

April 14, 2022

VIA Electronic Mail



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

LETTER OF DECISION

PROCEDURAL BACKGROUND

On February 14, 2022, the State Complaint Office	, ,
Superintendent of Education (OSSE), Division of Sycomplaint from (complainant) against	ystems and Supports, K-12 received a State Public
	ng systemic violations in the special education PCS.
The complainant alleged that Individuals with Disabilities Education Act (IDEA), promulgated at 34 CFR Part 300, specifically, failured, provide IEP services, and inform parents of additional issue of parental consent.	20 U.S.C. §1400 et seq. and regulations re to review and revise IEPs based on student
The SCO for OSSE has completed its investigation the investigation OSSE determined that obligations related to reviewing and revising IEPs comply with its obligations related to providing IE obtaining parental consent. This Letter of Decision investigation.	PCS complied with its and issuing prior written notice but did not P services, ensuring parent participation, and

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

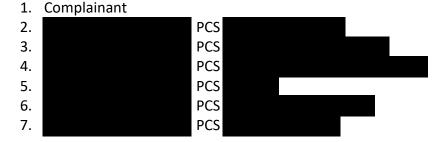
a. Failure to provide written notice to the parents of a child with a disability before the public agency refuses to initiate or change the educational placement of the child or the provision of FAPE to the child.

4. Parental consent requirements at 34 CFR §300.300

 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.

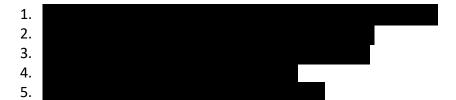
INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:



The investigation also included review of the following documents which were either submitted by the complainant, submitted by Education Data System (SEDS):

PCS, or accessible via the Special



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

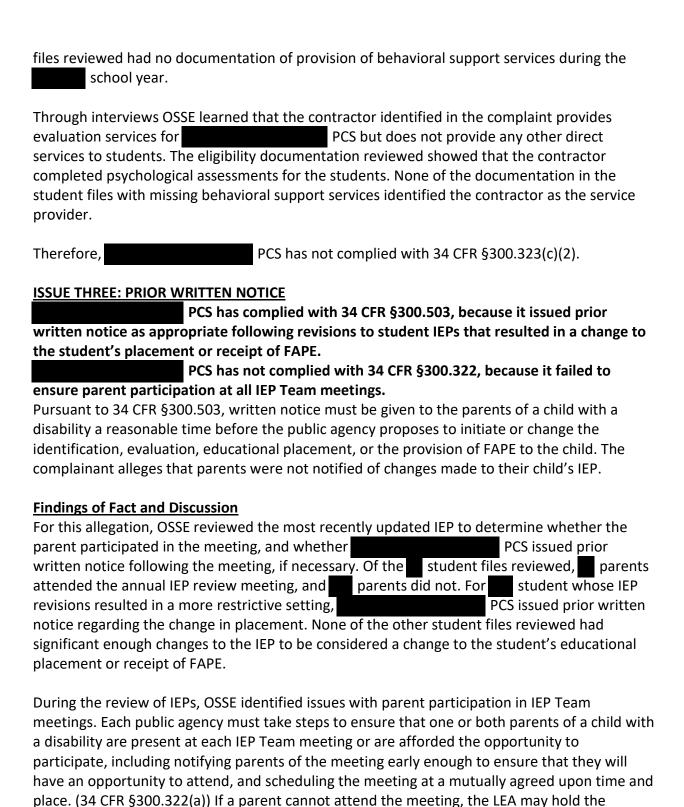
ISSUE ONE: IEP REVIEW PCS has complied with 34 CFR §300.324, because it updated students' IEPs based on recent student data.

¹ OSSE randomly selected 20% of special education students enrolled at 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 sample student files to review out of the students with IEPs enrolled at 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
Therefore, PCS has complied with 34 CFR §300.324(b).
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 PCS paid a contractor for related services that were never provided.
Findings of Fact and Discussion For the investigation OSSE reviewed service trackers for sample student files to determine the students' receipt of related services. Of the student files reviewed, student's IEP prescribed occupational therapy services, students' IEPs prescribed speech language services, and students' IEPs prescribed behavioral support services. OSSE's review of service trackers for those students found that therapy and behavioral support services as prescribed by students' IEPs, but only students received behavioral support services as prescribed by their IEP.



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

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.

meeting without the parent if the LEA has made reasonable efforts to ensure parent

(34 CFR §300.322(d)) OSSE reviewed SEDS communication logs for the parents did not attend the annual IEP review meeting and found that 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 student files showed a phone call or email to the parent on the day prior to the scheduled meeting, and in cases no communication attempts were recorded. In cases the SEDS letter of invitation was generated the day of or the day after the scheduled meeting. 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 the parent participation at IEP Team meetings.
Therefore, PCS t has not complied with 34 CFR §300.322. OSSE did not find sufficient evidence to indicate that CFR §300.503.
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 student files reviewed for this investigation, students had an initial evaluation during the one-year investigation period and students had a reevaluation. None of the 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 reevaluation students had parental consent to evaluate in the student's SEDS file. In interviews 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, of the initial evaluations or reevaluations reviewed occurred during the school year when students returned to inperson learning. None of the student files had a record of contact attempts to obtain parental consent and there is no record that PCS utilized the procedural safeguard options when a parent is unresponsive to requests to provide consent. (34 CFR)

moved forward with the evaluations or initial provision of services.
OSSE's investigation found clear evidence that 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, PCS has not complied with 34 CFR §300.300.
CONCLUSIONS
1. PCS has complied with 34 CFR §300.324, because it updated students' IEPs based on recent student data.
2. 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 complied with 34 CFR §300.503.
4. PCS has not complied with 34 CFR §300.322, because it failed to ensure parent participation at all IEP Team meetings.
5. 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), 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 school year.
i. 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 school year to create a
make-up services plan and determine if compensatory education for the missed
services is needed.
i. 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,
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. PCS must submit the CAP to OSSE for approval

§300.300(a)(3)(i)) Without parental consent,

within 90 days of the date of this letter of decision

- 3. In order to correct the noncompliance with 34 CFR §300.322, 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,

 PCS must obtain informed consent for the initial provision of services and upload the consent to SEDS.
 - ii. 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. 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 Hansen

Kirstin K Hansen

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

cc: , Complainant