



OFFICE OF THE STATE
SUPERINTENDENT OF EDUCATION

May 26, 2023

VIA Electronic Mail



District of Columbia Public Schools



RE: State Complaint No. 022-026 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] (complainants or parents) against the District of Columbia Public Schools (DCPS) alleging violations in the special education program of their [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 follow evaluation requirements, translate meetings and education records, include all required individualized education plan (IEP) team meeting participants, and issue 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 evaluation procedures and prior written notice but failed to comply with its obligations related to IEP team meetings and educational records. 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. **Reevaluation procedures at 34 CFR §§300.304-306 and 300.323(f)**
 - a. Failure to follow required reevaluation procedures.
2. **Independent educational evaluation requirements at 34 CFR §300.502(b)**

- a. Failure to provide an independent educational evaluation without unnecessary delay.
- 3. **IEP team meeting 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.
- 4. **Education records requirements at 34 CFR §§300.501(a) and 300.613**
 - a. Failure to provide a parent an opportunity to inspect and review education records.
- 5. **IEP team meeting participant requirements at 34 CFR §300.321(a) and (e)**
 - a. Failure to ensure that IEP team includes all required participants.
- 6. **Prior written notice requirements at 34 CFR §300.503**
 - a. Failure to provide Prior Written Notice.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

- 1. Complainants
- 2. DCPS [REDACTED]
- 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.

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2. The student's disability category is autism.
3. The student's local educational agency (LEA) is DCPS.

ISSUES ONE & TWO: EVALUATION REQUIREMENTS

DCPS has complied with 34 CFR §§300.304-306 and 300.323(f) because it properly completed a reevaluation of the student.

DCPS has complied with 34 CFR §300.502(b), because there is no LEA-completed speech-language or occupational therapy assessments and therefore DCPS is not required to fund independent educational evaluations.

Pursuant to 34 CFR §300.323(f), 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 pursuant to 34 CFR §§300.304 through 300.306 (if determined to be necessary by the new public agency); and develops, adopts, and implements a new IEP, if appropriate. As part of any reevaluation, the IEP team and other qualified professionals, must review existing evaluation data on the child, and identify what additional data, if any, are needed to determine whether the child continues to need special education and related services, and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP. (34 CFR §300.305(a)) 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. (34 CFR §300.502(b)(1)) 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 complainants allege that DCPS reduced the student's related service hours without evaluating the student and refused their request for an independent educational evaluation.

Findings of Fact and Discussion

The student transferred from another state at the start of the [REDACTED] school year. DCPS received the student's out-of-state [REDACTED] IEP on [REDACTED] and issued a comparable services letter on [REDACTED] with the same level of specialized instruction and related services as the out-of-state IEP. The student's out-of-state evaluation expired in [REDACTED] and so DCPS expedited the reevaluation process. DCPS conducted psychological and academic assessments but decided speech language and occupational therapy assessments were unnecessary to determine continued eligibility for those services. DCPS held an eligibility determination meeting on [REDACTED] and the IEP team found that the student continued to qualify as a student with a disability in need of special education and related services.

On [REDACTED] DCPS held an IEP team meeting to develop a new IEP. The speech-language pathologist recommended a reduction in services from six hours per month to four hours per month. The occupational therapist recommended a reduction in services from four hours per month to three hours per month. The parents disagreed with those recommendations and stated that they would not have agreed to forego formal assessments if they knew the service levels would not stay the same. DCPS discussed these concerns with the parents at the meeting, but DCPS and the parents did not come to an agreement.

Due to the proposed reeducations in service hours, the parents requested formal assessments for speech-language and occupational therapy on [REDACTED], and reiterated the request on [REDACTED] and [REDACTED]. DCPS responded that it had sufficient data from the service provider's work with the student to determine eligibility for those services and therefore did not need to complete formal assessments as part of the student's reevaluation. On [REDACTED] the parents requested independent educational evaluations and DCPS responded that they would first complete assessments themselves. By that point the parents were frustrated with the delay and no longer trusted DCPS to conduct an unbiased assessment and so on [REDACTED] the parents rejected DCPS's offer to conduct the assessments and refused to sign consent to evaluate. On [REDACTED] DCPS issued prior written notice that it would not proceed with the reevaluation process.

The parents contend that a formal assessment is needed to determine appropriate service levels for the student. DCPS correctly asserts that a formal assessment is only part of the data considered in determining eligibility. Observations from working with the student, results of current and previous interventions, and therapy notes are all sources of data used to determine the student's continued eligibility for those services, as well as the service levels and the annual goals and present levels of performance in the IEP. The IDEA regulations contemplate that additional data, including formal assessments, may not be needed to determine a student's continued eligibility for a particular service and any modifications to that service because the school already has sufficient data. In this case, the occupational therapist and speech-language pathologist had sufficient data based on working with the student to determine eligibility and make recommendations about those services. In addition to the eligibility determination, the IEP contained updated present levels of performance and annual goals.

DCPS is correct that it has the right and obligation to first conduct assessments before considering funding independent educational evaluations. The purpose of an independent educational evaluation is to compare it to the evaluation or assessment completed by the LEA. In this case, there is no speech-language or occupational therapy assessments to compare with an independent educational evaluation, and thus DCPS is not required to fund them.

Therefore, DCPS has complied with 34 CFR §§300.304-306, 300.323(f), and 300.502(b).

ISSUE THREE: IEP TEAM MEETINGS

DCPS has not complied with 34 CFR §300.322(e), because it failed to provide adequate [REDACTED] translation for all IEP team meetings.

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 complainants allege that there was not a [REDACTED] translator available at all IEP team meetings.

Findings of Fact and Discussion

[REDACTED] Eligibility Determination Meeting

DCPS attempted but could not get a hold of a [REDACTED] interpreter through the Language Access line for this meeting.

[REDACTED] IEP Team Meeting

DCPS held an IEP team meeting on [REDACTED]. DCPS attempted to have an interpreter through the Language Access Line, but there was a long wait time. The parents agreed to move forward with the IEP team meeting without the translator. When a translator became available halfway through the meeting, the translator did not provide adequate translation.

[REDACTED] Meeting

DCPS and the parents attended this meeting facilitated by the Office of the Ombudsman to discuss the reduction in related service hours. The translator was running late and DCPS had a time constraint, so they started the meeting before the translator was available. A translator joined the meeting about halfway through.

OSSE's investigation found that the parents did not have adequate [REDACTED] translation for three IEP team meetings. Although DCPS does not control the availability and quality of interpreters through the Language Line, they do control whether to move forward with a meeting when the parents do not have access to a translator. When parents need a translator to fully understand and participate in an IEP team meeting, they should not be given the option to proceed without an interpreter when one is not available. The lack of a translator led the parents to misunderstand evaluation procedures and prevented them from fully participating in IEP team meetings, specifically the discussion around the reduction in related services where the parents still do not feel they have received an adequate explanation from DCPS. The parents were not able to fully understand the proceedings and make informed decisions about exercising their procedural safeguards due to the lack of translation services.

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

ISSUE FOUR: EDUCATION RECORDS

DCPS has not complied with 34 CFR §§300.501(a) and 300.613, because it has failed to provide translated copies of the student's education records.

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 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(a)) The agency must comply with a request without unnecessary delay and in no case more than 45 days after the request has been made. (34 CFR §300.613(a)) The right to inspect and review education records under this section includes the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records (34 CFR §300.613(b) (1)). The complainants allege that they have requested translated copies of educational records but have not received them.

Findings of Fact and Discussion

On [REDACTED] the parents requested the student's complete education record translated into [REDACTED]. DCPS provided the English version of the requested records via email on [REDACTED]. The school requested from DCPS central office that the education records be translated into [REDACTED] in [REDACTED] and followed up in [REDACTED] but have not received a response. As of the date of this letter, DCPS has not provided translated copies of any of the student's education records.

Therefore, DCPS has not complied with 34 CFR §§300.501(a) and 300.613(b)(1).

ISSUE FIVE: IEP TEAM MEETING PARTICIPANTS

DCPS has not complied with 34 CFR §300.321(a) and (e), because the speech-language pathologist left the [REDACTED] IEP team meeting early.

Pursuant to 34 CFR §300.321(a), the public agency must ensure that the IEP team for each child with a disability includes 1) the parents of the child; 2) one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); 3) one special education teacher of the child; 4) a representative of the public agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of resources of the public agency; 5) an individual who can interpret the instructional implications of evaluation results (who may be a member of the team serving in another role); 6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and 7) whenever appropriate, the child with a disability. A member of the IEP team may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the

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curriculum or related services, if the parent, in writing, and the public agency consent to the excusal; and the member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting. (34 CFR §300.321(e)(2)) The complainants allege that the speech-language pathologist left the [REDACTED] IEP team meeting early and they were not able to adequately discuss the student's speech-language services.

Findings of Fact and Discussion

The following people attended the [REDACTED] IEP team meeting: the parents, a special education teacher, the speech-language pathologist, the LEA representative, and the occupational therapist. The meeting attendees met the required participants, but the speech-language pathologist left the meeting early due to a family emergency. Although the parents did not object to the speech-language pathologist leaving the meeting early to deal with the family emergency, there is no record of written agreement from DCPS and the parents to excuse the participation of the speech-language pathologist, nor written input from the speech-language pathologist prior to the IEP team meeting. The parents disagreed with the speech-language pathologist's recommendation to reduce service hours and were not able to adequately discuss the issue, especially because a translator was not available for the first part of the meeting when the speech-language provider was present. DCPS did not offer to reschedule or hold another meeting to finish the discussion before finalizing the IEP.

Therefore, DCPS has not complied with 34 CFR §300.321(a) and (e)(2).

ISSUE SIX: PRIOR WRITTEN NOTICE

DCPS has complied with 34 CFR §300.503, because it issued prior written notice about its proposal to reduce the student's speech-language and occupational therapy service hours. Pursuant to 34 CFR §300.503(a), written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the child. The notice must include a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action. (34 CFR §300.503(b)) The complainants allege that the [REDACTED] prior written notice did not contain a sufficient explanation for the reduction in the student's related services hours.

Findings of Fact and Discussion

The [REDACTED] IEP reduced the student's service hours for speech and language and occupational therapy. The parents disagreed with the reduction in services, so in a [REDACTED] email, the parents requested prior written notice with a written explanation for reducing the student's speech-language and occupational therapy services. On [REDACTED] DCPS issued a prior written notice that stated "The IEP team proposed to reduce the levels of occupational

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and speech and language therapies.” The prior written notice included input from the speech-language pathologist and occupational therapist and observations of the student as the basis for the proposed or refused action. The prior written notice additionally stated:

The IEP team considered, but refused, to maintain the student’s levels of occupational and speech and language therapies. The IEP team proposed to decrease the student’s levels of occupational and speech and language therapies due to considerations and data including the severity of the student’s disability, response to current and previous interventions, age, rate of progress based on current and previous interventions, years in therapy, educational programming, results of standardized assessments, and the clinician’s unique expertise and professional judgment. The IEP team explained that the levels of related services are reviewed at each annual IEP review and may increase or decrease throughout a student’s educational experience, depending on their need. The IEP team also shared that the provision of more or increased services does not necessarily equate to a faster rate or an increased level of progress. Because the student requires a specialized program, her instructional team embedded work on communication/speech and language and motor skills throughout the student’s school day. The parents disagreed with the reduction in levels of service for occupational and speech and language therapies.

OSSE finds that this prior written notice included the required elements, including a description of the proposal to reduce the student’s related service hours, an explanation of why DCPS proposed the reduction in services, and a description of the information DCPS used as a basis for the proposed action. There was a slight delay as the prior written notice came 3 weeks (including the [REDACTED] holiday) after the IEP team meeting and after the parents prompted DCPS to send it; however, the prior written notice gave adequate notice to the parents of DCPS’s final decision regarding the matter.

Therefore, DCPS has complied with §300.503(a).

CONCLUSIONS

1. DCPS has complied with 34 CFR §§300.304-306 and 300.323(f) because it properly completed a reevaluation of the student.
2. DCPS has complied with 34 CFR §300.502(b), because there is no LEA-completed speech-language or occupational therapy assessments and therefore DCPS was not required to fund independent educational evaluations.
3. DCPS has not complied with 34 CFR §300.322(e), because it failed to provide adequate [REDACTED] translation for all IEP team meetings.
4. DCPS has not complied with 34 CFR §§300.501(a) and 300.613, because it has failed to provide translated copies of the student’s education records [REDACTED]
5. DCPS has not complied with 34 CFR §300.321(a) and (e), because the speech-language

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pathologist left the [REDACTED] IEP team meeting early.

6. DCPS has complied with 34 CFR §300.503(a), because it issued prior written notice about its proposal to reduce the student’s speech-language and occupational therapy service hours, and the notice included all of the required elements.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §§300.322(e), 34 CFR §300.321(a) and (e), 300.501(a), and 300.613 DCPS must do the following:
 - a. Review its policies and procedures related to providing translation services at IEP team meetings and providing translated copies of education records and develop a corrective action plan to address the failure to consistently provide translation services for the entirety of IEP team meetings and the delay in providing translated education records, including revising the policies and procedures, if needed, and training. Documentation of the completion of this corrective action is due to OSSE within 60 days of the date of this letter.
 - b. Authorize funding for independent educational evaluations for the student in the areas of speech-language pathology and occupational therapy. Documentation of the completion of this corrective action is due to OSSE within 30 days of the date of this letter.
 - c. Upon receipt of the completed independent educational evaluations, DCPS must convene an IEP team meeting with the parents to review and revise, if appropriate, the student’s IEP. Documentation of the completion of this corrective action is due to OSSE within 30 days of the meeting.

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: [REDACTED], Complainants
[REDACTED], DCPS
[REDACTED], DCPS