

Office of the State Superintendent of Education  
Department of Special Education  
State Complaint Office  
1050 First Street, NE  
Washington, DC 20002

osse.IDEASStateComplaints@dc.gov

## STATE COMPLAINT

### Required Information

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Name of Complainant	Advocates for Justice & Education, Inc.
Address	1200 G. St. NW Suite 725 Washington DC 20005
Point of Contact	Maria Blaeuer
Phone	202-678-8060 ext. 213
Email	maria.blaeuer@aje-dc.org
Complaint is filed on behalf of	This complaint is filed on behalf of all DCPS students in self-contained classrooms whose classroom was not consistently staffed by qualified teachers.
Complaint is filed against	This complaint is filed against District of Columbia Public Schools (DCPS)

### Organizational Standing

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Advocates for Justice and Education, Inc. (AJE) is the District of Columbia's federally designated parent training and information center. Our mandate is to educate and empower families of students with disabilities, advocate for improvements to the systems serving students with disabilities and ensure that the rights of vulnerable students, including those with disabilities, are protected. AJE receives more than 800 calls per year from families in the District of Columbia seeking information, advice, and representation in educational matters concerning their children. As a result, we are in a unique position to identify trends in local education matters and we view it as our responsibility to amplify parent and student voices when we become aware of systemic violations of law.

AJE knows that a "[d]isability is a natural part of the human experience and in no way diminishes the right of individuals to participate in, or contribute to, society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals

with disabilities.” 20 U.S.C. §1400(c)(1). This guidance from the Individuals with Disabilities Education Improvement Act (IDEA) provides us with a lens through which we are filing this complaint. The essential nature of IDEA as a civil rights statute is clear, in that it strives to ensure equal and full access to a meaningful education for all students.

We are filing this systemic state complaint in our organizational capacity, because we are concerned that students with disabilities in self-contained classes in District of Columbia Public Schools (DCPS) are not receiving the free appropriate public education (FAPE) they are entitled to.

## **Alleged Violations**

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AJE is asking the Office of the State Superintendent of Education (OSSE) to investigate DCPS. Our work at AJE lead us to believe that DCPS has denied students a FAPE by failing to ensure that all self-contained classrooms are taught by qualified special educators at all times.

Under both federal and local law, students with disabilities have the right to a FAPE. 20 U.S.C. §1400. A FAPE means special education and related services available to the student at no charge to the parent or guardian, which meet the state educational standard and conform to the student’s IEP. 20 U.S.C. § 1401 (9). By failing to ensure that classrooms are staffed by qualified special educators at all times, DCPS has denied students FAPE.

### ***I.* DCPS fails to ensure that classrooms are staffed by qualified special educators when permanent teachers are on extended leave of absence.**

If permanent teachers are on extended leave of absence and an LEA fails to provide adequately trained substitute teachers, this practice is a failure on the part of the LEA and it is a denial of FAPE. Additionally it is inconsistent with DCPS’s plainly stated obligations under IDEA, specifically §§300.156(a) and 207 which require LEAs to:

- (a) establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. § 300.156(a). The LEA [also] must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156 (related to personnel qualifications) and section 2122 of the ESEA. §300.207.

Takoma Educational Campus (TEC) is a DCPS school that we believe has failed to replace trained and qualified permanent teachers with trained and qualified substitutes for extended periods of time. In August of 2018, the parents of children in Communication and Education Support (CES) K-2 classroom were informed by their children’s teacher that she would be on maternity leave for the first three months of the 2018-2019 school-year. This message also, informed parents that a paraprofessional (Ms. Loving) would assume the role of a long-term substitute while she (the teacher) was on leave maternity leave.<sup>1</sup> The full-time teacher never returned from maternity and

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<sup>1</sup> See, Exhibit 1

resigned in October. As a result, the paraprofessional led the class for the entire 2018 fall semester, except for a brief period where a substitute, Mr. Franco, was assigned to the classroom and then was abruptly removed from the classroom for reasons unknown to the parent community. A qualified and licensed teacher did not take over until some point after February 25 of 2019.<sup>2</sup> There is no evidence that Ms. Loving was acting under the direction of a qualified special education teacher when she was leading the classroom and no evidence that Mr. Franco was a qualified special educator.

The DCPS hiring website specifies that full-time teachers must possess at minimum the following to be hired: “possesses or is eligible for a valid District of Columbia Teaching License; meets Highly Qualified status as defined by the NCLB mandates; successful completion of Praxis I and II exams (unless holding a standard teaching license)”.<sup>3</sup> In contrast, paraprofessionals by DCPS standards must only have the following: “Associate’s Degree or 48 college credit hours or have successfully passed the ParaPro Assessment administered by ETS (with a high school diploma or equivalent); Experience working with students with disabilities strongly preferred.”<sup>4</sup> It is clear from the language on the DCPS website that a licensed special education teacher and a paraprofessional are not equivalent. This information found on the DCPS website supports our position that a failure to provide adequately trained special educators in situations where a full-time teacher is on leave for an extended period of time is an undisputable denial of FAPE.

## **II. DCPS denied students FAPE for the 2018-2019 school year.**

Under both federal and District laws, students with disabilities have the right to FAPE. A FAPE means that special education and all related services are made available to the student at no charge to the parent or guardian, and which meet the educational standards outlined by the District, while conforming with a student’s IEP. Under IDEA, DCPS is required to provide students with the basic foundation and opportunity that allows a student to access specialized instruction and related services that have been individual designed to provide the student with an educational benefit.

Again, students at TEC began their school year without a qualified teacher and had a paraprofessional assigned to be their long-term substitute. This failure— on the part of TEC and DCPS— to provide a properly qualified teacher to instruct students with disabilities prevented students from obtaining a meaningful benefit during the last school year. Based on our research and contacts with parents of students who attend TEC we believe that TEC failed to implement students IEPs and resulted in the students’ failure to progress as expected.

This failure can be attributable to lack of policies and procedures on the part of DCPS and poor oversight. We do not believe this is an isolated issue and more likely than not it is an issue that impacts the entire DCPS system. Thus, it is unlikely that students at TEC were the only students at a DCPS school denied a FAPE in this way during SY2018-2019. Based on information and research we believe the following to be true and therefore request that OSSE investigate the staffing of all of DCPS’ self-contained classrooms:

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<sup>2</sup> See, Exhibit 2

<sup>3</sup> Full-Time Teacher’s Position Description, D.C. Public Sch. Sys., <https://dcps.dc.gov/node/987062> (last visited Jun. 27, 2019).

<sup>4</sup> Educational Aides, D.C. Public Sch. Sys., <https://dcps.dc.gov/page/educational-aides> (last visited Jun. 27, 2019).

- Malcolm X Elementary School had a self-contained classroom that was not staffed with a qualified special educator for the entirety of SY2018-19.
- Langley Elementary School had a self-contained classroom for 3<sup>rd</sup> – 5<sup>th</sup> grade that was not staffed with a qualified special educator for a large portion of SY2018-19.
- Whittier Education Campus had a self-contained classroom that was not staffed with a qualified special educator for a large portion of the SY2018-19.

### **Sources upon which we base our belief**

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We base our belief on the following sources: interview with Chioma Oruh AJE Parent Support Specialist and TEC parent; interview with TEC parent; representations made by a Whittier EC parent at AJE; communication by AJE staff with members of the parent’s bar.

### **Proposed Resolution**

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This failure of policy is one that was preventable and resulted from a lack of planning and preparation on the part of individual schools and DCPS’ central office. Since this is an issue that likely impacts DCPS on a systemic level we ask that OSSE open an investigation into the policies and procedures related to extended absences of full-time special–education teachers. We also ask that OSSE specifically examine the staffing at the four schools mentioned, as well as any other DCPS school hosting self-contained classrooms. DCPS has seven different types of self-contained classes in addition to the Communication and Education Support (CES) previously mentioned, including: Early Learning Support (ELS), Independence and Learning Support (ILS), Medical and Education Support (MES), Sensory Support Programs (for students who are deaf/hard of hearing and/or blind/visually impaired) and Behavior and Education Support (BES) classrooms in DCPS,

Additionally, we request the following relief:

- All students who were impacted by this failure be provided with individualized compensatory education plans created in consultation with their families; and
- That OSSE affirmatively reach out to the potentially impacted families as part of their investigation and not rely on the representations of DCPS regarding staffing; and
- That OSSE ensure that DCPS develop and implement policies and procedures for how to handle extended absences of teachers so that future absences do not lead to a denial of FAPE; and
- That OSSE ensure that DCPS develop and implement policies and procedures about communicating extended teacher absences, resignations and other separations from DCPS to parents in a timely manner.

**Mediation**

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Because of the systemic nature of this complaint, mediation is likely inappropriate. However, AJE welcomes the opportunity to participate in any conversations regarding the resolution of this matter.

**Signature**

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8-1-19

August 1, 2019

**Certificate of Service**

I hereby certify that on this 1 day of August a copy of this State Complaint was provided to DCPS. The Complaint was provided via email to Quince Harris-Henry

Respectfully submitted,



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