



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

July 2, 2021

*VIA Electronic Mail*



RE: State Complaint No. 002-004 Letter of Decision

### **LETTER OF DECISION**

#### **PROCEDURAL BACKGROUND**

On May 3, 2021, 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] (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 written notice, revise the IEP, provide access to extracurricular services, provide behavioral support services, provide progress reports, timely complete the reevaluation, and timely request records from the student’s previous LEA.

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 obligation to revise the IEP, provide access to extracurricular services and activities, provide special education and related services, and promptly obtain education records, but has not complied with its obligation to issue written notice, timely provide progress reports, timely complete the student’s reevaluation, and notify the parent of their right to a hearing after refusing to amend an education record. 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. **Written notice requirements at 34 CFR §300.503**
  - a. Failure to provide written notice when proposing changes to the child's IEP.
2. **Requirement to revise the IEP at 34 CFR §300.324(b)**
  - a. Failure to timely revise the IEP, as appropriate, to address information about the child provided to, or by, the parent, the results of any reevaluation, and the child's anticipated needs.
3. **Access to extracurricular services requirements at 34 CFR §300.117**
  - a. Failure to provide access to extracurricular services and activities to the maximum extent appropriate to the needs of that child.
4. **Requirement to provide special education and related services at 34 CFR §300.323(c)(2)**
  - a. Failure to provide specialized education and related services, with regard to behavioral support services.
5. **Progress Report Requirements at 34 CFR §300.320(a)(3)**
  - a. Failure to provide a description of the child's progress toward meeting annual goals.
6. **Reevaluation requirements at 34 CFR §300.303(b)(2)**
  - a. Failure to timely complete the student's reevaluation as required at least once every 3 years.
7. **Records transfer requirements at 34 CFR §300.323(g)**
  - a. Failure to take reasonable steps to promptly obtain and transmit education records for the child between public agencies.

### **INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. Complainant
2. Complainant's Education Advocate
3. [REDACTED] PCS Head of School
4. [REDACTED] PCS School Psychologist

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]

9.

[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 other health impairment for attention deficit disorder.
3. The student’s local educational agency (LEA) is [REDACTED] PCS.

**ISSUE ONE: WRITTEN NOTICE**

**[REDACTED] PCS has not complied with 34 CFR §300.503, because it failed to issue written notice with regard to the changes made to the IEP at the [REDACTED] meeting.**

Pursuant to 34 CFR §300.503, a public agency must provide written notice to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the child. The complainant alleges that [REDACTED] PCS refused to remove subjective statements regarding the student’s classroom performance and reduced service minutes despite the objections of the parent, and failed to provide written notice of these actions.

**Findings of Fact and Discussion**

**[REDACTED] IEP Team Meeting**

The student’s [REDACTED] IEP from the previous LEA prescribed four (4) hours per week of specialized instruction inside the general education setting. On [REDACTED] the IEP Team met to discuss the student’s IEP and decided to change the student’s specialized education to two (2) hours per week of specialized instruction inside the general education setting and two (2) hours per week of specialized instruction outside the general education setting. The type and amount of related services stayed the same. [REDACTED] PCS began implementing this IEP, although the document was never finalized in SEDS. In its response [REDACTED] PCS admits that it did not issue written notice to the parent about the changes made to the IEP at this meeting. The lack of written notice for the changes made to the IEP at the [REDACTED] meeting contributed to confusion over the finality of those IEP Team decisions and what services were being provided to the student.

### IEP Team Meeting

The IEP Team met again to review and revise the IEP on [REDACTED], [REDACTED] and [REDACTED]. This IEP was finalized in SEDS. On [REDACTED] [REDACTED] PCS issued written notice about the changes made to the IEP. The notice listed updates to the student's special education and related services and annual goals and why those changes were made. The notice detailed the complainant's requested changes that [REDACTED] PCS refused to include in the IEP and the reasons for that refusal.

When an LEA provides written notice, it must include a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a description of other options that the IEP Team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal or refusal. (34 CFR §300.503(b)) The [REDACTED] written notice listed the changes to the student's IEP services and the reasons for those changes and detailed why [REDACTED] PCS refused to include some of the parent's requested changes to the IEP. OSSE finds that the [REDACTED] written notice meets the requirements outlined in the IDEA.

Therefore, [REDACTED] PCS has not complied with 34 CFR §300.503.

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

**[REDACTED] PCS has complied with 34 CFR §300.324(b), because it revised the IEP to address information provided by the parent, the results of any reevaluation, and the child's anticipated needs.**

**[REDACTED] PCS has not complied with 34 CFR §300.618(c) because it failed to notify the parent of the right to a hearing after refusing to amend an education record as requested.**

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 parent, the results of any reevaluation, and the child's anticipated needs. The complainant alleges that [REDACTED] PCS failed to properly revise, develop, and review the student's IEP despite signs of regression and demonstrated executive functioning concerns.

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

The student enrolled in [REDACTED] PCS at the start of the 2020 – 21 school year. Upon enrollment, [REDACTED] PCS implemented the student's [REDACTED] IEP that was created by the student's previous LEA. On [REDACTED] the IEP Team met and decided to update the student's IEP to prescribe two (2) hours per week of specialized instruction inside the general education setting and two (2) hours per week of specialized instruction outside the general education setting, and keep the same type and amount of related services. [REDACTED] PCS began implementing this IEP, although it was never finalized in SEDS. [REDACTED] continued to provide the same amount of related services as prescribed by the [REDACTED] IEP and the same amount of specialized instruction hours, although two (2) of those hours were provided in a different setting. During this time, the student's [REDACTED] IEP remained timely and thus the student

did not have an expired IEP at any point during the 2020 – 21 school year. The procedural failure to finalize the revised IEP following the [REDACTED] meeting did not result in a failure to deliver special education and related services to the student.

The IEP Team met again on [REDACTED], [REDACTED] and [REDACTED] to review and revise the student's IEP. The student's [REDACTED] finalized IEP prescribes four (4) hours per week of specialized instruction in the general education setting, four (4) hours per week of specialized instruction outside the general education setting, 120 minutes per month of speech-language pathology, and 30 minutes per week of behavioral support services. The [REDACTED] written notice details the discussions and final decisions made over the course of the three meetings, including many requests from the parent that were incorporated into the IEP.

[REDACTED] PCS did not incorporate all requests made by the parent. The parent requested that the descriptor "angry" be removed from the present levels of academic achievement and functional performance section of the area of concern for emotional, social, and behavioral development the student's IEP. On the relevant section of the student's [REDACTED] IEP, it states: "The previous school's report asserts that when angry or frustrated, [Student] is able to identify [student's] feeling and communicate [student's] needs with a trusted adult. This is important information for the current team because it demonstrates [student's] current emotional regulation ability level and techniques the school can use to support [Student's] progress." Although [REDACTED] PCS refused to remove the specific language requested by the parent, it added context to the statement. In addition, [REDACTED] PCS included the parent's [REDACTED] statement on disagreements with IEP Team decisions in the student's special education record in SEDS. However, when [REDACTED] PCS issued the [REDACTED] written notice of its refusal to amend the IEP as requested, it failed to notify the parent of the right to a hearing as required by 34 CFR §300.618(c). Upon request, an agency must provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (34 CFR §300.619)

The complainant points to the student's grades as evidence that [REDACTED] PCS did not update the IEP to meet the student's needs. The student's final report card for the 2020 – 21 school year shows the student received one A, one C, six Ds, and two passing grades. Although a relevant indicator of academic progress, letter grades are not the only factor to consider whether a student is making progress. The [REDACTED] IEP progress report showed that by the end of the 2020 – 21 school year the student was progressing in all IEP goals. Progress reports throughout the school year reported and the IEP Team discussed at the [REDACTED] meeting that the student did not always complete assignments, which impacted the student's grades. This concern was addressed in the [REDACTED] IEP which contains goals related to completing assignments and participating in class. The complainant reported that the student achieved higher academic success at the previous LEA; however, the final progress report from the previous LEA for the 2019 – 20 school year did not contain letter grades and so a direct comparison of academic progress is not possible.

OSSE's investigation found that the IEP Team, including the parent, participated in robust discussion about revising and updating the student's IEP. The [REDACTED] IEP contains increased specialized instruction hours, updated annual goals for all areas of concern, updated present levels of academic achievement and functional performance sections based on the [REDACTED] reevaluation, an additional area of concern for written expression, and additional classroom accommodations to meet the student's communication needs. OSSE finds that [REDACTED] PCS revised the student's IEP to address information provided by the parent, the results of the recent reevaluation, and the child's anticipated needs.

Therefore, [REDACTED] PCS has complied with 34 CFR §300.324(b), but has not complied with §300.618(c).

### **ISSUES THREE & FOUR: BEHAVIORAL SUPPORT SERVICES**

**[REDACTED] PCS has complied with 34 CFR §300.117 and §300.323(c)(2), because it ensured that the student participated in nonacademic and extracurricular services and activities with peers to the greatest extent appropriate to the needs of the student.**

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. Pursuant to 34 CFR §300.117, in providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals and 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 inappropriately tried to provide behavioral services to the student during lunch time.

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

On [REDACTED] the student's behavioral support services provider emailed the complainant to inform the complainant that the service provider was now working in the school building (after working remotely from the start of the school year) and proposed meeting with the student during lunchtime on Thursdays, having the student eat lunch in the learning suite and then come to the service provider's office for the behavioral support services session. The complainant objected to this proposal because the complainant did not want the student missing lunch with peers.

In the May 28, 2021 interview for this investigation, the complainant expressed uncertainty over when the student received behavioral support services, but suspected that the student missed lunch to receive the services on at least some occasions. At the [REDACTED] meeting, the IEP Team reviewed the student's class schedule and grades, as recorded in the meeting notes. The schedule from the meeting notes shows lunch and study hall divided into two separate periods. The complainant provided a schedule provided by [REDACTED] PCS on December 10, 2020 that labeled the period from 12:25 – 1:15 as "lunch," with no distinction for study hall during the second half. This schedule showed the student receiving behavioral support services on Tuesday at 2:15 during Music class. The complainant provided a second schedule provided by [REDACTED] PCS on April 29, 2021 that labeled the period from 12:25 – 1:15

as “lunch/study hall.” This schedule showed the student receiving behavioral support services on Thursday from 12:45 – 1:15, or the second half of the lunch/study hall period. With its response ██████ PCS provided a detailed daily student schedule that shows each class period of the day with its start and end time, location, and teacher. This schedule shows that the lunch period is from 12:25 – 12:50 and the study hall period is from 12:50 – 1:15. ██████ PCS reported that the study hall period is often used for related services and other interventions to minimize disruptions to academic and elective courses.

The ██████ IEP contains additional information on how ██████ PCS considered the best timing to provide behavioral support services to the student. The IEP describes possible harmful effects of services provided outside the general education setting: “We believe that it is possible that [Student] might miss out on elective time (Art, Music) with [student’s] General Education peers, however, these supports are in [Student’s] best interest to ensure access to our curriculum. The school will make every effort possible to not pull the student out of PE class as the parent has shared that PE is necessary for [Student’s] wellbeing.”

All four (4) schedules reviewed for this investigation contain slightly different details, but they are all consistent with ██████ PCS’s assertion that the lunch period is divided between lunch and study hall. The service provider’s March 23, 2021 email also indicated a separate time to eat lunch and receive behavioral support services. ██████ PCS had to find time during the school day to provide the behavioral support services required by the student’s IEP, and shifted the timing of the services throughout the 2020 – 21 school year. The record shows that ██████ PCS responded to the parent’s concerns about the student missing lunchtime and particular elective courses and shifted the timing of the student’s behavioral support services to minimize the student missing nonacademic time with peers without disabilities. Although the student’s behavioral support services may have been provided during lunch on some occasions, OSSE does not find that ██████ PCS consistently prevented the student from having lunch with peers. OSSE finds that ██████ PCS ensured that the student participated in nonacademic and extracurricular services and activities with peers to the greatest extent appropriate to the needs of the student.

Therefore, ██████ PCS has complied with 34 CFR §300.117 and §300.323(c)(2).

#### **ISSUE FIVE: PROGRESS REPORTS**

**██████ PCS has not complied with 34 CFR §300.320(a)(3), because it failed to timely produce IEP progress reports.**

Pursuant to 34 CFR §300.320(a)(3), the IEP must include a description of how the child’s progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. The complainant alleges that ██████ PCS failed to provide progress reports.

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

██████ PCS produced an IEP progress report for reporting period 1 (██████) –

[REDACTED] ) on [REDACTED]. [REDACTED] PCS produced an IEP progress report for reporting period 2 [REDACTED] – [REDACTED] ) on [REDACTED]. [REDACTED] PCS produced an IEP progress report for reporting period 3 [REDACTED] – [REDACTED] ) on [REDACTED]. [REDACTED] PCS produced an IEP progress report for reporting period 4 ( [REDACTED] – [REDACTED] ) on [REDACTED].

Although [REDACTED] PCS eventually provided progress reports for all four (4) reporting periods, the progress reports for the first three (3) reporting periods were provided three (3) to five (5) months after the reporting period ended. In its response [REDACTED] PCS admits that IEP progress reports were not generated timely, although [REDACTED] PCS reports that it was in frequent communication with the parent regarding the student’s academic progress and class participation. The lack of timely progress reports hinders the parent’s and IEP Team’s efforts to review student data when updating the student’s IEP and making decisions about services and supports. The record shows that [REDACTED] PCS communicated with the parent about the student’s progress generally; however, periodic reports on the student’s progress towards IEP goals are an important part of student data and are required under the IDEA.

Therefore, [REDACTED] PCS has not complied with 34 CFR §300.320(a)(3).

#### **ISSUE SIX: REEVALUATION**

**[REDACTED] PCS has not complied with 34 CFR §300.303(b)(2), because it failed to timely complete the student’s reevaluation.**

Pursuant to 34 CFR §300.303(b)(2), a public agency must ensure that a reevaluation of each child with a disability occurs at least once every three (3) years, unless the parent and the public agency agree that a reevaluation is unnecessary. The complainant alleges that [REDACTED] PCS failed to timely complete the student’s reevaluation.

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

The student’s previous eligibility determination occurred on [REDACTED], making the due date for the triennial reevaluation [REDACTED]. The student’s previous LEA began the reevaluation process and the parent signed consent to evaluate on [REDACTED]. The previous LEA completed a comprehensive psychological evaluation on [REDACTED] and a speech-language evaluation on [REDACTED]. The previous LEA did not complete the student’s reevaluation and eligibility determination before the student enrolled at [REDACTED] PCS for the 2020 – 21 school year on [REDACTED]. [REDACTED] PCS held an eligibility meeting and made an eligibility determination on [REDACTED], but did not finalize the student’s eligibility determination documentation in SEDS until [REDACTED].

The student’s reevaluation was already overdue by the time the student enrolled at [REDACTED] PCS. However, it took [REDACTED] PCS three (3) months after the student’s enrollment to make an eligibility determination to complete the reevaluation process, and another three (3) months to finalize the documentation in SEDS. The record does not show that [REDACTED] PCS completed additional assessments or any other reason for the delay in making an eligibility determination. In its response [REDACTED] PCS admitted that it failed to timely complete the student’s



reevaluation.

Therefore, [REDACTED] PCS has not complied with 34 CFR §300.303(b)(2).

#### **ISSUE SEVEN: RECORDS TRANSFER**

**[REDACTED] PCS has complied with 34 CFR §300.323(g), because it timely requested the student's education records from the student's previous LEA.**

Pursuant to 34 CFR §300.323(g), the new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled. The complainant alleges that [REDACTED] PCS failed to communicate with the student's prior LEA when completing the reevaluation.

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

The student enrolled in [REDACTED] PCS for the start of the 2020 – 21 school year. [REDACTED] PCS requested and obtained access to the student's special education records in SEDS on [REDACTED], the first day of school. The complainant raised the issue of records transfer in the context of completing the student's reevaluation. Completion of the reevaluation is addressed under Issue Six above. The delay in completing the student's reevaluation was not a result of [REDACTED] PCS's failure to timely request the student's records from the previous LEA. OSSE finds that [REDACTED] PCS timely requested the student's education records from the previous LEA.

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

#### **CONCLUSIONS**

1. [REDACTED] PCS has not complied with 34 CFR §300.503, because it failed to issue written notice with regard to the changes made to the IEP at the [REDACTED] meeting.
2. [REDACTED] PCS has complied with 34 CFR §300.324(b), because it revised the IEP to address information provided by the parent, the results of any reevaluation, and the child's anticipated needs.
3. [REDACTED] PCS has not complied with 34 CFR §300.618(c) because it failed to notify the parent of the right to a hearing after refusing to amend an education record as requested.
4. [REDACTED] PCS has complied with 34 CFR §§300.117 and 300.323(c)(2), because it ensured that the student participated in nonacademic and extracurricular services and activities with peers to the greatest extent appropriate to the needs of the student.
5. [REDACTED] PCS has not complied with 34 CFR §300.320(a)(3), because it failed to timely produce IEP progress reports.
6. [REDACTED] PCS has not complied with 34 CFR §300.303(b)(2), because it failed to timely complete the student's reevaluation.
7. [REDACTED] PCS has complied with 34 CFR §300.323(g), because it timely requested the student's education records from the student's previous LEA.

**CORRECTIVE ACTION**

1. In order to correct the noncompliance with 34 CFR §§300.503, 300.320(a)(3), and 300.303(b)(2) [REDACTED] PCS must do the following:
  - a. Create a corrective action plan (CAP) to address its failure to timely complete special education processes.
    - i. The CAP must address how [REDACTED] PCS will meet reevaluation timelines, timely complete IEP progress reports, finalize updated documentation in SEDS, and timely issue written notice.
    - ii. The CAP should include updated processes and procedures, responsible staff members, any needed trainings, and target completion dates for each item.
    - iii. The proposed CAP is due to OSSE within 60 days of the date of this decision. OSSE will review the proposed CAP and provide feedback as needed before final approval.
  - b. Authorize compensatory education for the student in the amount of 50 hours of tutoring as previously offered by [REDACTED] PCS on May 4, 2021. Documentation of the completion of this action is due to OSSE within 30 days of the date of this decision.
2. In order to correct the noncompliance with 34 CFR §300.618(c) [REDACTED] PCS must do the following:
  - a. Notify the parent of a right to hold a hearing under 34 CFR §300.619. Documentation of the completion of this action is due to OSSE within 15 days of the date of this decision.

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](mailto: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], Education Advocate