



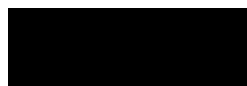
DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

Oct. 28, 2022

VIA Electronic Mail



District of Columbia Public Schools



RE: State Complaint No. 022-007 Letter of Decision

LETTER OF DECISION

PROCEDURAL BACKGROUND

On Aug. 30, 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 his son, [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 base the student’s placement on the IEP, ensure the parent understands the IEP team meeting, conduct a complete reevaluation, provide access to education records, and provide prior written notice.

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 related to placement and prior written notice but did not comply with its obligations related to parent participation and education records. OSSE declined to make a finding 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. **Placement requirements at 34 CFR §300.116(b)**
 - a. Failure to ensure that the child’s educational placement is based on the

child's IEP.

2. **Parent participation requirements at 34 CFR §300.322(e)**
 - a. Failure to ensure that the parent understands the proceedings of the IEP team meeting, specifically with regard to arranging for an interpreter for parents whose native language is other than English.
3. **Reevaluation requirements at 34 CFR §§300.303-305**
 - a. Failure to follow reevaluation procedures.
4. **Requirement to provide access to education records at 34 CFR §§300.501(a) and 300.613**
 - a. Failure to provide a parent an opportunity to inspect and review education records.
5. **Requirement to provide prior written notice at 34 CFR §300.503**
 - a. Failure to provide prior written notice.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

[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: PLACEMENT

DCPS has complied with 34 CFR §300.116(b), because changing the student's location of

services did not amount to a change in placement and the new location assignment can implement the student's IEP.

Pursuant to 34 CFR §300.116(b), each public agency must ensure that the child's placement is based on the child's IEP and is as close as possible to the child's home. The complainant alleges that DCPS unilaterally changed the student's location of services despite objections from the parent.

Findings of Fact and Discussion

The [REDACTED] IEP prescribes [REDACTED] specialized instruction outside the general education setting, [REDACTED] specialized instruction inside the general education setting, [REDACTED] speech language pathology, and [REDACTED] of occupational therapy. For the 2021-22 school year, the student attended [REDACTED]. On [REDACTED], DCPS sent the parent a letter changing the student's location of services to a [REDACTED] for the 2022-23 school year. The letter stated that [REDACTED] has the programming and resources needed to implement the student's IEP and that the change was because [REDACTED] is the feeder school for the communication and education support program in the [REDACTED] boundary.

The student's IEP was updated on [REDACTED]. Following the meeting, on [REDACTED] DCPS issued prior written notice [REDACTED]

[REDACTED]

On [REDACTED] the parent's advocate sent a letter to DCPS requesting that DCPS rescind its decision to change the student's location of services for the 2022-23 school year. On [REDACTED] DCPS refused the request and reiterated that [REDACTED] is the school closest to the student's home and can implement the student's IEP.

During an interview DCPS reported that to accommodate an increase in students requiring a fulltime placement outside the general education setting, it had to create new self-contained classrooms throughout its schools and divide students evenly among the classrooms. The student was transitioned back to the school closest to home for the 2022-23 school year because the student had to transition to a third through fifth grade classroom anyway, even if the student stayed [REDACTED]. DCPS has the authority to make administrative decisions about how to distribute programming and resources among its schools. The IEP team must make the placement decision, including determining the least restrictive environment and service levels, but DCPS has the flexibility to assign the student to a particular school or

classroom location that meets the child's special education and related services needs.¹ OSSE finds that changing the location of services to [REDACTED] especially when the student already had to transition to a third through fifth grade classroom, does not amount to a change in placement and that [REDACTED] can implement the student's IEP and is the closest school to the student's home.

Therefore, DCPS has complied with 34 CFR §300.116(b).

ISSUE TWO: PARENT PARTICIPATION AT IEP TEAM MEETINGS

DCPS has not complied with 34 CFR §§300.322(e) and 300.613, because it failed to confirm if the parent had received translated copies of all the student's education records, which may have prevented the parent from fully participating in the IEP team meeting.

Pursuant to 34 CFR §300.322(e), the public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents whose native language is other than English. The complainant alleges that failed to regularly communicate with the parent in the parent's native language.

Findings of Fact and Discussion

DCPS held an IEP team meeting on [REDACTED]. During this meeting DCPS utilized an interpreter via phone from the DC language line. Neither DCPS nor the complainant report that the parent was not able to understand the proceedings of the [REDACTED] IEP team meeting. Rather, the complaint argues that a lack of translated communications and education records prior to the IEP team meeting prevented the parent from fully participating in the meeting. The IDEA regulations require that parents receive notice and education records in their native language to be able to fully participate in IEP team decisions. Prior written notice must be provided in the native language of the parent, or the LEA must take steps to ensure the parent understands the content of the notice, such as by translating the notice orally. (34 CFR §300.503(c)) On [REDACTED] DCPS sent the parent a letter of invitation to the [REDACTED] IEP team meeting. This letter was provided in English and the parent's native language.

In addition, LEAs must comply with a records request before any meeting regarding an IEP. (34 CFR §300.613) As discussed under Issue Four below, on [REDACTED] DCPS provided translated copies of some of the student's education records, but did not respond to a request to confirm if any education records from the student's SEDS file had not yet been translated and provided. Therefore, the parent may not have had access to all education records prior to the [REDACTED] [REDACTED]. This may have prevented the parent from fully participating in IEP team discussions and decisions.

Therefore, DCPS has not complied with 34 CFR §§300.322(e) and 300.613.

¹ Policy Letter to Breeskin p. 2, US Department of Education Office of Special Education and Rehabilitative Services (November 22, 2019).

ISSUE THREE: REEVALUATION

OSSE declines to make a finding for 34 CFR §§300.303-305, because the student's May 12, 2020 reevaluation falls outside the one-year investigation period.

Pursuant to 34 CFR §300.303(b)(2), the public agency must ensure that a reevaluation occurs at least once every 3 years. The evaluation must be sufficiently comprehensive to identify all the child's special education and related services needs. (34 CFR §300.304(c)(6)) The complainant alleges that DCPS did not complete updated assessments during the student's most recent reevaluation.

Findings of Fact and Discussion

During the student's most recent reevaluation on [REDACTED], DCPS did not complete updated assessments in all areas of concern. At the [REDACTED] IEP team meeting, DCPS agreed to complete updated occupational therapy, speech language, and assistive technology assessments. OSSE's investigation may look back one year from the date the complaint is filed. (34 CFR §300.153(c)) The [REDACTED] reevaluation falls outside the one-year investigation period and so OSSE did not investigate whether DCPS should have completed updated assessments in all areas of concern at that time. During the investigation period, DCPS agreed to complete updated assessments as requested by the parent.

OSSE declines to make a finding for 34 CFR §§300.303-305 because the student's [REDACTED] reevaluation falls outside the one-year investigation period.

ISSUE FOUR: EDUCATION RECORDS

DCPS has not complied with 34 CFR §§300.501(a) and 300.613, because it failed to confirm if all the education records in the student's SEDS file had been translated and provided to the parent.

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 provision of FAPE to the child. The public agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency pursuant to IDEA. (34 CFR §300.613) 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 DCPS failed to provide education records that were translated into the parent's native language.

Findings of Fact and Discussion

On [REDACTED] DCPS sent the parent and advocate education records that had been translated into the parent's native language. On [REDACTED] the parent's advocate requested a list of which education records had been provided and which education records from SEDS had not yet been translated to the parent's native language. DCPS did not respond to this request. On [REDACTED] DCPS provided translated copies of recently completed occupational therapy and speech language assessment reports to the parent, but still did not respond to the [REDACTED] request. OSSE finds that DCPS failed to confirm if all the education records in the

student's SEDS file had been translated and provided to the parent.

Therefore, DCPS has not complied with 34 CFR §§300.501(a) and 300.613.

ISSUE FIVE: PRIOR WRITTEN NOTICE

OSSE declines to make a finding for 34 CFR §300.503, because prior written notice requirements do not apply to location assignment letters.

Pursuant to 34 CFR §300.503, notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the child. The complainant alleges that DCPS failed to provide sufficient notice to the parent about the change in location of services for the 2022-23 school year.

Findings of Fact and Discussion

On [REDACTED] DCPS provided a letter to the parent, changing the student's location of services to a new elementary school for the 2022-23 school year. The complaint alleges that the student's school sent an earlier email communication on [REDACTED] to parents about a new location of services for the 2022-23 school year. This email was in English, so the complainant did not understand it. The email referred to a letter that the parents should have already received, but the complainant had not yet received it. The complaint alleges that this left the complainant less time to express concerns to the IEP team than other parents had. DCPS provided the location of services letter on [REDACTED]. DCPS held an IEP team meeting on [REDACTED] where the parent was able to participate and share concerns. Under Issue One above OSSE found that changing the student's location of services did not amount to a change in placement and therefore 34 CFR §300.503 does not apply. However, it may be a good practice to provide advance notice of changes to a student's location of services. In regard to this complaint OSSE notes DCPS provided notice to the parent about the change in the student's location of services for the 2022-23 school year.

Therefore, OSSE declines to make a finding for 34 CFR §300.503.

CONCLUSIONS

1. DCPS has complied with 34 CFR §300.116(b), because changing the student's location of services does not amount to a change in placement and the new location assignment can implement the student's IEP.
2. DCPS has not complied with 34 CFR §§300.322(e) and 300.613, because it failed to confirm if the parent had received translated copies of all the student's education records, which may have prevented the parent from fully participating in the IEP team meeting.
3. OSSE declines to make a finding for 34 CFR §§300.303-305, because the student's [REDACTED] reevaluation falls outside the one-year investigation period.
4. DCPS has not complied with 34 CFR §§300.501(a) and 300.613, because it failed to

confirm if all of the education records in the student's SEDS file had been translated and provided to the parent.

5. OSSE declines to make a finding for 34 CFR §300.503, because prior written notice requirements do not apply to location assignment letters.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §§300.322(e), 300.501(a), and 300.613, DCPS must do the following:
 - a. Review which education records from the student's SEDS file have been translated and provided to the parent. Translate and provide any remaining education records to the parent. Documentation of the completion of this item is due to OSSE within 60 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 K Hansen

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

cc:

