



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

February 11, 2022

VIA Electronic Mail



RE: State Complaint No. 021 – 010 Letter of Decision

LETTER OF DECISION

PROCEDURAL BACKGROUND

On December 13, 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) against the District of Columbia Public Schools (DCPS) alleging violations in the special education program of private school students receiving equitable services.

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 provide services required by students' individual service plans (ISPs).

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS has not met its obligation to provide equitable services. 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. **Equitable services at 34 CFR §300.132(a)**
 - a. Failure to provide special education and related services, including direct services, to children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA in accordance with the services determined by the LEA to be provided to parentally-placed private

school children with disabilities.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

[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 are children with a disability as defined by 34 CFR §300.8.
2. The students are parentally-placed private school children.

ISSUE: EQUITABLE SERVICES

DCPS has not complied with 34 CFR §300.132(a), because it has not implemented all individual service plans (ISPs) for parentally-placed private school children with disabilities. Pursuant to 34 CFR §300.132(a), the LEA must provide special education and related services, including direct services, to children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA in accordance with the services determined by the LEA to be provided to parentally-placed private school children with disabilities. DCPS is the LEA with the obligation to provide equitable special education and related services to students attending private schools in the District of Columbia. Accordingly, DCPS has the obligation to develop and implement a services plan for each private school child with a disability who has been designated by DCPS to receive special education and related services. (34 CFR §300.132(b)) The complainant alleges that private school students have not been receiving any services during the 2021 – 2022 school year.

Findings of Fact and Discussion

At the start of the 2021 – 2022 school year, DCPS had determined eligibility for equitable services and developed an individualized service plan (ISP) for [REDACTED] students. The vendor DCPS contracted with to provide speech-language services had the capacity to provide services to [REDACTED] students. The remaining [REDACTED] students were placed on a waitlist. On December 9, 2021, DCPS sent a letter to parents of students with ISPs to inform them of the delay in services for many students who qualify for equitable services and that students who were receiving services would be assigned a new

speech-language pathologist after the beginning of the new year. DCPS promised to offer make-up services for students who had not yet received services. On January 5, 2022, DCPS sent a letter to parents of students with ISPs who were receiving services to inform them that services would be paused due to the new vendor's speech-language pathologists needing to go through DCPS's security clearance process required for all employees, program partners, contractors, student teachers, interns, and volunteers.¹ DCPS promised to offer make-up services for services missed during that time.

DCPS reported that there is nation-wide shortage of speech-language pathologists, which led to the vendor not having the capacity to serve all students. This shortage has been exacerbated by the COVID-19 pandemic. In addition, every three (3) years DCPS must competitively award a new contractor to provide the services. DCPS began a contract with a new vendor on January 1, 2022. The contractor's service providers are currently going through the required security clearance process. Once the process is complete, the contractor will have the capacity to provide services to all eligible students according to their ISPs.

OSSE's investigation found that the facts of this case are not in dispute: DCPS has not implemented all ISPs it has developed for parentally-placed private school children with disabilities during the 2021 – 2022 school year. However, the complainant is not satisfied by DCPS's promise to make up services once the vendor's service providers complete the clearance process. Private school representatives expressed concern about the missed services and the impact it has had on students' academic progress in multiple areas. The complaint asserts that making-up service hours does not fully remedy the harm from a long period of no services.

To address interrupted services, learning loss, and skills regression for all students resulting from the COVID-19 public health emergency, OSSE instructed LEAs to incorporate accelerated learning strategies into their recovery services planning, which focuses on placing unfinished learning in the context of new learning, integrating both new information and the needed prior knowledge at the same time.² DCPS should utilize accelerated learning strategies when making-up missed equitable services to account for the impact on students of a long period of missed services.³

Therefore, DCPS has not complied with 34 CFR §300.132(a).

¹ See <https://dcps.dc.gov/page/dcps-fingerprinting-background-check-and-id-badge-processes-and-requirements>

² OSSE 2021 – 2022 Guiding Principles for Continuous Education, found at https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2021-22%20Guiding%20Principles%20for%20Continuous%20Education_vF.pdf

³ It is important to distinguish accelerated learning from compensatory services, which are intended to put the child in the position he or she would have been in had the LEA provided the services in the first place (*Reid v. Dist. of Columbia*, 43 IDELR 32 (D.C. Cir. 2005)), for students with disabilities who did not receive a free appropriate public education (FAPE) as required by the IDEA. Parentally-placed private school students are not entitled to FAPE or the same services that the child would receive if enrolled in a public school. Accordingly, compensatory services are not the appropriate measure for this situation. (34 CFR §300.137)

CONCLUSION

1. DCPS has not complied with 34 CFR §300.132(a), because it has not implemented all ISPs for parentally-placed private school children with disabilities.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.132(a), DCPS must do the following:
 - a. Incorporate accelerated learning strategies into its plan to make-up missed equitable services. DCPS must provide notice to parents of its plan to make-up missed services and submit documentation of such notice to OSSE within thirty (30) days of the notice to parents.
 - b. Create a corrective action plan (CAP) to address the delays caused by the security clearance process for service providers following the award of a new contract every three (3) years.
 - i. The CAP must address specific steps DCPS will take and deadlines to reduce or eliminate the delay in service provision that may result from the security clearance process following contracts with new vendors.
 - ii. DCPS must submit the CAP to OSSE for review and final approval 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 (1) 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:

