OFFICE OF THE STATE
SUPERINTENDENT OF EDUCATION

August 9, 2024

VIA Electronic Mail

[redacted] Public Charter School [redacted]

RE: State Complaint No. 023-024 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 [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 provide prior written notice as required, conduct a reevaluation when requested, allow the parent to fully participate in individualized education program (IEP) team meetings, follow procedural safeguards requirements, ensure participation of all required IEP team members, provide access to educational records, revise the IEP, and provide IEP services.

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 written notice, reevaluation, parent participation, notice of procedural safeguards, IEP team meeting participants, access to educational records, IEP revision, and provision of IEP services. 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 prior written notice at 34 CFR §300.503 and 5-A DCMR §3032**
    a. Failure to provide prior written notice.
2. **Reevaluation requirements at 34 CFR §300.303**
    a. Failure to follow reevaluation procedures.
3. **Parent participation requirements at 34 CFR §300.322**
    a. Failure to ensure that parents are afforded the opportunity to participate in IEP team meetings.
4. **Requirement to provide notice of procedural safeguards at 34 CFR §300.504**
    a. Failure to provide procedural safeguards notice.
5. **IEP team meeting participant requirements at 34 CFR §300.321(a) and (e)**
    a. Failure to include all IEP team members at an IEP meeting.
6. **Requirement to provide access to educational records at 34 CFR §§300.501(a) and 300.613**
    a. Failure to allow the parents of a child with a disability an opportunity to inspect and review all educational records.
7. **Requirement to revise the IEP at 34 CFR §300.324(b)**
    a. Failure to review and revise the IEP, as appropriate to address information about the child provided by the parent, specifically with regard to a request for assistive technology and related services.
8. **Requirement to provide special education services at 34 CFR §300.323(c)(2)**
    a. Failure to make available special education in accordance with the child's IEP as soon as possible following development of an IEP, specifically with regard to assistive technology, supplementary aids and services, and related services.

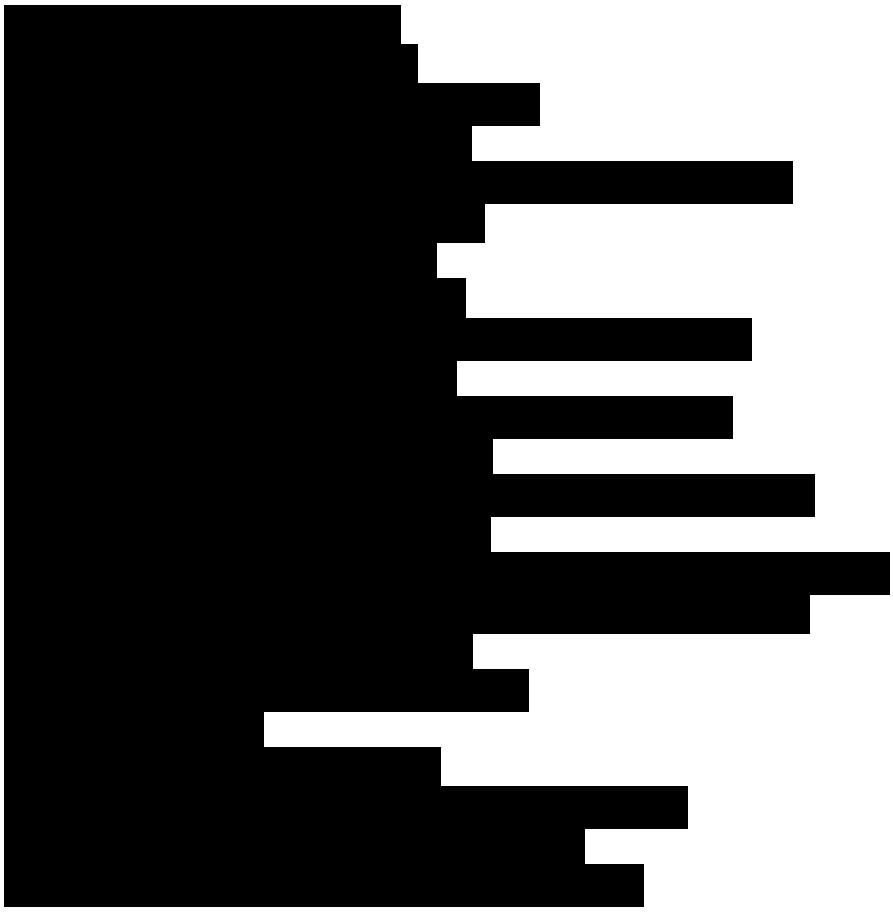
INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. [redacted] PCS [redacted]
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 autism.
3. The student's local educational agency (LEA) is [redacted] PCS.

ISSUE ONE: PRIOR WRITTEN NOTICE

[redacted] **PCS has complied with 34 CFR §300.503 and 5-A DCMR §3032, because it issued prior written notice regarding all changes and decisions about the IEP.**

Pursuant to 34 CFR §300.503 and 5-A DCMR §3032, prior 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 [redacted] PCS failed to issue written notice after refusing the parent's request for assistive technology or to increase the service minutes on the student's IEP and failed to issue written notice following later changes to the student's IEP.

Findings of Fact and Discussion

[redacted] IEP Team Meeting

The parent alleges that at a [redacted] IEP team meeting, the parent requested assistive technology for the student and an increase in service hours, but [redacted] PCS did not act on either request; therefore, [redacted] PCS should have issued written notice of its refusal. [redacted] PCS refutes the parent's claim that those requests were made at a [redacted] IEP team meeting and therefore was under no obligation to issue written notice. The IEP was amended on that date to increase specialized instruction to 17.5 hours per week outside the general education setting and add the support of a dedicated aide for 8 hours per day. There is no record of the parent's request to also add assistive technology to the student's IEP or increase additional services. Therefore, OSSE finds that [redacted] PCS did not refuse a request from the parent to add assistive technology to the IEP and did not need to issue written notice about it.

[redacted] IEP Team Meeting

The [redacted] meeting notes show that the IEP team, including the parent, agreed to change the student's placement to a more restrictive setting that would result in moving the student to a different school location. [redacted] PCS issued written notice following the meeting that the IEP team agreed to change the student's placement, including increasing the amount of specialized instruction hours outside the general education setting and changing the student's location of services, as well as update speech-language goals, increase the amount of behavioral support services, and update the student's eligibility for transportation services and extended school year services. The parent later rescinded agreement to the change in placement and invoked stay put through an email on [redacted]. [redacted] PCS issued written notice accordingly on [redacted]. [redacted] PCS agreed to pause the implementation of the [redacted] amended IEP and instead provide the services required by the [redacted] IEP. In the [redacted] email, the parent also requested that [redacted] PCS conduct an functional behavioral assessment (FBA). On [redacted], [redacted] PCS acknowledged the parent's request. OSSE finds that [redacted] PCS issued written notice regarding all changes and decisions about the IEP.

Therefore, [redacted] PCS has complied with 34 CFR §300.503 and 5-A DCMR §3032.

ISSUE TWO: REEVALUATION

[redacted] **PCS has complied with 34 CFR §300.303, because it appropriately responded to all evaluation requests by the parent.**

Pursuant to 34 CFR §300.303(a), a public agency must ensure that a reevaluation of each child with a disability is conducted if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or if the child's parent or teacher requests a reevaluation. A reevaluation may occur not more than once a year, unless the parent and the public agency agree otherwise; and must occur at least once every 3 years, unless the parent and the public

agency agree that a reevaluation is unnecessary. (34 CFR §300.303(b)) The complainant alleges that [redacted] PCS failed to treat the [redacted] request for assistive technology as a reevaluation request.

Findings of Fact and Discussion

The complaint alleges that the parent requested assistive technology on [redacted]. [redacted] PCS denies that the parent requested assistive technology on or around that date. OSSE found no evidence of the request and therefore there was no reason for [redacted] PCS to conduct a reevaluation at that time.

OSSE found that [redacted] PCS was responsive to later requests from the parent for evaluations throughout the [redacted] school year. On [redacted], [redacted] PCS issued prior written notice of its plan to conduct an FBA, which was completed on [redacted]. The complainant disagreed with the [redacted] FBA and requested an independent educational evaluation. Although [redacted] PCS believes the [redacted] FBA was appropriate, it authorized the parent to obtain an independent educational evaluation. At the [redacted] IEP team meeting, the parent requested an assistive technology evaluation and [redacted] PCS agreed. On [redacted] [redacted] PCS agreed to complete an occupational therapy evaluation in response to the parent's request. [redacted] PCS appropriately responded to all evaluation requests by the parent.

Therefore, [redacted] PCS has complied with 34 CFR §300.303(a).

ISSUE THREE: PARENT PARTICIPATION

[redacted] PCS has complied with 34 CFR §300.322, because it took steps to ensure the parent's participation at the [redacted] IEP team meeting.

Pursuant to 34 CFR §300.322(a), each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. The complainant alleges that [redacted] PCS did not provide adequate notice for the [redacted] IEP team meeting and forced the parent to decide about a change in placement to a more restrictive setting with only one day's notice.

Findings of Fact and Discussion

When [redacted] PCS invited the parent to the [redacted] meeting via phone call on [redacted], it informed the parent that the IEP team would be discussing the student's educational placement and the potential need for a more restrictive setting. [redacted] PCS let the parent know that there was space at another campus that could provide a more restrictive setting and the parent scheduled a visit for the morning of [redacted] prior to the IEP team meeting. At the IEP team meeting, the parent participated in the discussion, had an opportunity to provide

input and ask questions, and ultimately agreed with the rest of the IEP team that the student needed a more restrictive placement. Following the meeting [redacted] PCS amended the student's IEP to reflect the IEP team decision.

Therefore, [redacted] PCS has complied with 34 CFR §300.322(a).

ISSUE FOUR: PROCEDURAL SAFEGUARDS

[redacted] **PCS has complied with 34 CFR §300.504, because it provided a copy of the procedural safeguards to the parent as required.**

Pursuant to 34 CFR §300.504, a copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents upon initial referral or parent request for evaluation, upon receipt by the LEA of the first State complaint or due process complaint in the school year, in accordance with the discipline procedures, and upon request by a parent. The complainant alleges that [redacted] PCS failed to comply with procedural safeguards requirements.

Findings of Fact and Discussion

[redacted] PCS provided the parent with a copy of the procedural safeguards at all IEP team meetings, including the first IEP team meeting of the [redacted] school year on [redacted]. There is a signed acknowledgment of receipt of the procedural safeguards in Special Programs on [redacted]. All written notices issued by [redacted] PCS also contained a link to the procedural safeguards. OSSE finds that [redacted] PCS provided a copy of the procedural safeguards to the parent as required. The complainant alleges that [redacted] PCS failed to ensure implementation of the procedural safeguards with respect to IEP team meeting participants. That allegation is addressed under Issue Five below.

Therefore, [redacted] PCS has complied with 34 CFR §300.504.

ISSUE FIVE: IEP TEAM MEETING PARTICIPANTS

[redacted] **PCS has complied with 34 CFR §300.321(a) and (e), because it ensured that all required IEP team members participated at the [redacted] and [redacted] meetings.**

Pursuant to 34 CFR §300.321(a), the public agency must ensure that the IEP team for each child with a disability includes the parents of the child; not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); not less than one special education teacher of the child; 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; an individual who can interpret the instructional implications of evaluation results; 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

whenever appropriate, the child with a disability. A member of the IEP team is not required to attend an IEP team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. (34 CFR §300.321(e)(1)) 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 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 complainant alleges that the general education teacher did not participate in the IEP team meeting.

Findings of Fact and Discussion

The complainant alleges that the student's general education teacher, [redacted], did not participate in the [redacted] IEP team meeting, did not provide written input, and the parent did not agree to the teacher's absence from the meeting. The parent also alleges that [redacted] PCS invited a contractor to the meeting and did not provide notice of the contractor's participation to the parent. [redacted] PCS admits that the general education teacher was not present at the [redacted] IEP team meeting, but was present and participated at the [redacted] continuation of the IEP team meeting. All other required IEP team participants attended the meetings. The final participant list included the parent and two additional adult relatives of the student, special education teacher, general educational teacher, LEA representative, speech-language pathologist, occupational therapist, mental health practitioner, behavior analyst, [redacted] PCS directors, home ABA behavior analyst, managing director of compliance, and vice principal. OSSE finds that between the two meeting dates, all required IEP team members participated. The [redacted] letter of invitation included the roles of team members that would be at the meeting, but did not list specific names or indicate that anyone other than required team members would be present. The parent did not provide additional information on the alleged contractor who should not have been at the meeting and OSSE did not identify any team members that were unconnected to the student's IEP services that should not have been at the meeting.

Therefore, [redacted] PCS has complied with 34 CFR §300.321(a) and (e).

ISSUE SIX: EDUCATIONAL RECORDS

[redacted] **PCS has complied with 34 CFR §§300.501(a) and 300.613, because it provided all educational records requested by the parent.**

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. Each 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. (34 CFR §300.613) The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, and in no case more than 45 days after the request has been made. (34 CFR §300.613) The complainant alleges that [redacted] PCS failed to provide educational records within 45 days of the [redacted]; [redacted]; and [redacted] requests.

Findings of Fact and Discussion

The complainant alleges that failure to provide the requested educational records prevented the parent from meaningfully collaborating and contributing to the development of the IEP and placement decision. [redacted] PCS asserts that it has provided the parent with all requested educational records.

[redacted] Request

On [redacted] the parent requested access to all data related to the student's progress. On. [redacted] PCS provided the data sheets for the student's IEP goals. OSSE found no evidence that [redacted] PCS withheld any existing educational records related to the parent's request and provided the requested records within 45 days of the request.

[redacted] Request

On [redacted] the parent requested the raw data sheets for the student's current IEP goals. On. [redacted] PCS provided the data sheets for the student's IEP goals. OSSE found no evidence that [redacted] PCS withheld any existing educational records related to the parent's request and provided the requested records within 45 days of the request.

[redacted] Request

OSSE found no evidence of a records request on this date.

[redacted] Request

OSSE found no evidence of a records request on this date.

[redacted] Request

On [redacted] the parent requested student data and [redacted] PCS provided the requested information on the same day. OSSE found no evidence that [redacted] PCS withheld any existing educational records related to the parent's request and provided the requested records within 45 days of the request.

Therefore, [redacted] PCS has complied with 34 CFR §300.501(a).

ISSUE SEVEN: IEP REVISION

[redacted] **PCS has complied with 34 CFR §300.324(b), because it monitored the student's progress and relied on student data to update and amend the student's IEP throughout the**

[redacted] **school year.**
Pursuant to 34 CFR §300.324(b), each public agency must ensure that the IEP team revises the IEP, as appropriate, to address information about the child provided to, or by, the parents, or the child's anticipated needs. The complainant alleges that following the [redacted] IEP team meeting, [redacted] PCS failed to incorporate requested changes into the IEP and did not base the change to the student's educational placement on data.

Findings of Fact and Discussion

[redacted] IEP Team Meeting
The complaint alleges that at a [redacted] IEP team meeting, the parent requested that the student be provided with assistive technology for communication because the student does not speak. [redacted] PCS asserts that the parent made no such request. The IEP team did amend the IEP to increase specialized instruction to 17.5 hours per week outside the general education setting and add the support of a dedicated aide for 8 hours per day. OSSE found no evidence of the parent's request to add assistive technology or increase other services at this meeting.

[redacted] IEP Team Meeting
The complainant alleges that on [redacted], [redacted] PCS proposed changing the student's educational placement but did not base this decision on student data. [redacted] PCS reported that the recommendation to move the student to a more restrictive setting was based on IEP goal progress data, which showed that the student was unable to make progress in the second quarter. The progress report for [redacted] – [redacted] showed the student made no progress on 12 IEP goals and was progressing on 4 goals. The meeting notes show that the IEP team also reviewed standardized test scores, attendance report, current grades, and teachers' comments. After initially agreeing with the changes to the IEP and the student's educational placement, the parent later rescinded agreement and submitted a stay put request, so [redacted] PCS held off on moving the student to the more restrictive setting and implementing the amended IEP. OSSE finds that the IEP team relied on student data and all team members' input to update the IEP.

[redacted] IEP Team Meeting
The [redacted] letter of invitation shows that the IEP team would discuss an annual review of the IEP and a location of services. The complainant alleges that [redacted] PCS pre-determined that the student's placement should be changed to a self-contained classroom due to lack of progress ahead of the [redacted] IEP team meeting. The parent disagreed with the proposal and alleged that [redacted] PCS failed to provide the services required by the student's IEP and that with adequate support the student could progress in the general education setting. Changing the student's placement to a more restrictive setting was not a new proposal. The IEP team first discussed moving the student to a self-contained classroom at the [redacted] meeting. The IEP team, except for the parent, continued to believe this was the right decision

for the student, but held off on implementing it due to the parent's objections. [redacted] PCS continued to meet with the parent through the end of the [redacted] school year and gave much deference to the parent's concerns and requests for additional evaluations. Members of the IEP team are allowed to have different opinions; it is not an indication of a pre-determined decision. The record shows that IEP team members relied on student data showing minimal progress in the general education setting, and as discussed below under Issue Eight, [redacted] PCS missed only minimal related services required by the student's IEP. OSSE finds that the IEP team relied on student data and all team members' input to update the IEP.

OSSE finds that [redacted] PCS monitored the student's progress and relied on student data to update and amend the student's IEP throughout the [redacted] school year. Therefore, [redacted] PCS has complied with 34 CFR §300.324(b).

ISSUE EIGHT: IEP SERVICES

[redacted] **PCS has complied with 34 CFR §300.323(c)(2), because it provided the 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 the student was not provided an opportunity to meaningfully participate in appropriate school-based preschool activities through access to other means of alternative communication and provision of the related services required by the IEP.

Findings of Fact and Discussion

The student's [redacted] IEP from the previous LEA prescribed 25.5 hours per week of specialized instruction outside the general education setting, 120minutes per month of speech-language services, and 120 minutes per month of occupational therapy. [redacted] PCS updated the student's IEP on [redacted] IEP and it prescribed 5 hours per week of specialized instruction outside the general education setting, 20 hours per week of specialized instruction inside the general education setting, 2 hours per month of occupational therapy services outside the general education setting, 3.5 hours per month of speech-language services outside the general education setting, and 2 hours per month of behavior support services both inside and outside the general education setting. [redacted] PCS paused implementation of the [redacted] amended IEP and continued to implement the [redacted] IEP until it updated the student's IEP on [redacted].

Communication Assistance

The student enrolled in [redacted] PCS at the start of the [redacted] school year. Throughout the [redacted] school year, the speech-language pathologist worked with the student on verbal communication to promote all modalities of communication. The student's [redacted] IEP did not include use of assistive technology. The IEP contained two communication goals to

improve receptive language skills: follow one-step directions and independently identify vocabulary by pointing to a picture in response to an adult's prompt, and two communication goals to improve expressive language skills: independently request objects, actions, or activities and independently label vocabulary using visual supports, word approximations, and/or words. The [redacted] and [redacted] amended IEPs did not include use of assistive technology and the communication goals did not change.

In [redacted] the speech-language pathologist began a trial use of an assistive technology device as an intervention to see whether it helped the student's expressive language. Following the assistive technology trial, at the [redacted] IEP team meeting, the speech-language pathologist recommended adding assistive technology to the student's IEP. The parent requested an assistive technology evaluation and [redacted] PCS agreed. [redacted] PCS provided a dedicated iPad with the recommended application for the student. The speech-language pathologist trained the student's school-based team on how to use the assistive technology on [redacted] and trained the parent on [redacted]. OSSE finds that [redacted] PCS provided the communication support required by the student's IEP and added support as needed throughout the [redacted] school year.

Related Services

The complainant alleges that [redacted] PCS failed to provide the speech therapy, behavior support services, and occupational therapy required by the student's IEP. [redacted] PCS admitted that some related services were not provided and agreed to create a make-up plan at the conclusion of the [redacted] school year after all missed services could be tallied. [redacted] PCS found that the student was owed 220 minutes of behavior support services and 125 minutes of speech-language services and on [redacted], issued an authorization for the parent to obtain those services independently.

OSSE reviewed the related service tracker for the [redacted] school year and calculated how many minutes were owed, how many minutes were provided, how many minutes were missed. OSSE calculated how many minutes were owed by what the in-effect IEP required minus any week-long breaks for school, such as winter break and spring break. Services attempted but missed due to the student's unavailability or school closure (when no students were receiving services) are not required to be made up. Surplus minutes provided during a month were subtracted from the total minutes that were missed. OSSE found that during the [redacted] school year, [redacted] PCS provided more than the amount of occupational therapy services required, missed 30 minutes of speech-language services, and 153 minutes of behavior support services. The amount of independent make-up services calculated by [redacted] PCS makes up for all missed services during the school year and no further remedy is needed.

Therefore, [redacted] PCS has complied with 34 CFR §300.323(c)(2).

CONCLUSIONS

1. [redacted] PCS has complied with 34 CFR §300.503 and 5-A DCMR §3032, because it issued written notice regarding all changes and decisions about the IEP.
2. [redacted] PCS has complied with 34 CFR §300.303, because it appropriately responded to all evaluation requests by the parent.
3. [redacted] PCS has complied with 34 CFR §300.322, because it took steps to ensure the parent's participation at the [redacted] IEP team meeting.
4. [redacted] PCS has complied with 34 CFR §300.504, because it provided a copy of the procedural safeguards to the parent as required.
5. [redacted] PCS has complied with 34 CFR §300.321(a) and (e), because it ensured that all required IEP team members participated at the [redacted] and [redacted] meetings.
6. [redacted] PCS has complied with 34 CFR §§300.501(a) and 300.613, because it provided all education records requested by the parent.
7. [redacted] PCS has complied with 34 CFR §300.324(b), because it monitored the student's progress and relied on student data to update and amend the student's IEP throughout the [redacted] school year.
8. [redacted] PCS has complied with 34 CFR §300.323(c)(2), because it provided the services required by the student's IEP.

If you have any questions regarding this decision, please contact me at Victoria.Glick@dc.gov or 202-724–7860.

Sincerely,

Victoria Glick
Director of Special Education
Office of Special Education