



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

August 12, 2022

*VIA Electronic Mail*



District of Columbia Public Schools



RE: State Complaint No. 021-031 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 [REDACTED] [REDACTED] (Student ID # [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 provide speech language services and complete a reevaluation.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS has not complied with its obligations related to providing speech language services but has complied with its obligations related to reevaluation. 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. **Requirement to provide 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.
2. **Reevaluation requirements at 34 CFR §300.303(a)(2)**

- a. Failure to conduct a reevaluation of the student pursuant to the parent's request.
3. **Failure to make the corrections ordered in the letter of decision for State Complaint [REDACTED], specifically with regard to make-up speech and language services**

### **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**

1. The student is a child with a disability as defined by 34 CFR §300.8.
2. The student's disability category is autism.
3. The student's local educational agency (LEA) is DCPS.

### **ISSUE ONE: SPEECH AND LANGUAGE SERVICES**

**DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all the speech language services required by the student's IEP in [REDACTED] and [REDACTED]**

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 services during the fourth term of the [REDACTED] school year.

#### **Findings of Fact and Discussion**

The [REDACTED] and [REDACTED] IEPs prescribed 120 minutes per month of speech language services. OSSE reviewed the student's speech language service trackers for [REDACTED] through [REDACTED] and found that DCPS failed to provide all the speech language services required by the student's IEP. DCPS failed to provide 120 minutes of services in [REDACTED] and 80 minutes of services in [REDACTED]. The student is owed 200 minutes of speech language services in total. DCPS must make-up the 200 minutes of speech therapy services missed due to the service

provider's unavailability.<sup>1</sup>

In a [REDACTED] phone call to the parent, the parent stated that the student was not available over the summer for make-up speech language services. DCPS told the parent that speech-language services could be made up in the fall. DCPS created a missed services plan on [REDACTED] [REDACTED] that states that 240 minutes<sup>2</sup> of speech language services need to be made up due to no service provider to cover the school. The plan stated that services would be made up adding sessions on other days and scheduling time before and after school by [REDACTED]. OSSE finds that the plan to make up missed services after the start of the [REDACTED] school year because the student was not available over the summer is appropriate.

Notwithstanding the plan for make-up services, DCPS has not complied with 34 CFR §300.323(c)(2), as alleged.

### **ISSUE TWO: REEVALUATION**

**DCPS has complied with 34 CFR §300.303(a)(2), because it completed the student's reevaluation on [REDACTED] and relied on available data to determine the student's continuing eligibility for speech and language services.**

Pursuant to 34 CFR §300.303(a)(2), a public agency must ensure that a reevaluation of each child with a disability is conducted if the child's parent or teacher requests a reevaluation. The complainant alleges that DCPS has not completed the requested reevaluation because they are waiting on a speech-language assessment.

### **Findings of Fact and Discussion**

DCPS completed a reevaluation for the student on [REDACTED]. This was prior to the triennial reevaluation due date of [REDACTED]. To determine eligibility for speech-language services, DCPS reviewed progress reports, sessions logs, classroom observation reports, and the most recent speech language evaluation dated [REDACTED]. The speech-language pathologist attended the meeting to discuss the information. The IEP team determined that the student continued to be eligible for speech language services. Although the reevaluation did not include a new formal speech language assessment, DCPS completed the reevaluation and relied on available data to determine the student's continued eligibility for speech and language services. LEAs and IEP Teams making decisions regarding a student's eligibility or educational needs have broad discretion to consider a variety of data sources, including both formal and informal data. LEAs are encouraged to leverage existing data to support decision making during the evaluation process, especially when it may be challenging to complete formal assessments.<sup>3</sup>

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

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<sup>1</sup> OSSE's Related Services Policy p. 10 (Jan. 10, 2010)

<sup>2</sup> The additional 40 minutes accounts for the 40 minutes of make-up services owed for State Complaint [REDACTED] discussed under Issue Three below.

<sup>3</sup> OSSE's Special Education Non-Regulatory Guidance on Flexibilities for Completing Special Education Evaluations p. 1 (July 2022).

**ISSUE THREE: STATE COMPLAINT [REDACTED] CORRECTIVE ACTION**

**DCPS has not yet completed the corrective action required by State Complaint [REDACTED].** On [REDACTED] OSSE issued the letter of decision for State Complaint [REDACTED]. DCPS was required to make-up 120 minutes of speech therapy services missed due to the service provider's unavailability by [REDACTED]. The complainant alleges that DCPS has not completed the required make-up services.

**Findings of Fact and Discussion**

In [REDACTED], DCPS made up 80 minutes of missed services and attempted to make up an additional 30 minutes, but the student was unavailable. The [REDACTED] missed services plan discussed under Issue One above accounts for the remaining 40 minutes of services that need to be made up. OSSE finds that DCPS has not yet completed the corrective action required by State Complaint [REDACTED], but has a plan in place to deliver the remaining speech language services.

**CONCLUSIONS**

1. DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all the speech language services required by the student's IEP in [REDACTED] and [REDACTED].
2. DCPS has complied with 34 CFR §300.303(a)(2), because it completed the student's reevaluation on [REDACTED] and relied on available data to determine the student's continuing eligibility for speech and language services.
3. DCPS has not yet completed the corrective action required by State Complaint [REDACTED], with OSSE taking notice of the plan in place to meet such requirements.

**CORRECTIVE ACTION**

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2) and State Complaint [REDACTED], DCPS must do the following:
  - a. Provide documentation to OSSE of the completion of the [REDACTED] missed services plan by [REDACTED].

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](mailto: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  
[REDACTED], DCPS  
[REDACTED], DCPS