



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

Sep. 26, 2022

*VIA Electronic Mail*



District of Columbia Public Schools



RE: State Complaint No. 022-003 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 [REDACTED] [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 IEP services, revise the IEP to address the parent’s concerns, and ensure parent participation.

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 obligations to provide IEP services, revise the IEP, and ensure parent participation. 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 IEP services at 34 CFR §300.323(c)(2)**
  - a. Failure to make available special education and related services in accordance with the child's IEP.
2. **Requirement to revise the IEP at 34 CFR §300.324(b)**

- a. Failure to review and revise the IEP, as appropriate to address information about the child provided to, or by, the parent, or the child's anticipated needs, specifically with regard to the student's eligibility for a dedicated aide, extended behavior tech services, and ongoing safety concerns.
- 3. **Parent participation requirements at 34 CFR §300.322**
  - a. Failure to 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.

**INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

- 1. Complainant
- 2. Complainant's advocate
- 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]

**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 spectrum disorder.
- 3. The student's local educational agency (LEA) is DCPS.

**ISSUE ONE: IEP SERVICES**

**DCPS has complied with 34 CFR §300.323(c)(2), because it made available the services required by the student's IEP.**

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 DCPS failed to provide

a qualified substitute when the special education teacher was absent, fully staff the classroom, provide the classroom supports and accommodations required by the student's IEP, and provide any IEP services while the complainant kept the student home from school due to safety concerns.

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

For the [REDACTED] school year, the student was assigned to the pre-K CES classroom at [REDACTED] Elementary School (ES). The student's [REDACTED] IEP prescribes 22 hours per week of specialized instruction outside the general education setting, 240 minutes per month of speech-language services, and two hours per month of occupational therapy.

#### Classroom Staffing

The complainant alleges that when the regular classroom teacher was absent at the start of the [REDACTED] school year, DCPS failed to provide a qualified substitute. DCPS reported that the classroom teacher was absent fewer than ten school days during the [REDACTED] school year and that a qualified substitute was assigned to the classroom during all absences. OSSE reviewed documentation of substitute rolls and credentials to confirm.

The complainant alleges that starting [REDACTED], the student's classroom had only one paraprofessional instead of two as indicated in the DCPS program description for CES classrooms. The [REDACTED] IEP states that the student needs a lower teacher to student ratio than the general education setting, but does not require a specific ratio. OSSE's investigation focused on IEP requirements and supports and services available to the student, not on whether the classroom staffing aligned with the program description because that is not an IDEA violation and OSSE does not enforce DCPS' program descriptions. OSSE finds that having one paraprofessional in the classroom instead of two did not violate the student's IEP.

#### IEP Implementation

The [REDACTED] IEP contains various classroom aids and services to support the student in following directions, including repeated instructions, physical promptings, visual cues, and pauses to allow for processing instructions. The complainant alleges that on [REDACTED] the student's assistive technology (AT) device recorded several hours of audio in the classroom, which showed a chaotic classroom environment and verbal abuse from the teacher and classroom paraprofessional. The complainant alleges that the recording showed that DCPS failed to provide the classroom supports and accommodations required by the student's IEP, including a quiet setting and support with following instructions. After listening to the recording, the parent requested a meeting with the principal. The principal, the board certified behavior analyst (BCBA) specialist, and the parent met on [REDACTED]. At the meeting the parent shared concerns and the DCPS staff members apologized, but the parent was still apprehensive and did not send the student back to school.

DCPS had spring break from [REDACTED]. On [REDACTED] DCPS issued written notice that it proposed to continue implementing the student's [REDACTED] IEP. On [REDACTED] DCPS confirmed receipt of the parent's educational records request and was working to fulfill it. On

██████████ the principal informed the parent that a new paraprofessional had been hired for the student's classroom and wanted the parent to meet the new staff member.

DCPS held an IEP team meeting on ██████████. At this meeting the team discussed the recording and how to address the parent's concerns so that the student could return to school. At the conclusion of the meeting, DCPS created a safety plan and introduced the parent to the new paraprofessional assigned to the student's classroom. On ██████████ the student returned to school. The student missed five weeks of school.<sup>1</sup>

DCPS continued to make the student's IEP services available from ██████████, but the parent refused to send the student to school. The only evidence the parent cites for DCPS not implementing the student's supports and services is the ██████████ recording. DCPS staff members apologized and took steps to address the parent's concerns. DCPS reported that the classroom teacher and paraprofessionals assigned to the classroom were able to provide the supports and services required by the student's IEP. DCPS encouraged the parent to send the student back to school and convened an IEP team meeting to discuss what was needed for the student to return to school. OSSE finds that DCPS made services available as required by the student's IEP.

Therefore, DCPS has complied with 34 CFR §300.323(c)(2).

#### **ISSUE TWO: IEP REVISION**

**DCPS has complied with 34 CFR §300.324(b), because it used the IEP process to address the parent's concerns.**

Pursuant to 34 CFR §300.324(b), each public agency must ensure that the IEP Team revises the IEP, as appropriate, to address information about the child provided to, or by, the parents, the child's anticipated needs, or other matters. The complainant alleges that DCPS failed to address the complainant's concerns at the ██████████ IEP team meeting.

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

The purpose of the ██████████ meeting was to get the student to return to school. The IEP team discussed a safety plan that included placing an additional behavior technician in the classroom for three weeks to make sure the classroom, goals, and team were set up for safety. The team also discussed the new paraprofessional in the classroom. At this meeting the parent requested a dedicated aide for the student, but the rest of the IEP team did not believe the student needed a dedicated aide due to increased independence in classroom routines.

The IEP team also discussed a safety transfer to a pre-K CES classroom at another school. The parent wanted the student to stay at ██████ ES and suggested a transfer to another classroom within the school. DCPS reported that there was only one pre-K CES classroom for the student's age at the school and no other classrooms that could meet the student's needs and implement the IEP. The ██████████ IEP states that due to significant delays and differences across

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<sup>1</sup> Not including DCPS' spring break from ██████████.

developmental domains, the student needs a highly structured classroom with a lower student to teacher ratio than is available in the general education setting.

On [REDACTED] the DCPS Central Office integrity team held a meeting with the parent, the classroom teacher, and school administrators to address the parent's outstanding concerns. This meeting did not result in a resolution because the parent wanted a guarantee that the classroom teacher would never interact directly with the student, but DCPS said that the classroom teacher had to interact with the student to teach. The student continued in the classroom with the safety plan in place and the support of an additional behavior technician. The additional behavior technician's last day in the classroom was [REDACTED]. The parent requested an extension to the behavior technician's assignment to the classroom, but DCPS responded that the staff member had to move on to other assignments. On [REDACTED], DCPS sent the parent a letter that said the safety plan would be discontinued for the [REDACTED] school year and that the student's classroom teacher would be the same.

DCPS met with the parent to discuss concerns and possible solutions on [REDACTED] and [REDACTED], but ultimately DCPS was unable to accommodate the specific requests from the parent. Adding a dedicated aide or moving the student to another classroom within the school building did not meet the student's educational needs as determined by the IEP team. DCPS offered to move the student to another school or to take steps to address safety concerns within the CES classroom at [REDACTED] ES, including identifying specific staff members to check-in with the student throughout the school day such as at morning drop-off and dismissal, lunch, recess, and nap time, and provide the parent with greater access to the classroom. The student returned to school on [REDACTED] and OSSE's investigation found no additional incidents for the remainder of the [REDACTED] school year. DCPS reported that staff issues were addressed. DCPS has the discretion to make staffing decisions and assignments. OSSE finds that DCPS convened the IEP team to address the parent's concerns and took appropriate steps, including the creation of a safety plan.

Therefore, DCPS has complied with 34 CFR §300.324(b).

### **ISSUE THREE: PARENT PARTICIPATION**

**DCPS has complied with 34 CFR §300.322, because it took steps to ensure parent participation.**

Pursuant to 34 CFR §300.322, 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. The complainant alleges that a follow-up IEP team meeting in [REDACTED] or [REDACTED] [REDACTED] never happened, and that the classroom teacher expressed concerns with the parent's communication at the [REDACTED] meeting.

### Findings of Fact and Discussion

On [REDACTED] DCPS sent the parent a letter of invitation for the [REDACTED] IEP team meeting. At this meeting the IEP team discussed the student's present levels of performance and goals and updated the IEP accordingly. The parent attended and provided input at this meeting. In the complaint the parent alleged that there was supposed to be a follow-up meeting. The [REDACTED] meeting notes do not include plans for a follow-up meeting and OSSE found no evidence of a request from the parent to hold a follow-up IEP team meeting. On [REDACTED], DCPS sent the parent a letter of invitation for the [REDACTED] IEP team meeting. The parent attended and provided input at this meeting.

The parent reported that at the [REDACTED] meeting, the classroom teacher expressed concerns with the frequency and timing of the parent's communications. This was part of a larger discussion about concerns in the classroom. The [REDACTED] safety plan addressed how the parent would communicate with school staff members, including the classroom teacher. The safety plan indicated that the parent would receive daily written communication from the school and included the email addresses for the classroom teacher and paraprofessional for the parent to communicate with them.

OSSE finds that DCPS took all necessary steps to ensure parent participation. Therefore, DCPS has complied with 34 CFR §300.322.

### CONCLUSIONS

1. DCPS has complied with 34 CFR §300.323(c)(2), because it made available the services required by the student's IEP.
2. DCPS has complied with 34 CFR §300.324(b), because it used the IEP process to address the parent's concerns.
3. DCPS has complied with 34 CFR §300.322, because it took steps to ensure parent participation.

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