



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

October 1, 2019

VIA U.S. Mail & Electronic Mail

Amy Maisterra
Deputy Chancellor
District of Columbia Public Schools
1200 First Street NE, Ninth Floor
Washington, DC 20002

RE: State Complaint No. 019-002 Letter of Decision

LETTER OF DECISION

PROCEDURAL BACKGROUND

On August 2, 2019, 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 Maria Blaeuer (complainant) against the District of Columbia Public Schools (DCPS) alleging violations in the special education program of students receiving services in the self-contained classrooms at the Takoma Education Campus¹ (EC), Malcolm X Elementary School (ES), Langley ES, Whittier EC, Hearst ES, and River Terrace EC.

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 specialized instruction by a certified special education teacher.

The SCO for OSSE has completed its investigation of the State complaint. During the course of the investigation OSSE determined that DCPS has not complied with its obligation to ensure that special education teachers are qualified and to provide the specialized instruction required by 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 Specifically, the Communication and Education Support (CES) classroom.

1. **Personnel requirements at 34 CFR §300.156**
 - a. Failure to ensure that special education teachers and related service personnel meet the qualifications established by the SEA to ensure that personnel have the content knowledge and skills to serve students with disabilities.
2. **Requirement to provide services at 34 CFR §300.323(c)(2)**
 - a. Failure to make available special education in accordance with the child's IEP, specifically with regard to specialized instruction for students whose self-contained classrooms were not consistently staffed by qualified teachers.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. Parent 1
3. Parent 2
4. DCPS Principal 1
5. DCPS Principal 2
6. DCPS Principal 3
7. DCPS Principal 4
8. DCPS Principal 5
9. DCPS Principal 6

The investigation also included review of the following documents which were either submitted by the complainant, submitted by DCPS, or accessible via the Special Education Data System (SEDS):

1. August 16, 2018 Takoma ES – parents email communication
2. August 20 – December 14, 2018 Hearst ES – parents email communication
3. March 2019 DCPS Guidelines for the Provision of Specialized Instruction
4. May 9, 2019 Malcolm X ES special education weekly meeting agenda

GENERAL FINDINGS OF FACT

1. The students included in this complaint are children with disabilities as defined by 34 CFR §300.8.
2. The students' local educational agency (LEA) is DCPS.

ISSUE ONE: TEACHER QUALIFICATIONS

Findings of Fact

1. DCPS provided the current licensure status of all employees who worked in one of the self-contained classrooms under investigation.
 - a. Three (3) of the twenty-seven (27) employees currently hold a teacher license.
2. DCPS provided the highest level of education and special education experience of all

employees who worked in the self-contained classrooms under investigation.

- a. Additional employees may be eligible for a teaching license based on meeting the underlying qualifications.

Discussion/Conclusion

DCPS has not complied with 34 CFR §300.156 and 5-A DCMR §1601.1, because it failed to ensure that all employees who worked in the self-contained classrooms under investigation hold a current teaching credential.

Pursuant to 34 CFR §300.156(a), the SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of the IDEA are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. The qualifications must include qualifications for related services personnel and paraprofessionals that are consistent with any State approved certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services. (34 CFR §300.156(b)) OSSE has established requirements for individuals to receive teacher and school service provider credentials, including requirements related to education, training, and passing competency exams.² All DCPS teachers shall hold a teaching credential. (5-A DCMR §1601.1) The complainant alleges that DCPS failed to ensure that when permanent teachers were on extended leaves of absence, there were qualified special education substitute teachers in the self-contained classrooms.

DCPS provided the current licensure status of all employees who worked in the self-contained classrooms under investigation. Three (3) of the twenty-seven (27) employees required by law to hold a teacher license currently hold a teacher license. DCPS provided the highest level of education and special education experience of all employees who worked in the self-contained classrooms under investigation, indicating that additional employees may be eligible for a teaching license based on meeting the underlying qualifications. However, based on the current licensure status, the vast majority of teachers employed by DCPS in the self-contained classrooms under investigation do not hold the teaching credential required by law. DCPS must ensure that qualified and licensed teachers are available to provide specialized instruction to students with disabilities.

Therefore, DCPS has not complied with 34 CFR §300.156(a) and 5-A DCMR §1601.1.

ISSUE TWO: SPECIALIZED INSTRUCTION

Findings of Fact

1. At Hearst ES the regular special education teacher was on extended leave of absence from August 23, 2018 – November 12, 2018.
 - a. A paraprofessional consulted with special education teachers on staff until the long-term qualified special education substitute teacher started on November 13, 2018.

² See requirements on OSSE's website at <https://osse.dc.gov/ed-credentials>

2. At Langley ES the regular special education teacher was on extended leave of absence from October 29, 2018 – January 2, 2019.
 - a. Substitute teachers used differentiated materials designed by a special education teacher until a qualified special education substitute teacher started after winter break. The special education teacher provided pull-out services for two of the four students and one of the students was offered make-up services.
3. At Malcom X ES the regular special education teacher was on extended leave of absence from February 25, 2019 – June 3, 2019.
 - a. Substitute teachers were supported by a special education teacher and the special education coordinator. A special education teacher and a special education coordinator provided push-in services for 2.5 hours per day, but admitted that they were not able to implement students' IEPs.
4. At River Terrace EC the regular special education teacher was on extended leave of absence from January 28, 2019 – February 26, 2019.
 - a. Two special education teachers rotated into the classroom to provide specialized instruction in 60 minute blocks three (3) times per week each for English/language-arts (ELA) and mathematics.
5. At Takoma EC the regular special education teacher was on extended leave of absence from Aug 19, 2018 – February 25, 2019.
 - a. The paraprofessional and substitute teacher consulted with a special education teacher until a qualified special education substitute teacher began on January 28, 2019.
6. At Whittier EC the regular special education teacher was on extended leave of absence from January 2, 2019 – June 14, 2019.
 - a. A qualified special education substitute teacher began immediately after the regular teacher's departure.

Discussion/Conclusion

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

Pursuant to 34 CFR §300.323(c)(2), the 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 when permanent teachers were on extended leaves of absence from self-contained classrooms, the students did not receive specialized instruction from a qualified special education teacher.

In its response DCPS reported that it used various methods to ensure delivery of specialized instruction in self-contained classrooms while the regular teacher was on an extended leave of absence: paraprofessionals and substitute teachers were provided direct supervision (including co-planning and co-teaching) by a certified teacher or school administrator, classroom combination when capacity would not be exceeded, and classes were led by certified teachers and administrators. In addition DCPS Central Office assisted the classrooms through onsite support from a Communication and Education Support (CES) or Behavior and Education

Support (BES) specialist on implementation of IEP goals, behavior supports, classroom curriculum, and assessments.

Through its investigation, OSSE found that the following methods were used to provide specialized instruction in each classroom:

DCPS School	Dates of Special Education Teacher's Extended Leave of Absence	Non-Qualified³ Substitute Employee	Special Education Qualified⁴ Substitute Employee
Hearst ES	August 23, 2018 – November 12, 2018	Paraprofessional consulted with special education teachers	Long-term substitute teacher began November 13, 2018
Langley ES	October 29, 2018 – January 2, 2019	Substitute teachers used differentiated materials designed by special education teacher	Pull-out services provided by special education teacher for some students
Malcom X ES	February 25, 2019 – June 3, 2019	Substitute teachers supported by special education teacher and special education coordinator	special education teacher and special education coordinator provided push-in services for 2.5 hours per day
River Terrace EC	January 28, 2019 – February 26, 2019	Substitute teacher in classroom	Special education teachers provided instruction for 6 hours per week
Takoma EC	Aug 19, 2018 – February 25, 2019	Paraprofessional and substitute teacher consulted with special education teacher	Substitute teacher began January 28, 2019
Whittier EC	January 2, 2019 – June 14, 2019	None	Substitute teacher began immediately

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

³ "Non-qualified," means employees that do not meet the underlying requirements to obtain a special education teacher license.

⁴ "Qualified," means employees that meet the underlying requirements to obtain a special education teacher license, although they may not hold a current teacher license.

and the general education teachers to provide differentiated instruction and classroom accommodations, all of the students in these self-contained classrooms have IEPs that prescribe full-time specialized instruction outside of the general education setting. DCPS took steps to provide some specialized instruction during their regular teachers' extended absence; however, in five (5) out of six (6) instances it is clear that the specialized instruction hours fell short of the full-time hours required by the students' IEPs. In two (2) instances, there was no qualified teacher in the classroom for various periods of time and DCPS relied on a paraprofessional to provide instruction, which is unacceptable as paraprofessionals do not have the same underlying qualifications as teachers. OSSE finds that DCPS failed to provide the specialized instruction hours required by the students' IEPs in the self-contained classrooms for Hearst ES, Langley ES, Malcom X ES, River Terrace EC, and Takoma EC.

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

CONCLUSIONS

1. DCPS has not complied with 34 CFR §300.156 and 5-A DCMR §1601.1, because it failed to ensure that all employees who worked in the self-contained classrooms under investigation hold a current teaching credential.
2. DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide all of the specialized instruction hours required by the students' IEPs.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.156 and 5-A DCMR §1601.1, DCPS must do the following:
 - a. Develop a corrective action plan (CAP) to ensure that system-wide it is employing licensed teachers in its schools and tracking the current licensure status of its employees.
 - b. The CAP must address how DCPS plans to ensure that licensed teachers are available to provide specialized instruction to students with disabilities.⁵
 - c. DCPS must submit the CAP to OSSE for approval within 60 days of the date of this letter.
2. 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 of the students in the self-contained classrooms at Hearst ES, Langley ES, Malcom X ES, River Terrace EC, and Takoma EC to create a compensatory education plan for its failure to provide all of the specialized instruction hours required by each of the student's IEP.
 - b. DCPS must submit copies of the compensatory education plans to OSSE, including the justification relied on by the IEP Teams in determining the compensatory education hours. Documentation of the completion of this item is due to OSSE within 60 days of the date of this letter.

⁵ See OSSE Educator Credentialing Exams information available at: <https://osse.dc.gov/node/1189301>.

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 Victoria.Glick@dc.gov or 202-724-7860.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Victoria Glick', with a stylized flourish at the end.

Victoria Glick

State Complaints Manager, Division of Systems and Supports, K-12

cc: Maria Blaeuer, Complainant
Conchita Hudson Hall, Deputy Chief of Compliance and Policy, DCPS
Kerri Larkin, Deputy Chief of Specialized Instruction, DCPS
Arthur Fields, Chief Integrity Officer, DCPS