



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

May 17, 2022

VIA Electronic Mail



RE: State Complaint No. 021-019 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 from [REDACTED] (complainant or parent) against the District of Columbia Public Schools (DCPS) alleging violations in the special education program of her son, [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 complete the student's reevaluation, provide assessments to the parent to review, provide prior written notice following IEP Team meetings, and provide promised assistive technology.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS did not timely complete the student's reevaluation but did comply with its obligations related to prior written notice, education records, and assistive technology. 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. **Reevaluation requirements at 34 CFR §§300.303-305**
 - a. Failure to follow required reevaluation procedures.

2. **Requirement to provide prior written notice at 34 CFR §300.503**
 - a. Failure to provide Prior Written Notice.
3. **Education records requirements at 34 CFR §§300.501(a) and 300.613**
 - a. Failure to provide an opportunity to examine education records.
4. **Assistive technology requirements at 34 CFR §300.105**
 - a. Failure to provide assistive technology as required by the child's IEP.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. 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]

GENERAL FINDINGS OF FACT

[REDACTED]

3. The student's local educational agency (LEA) is DCPS.

ISSUE ONE: REEVALUATION

DCPS has not complied with 34 CFR §§300.303-305, because it did not timely complete the student's reevaluation.

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. In conducting the evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's IEP. (34 CFR §300.304(b)(1)) The complainant alleges that the student has not been administered required evaluations or assessments.

Findings of Fact and Discussion

The student's last reevaluation occurred on [REDACTED] making the triennial reevaluation due [REDACTED]. The school met with the parent on [REDACTED] to discuss the student's reevaluation. On [REDACTED] DCPS issued prior written notice that following a review of current data, the team decided to proceed with the student's reevaluation and complete additional assessments, and the parent signed consent to evaluate. After this complaint was filed, DCPS held the reevaluation eligibility determination meeting on [REDACTED]. DCPS reported various staffing issues related to the COVID-19 pandemic that caused delays in completing tasks related to the evaluation. Although the student's reevaluation is now complete, DCPS completed it untimely.

Therefore, DCPS has not complied with 34 CFR §§300.303-305.

ISSUE TWO: PRIOR WRITTEN NOTICE

DCPS has complied with 34 CFR §300.503, because it issued prior written notice consistent with requirements.

Pursuant to 34 CFR §300.503(a), 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 notice must include a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action. (34 CFR §300.503(b)) The complainant alleges that the school did not provide prior written notice for the [REDACTED] or [REDACTED] IEP Team meetings.

Findings of Fact and Discussion

There is no record in SEDS of IEP Team meetings held in [REDACTED]. DCPS last updated the student's IEP on [REDACTED] and completed the student's reevaluation on [REDACTED]. The only IEP Team meeting held during the fall of the [REDACTED] school year was the [REDACTED] meeting to discuss the student's reevaluation. DCPS issued prior written notice regarding this meeting on [REDACTED]. OSSE's investigation identified no IEP Team meetings, or any other actions taken by DCPS related to the identification, evaluation, educational placement, or the provision of FAPE to the child for which DCPS should have issued prior written notice in either [REDACTED]. When asked about these alleged meetings during the interview, the complainant responded that they were referring to requests for meetings and for a prior written notice from the [REDACTED] IEP Team meeting.

After this complaint was filed, DCPS issued written notice on [REDACTED] for the [REDACTED] IEP Team meeting that the team proposed the development of an appropriate IEP based on a review of student data on the student's present levels of performance, progress on goals from the previous IEP, and class grades. The student's previous IEP was developed [REDACTED]. The [REDACTED].

[REDACTED] There was no proposal or refusal to change the

identification, evaluation, educational placement, or the provision of FAPE to the student with the updates to the [REDACTED] and thus prior written notice was not required. Because no prior written notice was required, OSSE declines to make a finding for DCPS issuing written notice for the [REDACTED] IEP Team meeting ten months after the meeting occurred.

Therefore, DCPS has complied with 34 CFR §300.503(a).

ISSUE THREE: EDUCATION RECORDS

DCPS has complied with 34 CFR §§300.501(a) and 300.613, because at the time the complaint was filed, it had not yet completed the assessments for the student's reevaluation and thus could not provide them to the parent for review.

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 agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant or resolution session, and in no case more than 45 days after the request has been made. (34 CFR §300.613) The complainant alleges that the complainant has not received evaluations for review.

Findings of Fact and Discussion

On [REDACTED] DCPS sent a letter of invitation to the parent for a [REDACTED] evaluation meeting. As part of the reevaluation, DCPS completed a psychological assessment report on [REDACTED]. The [REDACTED] evaluation summary report lists the student data that was reviewed as part of the reevaluation meeting, which included the [REDACTED] psychological assessment report and classroom data from the [REDACTED] school year. When the complaint was filed on [REDACTED] the psychological assessment had not yet been completed and the reevaluation meeting had not yet been scheduled and thus the evaluation data to be reviewed during the reevaluation meeting had not yet been collected and provided to the parent. OSSE's investigation identified no other education records requests from the parent at the time the complaint was filed on [REDACTED].

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

ISSUE FOUR: ASSISTIVE TECHNOLOGY

DCPS has complied with 34 CFR §300.105, because the student's IEP does not require any assistive technology.

Pursuant to 34 CFR §300.105, each public agency must ensure that assistive technology devices or assistive technology services, are made available to a child with a disability if required as a part of the child's special education, related services, or supplementary aids and services. The complainant alleges that the student has not received the assistive technology device requested by the parent and approved by the IEP Team.

Findings of Fact and Discussion

The parent reported that at the [REDACTED] IEP Team meeting the school offered to provide a laptop computer to the student. School staff reported that laptops were used to aid students for various activities both during the pandemic and afterwards for remediation purposes. In a [REDACTED] message, the student's case manager told the parent that the school was collecting names of students who needed a computer at home to do make-up work and other skill building computer programs. The parent responded that the student needed a laptop at home to complete make-up work. There is no indication in the record that the computer was intended as assistive technology or required to implement the student's IEP services; it was intended as a general academic support available to all students. Under the assistive technology section on the [REDACTED] IEP it states "[Student] is not a student that needs assistive technology devices and services." There are no other supplemental supports and services related to technology listed on the student's IEP. OSSE finds that the laptop offered by DCPS was not assistive technology required by the student's IEP.

Therefore, DCPS has complied with 34 CFR §300.105.

CONCLUSIONS

1. DCPS has not complied with 34 CFR §§300.303-305, because it did not timely complete the student's reevaluation.
2. DCPS has complied with 34 CFR §300.503, because it issued prior written notice consistent with requirements.
3. DCPS has complied with 34 CFR §§300.501(a) and 300.613, because at the time the complaint was filed, it had not yet completed the assessments for the student's reevaluation and thus could not provide them to the parent for review.
4. DCPS has complied with 34 CFR §300.105, because the student's IEP does not require any assistive technology.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §§300.303-305, DCPS must do the following:
 - a. Convene an IEP Team meeting to determine whether the student is owed compensatory education for the late reevaluation. The team may consider any updates to the student's IEP or special education services resulting from the reevaluation and whether the student would have received additional supports or services sooner had the reevaluation been completed timely. DCPS must provide documentation of the completion of this action to OSSE within 60 days 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:

