



April 15, 2024

VIA Electronic Mail

[REDACTED]

District of Columbia Public Schools

[REDACTED]

RE: State Complaint No. 023-015 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 the District of Columbia Public Schools (DCPS) alleging violations in the special education program of [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 implement comparable services, conduct a timely evaluation, provide IEP supports and services, and provide access to education records.

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 provision of comparable services, IEP services, and access to education records but failed to comply with all timelines related to evaluation. 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. **Evaluation requirements at 34 CFR §300.323(f)(1) and 5-A DCMR §3020.8**
 - a. Failure to timely conduct an evaluation.
2. **Requirement to provide comparable services at 34 CFR §300.323(f)(2)**

- a. Failure to adopt the out of state IEP and provide services comparable to those described in the child’s IEP from the previous public agency until the new public agency conducts an evaluation, if necessary, and develops a new IEP, if appropriate.
- 3. **Requirement to provide IEP services at 34 CFR §300.323(c)(2)**
 - a. Failure to make special education and related services available to the child in accordance with the child’s IEP.
- 4. **Requirement to provide access to education records at 34 CFR §300.501**
 - a. Failure to ensure access to education records.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

- 1. Complainant
- 2. Parent
- 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 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 autism and other health impairment.
3. The student's local educational agency (LEA) is DCPS.

ISSUE ONE: EVALUATION

DCPS has not complied with 34 CFR §300.323(f)(1) and 5-A DCMR §3020.8, because it failed to document adoption of the child's existing eligibility within thirty (30) calendar days of enrollment.

Pursuant to 34 CFR §300.323(f)(1), 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). If a child transfers from an LEA outside of the District of Columbia, the new LEA shall determine whether it is necessary to conduct an evaluation to determine the child's eligibility. (5-A DCMR §3020.8) If the LEA determines it is not necessary to conduct an evaluation, the LEA shall document adoption of the child's existing eligibility within thirty (30) calendar days of enrollment. (5-A DCMR §3020.8) The complainant alleges that DCPS did not timely respond to an evaluation request.

Findings of Fact and Discussion

The student enrolled in DCPS at the beginning of the [REDACTED] school year from another state. On [REDACTED] the complainant submitted a referral to [REDACTED] Middle School (MS) notifying the school that the student had an out-of-state IEP. The IEP team met on [REDACTED] to review the student's out-of-state IEP. The student's most recent evaluation and eligibility determination was on [REDACTED] with a disability classification of other health impairment for a variety of diagnoses. The IEP contained a summary of the assessments completed as part of the most recent evaluation including a psychoeducational assessment and occupational therapy assessment. On [REDACTED] the complainant requested via email an initial referral and analysis of existing data meeting. In a [REDACTED] email DCPS responded that they had accepted the student's out-of-state eligibility determination and therefore an evaluation was not necessary.

However, later documentation and communication with the parent indicated that DCPS had not yet accepted the student's out-of-state eligibility determination. On [REDACTED] DCPS sent a letter to the parent acknowledging the [REDACTED] referral for initial evaluation and stating that the school team would review educational data to determine whether to proceed with an evaluation. The IEP team met on [REDACTED] for an analysis of existing data meeting. The IEP team determined that they had sufficient information to determine that the child continues to have a disability and needs special education and related services and that an evaluation to determine eligibility was not needed. The IEP team also decided that a functional behavior assessment was needed to determine the educational needs of the child. This was recorded in the [REDACTED] analysis of existing data. The [REDACTED] final eligibility determination report records acceptance of the student's disability category as other health impairment. The [REDACTED] meeting to review existing data and decision to accept the student's out-of-state eligibility determination occurred more than thirty (30) calendar days after the student's enrollment and referral to special education on [REDACTED].

DCPS reported that they initially accepted the student's out of state eligibility determination and then later determined that a new evaluation was needed to update the student's disability category. The student record shows referral dates of [REDACTED] for the out-of-state eligibility and [REDACTED] for the reevaluation. There are two later final eligibility determination reports dated [REDACTED] and [REDACTED] that have the date of referral of [REDACTED] and show the student's updated disability category as autism. This subsequent evaluation process that occurred soon after the adoption of the out-of-state eligibility determination caused confusion about where DCPS was in the evaluation process; however, OSSE's review of the record found two different evaluation processes: one for the out-of-state referral at the start of the [REDACTED] school year and the IEP team's later decision to reevaluate to update the student's disability category. This was acceptable and in compliance with evaluation requirements; however, DCPS is still out of compliance for failing to document adoption of the child's existing eligibility within thirty (30) calendar days of enrollment.

Therefore, DCPS has not complied with 34 CFR §300.323(f)(1) and 5-A DCMR §3020.8.

ISSUE TWO: COMPARABLE SERVICES

DCPS has complied with 34 CFR §300.323(f)(2), because it provided comparable services until it created a DCPS IEP.

Pursuant to 34 CFR §300.323(f)(2), 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 develops, adopts, and implements a new IEP, if appropriate. The complainant alleges that DCPS failed to provide comparable services to the student who transferred to DCPS with an out-of-

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state IEP due to limitations with staffing and school resources.

Findings of Fact and Discussion

The IEP team met on [REDACTED] to review the student's out-of-state IEP. The student's [REDACTED] out-of-state IEP prescribed 600 minutes per week of specialized instruction, 30 minutes per week of social work services, 50 minutes per week of group counseling, and 50 minutes per week of individual counseling. For comparable services, DCPS proposed 5 hours per week of specialized instruction in the general education setting, 30 minutes per day of behavior support services, and access to speech-to-text software to assist with writing to begin on [REDACTED]. DCPS created a DCPS IEP on [REDACTED] that prescribed 10 hours per week of specialized instruction and 4 hours per month of behavioral support services. OSSE finds that DCPS provided comparable services until it created a DCPS IEP.

Therefore, DCPS has complied with 34 CFR §300.323(f)(2).

ISSUE THREE: IEP SERVICES

DCPS has complied with 34 CFR §300.323(c)(2), because it provided the specialized instruction and related services required by the student's IEP.

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 not consistently provided the services, accommodations, and supports required by the IEP.

Findings of Fact and Discussion

The [REDACTED] comparable services plan prescribed 5 hours per week of specialized instruction in the general education setting, 30 minutes per day of behavioral support services, and access to speech-to-text software to assist with writing. The [REDACTED] DCPS IEP prescribes 5 hours per week of specialized instruction in the general education setting, 5 hours per week of specialized instruction outside the general education setting, four (4) hours per month of behavioral support services, and access to speech-to-text software to assist with writing. It includes classroom aids and services including prompts and redirection, visual supports, written schedule, typed copies of notes, chunking assignments and quizzes, extended time, and breaks. DCPS reported that the student receives specialized instruction during the Language Arts, Advisory, and Reading Support class periods. OSSE reviewed service trackers to confirm that DCPS provided all the behavior support services required by the IEP. Frequent email communication between the parent and school staff members show the various classroom supports and aids that were implemented to help the student.

Although DCPS provided the specialized instruction and behavior support services required by the IEP, the student struggled, was failing most classes, and attended class inconsistently. In interviews, the social worker and special education teacher reported that the student needed a

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higher level of support. In [REDACTED] the IEP team decided to start the process to request a dedicated aide; however, they wanted to first update the student's disability classification to autism. DCPS completed a functional behavior assessment on [REDACTED] and created a behavior intervention plan on [REDACTED] to address the student's task avoidance and defiance/agitation. The request for a dedicated aide was made [REDACTED]. OSSE's investigation found that DCPS is taking steps to address the student's needs and provide additional support, while implementing the current IEP.

Therefore, DCPS has complied with 34 CFR §300.323(c)(2).

ISSUE FOUR: EDUCATION RECORDS

DCPS has complied with 34 CFR §300.501, because it provided education records to the parent within required timelines.

Pursuant to 34 CFR §300.501, 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 agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, hearing, or resolution session, and in no case more than 45 days after the request has been made. (34 CFR §300.613(a)) The complainant alleges that DCPS has not timely provided requested documents.

Findings of Fact and Discussion

DCPS reported that at the start of the [REDACTED] school year there were some technical issues with the transition to the Special Programs data system that caused delays in the delivery of some documents. Below OSSE reviews the requested documents identified in the complaint, whether they exist in the student's education record in Special Programs, and when or if they were provided to the parent and/or complainant.

The complainant alleges that DCPS did not send a letter of invitation for the [REDACTED] meeting. The Special Programs data system generated letter of invitation for this meeting is dated after the meeting occurred. A Special Programs system-generated letter of decision is not required as long as DCPS provides an invitation with the required information in another way. Email communication confirms that DCPS invited the parent to the meeting, although DCPS forgot to invite the complainant.

On [REDACTED] the complainant requested the prior written notice, comparable services documentation, meeting notes, and the attendance/sign-in sheet from the [REDACTED] meeting. On [REDACTED] DCPS provided the prior written notice and comparable services plan. There are no meeting notes or sign-in sheet from the meeting in the student's education record.

Following the [REDACTED] IEP team meeting, the complainant requested a copy of the analysis of existing data, prior written notice from the meeting, meeting notes and sign-in sheet, comparable services plan, and letter of invitation for the [REDACTED] meeting. On [REDACTED] [REDACTED] DCPS sent the letter of invitation for the [REDACTED] meeting. The analysis of existing data document for this meeting was not finalized until [REDACTED] and was provided when it was available. There are no meeting notes, sign-in sheet, or prior written notice from this meeting in the student's education record. The comparable services plan was not updated at this meeting.

OSSE found evidence that DCPS provided the parent with the procedural safeguards on multiple dates, including [REDACTED]; and [REDACTED]. On [REDACTED] DCPS provided a copy of the draft IEP. On [REDACTED] DCPS provided the functional behavioral assessment. On [REDACTED] DCPS sent a copy of the behavior intervention plan. On [REDACTED] DCPS sent the amended IEP but no prior written notice. There is no prior written notice from that meeting in the student's education record.

OSSE's investigation found that the only documents requested by the complainant that DCPS did not provide were documents that do not exist in the student's education record. DCPS is not required to provide documents that do not exist. OSSE did not find any documents that were provided after the required 45-day timeline.

Therefore, DCPS has complied with 34 CFR §300.501.

CONCLUSIONS

1. DCPS has not complied with 34 CFR §300.323(f)(1) and 5-A DCMR §3020.8, because it failed to document adoption of the child's existing eligibility within thirty (30) calendar days of enrollment.
2. DCPS has complied with 34 CFR §300.323(f)(2), because it provided comparable services until it created a DCPS IEP.
3. DCPS has complied with 34 CFR §300.323(c)(2), because it provided the specialized instruction and related services required by the student's IEP.
4. DCPS has complied with 34 CFR §300.501, because it provided education records to the parent within required timelines.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.323(f)(1) and 5-A DCMR §3020.8, DCPS must do the following:
 - a. Train relevant school staff on the steps and required timelines related to reviewing and documenting the adoption of out-of-state transfer students with IEPs. Documentation of the completion of this corrective action is due to OSSE within 90 days of the date of this letter of decision.

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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], Complainant
[REDACTED], Parent
[REDACTED], DCPS
[REDACTED], DCPS