distance learning and plans to hold a meeting for each student with an IEP once school resumes in-person instruction to determine if additional services are needed. This approach is consistent with the U.S. Department of Education's guidance that states that when exceptional circumstances affect how a particular service is provided, an IEP Team would be required to make an individualized determination as to whether compensatory services are needed.<sup>2</sup>

The U.S. Department of Education's guidance states that LEAs must ensure that, to the greatest extent possible, each child with a disability is provided the special education and related services identified in the child's IEP.<sup>3</sup> On [REDACTED] [REDACTED] PCS proposed a plan to provide each of the services listed on the student's IEP. The 5 hours per week of specialized instruction in the general education setting would be provided through modification and differentiation of general education materials as provided during the course of normal instruction, including adjusting texts and quizzes to the student's reading level, use of a graphic organizer and sentence starters, and use of speech-to-text technology. The 7.5 hours per week of specialized instruction outside the general education setting would be provided through 2.5 hours per week of iReady<sup>4</sup> access, which is provided at the student's instructional level, with telephonic support from the dedicated aide and 5 hours per week of direct, live one-to-one instruction via a video platform. The 240 minutes per month of speech language pathology and 240 minutes per month of occupational therapy would be provided through an appropriate online platform. The 2.75 hours per week of behavioral support services could not effectively be provided remotely so the IEP Team would monitor progress to make an individual determination as to what make-up services are needed once school resumes in-person instruction, consistent with U.S. Department of Education guidance that if a child does not receive services during a closure, the child's IEP team must make an individualized determination whether and to what extent compensatory services may be needed, including to make up for any skills that may have been lost.<sup>5</sup> The student's dedicated aide would provide 2 hours per day of instructional support to complete the regular instruction and assignments provided to all students. [REDACTED] PCS would provide one hour per week of ABA

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<sup>1</sup> [REDACTED] PCS's distance learning implementation plan can be found here: <https://osse.dc.gov/publication/distance-learning-plans-2019-20-school-year>

<sup>2</sup> U.S. Department of Education Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak p. 2 (March 2020).

<sup>3</sup> U.S. Department of Education Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak p. 2 (March 2020).

<sup>4</sup> iReady is an intervention program that adapts lessons based on the student's needs and mastery of concepts. The student utilized iReady during the regular school year.

<sup>5</sup> U.S. Department of Education Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak p. 4 (March 2020).

services. The student's special education case manager would conduct two 20-minute check-ins per week to review the student's progress and provide instruction related to the student's IEP goals.

On [REDACTED] PCS held an IEP Team meeting to discuss the student's distance learning plan. The parent participated and provided input that was incorporated into the student's distance learning plan. [REDACTED] PCS worked with the parent to create a schedule that worked for the family and provided needed breaks for the student throughout the school day. [REDACTED] PCS also discussed the student's educational services with the parent via email during the transition to distance learning.

[REDACTED] PCS reconvened the IEP Team on [REDACTED] to discuss the student's progress during distance learning. The parent again participated and provided input. The IEP Team agreed to keep the services the same and made decisions about how to improve communication and cohesion between services providers. All participants, including the parents, reported that distance learning was going well for the student. The student's distance learning plan was in place for the remainder of the [REDACTED] school year.

During distance learning OSSE provided guidance to LEAs to provide the supports and services required by a student's IEP to the greatest extent possible and that the delivery of a free appropriate public education (FAPE) may look different during distance learning.<sup>6</sup> OSSE based its guidance on the guidance issued by the U.S. Department of Education that LEAs must make every effort to provide the special education and related services to the child in accordance with the child's IEP and must ensure that students with disabilities have equal access to the same opportunities as the general student population, including the provision of FAPE. SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA.<sup>7</sup> [REDACTED] PCS accounted for all IEP services in the student's distance learning plan. [REDACTED] PCS ensured that the student continued to access the general education curriculum through modification and differentiation (adjusting texts and quizzes to the student's reading level, use of a graphic organizer and sentence starters, and use of speech-to-text technology), support from the dedicated aide to complete the work, and daily one-to-one specialized instruction. The hours of specialized instruction and dedicated aide support did not match the hours prescribed by the IEP because the provision of FAPE looks different through distance learning. Additionally, no student was receiving six hours per day of instruction during distance learning. [REDACTED] PCS continued to provide the full amount of related services required by the student's IEP for those services that could effectively be provided remotely. The IEP Team, including the parent, discussed and made decisions about the best way to provide the student's IEP services during distance learning. OSSE finds that [REDACTED] PCS provided the special education and related services

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<sup>6</sup> OSSE IDEA, Part B Provision of FAPE: Guidance Related to Remote and Blended Learning p. 4 (July 21, 2020)

<sup>7</sup> See U.S. Department of Education Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak p. 2 (March 2020).

required by the student's IEP to the greatest extent possible. [REDACTED] PCS is closely monitoring the student's progress and plans to hold an IEP Team meeting to determine additional services if needed when school resumes to in-person learning, as set forth in the U.S. Department of Education's guidance.<sup>8</sup>

### **Conclusion**

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

### **ISSUE TWO: IEP REVISION**

Pursuant to 34 CFR §300.324(b), each public agency must ensure that the IEP Team revises the IEP, as appropriate, to address information about the child provided to, or by, the parents and the child's anticipated needs. The complainant alleges that [REDACTED] PCS made decisions about ESY outside of the IEP process and the ESY services did not meet the student's needs.

### **Findings of Fact and Discussion**

On [REDACTED] PCS sent the parent a proposed IEP amendment to add new ESY goals. The parent provided feedback on the amendment form and requested an IEP Team meeting. [REDACTED] PCS sent the parent a draft IEP on [REDACTED]. The parent provided feedback on the draft document on [REDACTED]. [REDACTED] PCS incorporated the parent's feedback into a new draft IEP and sent it to the parent. The parent provided additional feedback on the updated draft on [REDACTED]. [REDACTED] PCS held an IEP Team meeting on [REDACTED]. At this meeting the IEP Team reviewed the student's IEP, including ESY goals and services. The parents attended and participated in this meeting. The parents' feedback from the draft IEPs and from the meeting was incorporated into the student's IEP. The IEP Team discussed the dedicated aide service and noted that the student needs one-to-one support from the dedicated aide unless [REDACTED] is already receiving one-to-one instruction from another service provider because two adults to one student is too restrictive for the student.

The [REDACTED] finalized IEP prescribes for ESY services 3 hours per day of specialized instruction, 30 minutes per week of occupational therapy, 30 minutes per week of speech-language pathology, and 1 hour per week of behavioral support services. [REDACTED] PCS implemented the ESY services and goals that were agreed upon by the IEP Team in the [REDACTED] IEP. Due to the ongoing public health emergency, distance learning continued for [REDACTED] ESY services. [REDACTED] PCS decided to provide one-to-one instruction for all students receiving ESY services instead of small group instruction because they believed that small group instruction was not as effective when provided virtually due to the added challenge of maintaining students' attention and focus when not meeting in-person. During ESY from [REDACTED] [REDACTED] PCS provided the following services to the student: one hour

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<sup>8</sup> U.S. Department of Education Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak p. 2 (March 2020).

per day of one-to-one specialized instruction, 30 minutes per week of speech language services, 30 minutes per week of occupational therapy, and one hour per week of ABA services. The student did not have the support of the dedicated aide because all supports and services were provided one-to-one and the student did not have any assignments to complete independently outside of the one-to-one instruction time. Although the specialized instruction hours were less than what was listed on the IEP, as noted under Issue One above, LEAs were required to provide the supports and services required by a student's IEP to the greatest extent possible during the modified educational programs provided during distance learning. [REDACTED] PCS reported that one hour per day of one-to-one specialized instruction worked well for the student during distance learning for the end of the [REDACTED] school year and they believed that was sufficient for the student for ESY. [REDACTED] PCS continued to provide the full amount of related services required by the student's IEP.

In the complaint, the complainant disagreed with the decision to not provide dedicated aide support while the student is receiving one-to-one instruction from another service provider. IEP Team decisions are made by a team consensus and no one team member has veto power, including the parent.<sup>9</sup> In addition to the discussion recorded in the [REDACTED] meeting notes, the [REDACTED] justification and plan for dedicated aide states: "[Student's] dedicated aide service is 1:1 in all general education settings (general education classes, inclusion classes, specials, lunch, recess, and transitions). [REDACTED] also requires a 1:1 aide in small groups (2 students or larger). [Student] does not require a dedicated aide during 1:1 instruction, which would result in 2 adults to 1 student, and is overly restrictive given [Student's] present levels, abilities, and needs." The record is clear that the IEP Team decided that the student did not need the support of a dedicated aide while receiving one-to-one instruction. OSSE finds that all decisions about the student's IEP supports and services, including ESY services, were made by the IEP Team.

### **Conclusion**

[REDACTED] PCS has complied with 34 CFR §300.324(b), because it made all decisions about ESY services through the IEP process.

### **ISSUE THREE: IEP TEAM**

Pursuant to 34 CFR §300.321, the public agency must ensure that the IEP Team for each child with a disability includes the parents of the child; one regular education teacher of the child; one special education teacher of the child; a representative of the public agency who is knowledgeable about the availability of resources of the public agency; an individual who can interpret the instructional implications of evaluation results; and 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; and whenever appropriate, the child. The complainant alleges that [REDACTED] PCS made decisions about ESY without the whole IEP Team present.

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<sup>9</sup> OSSE IEP Process Policy p. 2 (August 30, 2011).

### **Findings of Fact and Discussion**

The IEP Team discussed the student's ESY services at the [REDACTED] meeting. The IEP Team members in attendance at this meeting were the parents, the family's health services and special education advocate, the student's special education teacher and case manager, two additional special education teachers, the student's general education teacher, the school principal, the LEA special education manager who acted as the LEA representative, the speech-language pathologist, the ABA service provider, the occupational therapist, the dedicated aide, the psychologist/evaluator who was able to interpret the instructional implications of evaluation results, and the distance specialized instruction contractor. OSSE finds that the meeting participants included all required IEP Team members.

### **Conclusion**

[REDACTED] PCS has complied with 34 CFR §300.321, because it ensured that all required IEP Team members attended the [REDACTED] meeting.

### **ISSUE FOUR: STUDENT INFORMATION**

Pursuant to 34 CFR §300.622, parental consent must be obtained before personally identifiable information is disclosed to parties, unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA).<sup>10</sup> FERPA allows educational agencies to disclose personally identifiable information from an education record without parental consent to a contractor who 1) performs an institutional service or function for which the agency would otherwise use employees, 2) is under the direct control of the agency or institution with respect to the use and maintenance of education records, and 3) will not disclose the information to any other party without the prior consent of the parent or eligible student.<sup>11</sup> The complainant alleges that [REDACTED] PCS provided a copy of the student's IEP to an outside party without the parent's consent.

### **Findings of Fact and Discussion**

[REDACTED] PCS incorporated contracted educational services into their distance learning planning for students who needed additional support. [REDACTED] PCS contracted with the educational service provider to deliver one-to-one specialized instruction to the student for one hour per day. [REDACTED] PCS provided a copy of the student's IEP to the educational service provider and included a representative at the [REDACTED] IEP Team meeting to discuss the student's distance learning plan. The contracted educational service provider delivered specialized instruction in accordance with the student's IEP and worked on the student's IEP goals.

Provision of specialized instruction to meet the requirements in the student's IEP is a service for which [REDACTED] PCS would otherwise use an employee. In its response [REDACTED] [REDACTED] PCS confirmed that the contractor was under the direct control of [REDACTED]

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<sup>10</sup> OSSE Confidentiality of Student Information Policy p. 2 (January 27, 2014)

<sup>11</sup> 34 CFR §99.31(a)(1)(B)



PCS with respect to the use and maintenance of the education record, only used the education record for authorized purposes, and did not re-disclose the record to other parties. OSSE finds that the use of a contractor to provide specialized instruction to the student meets the requirements for disclosure of personally identifiable information in an education record without parental consent as outlined in FERPA.

**Conclusion**

██████████ PCS has complied with 34 CFR §300.622, because its use of a contractor to provide specialized instruction to the student meets the requirements for disclosure of personally identifiable information in an education record without parental consent as outlined in FERPA.

**CONCLUSIONS**

1. ██████████ PCS has complied with 34 CFR §300.323(c)(2), because it provided the services required by the student’s IEP.
2. ██████████ PCS has complied with 34 CFR §300.324(b), because it made all decisions about ESY services through the IEP process.
3. ██████████ PCS has complied with 34 CFR §300.321, because it ensured that all required IEP Team members attended the ██████████ meeting.
4. ██████████ PCS has complied with 34 CFR §300.622, because its use of a contractor to provide specialized instruction to the student meets the requirements for disclosure of personally identifiable information in an education record without parental consent as outlined in FERPA.

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: ██████████, Complainant