



July 11, 2024

VIA Electronic Mail

[REDACTED]

District of Columbia Public Schools

[REDACTED]

RE: State Complaint No. 023-020 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] (parent/complainant) 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,” and the other students in her daughter’s classroom.

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 the special education services required by the individualized education program (IEP). The complaint raised concerns about the failure to provide the special education services during the [REDACTED] school year that were not investigated because they fall outside of the one-year investigation period for State complaints. (34 CFR §300.153(c))

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS failed to meet its obligation to provide the specialized instruction required by the students’ IEPs. 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 services at 34 CFR §300.323(c)(2)

- a. Failure to make available special education and related services in accordance with the IEP, specifically with regard to the students in the Communication and Education Support (CES) program at [REDACTED] Elementary School (ES).

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

- 1. Complainant
- 2. DCPS [REDACTED]
- 3. DCPS [REDACTED]
- 4. [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:



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.
- 3. The student's local educational agency (LEA) is DCPS.

ISSUE: IEP SERVICES

DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all of the specialized instruction required by the students' IEPs.

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 the students in the [REDACTED] ES CES [REDACTED] classroom have lost a significant amount of specialized instruction hours.

Findings of Fact and Discussion

The CES classroom is a self-contained special education classroom for students whose academic, social, and adaptive needs cannot be met in a general classroom and need help with everyday things like taking care of themselves, talking to others, and having fun. The IEPs of the

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students in the class prescribe 20-25.75 hours per week of specialized instruction outside the general education setting.

The complainant alleges that the [REDACTED] ES CES [REDACTED] classroom did not consistently have assigned partner teachers (paraprofessionals/classroom aides) to assist the main special education teacher at the start of the [REDACTED] school year. The special education teacher was periodically absent totaling three weeks of school days. When this occurred the partner teachers acted as substitutes for the special education teacher. The complainant additionally alleges that due to the aggressive behavior of one of the students, the other students had to be evacuated from the classroom more than fifteen times from [REDACTED] to [REDACTED]. The last incident occurred on [REDACTED] and the classroom teacher was injured and then absent for six school days. The disruptive student was removed from the classroom beginning [REDACTED] and there were no further incidents.

In its response DCPS admits that the special education teacher was absent for 15 school days during the [REDACTED] school year. DCPS reported that the special education teacher left lesson plans that were developed based on the students' IEP needs and were implemented by the classroom aide and substitute teacher. Sometimes a classroom aide acted as the substitute teacher when the regular special education teacher was absent. DCPS typically staffs the CES classroom with one special education teacher and two paraprofessionals. OSSE does not enforce DCPS policy on particular staffing arrangements or staff-to-student ratios. However, OSSE does oversee the provision of specialized instruction. Paraprofessionals must be appropriately trained and supervised to assist in the provision of special education and related services. Paraprofessionals are not certified special education teachers and are not qualified to deliver specialized instruction because paraprofessionals do not have the same underlying qualifications as teachers. Although it is acceptable for an LEA to provide specialized instruction in the general education setting through ongoing collaboration and co-planning between the special education teacher and the general education teachers to provide differentiated instruction and classroom accommodations, all of the students in the self-contained CES classroom have IEPs that prescribe full-time specialized instruction outside of the general education setting. DCPS provided no evidence that a certified special education substitute teacher covered the classroom on days when the regularly assigned special education teacher was absent. OSSE finds that DCPS failed to provide specialized instruction on the days the special education teacher was absent.

In the interview for this investigation, the [REDACTED] reported that the disruptive student caused significant disruptions that led to the other students being evacuated to the library for 30-45 minutes at a time, where they did not receive specialized instruction. The teacher would have to leave the classroom with the disruptive student and then take time to recover from the disruptions, which often involved being physically attacked. The teacher calculated that in total the students missed 20-25 hours of specialized instruction due to these

disruptions.

An occasional school day when the teacher is absent without a qualified special education substitute teacher or an hour-long classroom disruption here or there may be unavoidable and not necessarily constitute noncompliance; however, in totality the students in the [REDACTED] ES CES [REDACTED] classroom missed significant specialized instruction hours that may have impacted the students' receipt of FAPE. DCPS should convene the IEP teams for each student in the classroom to determine the impact of the missed specialized instruction on the student and what type and the amount of make-up services that are needed.

Therefore, DCPS has not complied with 34 CFR §300.323(c)(2).

CONCLUSION

1. DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all of the specialized instruction required by the students' IEPs.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.323(c)(2), DCPS must do the following:
 - a. Convene an IEP team meeting for each student in the [REDACTED] ES CES [REDACTED] classroom and determine the impact of the missed specialized instruction on the student and what type and the amount of make-up services that are needed. DCPS must provide documentation of the completion of this corrective action within 90 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], Complainant
[REDACTED], DCPS
[REDACTED], DCPS