



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

April 14, 2022

VIA Electronic Mail

[REDACTED] Public Charter School

RE: State Complaint No. 021-016 Letter of Decision

LETTER OF DECISION

PROCEDURAL BACKGROUND

On February 14, 2022, 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 [REDACTED] Public Charter School [REDACTED] PCS) alleging systemic violations in the special education programs of students with an IEP attending [REDACTED] PCS.

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 review and revise IEPs based on student need, provide IEP services, and inform parents of IEP changes. The investigation raised the additional issue of parental consent.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that [REDACTED] PCS complied with its obligations related to reviewing and revising IEPs and issuing prior written notice but did not comply with its obligations related to providing IEP services, ensuring parent participation, and obtaining parental consent. 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. IEP review requirements at 34 CFR §300.324**

- a. Failure to review and revise the IEP, as appropriate.
- 2. **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 student’s IEP.
- 3. **Prior written notice requirements at 34 CFR §300.503**
 - a. Failure to 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.
- 4. **Parental consent requirements at 34 CFR §300.300**
 - a. Failure to ensure obtain informed consent from the parent of the child before conducting the initial evaluation, reevaluation, or initial provision of special education and related services.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

- 1. Complainant
- 2. [REDACTED] PCS [REDACTED]
- 3. [REDACTED] PCS [REDACTED]
- 4. [REDACTED] PCS [REDACTED]
- 5. [REDACTED] PCS [REDACTED]
- 6. [REDACTED] PCS [REDACTED]
- 7. [REDACTED] PCS [REDACTED]

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]
- 2. [REDACTED]
- 3. [REDACTED]
- 4. [REDACTED]
- 5. [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 [REDACTED] PCS.

ISSUE ONE: IEP REVIEW

[REDACTED] PCS has complied with 34 CFR §300.324, because it updated students’ IEPs based on recent student data.

¹ OSSE randomly selected 20% of special education students enrolled at [REDACTED] for file reviews.

Pursuant to 34 CFR §300.324(b), each public agency must ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved, and revises the IEP, as appropriate. The complainant alleges that the LEA's previous special education coordinator falsified IEPs by not basing students' educational goals on an evaluation of the students' needs.

Findings of Fact and Discussion

To investigate this complaint, OSSE selected [REDACTED] sample student files to review out of the [REDACTED] students with IEPs enrolled at [REDACTED] PCS at the time of the file review. For this allegation, OSSE reviewed the most recent IEP (from the annual review, not amended IEPs) and compared it to the prior IEP. OSSE looked for evidence of updated goals, special education services and supports, and present levels of achievement. In addition, if a student had an initial evaluation or reevaluation during the one-year investigation period, OSSE reviewed the eligibility documentation for evidence of assessments, including updated assessments as applicable, and student data.

OSSE's review found evidence that student IEPs were updated and based on recent student data. All the initial evaluations and reevaluations reviewed included a recent psychological assessment. In interviews staff reported that during the eligibility discussion and IEP reviews the team reviews classroom data and assessments, teacher observations, parent input, and behavior data. IEPs included recent student data for the present levels of achievement. OSSE's review found updated special education hours, related services, and revised goals on the IEPs OSSE identified no concerns with [REDACTED] PCS's review and revision of students' IEPs based on student data.

Therefore, [REDACTED] PCS has complied with 34 CFR §300.324(b).

ISSUE TWO: IEP SERVICES

[REDACTED] **PCS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all of the behavioral support services 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 complainant alleges that [REDACTED] PCS paid a contractor for related services that were never provided.

Findings of Fact and Discussion

For the investigation OSSE reviewed service trackers for [REDACTED] sample student files to determine the students' receipt of related services. Of the [REDACTED] student files reviewed, [REDACTED] student's IEP prescribed occupational therapy services, [REDACTED] students' IEPs prescribed speech language services, and [REDACTED] students' IEPs prescribed behavioral support services. OSSE's review of service trackers for those students found that [REDACTED] PCS provided occupational therapy and behavioral support services as prescribed by students' IEPs, but only [REDACTED] students received behavioral support services as prescribed by their IEP. [REDACTED] of the student

files reviewed had no documentation of provision of behavioral support services during the [REDACTED] school year.

Through interviews OSSE learned that the contractor identified in the complaint provides evaluation services for [REDACTED] PCS but does not provide any other direct services to students. The eligibility documentation reviewed showed that the contractor completed psychological assessments for the students. None of the documentation in the student files with missing behavioral support services identified the contractor as the service provider.

Therefore, [REDACTED] PCS has not complied with 34 CFR §300.323(c)(2).

ISSUE THREE: PRIOR WRITTEN NOTICE

[REDACTED] PCS has complied with 34 CFR §300.503, because it issued prior written notice as appropriate following revisions to student IEPs that resulted in a change to the student's placement or receipt of FAPE.

[REDACTED] PCS has not complied with 34 CFR §300.322, because it failed to ensure parent participation at all IEP Team meetings.

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 to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the child. The complainant alleges that parents were not notified of changes made to their child's IEP.

Findings of Fact and Discussion

For this allegation, OSSE reviewed the most recently updated IEP to determine whether the parent participated in the meeting, and whether [REDACTED] PCS issued prior written notice following the meeting, if necessary. Of the [REDACTED] student files reviewed, [REDACTED] parents attended the annual IEP review meeting, and [REDACTED] parents did not. For [REDACTED] student whose IEP revisions resulted in a more restrictive setting, [REDACTED] PCS issued prior written notice regarding the change in placement. None of the other student files reviewed had significant enough changes to the IEP to be considered a change to the student's educational placement or receipt of FAPE.

During the review of IEPs, OSSE identified issues with parent participation in IEP Team meetings. Each public agency must take steps to ensure that one or both parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually agreed upon time and place. (34 CFR §300.322(a)) If a parent cannot attend the meeting, the LEA may hold the meeting without the parent if the LEA has made reasonable efforts to ensure parent participation, which is a minimum of three attempts using multiple modalities.² The LEA must record its contact attempts to arrange a mutually agreed upon time and place for the meeting.

² OSSE's IEP Process Policy p. 3 (Aug. 30, 2011).

(34 CFR §300.322(d)) OSSE reviewed SEDS communication logs for the [REDACTED] students whose parents did not attend the annual IEP review meeting and found that [REDACTED] PCS's contact attempts did not meet the reasonable efforts threshold or record its contact attempts to arrange a mutually agreed upon time and place for the meeting in any case. The SEDS communication logs for [REDACTED] student files showed a phone call or email to the parent on the day prior to the scheduled meeting, and in [REDACTED] cases no communication attempts were recorded. In [REDACTED] cases the SEDS letter of invitation was generated the day of or the day after the scheduled meeting. [REDACTED] PCS provided documentation of email invitations sent to parents for IEP Team meetings held via zoom, but there was no evidence that those meetings were scheduled at a mutually agreed upon date and time. OSSE's investigation found clear evidence that [REDACTED] PCS has a systemic problem with ensuring parent participation at IEP Team meetings.

Therefore, [REDACTED] PCS has not complied with 34 CFR §300.322. OSSE did not find sufficient evidence to indicate that [REDACTED] PCS has not complied with 34 CFR §300.503.

ISSUE FOUR: PARENTAL CONSENT

[REDACTED] PCS has not complied with 34 CFR §300.300, because it failed to obtain parental consent for initial evaluations, reevaluations, and initial provision of special education and related services.

Pursuant to 34 CFR §300.300(a), the public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability must obtain informed consent from the parent of the child before conducting the evaluation. A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. (34 CFR §300.300(b)) Each public agency also must obtain informed parental consent prior to conducting any reevaluation of a child with a disability. (34 CFR §300.300(c)) During the review of IEPs and eligibility documentation, OSSE identified issues with parental consent for initial evaluations, reevaluations, and initial provision of special education and related services.

Findings of Fact and Discussion

Of the [REDACTED] student files reviewed for this investigation, [REDACTED] students had an initial evaluation during the one-year investigation period and [REDACTED] students had a reevaluation. None of the [REDACTED] initial evaluation students had parental consent to evaluate or parental consent for the initial provision of services in the student's SEDS file. None of the [REDACTED] reevaluation students had parental consent to evaluate in the student's SEDS file. In interviews [REDACTED] PCS reported that many of the evaluation requests were initiated by parents but there was difficulty obtaining signatures during distance learning while students were not in school buildings due to the COVID-19 pandemic. However, [REDACTED] of the initial evaluations or reevaluations reviewed occurred during the [REDACTED] school year when students returned to in-person learning. None of the student files had a record of contact attempts to obtain parental consent and there is no record that [REDACTED] PCS utilized the procedural safeguard options when a parent is unresponsive to requests to provide consent. (34 CFR

§300.300(a)(3)(i)) Without parental consent, [REDACTED] PCS should not have moved forward with the evaluations or initial provision of services.

OSSE's investigation found clear evidence that [REDACTED] PCS has a systemic problem in seeking and obtaining parental consent for initial evaluations, reevaluations, and initial provision of special education and related services.

Therefore, [REDACTED] PCS has not complied with 34 CFR §300.300.

CONCLUSIONS

1. [REDACTED] PCS has complied with 34 CFR §300.324, because it updated students' IEPs based on recent student data.
2. [REDACTED] PCS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all of the behavioral support services required by students' IEPs.
3. OSSE did not find sufficient evidence to indicate that [REDACTED] PCS has not complied with 34 CFR §300.503.
4. [REDACTED] PCS has not complied with 34 CFR §300.322, because it failed to ensure parent participation at all IEP Team meetings.
5. [REDACTED] PCS has not complied with 34 CFR §300.300, because it failed to obtain parental consent for initial evaluations, reevaluations, and initial provision of special education and related services.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2), [REDACTED] [REDACTED] PCS must do the following:
 - a. Complete file reviews for all students whose IEPs prescribe behavioral support services and review service trackers to determine if those students have been receiving behavioral support services during the [REDACTED] school year.
 - i. [REDACTED] PCS must submit the results of the file review to OSSE for verification within 45 days of the date of this letter of decision.
 - b. Convene IEP Team meetings, including the parent, for all students who did not receive behavioral support services during the [REDACTED] school year to create a make-up services plan and determine if compensatory education for the missed services is needed.
 - i. [REDACTED] PCS must submit documentation of the meetings held, the make-up plan, and compensatory education determination to OSSE within 90 days of the date of this letter of decision.
2. In order to correct the noncompliance with 34 CFR §300.322, [REDACTED] PCS must do the following:
 - a. Utilize the individualized special education supports from Opportunity Consulting made available to LEAs by OSSE to create a corrective action plan (CAP) to update LEA policy and procedures to improve parent participation in IEP Team meetings.
 - i. [REDACTED] PCS must submit the CAP to OSSE for approval

within 90 days of the date of this letter of decision

3. In order to correct the noncompliance with 34 CFR §300.322, [REDACTED] PCS must do the following:
 - a. Complete file reviews for all students who had an initial evaluation within the past year.
 - i. For any students who do not have parental consent in SEDS, [REDACTED] PCS must obtain informed consent for the initial provision of services and upload the consent to SEDS.
 - ii. [REDACTED] PCS must submit the results of the file review to OSSE for verification within 60 days of the date of this letter of decision.
 - b. Utilize the individualized special education supports from Opportunity Consulting made available to LEAs by OSSE to create a CAP to update LEA policy and procedures to obtain parental consent prior to conducting initial evaluations, reevaluations, or providing initial services.
 - i. [REDACTED] PCS must submit the CAP to OSSE for approval within 90 days of the date of this letter of 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 or 202-445-4893.

Sincerely,

Kirstin K Hansen

Kirstin Hansen
State Complaints Manager, Division of Systems and Supports, K-12

cc: [REDACTED], Complainant