



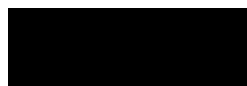
DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

April 4, 2023

VIA Electronic Mail



District of Columbia Public Schools



RE: State Complaint No. 022-025 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 an independent evaluation, follow discipline requirements, revise the individualized education program (IEP), and obtain parental consent to provide services, evaluate the student, and share personally identifiable information.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS met its obligations related to evaluations, discipline, IEP revision, and parental consent. 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. **Independent evaluation requirements at 34 CFR §300.502**
 - a. Failure to provide an independent evaluation upon the parent’s request.
2. **Discipline requirements at 34 CFR §300.530**

- a. Failure to follow discipline procedures, specifically with regard to the student's suspension on [REDACTED].
- 3. **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 child's ADHD diagnosis.
- 4. **Requirement to obtain consent at 34 CFR §300.300**
 - a. Failure to obtain informed consent from the parent of the child before conducting the initial evaluation, reevaluation, or initial provision of special education and related services.
- 5. **Personally identifiable information requirements at 34 CFR §300.622(a)**
 - a. Failure to obtain parental consent before disclosing the child's personally identifiable information to parties other than officials of participating agencies.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

- 1. Complainant
- 2. DCPS [REDACTED]
- 3. 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 multiple disabilities.
- 3. The student's local educational agency (LEA) is DCPS.

ISSUE ONE: INDEPENDENT EDUCATIONAL EVALUATION

DCPS has complied with 34 CFR §300.502, because it is not required to fund an independent evaluation before DCPS has completed its own evaluation.

Pursuant to 34 CFR §300.502(b)(1), a parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense. (34 CFR §300.502(b)(2)) The complainant alleges that DCPS ignored requests for an independent evaluation.

Findings of Fact and Discussion

On [REDACTED] the parent requested an independent evaluation. On [REDACTED] DCPS responded that because it had not yet completed any evaluations for the student, the parent was not entitled to an independent evaluation. The parent's disagreement was with the evaluation completed by the student's prior out-of-state LEA. To address this concern, DCPS agreed to evaluate the student in multiple areas of concern. OSSE finds that DCPS is not required to fund an independent evaluation before it has completed its own evaluation.

Therefore, DCPS has complied with 34 CFR §300.502(b)(1).

ISSUE TWO: DISCIPLINE

DCPS has complied with 34 CFR §300.530, because it did not suspend the student for more than ten days.

Pursuant to 34 CFR §300.530(b)(1), 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 ten consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement). After a child with a disability has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the public agency must provide services. (34 CFR §300.530(b)(2)). The complainant alleges that the student's [REDACTED] suspension was extreme, and the underlying behavior was due to the student's disability.

Findings of Fact and Discussion

On [REDACTED] DCPS notified the parent about a behavior incident and that the student would be suspended for five days from [REDACTED]. This is the only time DCPS suspended the student during the [REDACTED] school year. OSSE's review of the record did not find any other disciplinary removals. DCPS has not yet met the threshold of exceeding ten days of suspension and thus the disciplinary safeguards are not yet triggered.

Therefore, DCPS has complied with 34 CFR §300.530(b)(1).

ISSUE THREE: IEP REVISION

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

Pursuant to 34 CFR §300.324(b)(1), 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, and the child's anticipated needs. The complainant alleges that DCPS ignored the parent's concerns about the student's ADHD diagnosis and the resulting impact on the student's behavior.

Findings of Fact and Discussion

At the [REDACTED] meeting to review existing data, DCPS started by asking the parent to share any concerns and the parent had none. The IEP team reviewed the disability worksheets for speech language impairment and other health impairment. All team members, including the parent, agreed that the student met the criteria for both disability categories and agreed that the student was eligible for special education and related services under the disability category of multiple disabilities. The team planned to meet again to review and finalize the IEP and discuss if any additional evaluations were needed. The parent did not provide any documentation of the student's ADHD diagnosis.

The IEP team agreed to meet again on [REDACTED], but the parent later cancelled that meeting. DCPS proposed new meeting date options, but the parent refused to reschedule until a later date. The IEP team eventually met on [REDACTED] to finalize the IEP. The IEP notes concerns with the student's behavior; contains two goals related to emotional, social, and behavioral development; and prescribes 120 minutes per month of behavioral support services in the general education setting and 120 minutes per month of behavioral support services outside the general education setting. On [REDACTED] the parent signed consent to evaluate and on [REDACTED] DCPS issued prior written notice that it planned to evaluate the student in multiple areas, including cognitive functioning and behavior support. OSSE finds that DCPS responded to the parent's concerns, including revising the IEP to address the student's behavior and plans to evaluate the student.

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

ISSUE FOUR: PARENTAL CONSENT

DCPS has complied with 34 CFR §300.300, because it did not need parental consent to provide comparable services and obtained parental consent before evaluating the student.

Pursuant to 34 CFR §300.300, a public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. Each public agency must obtain informed parental consent prior to conducting any reevaluation of a child with a disability. (34 CFR §300.300(c)(1)) The complainant alleges that DCPS started the evaluation process and provided special education services to the student before obtaining parental consent.

Findings of Fact and Discussion

On [REDACTED], DCPS received a copy of the student's [REDACTED] out-of-state IEP. On [REDACTED] DCPS sent a comparable services consultation letter outlining the planned services of five hours per week of specialized instruction for reading, five hours per week of specialized instruction for math, 240 minutes per month of occupational therapy, 240 minutes per month of speech-language pathology, and various classroom accommodations. On [REDACTED] DCPS and the parent met to review existing data and educational records to decide if an evaluation was necessary in order to determine the student's special education eligibility. The IEP team determined that the student was eligible for special education and related services under the disability category of multiple disabilities. The team planned to meet again to review and finalize the IEP and discuss if any additional evaluations were needed. On [REDACTED] DCPS issued written notice that it planned to provide the comparable services to the student until DCPS completed its own evaluation and developed an IEP.

If a child with a disability (who had an IEP that was in effect in a previous public agency in another state) transfers to a public agency in a new state, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency conducts an evaluation (if determined to be necessary by the new public agency); and develops, adopts, and implements a new IEP, if appropriate. (34 CFR §300.323(f)) DCPS was obligated to provide comparable services to the student and did not need to obtain parental consent to do so. DCPS informed the parent of the plan to provide comparable services via the [REDACTED] prior written notice. The parent signed consent to evaluate on [REDACTED]. On [REDACTED] DCPS issued prior written notice that it planned to evaluate the student in the areas of reading, math, occupational therapy, speech-language pathology, cognitive functioning, and behavior supports. DCPS did not evaluate the student prior to obtaining parental consent.

Therefore, DCPS has complied with 34 CFR §300.300.

ISSUE FIVE: PERSONALLY IDENTIFIABLE INFORMATION

DCPS has complied with 34 CFR §300.622, because it did not need parental consent to obtain educational records from the student's previous school.

Pursuant to 34 CFR §300.622, parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies for purposes of meeting a requirement of the IDEA. The complainant alleges that DCPS received evaluation reports about the student without the parent's consent.

Findings of Fact and Discussion

The complainant alleges that a [REDACTED] notice shows that DCPS received evaluation reports about the student for which the parent had not provided consent. The [REDACTED] and [REDACTED] notices showed that DCPS reviewed educational records from the student's previous school, including the IEP, evaluations, and behavior logs.

The IDEA and OSSE policy are clear about an LEA's obligation to obtain educational records from the student's previous school. The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled. (34 CFR §300.323(g)(1)) The new LEA and previous LEA are not required to seek consent from the parent for the transfer of records.¹ OSSE finds that DCPS did not violate the consent requirement by obtaining education records from the student's previous school, but rather was fulfilling their legal obligation to promptly request those records. Even though parental consent was not required, DCPS obtained the parent's consent for the release of cumulative records on [REDACTED].

Therefore, DCPS has complied with 34 CFR §300.622.

CONCLUSIONS

1. DCPS has complied with 34 CFR §300.502, because it is not required to fund an independent evaluation before DCPS has completed its own evaluation.
2. DCPS has complied with 34 CFR §300.530, because it did not suspend the student for more than ten days.
3. DCPS has complied with 34 CFR §300.324(b), because it revised the IEP to address the parent's concerns.
4. DCPS has complied with 34 CFR §300.300, because it did not need parental consent to provide comparable services and obtained parental consent before evaluating the student.
5. DCPS has complied with 34 CFR §300.622, because it did not need parental consent to obtain educational records from the student's previous school.

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: [REDACTED], Complainant
[REDACTED], DCPS
[REDACTED], DCPS

¹ OSSE IEP Implementation for Transfer Students Policy p. 2 (Dec. 17, 2014).