



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

November 18, 2021

VIA Electronic Mail

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 021-001 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 the District of Columbia Public Schools (DCPS) alleging violations in the special education program of [REDACTED] [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 implement the student’s IEP at the school in which the student is enrolled.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS has complied with the placement requirements and made available all of the special education 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. **Placement requirements at 34 CFR §§300.114 - 300.116**
 - a. Failure to educate the student in the least restrictive environment and base the placement on the student’s IEP.
2. **Requirement to implement the IEP at 34 §300.323(c)(2)**

- a. Failure to provide specialized education and related services in accordance with the child's IEP.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. DCPS [REDACTED]
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):

1. [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 intellectual disability.
3. The student's local educational agency (LEA) is DCPS.

ISSUE ONE: PLACEMENT

DCPS has complied with 34 CFR §§300.114 - 300.116, because the location assignment to the [REDACTED] program meets the student's educational needs and follows the placement requirements.

Pursuant to 34 CFR §300.116(a), the child's placement must be based on the child's IEP and be as close as possible to the child's home. Unless the IEP of a child with a disability requires some other arrangement, the child must be educated in the school that he or she would attend if nondisabled and not be removed from education in age-appropriate regular classrooms solely because of needed modification in the general education curriculum. (34 CFR §300.116(c) and (e)) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services, including instruction in regular classes, special classes, and special schools. (34 CFR §300.115(a) and (b)) The complainant alleges that DCPS will not implement the student's IEP at the parent's chosen school.

Findings of Fact and Discussion

The student's [REDACTED] IEP prescribes twenty-four (24) hours per week of specialized instruction outside of the general education setting in the areas of reading, written expression, and mathematics; 120 minutes per month of occupational therapy outside the general education setting; and 120 minutes per month of behavioral support services outside the general education setting. For the [REDACTED] school year, the student was placed in the [REDACTED] ([REDACTED]) program at [REDACTED] Elementary School (ES). The [REDACTED] program provides intensive specialized instruction and academic support to students who receive the majority of their specialized instruction (20 or more hours per week) outside of the general education setting.

On [REDACTED], DCPS issued a location assignment for the [REDACTED] school year to the [REDACTED] program at [REDACTED] Education Campus (EC), the student's in-boundary feeder middle school. Prior to the start of the [REDACTED] school year, the student's parent enrolled the student at School [REDACTED] ([REDACTED]). The school year started on [REDACTED] and on [REDACTED], a staff member informed the parent that [REDACTED] does not have an [REDACTED] program and is unable to implement the student's IEP and reiterated the location assignment at [REDACTED] EC. The parent does not want the student to attend [REDACTED] EC, but rather to receive the full IEP supports at [REDACTED]. The parent filed this State complaint to resolve the issue.

The student's placement is the learning environment and level of supports and services needed as determined by the IEP Team. The same IEP that was in place during the [REDACTED] school year while the student attended the [REDACTED] program at [REDACTED] ES was in effect at the start of the [REDACTED] school year. There is evidence to support the determination that the student needs a placement outside the general education setting. The student's [REDACTED] IEP states that small group instruction in the general education setting with accommodations, supports, and services were previously attempted, but the student needs instruction outside the general education setting, with minimal distractions to help reduce frustration and meltdowns, to show adequate progress towards IEP goals. The [REDACTED] IEP progress report shows that the student made progress on all IEP goals throughout the [REDACTED] school year except for academic goals related to written expression, indicating that the [REDACTED] IEP is enabling the student to make progress. OSSE finds that the student's placement in the [REDACTED] program is based on the student's IEP. The location assignment to the [REDACTED] EC [REDACTED] program is close to the student's home because it is the in-boundary feeder middle school.

DCPS must provide a continuum of alternative placements; however, each school building does not have to provide all the special education and related services for all types and severities of disabilities.¹ The parent must be included in the placement discussion, but DCPS has the flexibility to assign the student to a particular school or classroom location that meets the

¹ US Department of Education Commentary p. 46588, Federal Register Volume 71, Number 156 (August 14, 2006).

child's special education and related services needs.² OSSE finds that DCPS's location assignment to the [REDACTED] EC [REDACTED] program meets the student's educational needs and follows the placement requirements.

Therefore, DCPS has complied with 34 CFR §§300.114 - 300.116.

ISSUE TWO: IEP SERVICES

DCPS has complied with 34 CFR §300.323(c)(2), because it made available the special education required by the student's IEP at the assigned location assignment.

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 the school said that they could not accommodate the student's IEP.

Findings of Fact and Discussion

On [REDACTED], a staff member informed the parent that [REDACTED] does not have an [REDACTED] program and is unable to implement the student's IEP because it is not able to provide the 24 hours per week of specialized instruction outside the general education setting. The staff member reiterated the location assignment at [REDACTED] EC where DCPS is able to provide all of the student's IEP services. Pursuant to the parent's insistence, the student has continued attending [REDACTED]. [REDACTED] staff members reported that they are implementing the student's IEP to the best of their ability, but can provide only 12 hours per week of specialized instruction. A review of related service trackers shows that [REDACTED] is able to provide the behavioral support services and occupational therapy required by the student's IEP. From the start of the [REDACTED] school year to the date of this decision letter, the student has not been receiving all of the services required by his IEP; however, the special education and related services required by the student's IEP are available at the [REDACTED] program at [REDACTED] EC. DCPS has met its obligation to make available the special education required by the student's IEP, but the parent has refused to enroll the student at the school location that can meet the student's needs.

Although DCPS informed the parent verbally on [REDACTED] that [REDACTED] cannot implement the student's IEP, it should have issued written notice. Pursuant to 34 CFR §300.503, an LEA must provide written notice to the parents of a child with a disability before the public agency refuses to initiate or change the educational placement of the child or the provision of FAPE to the child, including an explanation of why the LEA proposes or refuses to take action 34 CFR §300.503. DCPS did not meet this procedural requirement.

Therefore, DCPS has complied with 34 CFR §300.323(c)(2), but has not complied with 34 CFR §300.503.

² Policy Letter to Breeskin p. 2, US Department of Education Office of Special Education and Rehabilitative Services (November 22, 2019).

CONCLUSIONS

1. DCPS has complied with 34 CFR §§300.114 - 300.116, because the location assignment to the [REDACTED] EC [REDACTED] program meets the student's educational needs and follows the placement requirements.
2. DCPS has complied with 34 CFR §300.323(c)(2), because it made available the special education required by the student's IEP at the assigned location assignment.
3. DCPS has not complied with 34 CFR §300.503 because it did not issue written notice that DCPS cannot implement the student's IEP at the parent's school of choice.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR 34 CFR §300.503, DCPS must do the following:
 - a. Issue written notice that [REDACTED] cannot implement the student's IEP. The notice must include all requirements under 34 CFR §300.503. Evidence of the completion of this action must be provided to OSSE within 2 weeks of the date of this decision 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