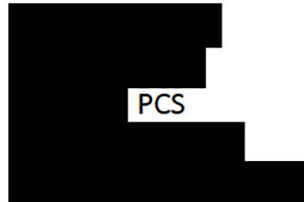




March 29, 2024

*VIA Electronic Mail*



RE: State Complaint No. 023-011 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) against [REDACTED] Public Charter School (PCS) alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED]) hereinafter “student” or “child.”

The complainant alleged that [REDACTED] PCS 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 ensure parent participation, correctly decide the manifestation determination, and provide an adequate interim alternative educational setting (IAES).

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that [REDACTED] PCS has complied with its obligations related to parent participation, manifestation determination meetings, and continuum of alternative placements, but has not complied with its obligations related to IAES. 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. **Parental participation requirements at 34 CFR §300.501**
  - a. Failure to ensure meaningful parental participation, specifically with regard to the [REDACTED] manifestation determination meeting.

**2. Discipline requirements at 34 CFR §300.530(e)**

- a. Failure to properly determine if the conduct that prompted the suspension was caused by or had a direct and substantial relationship to the child’s disability, or was the direct result of the LEA’s failure to implement the IEP.

**3. IAES requirements at 34 CFR §§300.115 and 300.531**

- a. Failure to offer a continuum of alternative placements to meet the needs of children with disabilities and determine an IAES for the child’s services prior to removal.

**INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

- 1. Complainant
- 2. Parent
- 3. [REDACTED] PCS [REDACTED]

The investigation also included review of the following documents which were either submitted by the complainant, submitted by [REDACTED] PCS, 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 emotional disability.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

1050 First Street NE, Washington, DC 20002

(202) 727-6436 TTY: 711 | osse.dc.gov

3. The student's local educational agency (LEA) is ██████ PCS.

### **ISSUES ONE & TWO: MANIFESTATION DETERMINATION AND PARENTAL PARTICIPATION**

█████ PCS has complied with 34 CFR §300.501, because it ensured the parent's participation in the manifestation determination meeting.

█████ PCS has complied with 34 CFR §300.530(e), because it followed all manifestation determination requirements.

Pursuant to 34 CFR §300.501(b)(1), 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. Each public agency must provide notice to ensure that parents of children with disabilities have the opportunity to participate in meetings. (34 CFR §300.501(b)(2)) Pursuant to 34 CFR §300.530(e), 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 (as determined by the parent and the LEA) 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 if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the LEA's failure to implement the IEP. The complainant alleges that ██████ PCS invited the parent to the manifestation determination meeting with one day's notice, which the parent could not attend and asked to be rescheduled, initiated the expulsion process prior to holding the manifestation determination meeting, and incorrectly determined that the students' behavior was not a manifestation of the student's disability.

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

On ██████ the student brought a toy gun and a kitchen knife with a blade exceeding 2.5 inches to school. ██████ PCS removed the student on an emergency basis, and BASIS DC PCS ultimately recommended that the student be expelled, in alignment with the Parent/Student Handbook. On ██████ PCS invited the parent to a manifestation determination meeting scheduled for ██████. The parent could not attend, and the meeting was rescheduled for ██████. The school was unexpectedly closed due to snow on ██████ so the meeting was rescheduled for ██████. The parent could not attend on that date, so the meeting was held on ██████ and reconvened on ██████ to include the student at the parent's request and finish the discussion. The expulsion hearing was originally scheduled for ██████ but was postponed to be held after the manifestation determination meeting.

At the manifestation determination meeting, the IEP team reviewed the facts of the ██████ incident; the student's most recent IEP and behavior intervention plan; IEP services; emotional, social, and behavioral development IEP goals; IEP progress reports; and discipline history. ██████ PCS staff members at the meeting believed that the ██████ behavioral incident was not a manifestation of the student's disability nor but the parent disagreed. The IEP team

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

1050 First Street NE, Washington, DC 20002

(202) 727-6436 TTY: 711 | osse.dc.gov

consensus and ultimate determination was that the student's behavior was not a manifestation of the student's disability nor a result of the school's failure to implement the student's IEP.

OSSE's review of the record found that [REDACTED] PCS scheduled and rescheduled the manifestation determination meeting to ensure that the parent could attend. The parent participated in the manifestation determination meeting and the IEP team considered the parent's input. The IEP team reviewed all relevant student data and the ultimate manifestation determination decision was made by team consensus. OSSE found that [REDACTED] PCS followed all the procedural requirements for the manifestation determination meeting.

Therefore, [REDACTED] PCS has complied with 34 CFR §§300.501 and 300.530(e).

### **ISSUE THREE: IAES**

**[REDACTED] PCS has complied with 34 CFR §300.115 but has not complied with §300.531, because the initial IAES decision was not made by the IEP team.**

Pursuant to 34 CFR §300.115, each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. School personnel may remove a student to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA. (34 CFR §300.530(g)) The child's IEP Team determines the IAES for services. (34 CFR §300.531) A child with a disability who is removed from the child's current placement must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. (34 CFR §300.530(d)) The complainant alleges that [REDACTED] PCS offered only a remote learning plan for an IAES despite the parent's objections.

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

On [REDACTED] [REDACTED] PCS provided notice of a virtual learning IAES. The parent objected to a remote learning plan for the IAES because previously the student did not effectively access online learning and requested a brick-and-mortar IAES. On [REDACTED] the IEP team met for manifestation determination meeting and the parent requested a nonpublic placement for the IAES. That same day [REDACTED] PCS submitted a change in placement request to OSSE. The IEP team met on [REDACTED] to discuss other IAES options. [REDACTED] PCS proposed as an alternative to the virtual learning IAES that the student take the bus to school and then go to a nearby public library with a dedicated aide to provide support and supervision. The parent requested time to

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

1050 First Street NE, Washington, DC 20002  
(202) 727-6436 TTY: 711 | osse.dc.gov

consider this option and ultimately rejected it, insisting on a nonpublic placement as an IAES. On [REDACTED] the IEP team met with OSSE for the change in placement team where everyone agreed on a nonpublic placement for the student. The student began attending a nonpublic school on [REDACTED].

OSSE's review found that the initial virtual learning IAES proposed by [REDACTED] PCS was not determined by the IEP team, as required. This was later rectified after the IEP team met to discuss the IAES on [REDACTED]. In general, a virtual learning IAES is acceptable as long as the student can continue to participate in the general education curriculum and make progress on IEP goals. In this case the student was not accessing virtual learning and so the IEP team determined an in-person IAES option, which the parent rejected and refused to send the student to. OSSE found that [REDACTED] PCS provided a continuum of alternative placements, for both the short-term IAES and the student's long-term educational placement. The parent insisted on a nonpublic school as the only IAES option, and while [REDACTED] PCS was working with OSSE to change the student's educational placement to a more restrictive setting, the change to a nonpublic school setting cannot happen immediately. The IAES is an IEP team decision, and no single IEP team member can veto the rest of the team's decision. OSSE found that [REDACTED] PCS initially failed to comply with the IAES requirements by failing to have the IEP team determine the IAES, but then convened the IEP team and correctly followed the IAES requirements.

Therefore, [REDACTED] PCS has complied with 34 CFR §300.115 but has not complied with 34 CFR §300.531.

### **CONCLUSIONS**

1. [REDACTED] PCS has complied with 34 CFR §300.501, because it ensured the parent's participation on the manifestation determination meeting.
2. [REDACTED] PCS has complied with 34 CFR §300.530(e), because it followed all manifestation determination requirements.
3. [REDACTED] PCS has complied with 34 CFR §300.115 but has not complied with §300.531, because the initial IAES decision was not made by the IEP team.

### **CORRECTIVE ACTION**

1. In order to correct the noncompliance with 34 CFR §300.531, [REDACTED] PCS must do the following:
  - a. Update its policy or procedures to ensure that initial IAES decisions are made by the IEP team. Documentation of the completion of this 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 202-741-0274.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

1050 First Street NE, Washington, DC 20002

(202) 727-6436 TTY: 711 | [osse.dc.gov](http://osse.dc.gov)

Sincerely,

*Kirstin Hansen*

Kirstin Hansen  
State Complaints Manager  
Office of Special Education

cc: [REDACTED] Complainant  
[REDACTED], Parent

[REDACTED]

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

1050 First Street NE, Washington, DC 20002

(202) 727-6436 TTY: 711 | [osse.dc.gov](http://osse.dc.gov)