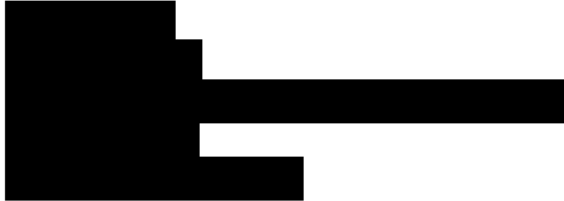




March 18, 2024

VIA Electronic Mail



RE: State Complaint No. 023-008 Letter of Decision

LETTER OF DECISION

PROCEDURAL BACKGROUND

On Jan. [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] (parent/complainant) against [REDACTED] (PCS) alleging violations in the special education program of her child, [REDACTED] hereinafter "student" or "child."

The complainant alleged that [REDACTED] 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 a dedicated aide and prior written notice.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that [REDACTED] complied with its obligation to provide prior written notice but did not comply with its obligation to implement the student's individualized education program (IEP) as soon as possible. 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 IEP services at 34 CFR §300.323(c)**
 - a. Failure to provide specialized instruction, specifically with regard to providing a dedicated aide as prescribed by the student's IEP.
2. **Requirement to provide prior written notice at 34 CFR §300.503**

- a. Failure to issue Prior Written Notice.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. [REDACTED]

The investigation also included review of the following documents which were either submitted by the complainant, submitted by [REDACTED] or accessible via the Special Programs data system:

[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 other health impairment.
3. The student’s local educational agency [REDACTED]

ISSUE ONE: DEDICATED AIDE

[REDACTED] PCS has not complied with 34 CFR §300.323(c), because of the delay in providing a dedicated aide after the service was added to the student’s IEP.

Pursuant to 34 CFR §300.323(c), 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 [REDACTED] PCS amended the student’s IEP in [REDACTED] 2023 to include a dedicated aide but has not yet

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provided one.

Findings of Fact and Discussion

On Dec. [REDACTED] the IEP team met and agreed to add a dedicated aide to the student's IEP to address the student's behavior concerns, as well as increasing the amount of specialized instruction and behavioral support services provided to the student. [REDACTED] PCS was closed from Dec. [REDACTED] – Jan. [REDACTED] for winter break. [REDACTED] PCS reported that it needed to hire someone for the position and began taking steps in early January to find and interview candidates. A dedicated aide was hired and assigned to the student on Jan. [REDACTED]. [REDACTED] PCS was closed due to holidays and inclement weather on several days (Jan. [REDACTED], and [REDACTED] and therefore the student was without a dedicated aide for 16 school days after the service was added to the IEP.

Although [REDACTED] PCS promptly took steps to hire a dedicated aide and the timeline may have been reasonable for finding and hiring a new staff member, 16 school days is not a reasonable amount of time for a student to go without a required IEP service. [REDACTED] PCS reported that they assigned additional float staff to the student's class to provide extra support during this time; however, the student's behavior issues continued. The behavior report shows seven incidents during this time. The other services added to the IEP on Dec. [REDACTED] were implemented sooner, but the delay in providing a dedicated aide negatively impacted the student's progress. The student's interim progress reports throughout January [REDACTED] show that the student continued to struggle and needed the additional support of a dedicated aide. (Jan. [REDACTED]: "Very talkative in class, having issues following direction and keeping [student] focused on the task at hand. [Student] currently has 3 F's, one D and an A."; Jan. [REDACTED]: "Very talkative in class, having issues following direction and keeping [student] focused on the task at hand. [Student] currently has 3 F's, one D and two C's. This is a decrease in [student's] grades. [Student] had an A last week and [student] dropped to a C."; Jan. [REDACTED]: "[Student] is continuing to have issues in the classroom with paying attention and keeping focus on [student's] tasks. [Student] is very talkative in class, having issues following direction and keeping [student] focused on the task at hand. [Student] currently has 3 F's, one D and a B.") The Jan. [REDACTED] student interim progress report acknowledged the importance of having a dedicated aide and the positive impact it would have on the student's behavior and academics: "As of today, [student] was switched to a new cohort and has been given a direct aide to help [student] stay focused on [student's] studies and regulate [student's] behaviors. We believe this will help [student]...[student's] academics will excel." The delay in providing a dedicated aide for the student after the service was added to the IEP prevented the student from making the hoped-for progress for an additional month.

Therefore, [REDACTED] has not complied with 34 CFR §300.323(c).

ISSUE TWO: PRIOR WRITTEN NOTICE

██████████ PCS has complied with 34 CFR §300.503, because it properly issued prior written notice following the Jan. ██████████ change in placement meeting.

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 complainant alleges that ██████████ PCS is out of compliance because it sent notice of its refusal to change the student's placement after the Jan. ██████████ change in placement meeting.

Findings of Fact and Discussion

A change in placement meeting was held on Jan. ██████████. After discussion, the IEP Team voted and determined that the student did not require placement in a more restrictive setting. Later that day ██████████ PCS issued written notice of the IEP team's decision and refusal to change the student's placement. This timeline aligns with the legal requirements of prior written notice. The United States Department of Education's Office of Special Education and Rehabilitative Services has explained that "Providing prior written notice in advance of meetings could suggest, in some circumstances, that the public agency's proposal was improperly arrived at before the meeting and without parent input. Therefore, we are not changing Section 300.503 to require the prior written notice to be provided prior to an IEP Team meeting."¹ An LEA cannot issue written notice of an IEP team decision before the decision is made. The written notice informs the parent of a final decision so that they may act accordingly, including accessing their procedural safeguards.

Therefore, ██████████ PCS has complied with 34 CFR §300.503.

CONCLUSIONS

1. ██████████ PCS has not complied with 34 CFR §300.323(c), because it delayed in providing a dedicated aide after the service was added to the student's IEP.
2. ██████████ PCS has complied with 34 CFR §300.503, because it properly issued prior written notice following the Jan. ██████████ change in placement meeting.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.323(c), ██████████ PCS must do the following:
 - a. Authorize the student to obtain 32 hours of independent tutoring and 4 hours of independent behavior support services. Alternatively, ██████████ PCS and the parent may agree to a different amount or type of educational services. Documentation of the completion of this corrective action is due to OSSE within ██████████

¹ Fed. Reg. Vol. 71 No. 156 p. 46,691 (Aug ██████████, ██████████)

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 202-741-0274.

Sincerely,

Kirstin Hansen

Kirstin Hansen
State Complaints Manager
Office of Special Education

cc:

[REDACTED]

[REDACTED]

[REDACTED]

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