



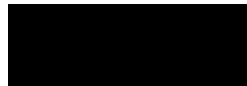
DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

Nov. 7, 2022

VIA Electronic Mail



District of Columbia Public Schools



RE: State Complaint No. 022-008 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 Advocates for Justice and Education, Inc. (AJE or complainant) against the District of Columbia Public Schools (DCPS) alleging violations in the special education program of [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 conduct child find, complete a full and timely evaluation, follow discipline procedures, revise the IEP, 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 related to child find, evaluations, IEP revision, and parent participation, but did not comply with its obligations related to manifestation determination meetings. 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. **Child find requirements at 34 CFR §300.111**
 - a. Failure to perform child find obligations for a child with a suspected disability, specifically at the beginning of the [REDACTED] school year.

2. **Evaluation requirements at 34 CFR §§300.301-311**
 - a. Failure to follow evaluation procedures.
3. **Discipline requirements at 34 CFR §300.530**
 - a. Failure to follow discipline procedures, specifically with regard to completing a functional behavioral assessment, developing a behavioral intervention plan, and convening a manifestation determination review.
4. **Requirement to revise the IEP at 34 CFR §300.324(b)(1)(ii)**
 - a. Failure to review and revise the child’s IEP as appropriate to address the child’s needs.
5. **Parent participation requirements at 34 CFR §300.501**
 - a. Failure to ensure parent participation, specifically with regard to access to records and meetings discussing student’s identification, evaluation and placement.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. Complainant’s advocates
3. DCPS [REDACTED]
4. DCPS [REDACTED]
5. DCPS [REDACTED]
6. DCPS [REDACTED]
7. DCPS [REDACTED]
8. 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 specific learning disability.
3. The student's local educational agency (LEA) is DCPS.

ISSUE ONE: CHILD FIND

DCPS has complied with 34 CFR §300.111 and OSSE's Comprehensive Child Find System Policy, because it responded to the parent's request for evaluation by collecting student data and proceeding with an evaluation.

Pursuant to 34 CFR §300.111, the State must have in effect policies and procedures to ensure that all children with disabilities residing in the State, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated. OSSE's Comprehensive Child Find System Policy requires LEAs to have policies and procedures in effect to ensure that all children with disabilities, regardless of the severity of the disability, and who are in need of special education and related services, are identified, located, and evaluated. The complainant alleges that DCPS was not responsive to the parent's requests to evaluate the student.

Findings of Fact and Discussion

On [REDACTED] the parent referred the student for a special education evaluation. On [REDACTED] DCPS issued written notice that the parent and team agreed to wait until the student returned to in-person learning and completed the summer program before reconvening in the fall to review the student's progress and decide if an evaluation was needed. On [REDACTED] DCPS held a meeting to analyze existing data and decided to move forward with the evaluation. The parent signed consent to evaluate and on [REDACTED] the IEP team found the student eligible for special education services under the disability category of specific learning disability. OSSE finds that DCPS responded to the parent's request for evaluation and through discussion with the parent decided to wait for the student to return to in-person learning and collect additional student data before deciding if an evaluation was necessary. State complaint investigations may look back one year from the date the complaint is filed, which is [REDACTED] for this complaint. (34 CFR §300.153(c)) OSSE's investigation did not include any allegations raised in the complaint from the 2019-20 school year.

Therefore, DCPS has complied with 34 CFR §300.111 and OSSE's Comprehensive Child Find System Policy.

ISSUE TWO: EVALUATION

DCPS has complied with 34 CFR §§300.301-311, because it evaluated the student in all areas of concern identified during the evaluation process.

Pursuant to 34 CFR §§300.301-311, each public agency must conduct a full and individual initial evaluation before the initial provision of special education and related services to a child with a disability. The initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation. The complainant alleges that DCPS delayed the student's evaluation and did not complete an adequate evaluation.

Findings of Fact and Discussion

The parent signed consent to evaluate on [REDACTED] and DCPS completed the eligibility determination on [REDACTED], within 59 days of consent. During the evaluation process, the parent shared concerns that the student's reading and math skills were below grade level and that the student had issues getting along with peers at the previous school. As part of the evaluation DCPS completed a psychological assessment. The [REDACTED] psychological assessment included academic, cognitive and emotional, and social and behavioral areas of concern. During the eligibility determination, the team also reviewed the results from reading and math assessments, progress reports, current grades, teacher observations, and input from the parent, student, and school counselor. The [REDACTED] psychological assessment stated that the student would benefit from receiving specialized instruction for reading and math. The assessment recommended various classroom supports and interventions but did not recommend testing in any additional areas of concern.

The complainant reported that the student was not evaluated in all areas of concern, including no assessments related to occupational therapy, speech and language, autism, [REDACTED], or ADHD. The [REDACTED] psychological assessment included a review of the eligibility criteria for other health impairment, the eligibility category used for ADHD, and found that the student did not meet the eligibility criteria. OSSE's review of the record did not show that any of the other areas of concern listed by the complainant were raised during the evaluation process. OSSE finds that DCPS evaluated the student in all areas of concern identified during the evaluation process.

Therefore, DCPS has complied with 34 CFR §§300.301-311.

ISSUE THREE: DISCIPLINE

DCPS has not complied with 34 CFR §300.530, because it did not hold the manifestation determination within 10 days of the decision to change the placement of a child with a disability because of a violation of a code of student conduct.

Pursuant to 34 CFR §300.530(b), school personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP team must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine (1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (2) If the conduct in question was the direct result of the LEA's failure to implement the IEP. (34 CFR §300.530(e)) A change of placement occurs if the child has been subjected to a series of removals that constitute a pattern because the series of removals total more than 10 school days in a school year and the child's behavior is substantially similar to the child's behavior in

previous incidents that resulted in the series of removals. (34 CFR §300.536) The complainant alleges that DCPS failed to include the parent in the manifestation determination meeting and provide discipline records prior to the meeting.

Findings of Fact and Discussion

OSSE reviewed the student's disciplinary record which lists approved suspensions on the following dates: [REDACTED] for one day; [REDACTED] for one day; [REDACTED] for one day; [REDACTED] for one day; [REDACTED] for one day; [REDACTED] for four days; [REDACTED] for one day, and [REDACTED] for two days. Email communication records an incident and proposed disciplinary action on [REDACTED]. The [REDACTED] proposed suspension would have been the tenth day of suspension for the student. The complainant asserts that there were multiple requests from DCPS to pick-up the student early and unofficial suspensions, so the tenth day of suspension occurred earlier, in [REDACTED]. DCPS reported that the student had other disciplinary infractions and often eloped from class but did not have additional suspensions. OSSE's review of the student's discipline records did not identify additional disciplinary removals from school that were not recorded as suspensions.

On [REDACTED] DCPS emailed the parent a detailed description of the student's concerning behavior, including verbal and physical aggression towards staff members and other students. On [REDACTED] DCPS requested the parent attend a manifestation determination meeting the following day. The parent's advocate responded and requested alternative meeting dates and documentation of the disciplinary incident. On [REDACTED] DCPS emailed the parent to request dates the parent was available for the manifestation determination review but the parent and advocate did not propose any dates and insisted that DCPS provide the notice of suspension prior to meeting. DCPS responded that a notice of suspension would be generated after the manifestation determination review and referred to the behavior that led to the disciplinary incident. On [REDACTED] DCPS emailed the parent that the manifestation determination meeting was rescheduled for the following day. DCPS held the manifestation determination meeting on [REDACTED] and found that the student's behavior was not a manifestation of the student's disability or the result of DCPS' failure to implement the IEP. The parent did not attend this meeting.

OSSE's investigation found that DCPS made multiple attempts to invite the parent to the manifestation determination meeting. The parent and advocate refused to cooperate with scheduling the meeting until suspension documentation was provided. DCPS stated that suspension documentation did not yet exist but had provided the parent with a detailed description of the behavior that led to the proposed disciplinary action. DCPS wanted to hold the manifestation determination review meeting prior to deciding whether the student would be suspended for the [REDACTED] disciplinary incident. DCPS notified the parent of the meeting date and time, and the parent did not attend and did not propose an alternate meeting date. The tenth school day after the [REDACTED] decision to remove the student was

¹ The [REDACTED] suspension was the result of the [REDACTED] incident. The student did not serve this suspension until after the manifestation determination review was held.

██████████. DCPS did not hold the manifestation determination within 10 days of the decision to change the placement of a child with a disability because of a violation of a code of student conduct. Due to the repeated disciplinary incidents and ongoing safety concerns, on ██████████ DCPS proposed an involuntary safety transfer to another middle school. The student would be in the same placement and receive all IEP services at the new school. If an LEA finds that the student's behavior was not a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. (34 CFR §300.530(c)) In this case, DCPS found that the student's behavior was not a manifestation of the student's disability and therefore could apply its disciplinary procedures, including an involuntary safety transfer.

Therefore, DCPS has not complied with to 34 CFR §300.530 due to the failure to hold the manifestation determination within 10 days of the decision to change the placement of a child with a disability because of a violation of a code of student conduct.

ISSUE FOUR: IEP REVISION

DCPS has complied with 34 CFR §300.324(b)(1)(ii), because it took steps to address the student's behavior concerns and made adjustments as the student's behavior escalated during the school year.

Pursuant to 34 CFR §300.324(b)(1)(ii), each public agency must ensure that the IEP team revises the IEP, as appropriate, to address the child's anticipated needs. The complainant alleges that DCPS failed to update the IEP to address the student's behavior concerns.

Findings of Fact and Discussion

On ██████████ DCPS created the student's initial IEP. The IEP prescribed 210 minutes per month of behavioral support services and contained goals related to building problem solving skills for social conflict and reducing negative behavior in class. The meeting notes record that IEP team agreed to complete a functional behavior assessment to address the student's behavior concerns. DCPS completed a functional behavior assessment and a behavior intervention plan on ██████████. Due to ongoing behavior concerns, DCPS completed an updated functional behavior assessment on ██████████ and updated behavior intervention plan on ██████████. OSSE's review of the record shows that DCPS took steps to address the student's behavior concerns and made adjustments as the student's behavior escalated during the school year.

Therefore, DCPS has complied with 34 CFR §300.324(b)(1)(ii).

ISSUE FIVE: PARENT PARTICIPATION

DCPS has complied with 34 CFR §300.501, because the parent attended the ██████████ eligibility meeting and the ██████████ IEP team meeting.

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 parents of a

child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of FAPE to the child. (§300.501(b)) The complainant alleges that DCPS did not provide requested documentation timely and the parent did not attend the manifestation determination meeting.

Findings of Fact and Discussion

The parent attended and participated in the [REDACTED] eligibility meeting and the [REDACTED] IEP team meeting. The parent's attendance at the manifestation determination meeting was discussed under Issue Three above. OSSE identified no other meetings with respect to the identification, evaluation, educational placement, and the provision of FAPE to the child.

Therefore, DCPS has complied with 34 CFR §300.501.

CONCLUSIONS

1. DCPS has complied with 34 CFR §300.111 and OSSE's Comprehensive Child Find System Policy, because it responded to the parent's request for evaluation by collecting student data and proceeding with an evaluation.
2. DCPS has complied with 34 CFR §§300.301-311, because it evaluated the student in all areas of concern identified during the evaluation process.
3. DCPS has not complied with 34 CFR §300.530, because it did not hold the manifestation determination within 10 days of the decision to change the placement of a child with a disability because of a violation of a code of student conduct.
4. DCPS has complied with 34 CFR §300.324(b)(1)(ii), because it took steps to address the student's behavior concerns and made adjustments as the student's behavior escalated during the school year.
5. DCPS has complied with 34 CFR §300.501, because the parent attended the [REDACTED] eligibility meeting and the [REDACTED] IEP team meeting.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.530, DCPS must do the following:
 - a. Train relevant school staff members on the requirement to hold manifestation determination meetings within 10 days of the decision to change the placement of a child with a disability because of a violation of a code of student conduct.

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: Katharine Bohrs, Public Interest Fellow, AJE, Complainant
Stacey Eunnae, Senior Staff Attorney, AJE
[REDACTED], Parent
[REDACTED], DCPS
[REDACTED], DCPS