



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

December 13, 2019

VIA Electronic Mail

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

RE: State Complaint No. 019-011 Letter of Decision

LETTER OF DECISION

PROCEDURAL BACKGROUND

On October 16, 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 Payne Elementary School (ES) and Patterson Elementary School (ES).

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 did not comply with its obligation to provide specialized instruction by a certified special education teacher. 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. **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.¹

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. Attorney 1
2. Attorney 2
3. Attorney 3
4. Patterson ES principal
5. Patterson ES assistant principal
6. Patterson ES special education coordinator
7. Payne ES principal
8. Payne ES manager of specialized instruction

GENERAL FINDINGS OF FACT

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

ISSUE ONE: TEACHER QUALIFICATIONS

Findings of Fact

1. The long-term substitute teacher in the Patterson ES third grade to fifth grade communication and education support (CES) classroom does not hold a current teaching license, but is a retired special education teacher who previously held a teaching license and has a bachelor's degree.
2. The long-term substitute teacher in the Payne ES intermediate deaf and hard of hearing (DHOH) classroom is a retired teacher who does not hold a current teaching license and is not American Sign Language (ASL) certified but has a bachelor's degree.
3. The substitute teachers in the Payne ES primary DHOH classroom were a retired teacher who did not hold a current teaching license and was not ASL certified and a substitute teacher who had no teaching credentials and was not ASL certified but had a college degree.
4. The long-term substitute teacher in the Payne ES behavior and education support (BES)

¹ In 2015, the Elementary and Secondary Education Act (ESEA) was amended by the Every Student Succeeds Act (ESSA). ESSA amended existing ESEA provisions regarding highly qualified teachers by removing the definition and related requirements. ESSA also made conforming amendments to IDEA. (See ESSA Section 9214 ("Use of the Term 'Highly Qualified' in Other Laws"), specifically Sec. 9214(d) and 34 CFR §300.156(c))

classroom does not hold a current teaching license, but is a retired special education teacher and has a bachelor's degree.

Discussion/Conclusion

DCPS has not complied with 34 CFR §300.156 and 5-A DCMR §1601.1, because it failed to ensure that the self-contained classrooms under investigation were staffed by teachers holding a current teaching credential.

Pursuant to 34 CFR §300.156, 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. 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 the long-term substitute teachers who worked in the self-contained classrooms under investigation. None of the five (5) long-term substitute teachers hold a current teaching license. Four (4) of the long-term substitute teachers are retired teachers who previously held or may be eligible for a teaching license based on meeting the underlying qualifications. None of the long-term substitute teachers in the DHOH classrooms are ASL certified. Based on the current licensure status, the long-term substitute teachers employed by DCPS in the self-contained classrooms under investigation do not hold the teaching credential required by DC Municipal Regulations. 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 Patterson ES in the third grade to fifth grade CES classroom, the regular special education teacher is on a planned extended leave of absence from September 3, 2019 to January 2, 2020.
 - a. Two different substitute teachers were in the classroom.
 - i. One substitute teacher was a retired teacher who did not hold a current teaching license and was not ASL certified.
 - ii. The other substitute teacher had no teaching credentials and was not ASL certified but had a college degree.

- b. A certified autism special education teacher consults with the substitute teacher on lesson planning and service delivery.
 - c. A CES instructional coach pushes into the classroom to support service delivery twice a week.
 - d. There are eight (8) students in the classroom.
2. At Payne ES in the intermediate DHOH classroom, the regular special education teacher was on extended leave of absence from October 2018 to April 2019.
 - a. A long-term substitute teacher, who was a retired teacher, was in the classroom.
 - b. An educational aide, who was ASL certified, was in the classroom.
 - c. A DHOH certified specialist provided consultation to the substitute teacher.
 - d. This classroom had six (6) students.
 3. At Payne ES in the primary DHOH classroom, the regular special education teacher was on extended leave of absence from October 2018 to November 2019.
 - a. A substitute teacher was in the classroom.
 - b. An educational aide was in the classroom.
 - c. A DHOH certified specialist provided consultation to the substitute teacher.
 - d. A permanent certified teacher was hired in November 2019.
 - e. This classroom had six (6) students.
 4. At Payne ES in the BES classroom, the regular special education teacher was on extended leave of absence from October 2018 to present.
 - a. A long-term substitute teacher, who is a retired special education teacher, is in the classroom.
 - b. A BES specialist provides consultation to the substitute teacher.
 - c. An educational aide and a behavior technician are in the classroom.
 - d. A reading specialist and a special education certified reading coach provide direct reading instruction to the students on alternating days.
 - e. A special education certified math teacher provided math instruction to the students until March 2019.
 - i. DCPS admits that the students did not receive specialized instruction in math from April 2019 until the end of the 2018 – 19 school year.
 - f. This classroom has eight (8) students.

Discussion/Conclusion

DCPS has not complied with 34 CFR §300.323(c)(2), because it failed to provide the specialized instruction required by the students' IEPs in the Payne ES intermediate and primary DHOH classrooms.

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 and through interviews DCPS reported that it ensured delivery of specialized instruction in self-contained classrooms while the regular teacher was on an extended leave of

absence through consultation from a certified teaching specialist to substitute teachers and direct classroom instruction provided by certified teachers.

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

DCPS Classroom	Dates of Special Education Teacher's Extended Leave of Absence	Non-Qualified² Substitute Employee	Special Education Qualified³ Substitute Employee
Patterson ES 3 – 5 CES	September 3, 2019 – January 2, 2020	None	Long-term substitute teacher is in the classroom, direct instruction and consultation provided by certified teachers
Payne ES intermediate DHOH	October 2018 – April 2019	Non-ASL certified substitute teacher supported by DHOH specialist	DHOH certified specialist provided consultation
Payne ES primary DHOH	October 15, 2018 – November 13, 2019	Non-ASL certified substitute teacher supported by DHOH specialist	DHOH certified specialist provided consultation
Payne ES BES	October 2018 – present	None	Long-term substitute teacher is in the classroom, direct instruction and consultation provided by certified teachers

Both the Patterson ES 3 -5 CES and Payne ES BES classrooms have a long-term substitute who is a retired special education teacher. In addition a certified specialist provides consultation to the substitute teachers and certified teachers provide direct instruction to the students. DCPS admits that the students in the Payne ES BES classroom did not receive specialized instruction in math from April 2019 until the end of the 2018 – 19 school year. Other than this instance,

² "Non-qualified," means employees that do not meet the underlying requirements to obtain a special education teacher license.

³ "Qualified," means employees that meet the underlying requirements to obtain a special education teacher license, although they may not hold a current teacher license.

OSSE finds that DCPS provided specialized instruction required by the students' IEPs in the Patterson ES 3 -5 CES and Payne ES BES self-contained classrooms.

Neither DHOH classroom at Payne ES had a qualified substitute teacher. Furthermore, both long-term substitute teachers lacked an ASL certification. Although a certified specialist provided consultation, no certified teachers provided direct instruction to the students. OSSE finds that DCPS failed to provide the specialized instruction required by the students' IEPs in the Payne ES intermediate and primary DHOH classrooms.

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 the long-term substitute teachers 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 the specialized instruction required by the students' IEPs in the Payne ES intermediate and primary DHOH classrooms, and specialized instruction in math in the BES classroom from April 2019 through the end of the 2018-19 school year.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.156 and 5-A DCMR §1601.1, DCPS has developed a corrective action plan (CAP) that includes the following:
 - a. As substitute teachers are needed, develop and implement strategies to recruit substitute teachers who are licensed, and motivate current substitute teachers to apply for a teaching credential and transition to self-contained classrooms.
 - b. Develop guidance for principals regarding the delivery of specialized instruction in self-contained classrooms when the regular classroom teacher is absent.
 - c. Conduct an audit of all self-contained classrooms to determine if IEP service delivery is systematically impacted by the absence of a special education teacher, and if so, determine the need for compensatory education related to missed services.
 - i. Review all students with disabilities in all self-contained classrooms over school years 18-19 and 19-20 (to date) to identify instances in a special education teacher did not provide IEP service delivery.
 - ii. In instances where a special education teacher did not provide IEP service delivery, conduct a 100% review of IEPs to determine if missed services are owed, based upon the review and determination of the students' IEP team.
 - iii. In instances where missed services are owed to the student, develop compensatory education plans and ensure delivery of services in accordance with the compensatory education plan.
 - d. Develop an annual compliance review/corrective action process that identifies and addresses systematic IEP service delivery gaps in instances where a self-contained special education classroom has been without a teacher on a long-term basis.
2. In order to correct the noncompliance with 34 CFR §300.323(c)(2), DCPS must:

- a. Convene an IEP Team meeting for each of the students in the intermediate and primary DHOH classrooms at Payne ES 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. Convene an IEP Team meeting for each of the students in the BES classroom at Payne ES to create a compensatory education plan for its failure to provide specialized instruction in math required by each of the student's IEP.
- c. 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.

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,



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