



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

December 21, 2021

VIA Electronic Mail



District of Columbia Public Schools



RE: State Complaint No. 021 – 004 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 for students with disabilities attending [REDACTED] High School ([REDACTED]).

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 follow evaluation procedures, provide equal access to assistive technology, educate children with disabilities in the least restrictive environment with their peers to the maximum extent appropriate, ensure students are in the proper placement, and provide the specialized instruction and related services required by students' IEPs.

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 its obligations related to evaluations, assistive technology, the least restrictive environment, and placements, but has not complied with its obligation to provide the special education and related services required by students' IEPs. 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. Evaluation requirements at 34 CFR §300.304**

- a. Failure to follow evaluation procedures, specifically with regard to completing necessary eligibility testing for students referred for evaluation.
2. **Requirement to provide assistive technology at 34 CFR §300.105**
 - a. Failure to provide access to assistive technologies, specifically with regard to the unequal access to technologies when compared to general student populations.
3. **Least restrictive environment requirements at 34 CFR §300.114**
 - a. Failure to ensure children with disabilities to the maximum extent appropriate are educated with children who are nondisabled, specifically with regard to the physical separation of students with disabilities from their peers.
4. **Placement requirements at 34 CFR §300.116(d)**
 - a. Failure to ensure proper placements for children with disabilities in selecting the least restrictive environment giving consideration to any potential harmful effect on children with disabilities.
5. **Requirement to implement IEP at 34 CFR §300.323(c)(2)**
 - a. Failure to provide specialized education and related services, specifically with regard to not providing adequate staffing, paraprofessionals and co-teacher support, to students in need.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. DCPS [REDACTED]
3. DCPS [REDACTED]
4. DCPS [REDACTED]
5. 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):

[REDACTED]

GENERAL FINDINGS OF FACT

1. The students in this complaint are children with a disability as defined by 34 CFR §300.8.
2. The students' local educational agency (LEA) is DCPS.

ISSUE ONE: EVALUATION

DCPS has complied with 34 CFR §300.304, because it has a process to ensure the timely completion of student evaluations and the SCO found no untimely evaluations in its sample review of student records.

Pursuant to 34 CFR §300.304, when conducting the evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's IEP. The public agency must ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs. The complaint alleges that the manager of specialized instruction is not completing necessary eligibility testing nor actively participating in eligibility meetings.

Findings of Fact and Discussion

DCPS reported that when a referral is received, a multidisciplinary team is convened to review student data and determine if an evaluation is warranted, and if so, what assessments are needed. Students are then assessed by the appropriate case manager or related service providers. The team reconvenes to review all assessments and data and determine the student's eligibility for special education services.

During interviews, teachers confirmed this process, but informed OSSE that the responsibility to gather student data and complete initial testing, such as the Woodcock Johnson, has shifted from the manager of specialized instruction to the case manager. The teachers interviewed expressed concern about a heavy workload and the challenge it creates in timely completing all steps in the evaluation process. During the interview, the [REDACTED] reported that there were a few students enrolled at [REDACTED] at the start of the school year with overdue evaluations or reevaluations, but that the school worked to quickly complete the evaluations. The [REDACTED] reported that [REDACTED] does not have issues with timely completing or scheduling evaluations.

OSSE reviewed SEDS data on the current evaluation/reevaluation status of [REDACTED] students and noted two (2) currently enrolled students have an overdue reevaluation. Both students' reevaluations were overdue prior to the start of the school year and were based on the most recent reevaluation conducted by DCPS more than three (3) years ago. However, the students transferred from out of state at the start of the school year and were reevaluated by the out of state LEA within the past three (3) years. Documentation in the students' SEDS files shows that DCPS is completing its own assessments and eligibility meetings have been scheduled. OSSE identified no other students with overdue evaluations.

OSSE found no evidence that the evaluation process changes identified by the teachers have impacted the timeliness or quality of evaluations conducted [REDACTED].

Therefore, DCPS has complied with 34 CFR §300.304.

ISSUE TWO: ASSISTIVE TECHNOLOGY

DCPS has complied with 34 CFR §300.105, because it made sure that special education students had access to technology devices required by their IEPs.

Pursuant to 34 CFR §300.105, each public agency must ensure that assistive technology devices are made available to a child with a disability if required as a part of the child's special education, related services, or supplementary aids and services as prescribed in the child's IEP. The complaint alleges that special education classrooms are not getting access to technology.

Findings of Fact and Discussion

The complaint specifically alleges that multiple special education classrooms have broken projectors and no alternatives. During interviews, no staff member reported that students are unable to access assistive technology required by their IEPs; the technology concerns were related to generally accessible technology devices used in classrooms such as projectors and laptops/tablets.

The availability of general classroom technology is not an IDEA issue and therefore is not under the authority of this State complaint investigation. OSSE found no evidence that students do not have access to the technology required by their IEPs and thus identified no IDEA violation.

Therefore, DCPS has complied with 34 CFR §300.105.

ISSUE THREE: LEAST RESTRICTIVE ENVIRONMENT

DCPS has complied with 34 CFR §300.114, because it places students in the least restrictive environment required by their IEPs.

Pursuant to 34 CFR §300.114, each public agency must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled. The complaint alleges that special education students have been physically isolated from their peers.

Findings of Fact and Discussion

During interviews the teachers expressed concern about the location in the school building of several self-contained classrooms. The teachers reported that in past years, classroom locations were grouped together by grade level or subject, but this year several of the self-contained classrooms were grouped together. The [REDACTED] acknowledged this change, but reported that those self-contained classrooms were next to other general education classrooms and not isolated from the rest of the student population. Students in the self-contained classrooms still had opportunities to interact with their peers without disabilities during transitions in between classes.

The [REDACTED] confirmed that the only students in a self-contained classroom are those whose IEPs require that placement. OSSE found no evidence that students are not being placed in the least restrictive environment required by their IEPs. OSSE finds that

classroom location is an administrative decision and has not prevented special education students from interacting with students without disabilities.

Therefore, DCPS has complied with 34 CFR §300.114.

ISSUE FOUR: PLACEMENT

DCPS has complied with 34 CFR §300.116, because it bases students' placements on their IEPs.

Pursuant to 34 CFR §300.116(d), each public agency must ensure that when selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs. A child's placement must be based on the child's IEP. (34 CFR §300.116(b)(2)) The complaint alleges that some students are in the incorrect placement.

Findings of Fact and Discussion

The [REDACTED] reported that within the [REDACTED] building, there are multiple placement options: there are a variety of self-contained programs and classrooms and every core academic subject has a co-teaching section for specialized instruction in the general education setting. Student placements and class schedules are based on their IEPs. The [REDACTED] reported that a few students' schedules were changed once [REDACTED] had access to the students' IEPs after enrollment at the beginning of the school year, but that these students were in the incorrect setting for a few days, not weeks.

During interviews, teachers provided the names of seven (7) students they believed were not in the correct placement. In addition, OSSE reviewed seven (7) random student files to determine whether there were any placements that did not align with IEPs. OSSE compared the students' IEP required specialized instruction hours to their class schedules and found no inconsistencies.

During interviews, teachers raised concerns about facing resistance from administration when proposing a change to a student's placement or requesting special education services. The teachers provided email communication with administration about students who may need a more restrictive setting. OSSE found that when teachers raised concerns about a student's placement or need for extra support, including a potential need for special education services, they were directed to collect data and make a referral to the multi-tiered system of support process. A successful response to intervention program provides intensive short-term interventions to students who need them and ensures that students who do not respond to interventions and may need special education services are referred for evaluation; however, the use of RTI strategies cannot be used to delay an evaluation.¹ OSSE did not see a refusal by [REDACTED] administration to initiate the special education evaluation process and did not find evidence that the recommendation to start with the intervention process was being used

¹ U.S. Department of Education Memorandum: A Response to Intervention (RTI) Process Cannot be Used to Delay-Deny an Evaluation for Eligibility under the IDEA (January 21, 2011) at p. 2-3. (Available at: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>).

to delay an evaluation. OSSE found no recommendations from [REDACTED] administration that were not in alignment with IEP or evaluation processes under the IDEA.

The teachers also expressed concern that some of the self-contained classrooms were used interchangeably, even though the programs focused on different areas of student support, e.g., an academic versus a behavior focus. OSSE reviewed the educational file for specific students named by the teachers, including the IEP, class schedule, discipline records, behavior intervention plans, and the most recent reevaluation data. For each student, OSSE found evidence to support the student's placement as prescribed by the IEP.

Therefore, DCPS has complied with 34 CFR §300.116.

ISSUE FIVE: IEP SERVICES

DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all of the specialized instruction and supports required by students' IEPs.

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 complaint alleges that some general education classrooms with special education students do not have a co-teacher or supports and that the BES classrooms do not have support from the behavior technicians and paraprofessionals that they are supposed to.

Findings of Fact and Discussion

The complaint specifically referred to foreign language classes that do not have a co-teacher or supports. During interviews, teachers mentioned core academic classes that did not have special education teachers. The teachers also raised concerns about a lack of classroom aides in self-contained classrooms and a specific student that does not have the dedicated aide required by the student's IEP.

From the student files reviewed for this investigation, OSSE found no IEPs that required specialized instruction in a foreign language class. In addition, OSSE found no IEPs that required a specific student to teacher ratio or any other requirement that would result in an IEP violation due to a lack of an aide in the classroom. In addition, in its response DCPS asserted that all BES classrooms at [REDACTED] are staffed with a special education teacher and a classroom aide.

Through its investigation, OSSE identified one math teacher who serves in a co-teaching classroom and a self-contained classroom but is not certified in special education. The [REDACTED] reported that this teacher receives support from other special education teachers and administrators to provide accommodations and modifications to students. Although it is acceptable for an LEA to provide specialized instruction in the general education setting through ongoing collaboration and co-planning between the special education teacher and the general education teachers to provide differentiated instruction and classroom accommodations, the students in these self-contained classrooms have IEPs that

prescribe full-time specialized instruction outside of the general education setting. Without a special education teacher, this requirement is not met.

DCPS confirmed that one student does not have the dedicated aide required by the student's IEP. [REDACTED] submitted the request on [REDACTED], but an assignment has not been made.

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

CONCLUSIONS

1. DCPS has complied with 34 CFR §300.304, because it has a process to ensure the timely completion of student evaluations and the SCO found no untimely evaluations in its sample review of student records.
2. DCPS has complied with 34 CFR §300.105, because it made sure that special education students had access to needed technology devices.
3. DCPS has complied with 34 CFR §300.114, because it places students in the least restrictive environment required by their IEPs.
4. DCPS has complied with 34 CFR §300.116, because it bases students' placements on their IEPs.
5. DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all of the specialized instruction and supports required by students' IEPs.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2), DCPS must do the following:
 - a. For the students in the self-contained math class without a special education teacher:
 - i. Convene an IEP Team meeting for each of the students to create a compensatory education plan for its failure to provide all of the specialized instruction hours required by the student's IEP.
 - ii. DCPS must submit copies of the compensatory education plans to OSSE, including the justification relied on by the IEP Teams in determining the compensatory education hours. Documentation of the completion of this item is due to OSSE within 60 days of the date of this letter.
 - b. For the student with the dedicated aide required by the student's IEP:
 - i. Assign a dedicated aide to the student as soon as possible, but in no case later than 30 days from the date of this letter.
 - ii. Convene an IEP Team meeting for the student to create a compensatory education plan for its failure to provide the dedicated aide required by the student's IEP.
 - iii. DCPS must submit the compensatory education plan to OSSE, including the justification relied on by the IEP Team in determining the compensatory education hours or services. Documentation of the completion of this item 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 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