



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

May 2, 2022

VIA Electronic Mail



RE: State Complaint No. 021-017 Letter of Decision

LETTER OF DECISION

PROCEDURAL BACKGROUND

On March 11, 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 or parent) against the District of Columbia Public Schools (DCPS) alleging violations in the special education program of [REDACTED] [REDACTED] hereinafter “student” or “child.”

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 base the child’s placement on the IEP, provide speech and language services, timely complete the reevaluation, 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 obligation related to reevaluation but did not comply with its obligations related to placement, provision of services, and education records. 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. **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, specifically with regard to speech and language services.
- 3. **Reevaluation requirements at 34 CFR §300.303(b)(2)**
 - a. Failure to timely complete the student’s reevaluation as required at least once every three years.
- 4. **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 [REDACTED]
- 3. DCPS [REDACTED]
- 4. 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]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- 8. [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 developmental delay.
- 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 failed to provide specialized instruction for math in the general education setting as required by the IEP.

Pursuant to 34 CFR §300.116(b)(2), the child's placement must be based on the child's IEP. The complainant alleges that the student is supposed to be in the general education setting for math but is not.

Findings of Fact and Discussion

The student's [REDACTED] IEP prescribes 20 hours per week of specialized instruction outside the general education setting and five hours per week of specialized instruction for math inside the general education setting. The student is placed in an early learning support classroom, which is a self-contained program for students who have a developmental delay. The student receives specialized instruction for all core academic classes outside of the general education setting. The student does not receive specialized instruction for math in the general education setting as required by the IEP.

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

ISSUE TWO: IEP SERVICES

DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide the full amount of speech therapy services required by the student's IEP during the [REDACTED] school year.

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 the student did not receive speech language therapy services for a few months during the [REDACTED] school year.

Findings of Fact and Discussion

The student's [REDACTED] IEPs prescribe 120 minutes per month of speech language services.

[REDACTED] School Year

The investigation lookback period for this complaint extends to March 2021. During the [REDACTED] school year, students participated in distance learning. For speech language services, DCPS provided virtual direct services and asynchronous work assignments. OSSE's review of service trackers found that DCPS provided all service minutes required by the student's IEP from [REDACTED] through [REDACTED].

[REDACTED] School Year

OSSE's review of service trackers from [REDACTED] through [REDACTED] found that DCPS failed to provide 90 minutes of services in [REDACTED] and 30 minutes in [REDACTED] due to the service provider's unavailability. For the remaining months, DCPS provided or made available the amount of speech therapy services required by the student's IEP. DCPS must make-up the 120 minutes of speech therapy services missed due to the service provider's unavailability.

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

ISSUE THREE: REEVALUATION

DCPS has complied with 34 CFR §300.303(b)(2), because the student's reevaluation is not yet due.

Pursuant to 34 CFR §300.303(b)(2), a reevaluation must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary. The complainant alleges that the student's reevaluation is late.

Findings of Fact and Discussion

The student's most recent evaluation occurred on [REDACTED]. The student's next triennial reevaluation is due [REDACTED]. Neither the parent nor the LEA has requested a reevaluation to occur prior to the triennial due date. OSSE finds that the student's reevaluation is not overdue.

Therefore, DCPS has complied with 34 CFR §300.303(b)(2).

ISSUE FOUR: EDUCATION RECORDS

DCPS has not complied with 34 CFR §§300.501(a) and 300.613, because it failed to respond to the parent's [REDACTED] education records 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. The public agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, and in no case more than 45 days after the request has been made. (34 CFR §300.613) The complainant alleges that the school did not respond for a few months to the parent's request for the student's speech therapy services record.

Findings of Fact and Discussion

On [REDACTED] the parent's advocate requested all of the student's education records. DCPS did not respond to this request. On [REDACTED], a representative from the Office of the Ombudsman for Public Education requested the student's speech language service trackers on behalf of the parent. DCPS provided the records the same day. OSSE finds that DCPS failed to respond to the [REDACTED] records request.

Therefore, DCPS has not complied with 34 CFR §300.501(a).

CONCLUSIONS

1. DCPS has not complied with 34 CFR §300.116(b)(2), because it failed to provide specialized instruction for math in the general education setting as required by the IEP.
2. DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide the full amount of speech therapy services required by the student's IEP during the [REDACTED] school year.
3. DCPS has complied with 34 CFR §300.303(b)(2), because the student's reevaluation is not yet due.
4. DCPS has not complied with 34 CFR §§300.501(a) and 300.613, because it failed to respond to the parent's [REDACTED] education records request.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.116(b)(2), DCPS must do the following:
 - a. Ensure that the student’s placement aligns with the student’s IEP, either through adjusting the student’s class schedule or reconvening the IEP Team to update the student’s IEP if the student requires the full-time outside of the general education setting. DCPS must submit to OSSE documentation of completion of this action within 30 days of the date of this complaint.
2. In order to correct the noncompliance with 34 CFR §300.323(c)(2), DCPS must do the following:
 - a. Make-up the 120 minutes of speech therapy services missed due to the service provider’s unavailability. DCPS must submit to OSSE documentation of completion of this action within 60 days of the date of this complaint.
3. In order to correct the noncompliance with 34 CFR §§300.501(a) and 300.613, DCPS must do the following:
 - a. Review policies and procedures for responding to requests for student records received during the summer with relevant school staff and update the procedures if needed. DCPS must submit to OSSE documentation of completion of this action 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:

