



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

Dec. 22, 2022

*VIA Electronic Mail*



District of Columbia Public Schools



RE: State Complaint No. 022-018 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 Samantha Brown against the District of Columbia Public Schools (DCPS) alleging violations in the special education program of special education students attending [REDACTED] High School (HS), hereinafter “students” or “children.”

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 and place students in the correct placement.

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 obligation to provide IEP services and place students in the correct placement. 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 a student’s IEP, specifically with regard to the provision of specialized instruction services, small classroom setting, and dedicated aides.

2. **Placement requirements at 34 CFR §§300.114 and 300.116(b)(2)**
  - a. Failure to educate the student in the least restrictive environment and ensure that a child’s placement is based on 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):

1. 46 student individualized education programs (IEPs)
2. 46 student class schedules
3. DCPS email communication

**GENERAL FINDINGS OF FACT**

1. The students included in this investigation are children with a disability as defined by 34 CFR §300.8.
2. The students’ local educational agency (LEA) is DCPS.

**ISSUE ONE: IEP SERVICES**

**DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide the specialized instruction, small group instruction, and dedicated aides required by the students’ IEPs.**

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 has failed to provide all hours of specialized instruction required by students’ IEPs and failed to provide a dedicated aide when required by a student’s IEP.

**Findings of Fact and Discussion**

For this investigation, OSSE reviewed the IEPs, class schedules, and other relevant documents for the students in the complainant’s English I and English IV classes, and for the other students on the complainant’s caseload who were named in the complaint.

**Specialized Instruction**

The complainant alleges that some students’ class schedules make it impossible to receive all of the specialized instruction required by their IEPs. DCPS confirmed that specialized education is provided in core academic classes but not in elective classes. OSSE reviewed the IEPs and class schedules for 46 students and found that three students ([REDACTED], [REDACTED], and [REDACTED]) cannot receive the amount of specialized instruction required by their IEPs based on their schedules.

### Small Classroom Setting

The complainant alleges that DCPS places too many students in self-contained classrooms, which prevents students from receiving specialized instruction in a small classroom setting. Out of the 46 IEPs OSSE reviewed, 20 included small group instruction as an accommodation. DCPS reported that students can receive small group instruction and one-on-one support even in a large class. Although it is possible for teachers to provide this type of support even when the class size is large, the complainant teaches the students' English I and English IV classes and reported not being able to provide small group instruction for those students due to the large class sizes.

### Dedicated Aide

The complainant alleges that one student whose IEP requires a dedicated aide has not been provided with one. In reviewing the 46 IEPs, OSSE found that two students' (█. and █.) IEPs require the support of a dedicated aide. OSSE found no evidence that either student was provided the support of a dedicated aide.

Therefore, DCPS has not complied with 34 CFR §300.323(c)(2).

### **ISSUE TWO: PLACEMENT**

**DCPS has not complied with 34 CFR §§300.114 and 300.116(b)(2), because it failed to provide specialized instruction in the correct setting for one student.**

Pursuant to 34 CFR §300.114(a)(2), each public agency must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Each public agency must ensure that the child's placement is based on the child's IEP. (34 CFR §300.116(b)(2)) The complainant alleges that inappropriately places students in self-contained classrooms instead of an inclusion setting.

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

The complainant alleges that many students who should be placed in an inclusion setting have instead been placed in a self-contained classroom. OSSE reviewed 46 IEPs for the students in the complainant's English I and English IV self-contained special education classes and found that all but one of the IEPs require specialized instruction be provided outside the general education setting or a combination of inside and outside the general education setting. Placement in a self-contained English class is consistent with the least restrictive environment required by those IEPs. One of the student's (█) IEP requires all specialized instruction be provided inside the general education setting. DCPS is providing specialized instruction, but in the wrong setting, for that student.

Therefore, DCPS has not complied with 34 CFR §§300.114 and 300.116(b)(2).

## **CONCLUSIONS**

1. DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide the specialized instruction, small group instruction, and dedicated aides required by the students' IEPs.
2. DCPS has not complied with 34 CFR §§300.114 and 300.116(b)(2), because it failed to provide specialized instruction in the correct setting for one student.

## **CORRECTIVE ACTION**

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2), DCPS must do the following:
  - a. Provide the specialized instruction required by the students' IEPs, either by adjusting the students' class schedules or providing specialized instruction in the students' current classes.
  - b. Provide opportunities for small group instruction in the English I and English IV classes as required by students' IEPs.
  - c. Provide the dedicated aides required by the students' IEPs.
2. In order to correct the noncompliance with 34 CFR §§300.114 and 300.116(b)(2), DCPS must do the following:
  - a. Adjust the student's schedule to align with the least restrictive environment required by the IEP.
3. Documentation of the completion of all corrective action 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](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: Samantha Brown, Complainant

[REDACTED], DCPS  
[REDACTED], DCPS