



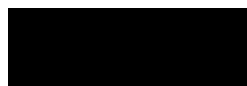
DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

June 10, 2022

VIA Electronic Mail



District of Columbia Public Schools



RE: State Complaint No. 021-014 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 [REDACTED] [REDACTED] (complainant or parent) against the District of Columbia Public Schools (DCPS) alleging violations in the special education program of [REDACTED] [REDACTED], hereinafter “student” or “child.” On [REDACTED] the parties agreed to mediation and on [REDACTED] agreed to extend the complaint timeline to continue to engage in mediation. On [REDACTED] the parties withdrew their agreement to mediate and OSSE continued its investigation.

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 ensure the child’s placement is based on the IEP, ensure all IEP Team members attend the IEP Team meeting, provide special education and related services required by the IEP, revise the IEP, provide an independent educational evaluation, provide prior written notice, and provide education records.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS complied with its obligations related to IEP Team participants, revising the IEP, and providing education records, but did not comply with its obligations related to placement, provision of services, independent educational evaluations, and prior written notice. 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 ensure that the child’s placement is based on the child’s IEP.
2. **IEP Team requirements at 34 CFR §300.321(a) and (e)**
 - a. Failure to ensure that the IEP Team includes all required participants.
3. **Requirement to provide IEP services at 34 CFR §300. 323(c)(2)**
 - a. Failure to make available special education and related services in accordance with the IEP.
4. **IEP revision requirements at 34 CFR §300.324(b)(1)(ii)**
 - a. Failure to revise the child’s IEP, as appropriate, to address information about the child provided to, or by, the parents and the child’s anticipated needs.
5. **Independent educational evaluation requirements at 34 CFR §300.502(b)**
 - a. Failure to provide an independent educational evaluation without unnecessary delay.
6. **Prior written notice requirements at 34 CFR §300.503**
 - a. Failure to provide Prior Written Notice.
7. **Requirement to provide education records at 34 CFR §§300.501(a) and 300.613**
 - a. Failure to provide an opportunity to examine education records.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. DCPS speech language pathologist
3. DCPS special education coordinator

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 student is a child with a disability as defined by 34 CFR §300.8.
- 2. The student’s disability category is [REDACTED]
- 3. The student’s local educational agency (LEA) is DCPS.

ISSUE ONE: PLACEMENT

DCPS has not complied with 34 CFR §300.116(b)(2), because it did not provide the student’s specialized instruction in the setting required by the IEP.

Pursuant to 34 CFR §300.116(b)(2), each public agency must ensure that the child's placement is based on the child's IEP. The complainant alleges that the student was placed in self-contained [REDACTED] instead of general education classes as required by the IEP.

Findings of Fact and Discussion

The [REDACTED] IEP prescribes [REDACTED] specialized instruction for mathematics in the general education setting and [REDACTED] for [REDACTED] in the general education setting. The student was placed in self-contained special education [REDACTED] classes [REDACTED]. The student received the specialized instruction for [REDACTED] but did not receive it in the general education setting as required by the IEP.

The complaint alleges that the self-contained classrooms were unduly restrictive and provided instruction below grade level standards. Placement in a special education classroom is more restrictive than what is required by the student’s IEP. [REDACTED] not classes that were below grade level.

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

ISSUE TWO: IEP TEAM

DCPS has not complied with 34 CFR §300.321(a) and (e), because it failed to ensure all required IEP Team members attended the [REDACTED] IEP Team meeting .

Pursuant to 34 CFR §300.321(a), the public agency must ensure that the IEP Team for each child with a disability includes: 1) the parents, 2) not less than one regular education teacher of the child, 3) not less than one special education teacher of the child, 4) a representative of the public agency, 5) an individual who can interpret the instructional implications of evaluation results, 6) other individuals who have knowledge or special expertise of the child, and 7) the child, when appropriate. A required member of the IEP Team is not required to attend an IEP Team meeting if the parent and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is

not being modified or discussed in the meeting. (§300.321(e)(1)) A required member of the IEP Team may be excused from attending an IEP Team meeting when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent, in writing, and the public agency consent to the excusal, and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting. (§300.321(e)(2)) The complainant alleges that DCPS failed to have all required IEP Team members at various meetings.

Findings of Fact and Discussion

DCPS held the student's annual IEP review meeting on [REDACTED]. The complaint alleges that the speech-language pathologist did not attend this meeting and [REDACTED] as the general education teacher. The meeting notes indicate that the parent excused the speech therapist from attending this meeting; however, later email communication showed that the parent wanted to reconvene the IEP Team so that the speech language pathologist could participate and DCPS held a subsequent meeting [REDACTED]. The [REDACTED] teacher filled the role of general education teacher. While LEAs have the discretion on which teachers to include in IEP Team meetings¹, there is no indication that DCPS included the [REDACTED] teacher due to valuable input for the IEP, but rather to simply fill the role of a general education teacher. While having the [REDACTED] teacher fill the role of general education teacher at the meeting was technically compliant, it is a poor practice.

On [REDACTED] DCPS held another meeting to continue the student's annual IEP review. Prior to the meeting, in a [REDACTED] email the parents requested that the student's English teacher attend the IEP Team meeting. The complaint alleges that there was no general education English teacher at the meeting; however, during that semester the student was in a self-contained special education classroom for English and did not have a general education English teacher. However, DCPS was unable to confirm that another general education teacher attended the [REDACTED] meeting. Although the IEP is dated for the [REDACTED] meeting, it was finalized after this meeting and so this meeting should also have included all required meeting participants. OSSE finds that DCPS did not ensure all required IEP Team members attended the [REDACTED] IEP Team meeting.

DCPS held the student's eligibility determination meeting on [REDACTED]. The complaint alleges that the student's special education teacher did not attend this meeting. The complaint alleges that the school reported that this was an eligibility meeting and that no changes would be made to the IEP. No changes were made to the IEP following this meeting. The eligibility determination must be made by a group of qualified professionals and the parent of the child.

¹ 71 Fed. Reg. 46,670 (2006) "Decisions as to which particular teacher(s) or special education provider(s) are members of the IEP Team ... are best left to State and local officials to determine."

(34 CFR §300.306(a)(1)) OSSE finds that the full IEP Team was not required to attend this meeting.

[REDACTED]

The complaint alleges that no special education teacher or general education teacher attended this meeting. The complaint alleges that at this meeting the school reported that the student's IEP had been amended to remove speech language services following the [REDACTED] eligibility meeting, but the parents never agreed to nor informed of an IEP amendment. The [REDACTED] prior written notice stated that the student was no longer eligible for speech language services, but OSSE's review of the student's SEDS record found that there were no updated or amended IEPs until the annual review on [REDACTED]. OSSE finds that no changes were made to the student's IEP following the [REDACTED] meeting and therefore the full IEP Team was not required to attend.

Therefore, DCPS has not complied with 34 CFR §300.321(a).

ISSUE THREE: IEP SERVICES

DCPS has not complied with 34 CFR §300. 323(c)(2), because it failed to provide all of the specialized instruction and classroom aids and services required by the student's IEP.

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 DCPS has failed to provide the specialized instruction, speech language services, behavioral support services, and classroom aids and services required by the student's IEP.

Findings of Fact and Discussion

The [REDACTED] IEP prescribes [REDACTED] specialized instruction in the general education setting, [REDACTED] specialized instruction for mathematics in the general education setting, [REDACTED] specialized instruction for written expression in the general education setting, [REDACTED] speech-language pathology services, and [REDACTED] behavioral support services.

Specialized Instruction

The complaint alleges that the student did not receive specialized instruction for math or written instruction from [REDACTED] because the student's class schedule did not include a Math or English class for the fall semester. The schedule for the fall semester shows that the student was placed in a co-taught classroom for [REDACTED] and [REDACTED]. The student received specialized instruction in these classes. DCPS could incorporate specialized instruction related to the student's math and written expression goals into other classes, but DCPS failed to provide information on how that was done for the student.

The complaint alleges that DCPS is not providing the [REDACTED] specialized instruction required by the IEP for the spring semester because a special education teacher is

present in only the Math and English classes. The schedule for the spring semester shows that the student was placed in a co-taught classroom for [REDACTED]. The student received specialized instruction in these classes. DCPS failed to provide information on how it provided specialized instruction to the student for the non-co-taught classes.

Speech Language Services

OSSE reviewed services trackers from [REDACTED]:

	Provided	Attempted but missed due to student unavailability	Missed due to school closure
[REDACTED]	20	45	0
[REDACTED]	45	0	0
[REDACTED]	90	0	0
[REDACTED]	90	0	0

OSSE finds that DCPS was required to make up 60 minutes of services and could make up an additional 45 minutes that were missed due to the student’s unavailability. In [REDACTED] DCPS made up 30 minutes of services and in [REDACTED] made up 90 minutes of services. OSSE finds that DCPS made up all required speech language services.

Behavioral Support Services

OSSE reviewed services trackers from [REDACTED]:

	Provided	Attempted but missed due to student unavailability	Missed due to school closure
[REDACTED]	60	0	0
[REDACTED]	120	0	0
[REDACTED]	60	30	0
[REDACTED]	90	0	30

OSSE finds that DCPS was required to make up 90 minutes of services and could make up an additional 30 minutes that were missed due to the student’s unavailability. In both [REDACTED] DCPS provided an additional 75 minutes of services beyond the 120 minutes required by the IEP. OSSE finds that DCPS made up all required behavioral support services.

Classroom Aids and Services

The [REDACTED] IEP lists the following other classroom aids and services: provide written instructions for homework; verbal directions must be paired with written or visual directions (a handout or PowerPoint slide accompanying a lecture); provide notes or notes outline when direct instruction longer than 10 minutes; provide a study guide, copy of guided notes, or completed notes to student to prepare for quizzes, tests, and exams; chunking of assignments; modified assignments/assessments (as needed); modified presentation of work to ensure comprehension and confidence; reminders to go back through work to revise for punctuation, capitalization, and grammar; and a rubric for writing assignments in advance of starting the assignment. The complaint alleges that these supports have not been provided to the student. DCPS failed to provide information on how it provided the classroom aids and services required by the IEP.

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

ISSUE FOUR: IEP REVISION

DCPS has complied with 34 CFR §300.324(b)(1)(ii), because it incorporated the academic programming recommendations from the independent neuropsychological evaluation into the student's IEP.

Pursuant to 34 CFR §300.324(b)(1)(ii), each public agency must ensure that the IEP Team revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals, and in the general education curriculum; the results of any reevaluation; information about the child provided to, or by, the parents; and the child's anticipated needs. The complainant alleges that DCPS failed to consider a neuropsychological evaluation provided by the parents and incorporate the evaluation's recommendations into the student's IEP.

Findings of Fact and Discussion

The student had an independent neuropsychological evaluation completed in [REDACTED] and the parents provided a copy of the evaluation report to DCPS on [REDACTED]. DCPS added the evaluation to the student's SEDS record. The report includes academic programming recommendations in the areas of services, accommodations, and goals. OSSE reviewed the recommendations and found that they are incorporated into the student's [REDACTED] IEP in the services, goals, and classroom aids and services. For the recommended services, the IEP continued to prescribe specialized and general education instruction, speech language services, and behavioral support services, and the student was enrolled in a study skills class in the [REDACTED]. For the recommended accommodations and goals, the IEP's other classroom aids and services, classroom and assessment accommodations, and goals address all areas of concern raised in the evaluation report. Although the IEP does not contain a copy and paste of every recommendation in the evaluation report, OSSE does not find any areas of concern raised in the evaluation report that are not addressed in the IEP.

Therefore, DCPS has complied with 34 CFR §300.324(b)(1)(ii).

ISSUE FIVE: INDEPENDENT EDUCATIONAL EVALUATION

DCPS has not complied with 34 CFR §300.502(b), because it failed to respond to the parent's request for an independent educational evaluation without unnecessary delay.

Pursuant to 34 CFR §300.502(b)(1), a parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense. (34 CFR §300.502(b)(2)) The complainant alleges that DCPS failed to respond to the parent's request for an independent educational evaluation.

Findings of Fact and Discussion

At the [REDACTED] meeting, the parents requested an independent psychoeducational evaluation due to disagreements with the educational evaluation conducted by DCPS. The

parents renewed this request via email on [REDACTED]. On [REDACTED] DCPS issued an authorization letter for independent comprehensive psychological and speech-language evaluations. DCPS took two months to respond to the parent's request, which does not meet the standard of "without unnecessary delay."

Therefore, DCPS has not complied with 34 CFR §300.502(b)(1).

ISSUE SIX: PRIOR WRITTEN NOTICE

DCPS has not complied with 34 CFR §300.503, because it failed to issue accurate and timely written notice following the [REDACTED] evaluation planning meeting.

Pursuant to 34 CFR §300.503, written notice must be given 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 DCPS failed to provide an accurate prior written notice following the [REDACTED] evaluation planning meeting.

Findings of Fact and Discussion

Following the [REDACTED] meeting to review student data, DCPS sent the parents a copy of the analysis of existing data document. The parents requested written notice of the evaluations proposed, refused, or agreed to by the team. On [REDACTED] DCPS provided a prior written notice dated [REDACTED] that inaccurately described the [REDACTED] meeting as a meeting to develop an IEP for the student. After this complaint was filed, DCPS issued written notice on [REDACTED] to correct the [REDACTED] written notice. The corrected notice stated that the team agreed to complete a psychological assessment with an updated educational assessment and a speech assessment. Although DCPS eventually issued an accurate written notice regarding the [REDACTED] evaluation planning meeting, it came after the [REDACTED] eligibility determination meeting.

Therefore, DCPS has not complied with 34 CFR §300.503.

ISSUE SEVEN: EDUCATION RECORDS

DCPS has complied with 34 CFR §§300.501(a) and 300.613, because it provided all education records requested by the parent that existed at the time of the request.

Pursuant to 34 CFR §300.501(a), the parents of a child with a disability must be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, educational placement, and the provision of FAPE to the child. Each public agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the public agency under IDEA. (34 CFR §300.613(a)) The public agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any due process hearing and in no case more than 45 days after the request has been made. (34 CFR §300.613(a)) The complainant alleges that DCPS failed to provide the prior written notice from the [REDACTED]; IEP progress reports for the [REDACTED]; and related services trackers from [REDACTED] for speech therapy and behavioral support services.

Findings of Fact and Discussion

On [REDACTED] the parents requested via email the prior written notice from the [REDACTED]; IEP progress reports for the [REDACTED] school years; and related services trackers from [REDACTED] for speech therapy and behavioral support services. In response to DCPS providing education records, on [REDACTED] the parents reiterated a request for the following records: progress reports for the [REDACTED] school year, corrected prior written notice for the [REDACTED] meeting, and all service trackers for speech therapy and behavioral support services for the [REDACTED] school year. On [REDACTED] DCPS sent all service trackers for speech therapy and behavioral support services and the IEP progress reports for the [REDACTED] school year. DCPS had already provided the written notice for the [REDACTED] meeting that existed in the student's education record; the corrected notice did not exist at the time of the [REDACTED] request and thus DCPS could not provide it. The inaccuracy of the notice is addressed under Issue Six above.

The service tracker for speech language services provided in [REDACTED] was finalized in SEDS on [REDACTED] and the service tracker for behavioral support services provided in [REDACTED] was finalized in SEDS on [REDACTED]. The service trackers for Dec. were not yet available at the time of the parent's request for education records. OSSE finds that DCPS provided all education records requested by the parent that existed at the time of the request.

Therefore, DCPS has complied with 34 CFR §300.501(a).

CONCLUSIONS

1. DCPS has not complied with 34 CFR §300.116(b)(2), because it did not provide the student's specialized instruction in the setting required by the IEP.
2. DCPS has not complied with 34 CFR §300.321(a) and (e), because it failed to ensure all required IEP Team members attended the [REDACTED] IEP Team meeting.
3. DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all of the specialized instruction and classroom aids and services required by the student's IEP.
4. DCPS has complied with 34 CFR §300.324(b)(1)(ii), because it incorporated the academic programming recommendations from the independent neuropsychological evaluation into the student's IEP.
5. DCPS has not complied with 34 CFR §300.502(b), because it failed to respond to the parent's request for an independent educational evaluation without unnecessary delay.
6. DCPS has not complied with 34 CFR §300.503, because it failed to issue accurate and timely written notice following the [REDACTED] evaluation planning meeting.
7. DCPS has complied with 34 CFR §§300.501(a) and 300.613, because it provided all education records requested by the parent that existed at the time of the request.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.116(b)(2), DCPS must do the following:
 - a. Review and revise, if necessary, the procedures to ensure that a student's

placement is based on the student's IEP. DCPS must train relevant school staff on the procedures. Documentation of the completion of this action is due to OSSE within 75 days of the date of this complaint.

2. In order to correct the noncompliance with 34 CFR §300.321(a) and (e), DCPS must do the following:
 - a. Train relevant school staff on the IEP Team required participants. Documentation of the completion of this action is due to OSSE within 60 days of the date of this complaint.
3. In order to correct the noncompliance with 34 CFR §300.323(c)(2), DCPS must do the following:
 - a. Authorize 80 hours of independent tutoring for the student. Documentation of the completion of this item is due to OSSE within 30 days of the date of this complaint.
4. In order to correct the noncompliance with 34 CFR §300.502(b), DCPS must do the following:
 - a. Review and revise, if necessary, the procedures to respond to a parent's request for an independent educational evaluation. DCPS must train relevant staff on the procedures. Documentation of the completion of this action is due to OSSE within 75 days of the date of this complaint.
5. In order to correct the noncompliance with 34 CFR §300.503, DCPS must do the following:
 - a. Train relevant school staff on the requirements related to prior written notice. Documentation of the completion of this action is due to OSSE within 60 days of the date of this complaint.

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]