



*VIA Electronic Mail*

Public Charter School

## LETTER OF DECISION

On [REDACTED], the State Complaint Office (SCO) of the Office of the State Superintendent of Education (OSSE), Division of Strategic Funding for School Quality received a State complaint from [REDACTED] (parent or complainant) against the OSSE Division of Student Transportation (DOT) and [REDACTED] Public Charter School ([REDACTED] PCS) alleging violations in the special education program of [REDACTED], [REDACTED] (Student ID # [REDACTED]), hereinafter “student” or “child.” [REDACTED]

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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 transportation services in accordance with the child's individualized education program (IEP).

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE SCO determined that while OSSE DOT complied with its responsibilities related to the provision of transportation services, [REDACTED] PCS failed to comply with its responsibilities as it did not hold an IEP team meeting following the pause in transportation. This Letter of Decision is the report of the final results of OSSE SCO'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)(2)**
  - a. Failure to make available special education and related services in accordance with the student's IEP, specifically with regard to transportation services.
- 2. Requirement to revise the IEP 34 CFR §34 CFR §300.324(b)(1)(ii)**
  - a. Failure to revise the IEP, as appropriate, to address the child's anticipated needs.

### **INVESTIGATIVE PROCEDURE**

The investigation included interviews with the following individuals:

1. Complainant
2. OSSE DOT [REDACTED]
3. [REDACTED] PCS [REDACTED]

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

[REDACTED]

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[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: IEP SERVICES AND IEP REVISION**

**OSSE DOT has complied with 34 CFR §300.323(c)(2) because it reasonably made efforts to ensure it could safely provide transportation services to child in accordance with the child's IEP.**

**[REDACTED] PCS has not complied with 34 CFR §300.324(b)(1)(ii) because it did not appropriately hold an IEP meeting to determine the needed accommodations to allow the child to safely receive transportation services in accordance with the child'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. Each public agency must ensure that the IEP team revises the IEP, as appropriate, to address the child's anticipated needs. (34 CFR §300.324(b)(1)(ii)) In the District of Columbia, OSSE, as the state education agency (SEA), and a student's LEA share responsibilities related to the transportation of students with disabilities. A student's LEA determines a student's eligibility for transportation services as well as accommodations to ensure a student can be transported safely. OSSE DOT provides the transportation services. The complainant alleges that OSSE DOT has not provided the student with transportation services in accordance with the child's IEP since [REDACTED].

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

The student's [REDACTED] IEP prescribes that the student receive transportation to and from school as a related service. The child began to experience issues with the receipt of transportation in [REDACTED]. In [REDACTED], a new behavior for the child emerged. Specifically, the child would have a stiff posture so that the child would remain in a standing position on the bus. Additionally, in the limited times the child would sit, the child would not remain so for the duration of the ride.

Due to the behavioral change, OSSE DOT [REDACTED] observed the child during morning pick-up on [REDACTED]. The OSSE DOT [REDACTED] determined that the student's presenting behavioral concern posed a serious safety risk to the child. Specifically, OSSE DOT staff they assert that if the bus had to brake suddenly, the child could experience a spinal injury due to not being properly seated and secured. The specialists determined, based on the observation, that a safety vest, bucket guard, and booster seat would not allow for the

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child to be properly seated given the presenting behavior. As a result, OSSE DOT determined that due to the student's safety being at risk, transportation services had to be paused until the child's IEP team convened a meeting to discuss accommodations that would ensure the child's safety. OSSE DOT appropriately followed the OSSE Special Education Transportation Policy when making this determination. The Policy states, "OSSE DOT retains the right to assess a student's condition to determine whether the student can be transported safely. OSSE DOT reserves the right to refuse to transport a student on the basis of health and/or safety concerns. In such cases, OSSE DOT shall provide same day written notification to the parent and LEA with information regarding the basis of its refusal to transport."<sup>1</sup> The OSSE DOT [REDACTED] [REDACTED] contacted both the parent and [REDACTED] PCS to notify them of the safety concern and to pause transportation services starting on [REDACTED]. Of note, OSSE DOT did not provide [REDACTED] PCS and the parent with the standard form used when transportation is paused as this particular situation is atypical. OSSE DOT notified OSSE SCO that its internal procedures will be revised to ensure a new form is developed that can be used when situations such as this one arise. Regardless, OSSE DOT did contact both the complainant and [REDACTED] PCS immediately upon determining transportation needed to be paused for the student's safety.

During the transportation service pause, [REDACTED] PCS and OSSE DOT convened a safety meeting to discuss the concerns and brainstorm possible solutions. Importantly, a safety meeting is not an IEP meeting as not all mandatory IEP team members are in attendance. The complainant, however, reported that an IEP meeting was never convened to discuss the student's accommodations and OSSE found no evidence that an IEP meeting took place. Therefore, [REDACTED] PCS did not comply with its responsibility to ensure the student's IEP met the child's needs nor the requirement of the IDEA to convene the child's IEP Team to address the safety concerns during transport of the child.<sup>2</sup> OSSE's Special Education Transportation Policy also provides that an LEA should convene an IEP meeting when transportation is paused due to health and/or safety concerns. As such, this may be a contributing factor to the lengthy pause in the provision of transportation services.

While an IEP meeting was not held, [REDACTED] PCS engaged in informal conversations regarding accommodations that could address the safety issue. [REDACTED] PCS and OSSE DOT agreed to assess whether a weighted support device would assist the child in being seated. Therefore, OSSE DOT reactivated the student's transportation services on [REDACTED] for the following day. On [REDACTED], OSSE DOT and a [REDACTED] PCS staff member visited the student's residence during pick-up to assess the effectiveness of the weighted support device. It was

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<sup>1</sup> OSSE Special Education Transportation Policy (November 2013)

<sup>2</sup> 34 CFR §300.324(b)(1)(ii)

determined by both public agencies that the device did not adequately address the safety issue. Therefore, OSSE DOT paused transportation services again while alternative accommodations were discussed. Of note, in the initial complaint, the complainant expressed their understanding that a harness would be ordered to support the child in sitting. An accommodation for a harness, however, was never added to the child's IEP, and OSSE DOT did not order a harness as the accommodation would not be effective given the specific issue. Ultimately, on [REDACTED], [REDACTED] PCS amended the student's IEP to add a wheelchair and ramp/lift accommodation during transportation. The [REDACTED] amendment resulted from a written agreement by the parent to not convene an IEP meeting in accordance with 34 CFR §300.324(a)(4). [REDACTED] PCS provided the student with the wheelchair and OSSE DOT provided a bus with a ramp/lift. OSSE DOT reports that transportation resumed on [REDACTED], and the IEP amendment addressed their safety concerns.

It is undisputed that the transportation service for the student was paused for an extensive period of time. The OSSE DOT [REDACTED] reported that transportation is not usually paused for such a substantial amount of time. Specifically, transportation is typically only paused for a few days until an IEP team addresses the concern. In this case, OSSE DOT acknowledged that this case posed a great challenge in determining the appropriate accommodations to meet the student's unique needs. Ultimately, when OSSE DOT pauses transportation, it provides the parent-provided transportation reimbursement form to the LEA, which works with the parent to complete and submit the form in order to receive monetary reimbursement for the days in which the parent transported the child to school. OSSE DOT has this procedure in place to ensure a continuance of free appropriate public education (FAPE) during periods of paused transportation. OSSE DOT correctly provided the form to [REDACTED] PCS, and the complainant submitted the reimbursement form for some of the dates in which OSSE DOT was unable to provide transportation due to the safety issue. The OSSE DOT [REDACTED] reports that the parent's reimbursement form was approved. Therefore, OSSE DOT correctly followed its policies and procedures.

While [REDACTED] PCS failed to convene an IEP meeting at the start of the transportation service pause, it actively took steps to support the student in other ways as an LEA is responsible for ensuring the implementation of a student's IEP. Specifically, during the pause, [REDACTED] PCS transported the child to and from school using a school van. The [REDACTED] PCS [REDACTED] stated that while it is not necessarily standard procedure to provide transportation themselves when safety concerns arise, they had the resources available to support transporting this student. As such, [REDACTED] PCS asserts they transported the child to and from school during each week of the pause except for on Wednesdays. The [REDACTED] PCS [REDACTED] reported that they did not transport the child on Wednesdays

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due to the school's half day schedule. Additionally, they assert that while they did not transport the child on these days, the parent was aware of the transportation reimbursement procedure. However, the parent told [REDACTED] PCS that they could not personally transport their child to school on those days. Due to this, the student was absent from school on Wednesdays during the pause, which [REDACTED] PCS did excuse.

Based on review of the student's attendance record, OSSE SCO determined that the student missed two full days and five half days of instruction. The student's [REDACTED] IEP prescribes the student receive 28.50 hours of specialized instruction outside the general education environment per week. [REDACTED] PCS reported that the student receives four hours of specialized instruction on Wednesdays. Based on this information and the student's IEP, OSSE SCO determined the student receives approximately six hours of specialized instruction on full days of school. Therefore, OSSE SCO finds the student missed 32 hours of specialized instruction due to the transportation pause. The student's IEP prescribes four hours per month of speech-language therapy and 30 minutes per week of occupational therapy. OSSE SCO reviewed the student's service log and found that while the student did receive the correct amount of speech-language therapy, the student's occupational therapy was, with the exception of one week, only held on Wednesdays. Therefore, [REDACTED] PCS did not schedule the student's occupational therapy for the days in which they knew the student would be in attendance at school. OSSE SCO finds that the student missed two hours of occupational therapy during the transportation pause.

Importantly, while OSSE DOT reports that the [REDACTED] IEP amendment addressed the safety concerns, [REDACTED] PCS reports ongoing concerns. Specifically, the [REDACTED] PCS [REDACTED] asserts that while the wheelchair has helped the student get onto the bus and begin the bus ride seated, the student still has difficulty with remaining seated which poses a safety concern. Further, [REDACTED] PCS indicated that when it transported the child using the school van, the student did not stand up during transport. On the school van, the child received one-to-one support by a staff member who had positive rapport with the child. [REDACTED] PCS attributes the difference in the student's behavior to this supportive relationship. The student's IEP presently does not include an aide during transportation but does include an accommodation for the bus attendant to help the child with getting on the bus through hand-to-hand contact. OSSE DOT transportation includes a bus attendant on every DOT-provided bus. While the attendant assigned to the student's route has known the child for years, the attendant does not provide one-to-one support to the child during the bus ride because it is not required by the student's IEP.

As such, OSSE SCO asked [REDACTED] PCS whether an IEP team meeting has been held to discuss their ongoing concerns regarding the student's needs, specifically if any discussion has taken place regarding if the child needs a one-to-one aide on the bus. [REDACTED] PCS has not convened an IEP meeting nor engaged in informal discussions regarding this accommodation. The LEA has the responsibility to ensure that a child's IEP meets their anticipated needs as well as the responsibility to ensure the implementation of the IEP. As such, [REDACTED] PCS failed to convene an IEP meeting to ensure the student's IEP appropriately addresses the student's needs and failed to ensure that the child's IEP was adequately implemented during the pause in transportation services.

Therefore, OSSE DOT complied with 34 CFR §300.323(c)(2), but [REDACTED] PCS did not comply with 34 CFR §300.324(b)(1)(ii).

### **CONCLUSIONS**

1. OSSE DOT has complied with 34 CFR §300.323(c)(2) because it made efforts to ensure it could safely provide transportation services to the child in accordance with the child's IEP.
2. [REDACTED] PCS has not complied with 34 CFR §300.324(b)(1)(ii) because it did not appropriately hold an IEP Team meeting to determine the needed accommodations to allow the child to receive transportation services in accordance with the child's IEP.

### **CORRECTIVE ACTION**

1. In order to correct the noncompliance with 34 CFR §300.324(b)(1)(ii), [REDACTED] PCS must do the following:
  - a. Convene an IEP team meeting for the student to discuss if any additional accommodations are appropriate for the student to ensure that the child's needs are met during transportation to and from school. Documentation of the completion of this action is due to OSSE SCO within 15 business days of the date of the letter of decision.
  - b. Develop a make-up services plan for the 32 hours of specialized instruction and 2 hours of occupational therapy that the student did not receive.
    - i. The make-up services plan is due to OSSE SCO within 30 days of the date of the letter of decision.
    - ii. Documentation that all make-up service hours have been completed is due to OSSE SCO within 10 days of the completion date.

- c. Train relevant staff members on LEA responsibilities in regard to transportation services and procedural requirements when OSSE DOT provided transportation services are paused due to a safety concern. Documentation of the completion of this action is due to OSSE SCO within 30 days of the date of the 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.

Sincerely,

*Kirstin Hansen*

Kirstin Hansen  
State Complaints Manager  
Office of Special Education

cc: [REDACTED] Complainant