



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

January 26, 2021

VIA Electronic Mail

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 020-002 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) against the District of Columbia Public Schools (DCPS) alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter “student” or “child.”

The complainant alleged that DCPS 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 base the child’s placement on the child’s IEP.

The complainant raised additional allegations that DCPS failed to ensure parent participation at the [REDACTED] IEP meeting and provide written notice to the parent proposing to change the educational placement of the child. OSSE did not investigate these concerns because they occurred more than one year prior to the date of the complaint. (34 CFR §300.153(c))

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS has not complied with its obligation to base the child’s placement on the child’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. **Placement requirements at 34 CFR §300.116(b)(2)**

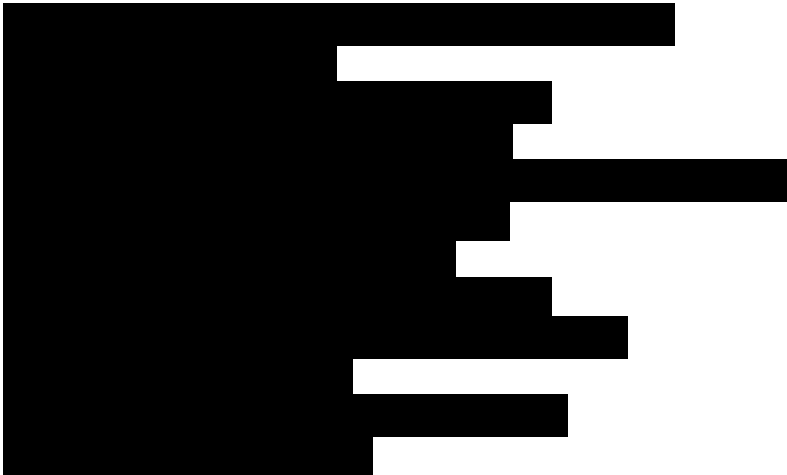
- a. Failure to base the child's placement on the child's IEP during the [REDACTED] and [REDACTED] school years.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. Parent's advocate
3. DCPS [REDACTED]

The investigation also included review of the following documents which were either submitted by the complainant, submitted by DCPS, or accessible via the Special Education Data System (SEDS):



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 DCPS.

ISSUE: PLACEMENT

DCPS has not complied with 34 CFR §300.116(b)(2), because it failed to provide the specialized instruction in the least restrictive environment required by the student's IEP.

Pursuant to 34 CFR §300.116(b)(2), in determining the educational placement of a child with a disability, each public agency must ensure that the child's placement is based on the child's IEP. The complainant alleges that DCPS placed the student in a general education classroom despite the IEP requiring an outside of general education placement.

Findings of Fact and Discussion

The student's [REDACTED] IEP prescribes 24 hours per week of specialized instruction outside the general education setting and two (2) hours per week of specialized instruction inside the general education setting. This IEP changed the placement of the student from the previous IEP dated [REDACTED], which prescribed seven (7) hours per week of specialized instruction inside of the general education setting. Following this change to the IEP, DCPS did not change the student's placement and the student remained in the same general education setting classroom for the remainder of the [REDACTED] school year. DCPS and the parent report that the parent opposed placing the student in a more restrictive setting and refused to cooperate with changing the student's placement, so DCPS did not proceed with changing the student's placement. A special education teacher, who co-taught with a general education teacher, provided specialized instruction to the student in the general education setting.

The student remained in a general education setting classroom for the start of the [REDACTED] school year. This classroom was co-taught by a general education teacher and a special education teacher who provided specialized instruction to the student. On [REDACTED] DCPS held a meeting to review the IEP. At this meeting, the IEP Team maintained the student's placement, with the updated IEP prescribing 24.5 hours per week of specialized instruction outside the general education setting and one (1) hour per week of specialized instruction inside the general education setting. DCPS reports that it plans to identify a new location of services that can implement the student's IEP.

DCPS did not implement the student's [REDACTED] IEP as written by not providing the student's specialized instruction outside the general education setting. The IEP Team determined that in order to receive FAPE, the student needed to receive specialized instruction outside of the general education setting. Although the parent disagreed, IEP Team decisions are made by consensus and no one team member has veto power, including the parent.¹ OSSE finds that DCPS failed base the student's placement on the IEP from [REDACTED] until the present.

Therefore, DCPS has not complied with 34 CFR §300.116(b)(2).

CONCLUSION

1. DCPS has not complied with 34 CFR §300.116(b)(2), because it failed to provide the specialized instruction outside of the general education as required by the student's IEP.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.116(b)(2), DCPS must do the following:
 - a. Identify a location of services that can implement the student's IEP as written as soon as possible, but in no case later than 30 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 DCPS' failure to provide the

¹ OSSE IEP Process Policy p. 2 (August 30, 2011).

student's specialized instruction in the setting required by the IEP from [REDACTED] until the present. If DCPS 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 200 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.

- c. 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.

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 Kirstin.Hansen@dc.gov or 202-445-4893.

Sincerely,

Kirstin K Hansen

Kirstin Hansen
State Complaints Manager, Division of Systems and Supports, K-12

cc: [REDACTED], Complainant
[REDACTED], DCPS
[REDACTED], DCPS
[REDACTED], DCPS