



Office of the  
State Superintendent of Education

**Division of Special Education**  
**Quality Assurance & Monitoring Unit Report**  
**Rock Creek Academy**  
**April 27, 2011**

**I. Summary**

This report documents the inspection of Rock Creek Academy conducted by the Office of the State Superintendent of Education (OSSE)'s Division of Special Education under D.C. Official Code §38-2561.09. Rock Creek Academy is a nonpublic special education school located in Washington, D.C. With limited exceptions, the placement of District of Columbia children with disabilities into non-public special education schools and programs is prohibited unless that school or program maintains a Certificate of Approval (COA) pursuant to the Placement of Students with Disabilities in Nonpublic Schools Amendment Act (the Placement Act) (D.C. Official Code §38-2561 *et seq.*).<sup>1</sup> The Placement Act requires OSSE, as the State Educational Agency (SEA), to administer a process for the issuance of COAs to qualifying nonpublic special education schools and programs and to inspect those schools and programs for compliance with applicable law.<sup>2</sup> As part of the required inspection, OSSE conducted monitoring activities, including on-site visits, document reviews, interviews and record reviews of Rock Creek Academy between June 7, 2010 and March 16, 2011. The on-site visits occurred on June 7-8, 2010, October 18, 2010, and November 9, 2010.

OSSE conducted its inspection of Rock Creek Academy for the following reasons, any one of which provides sufficient authority under D.C. Official Code §38-2561.09(b) to revoke a COA:

- To verify compliance with statutory and regulatory provisions applicable to nonpublic schools per Title 38 of the D.C. Official Code and Title 5, Subtitle A, Chapter 28 of the District of Columbia Municipal Regulations (DCMR) with regard to the placement of students with disabilities in a nonpublic school;

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<sup>1</sup> The placement of a student in a school or program that has not received and maintained a valid COA may in certain circumstances be ordered by a District of Columbia Court, federal court, or a hearing officer pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* See D.C. Official Code §38-2561.03(b)(1).

<sup>2</sup> See D.C. Official Code §§38-2561.01(1A) and 38-2561.07

- To determine compliance with District of Columbia law and regulations, including but not limited to Title 5, Subtitle E, Chapter 30 of the District of Columbia Municipal Regulations concerning special education;
- To investigate complaints of violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. and regulations promulgated at 34 CFR Part 300;
- To monitor program quality; and
- To investigate allegations of staff misconduct and complaints about the school received during the course of routine monitoring.

Under D.C. Official Code §38-2561.11, OSSE is issuing a notice of intent to revoke Rock Creek Academy's Certificate of Approval based on the following violations:

1. Failure to maintain a six hour instructional day as required by 34 CFR §300.146(b) and 5 DCMR §A-2806.2;
2. Failure to ensure that all students are included in all general statewide assessments as required by 34 CFR §§300.146(b) and 300.160(a);
3. Failure to demonstrate that Rock Creek Academy is providing the related services specified in each child's Individualized Education Program (IEP) as required by 34 CFR §300.323(c)(2); 5 DCMR §A-2808.3, and 5 DCMR §E-3010.2;
4. Failure to ensure parental participation in IEP meetings as required by 34 CFR §300.322(a)(1) and 5 DCMR §E-3003.6 which mandates notification to a parent of the IEP meeting early enough to ensure an opportunity for the parent to attend;
5. Utilizing restraints in violation of D.C. Official Code §38-2561.11(a)(4) and 5 DCMR §B-2502;
6. Utilizing prone restraints in violation of D.C. Official Code §38-2561.11(a)(4);
7. Utilizing seclusion in violation of D.C. Official Code §38-2561.11(a)(4);
8. Failure to provide information requested by DCPS regarding student incident reports as required by D.C. Code 38-2561.11(a)(2);
9. Failure to utilize effective school-wide positive behavior intervention supports as required by 5 DCMR §A-2814.1;
10. Failure to take into consideration the requirements of least restrictive environment at the annual review of a student's placement as required by 34 CFR §300.116 and 5 DCMR §E-3013.1, and to conduct appropriate transition planning to a less restrictive environment as required by 5 DCMR §A-2810;
11. Failure to follow the requirements of secondary transition planning as required by 34 CFR §300.320(b); and
12. Failure to provide true and complete information regarding absenteeism and truancy as required by D.C. Official Code §38-2561.11(a)(2).

Rock Creek Academy is responsible for complying with all COA requirements and working collaboratively with the student's local educational agency (LEA) to ensure that the student is receiving a free appropriate public education (FAPE) in the least restrictive environment. Ultimately, however, the LEA responsible for a student in a nonpublic school is responsible for ensuring that the IDEA is being implemented for each student placed in the nonpublic

school. Therefore, the responsible LEA is also receiving notice of the findings of noncompliance and is accountable for working collaboratively with the nonpublic school to correct the noncompliance **as soon as possible, but in no case later than one year from the identification of noncompliance.**

The District of Columbia Public Schools (DCPS), as the LEA responsible for the students' placement in Rock Creek Academy for the students selected for the file review during the on-site visit, and Community Academy Public Charter School (CAPS), as the LEA responsible for one student placed in Rock Creek Academy during the period of monitoring activities, remain responsible for correcting the student level and LEA level findings of noncompliance contained within this report and the attached file review reports. OSSE encourages DCPS and CAPS immediately to correct all student level noncompliance to ensure compliance with IDEA and local law.

## **II. State Educational Agency (SEA) Authority**

OSSE is the SEA for the District of Columbia (D.C. or the District) under D.C. Official Code §§38-2601 and 38-2561.01(13). OSSE has statutory authority under both federal and local law to establish, operate, and maintain an administrative process to ensure compliance with all federal statutes for the programs under its jurisdiction, including education of District children and youth with disabilities.

Section 616 of the IDEA requires each SEA to implement a general supervision system that monitors the implementation of the IDEA Part B and its accompanying regulations. As the SEA for the District of Columbia, OSSE is responsible for the implementation of the general supervision system for the District, which includes but is not limited to State complaint processes and Due Process adjudication in addition to LEA monitoring.

Under local special education law, OSSE *“has primary responsibility for the state-level supervisory functions for special education that are typically handled by a state department of education or public instruction, a state board of education, a state education commission, or a state education authority.”* (D.C. Official Code 38-2561.01 (7)(a)(13))

Under IDEA, when children with disabilities are “placed in or referred to...private school[s] or facilit[ies] by a public agency as a means of providing special education and related services,” the SEA must, consistent with 34 CFR §§300.146 – 300.147:

- Ensure that children attending nonpublic schools at public expense are being provided special education and related services in compliance with individualized education programs (IEPs) that meet the requirements of IDEA.
- Ensure that services are being provided at no cost to the parents.
- Ensure that the educational services being provided by the nonpublic schools or programs meet the state’s educational standards.

- Ensure that children attending the nonpublic schools have all of the same rights as children with disabilities in the public system.
- Monitor compliance using procedures including written reports, on-site visits, and parent questionnaires.

Additionally, the Placement Act requires OSSE, as the District's SEA, to administer a Certificate of Approval process before a nonpublic special education school or program can serve District of Columbia students with disabilities funded by the District. A nonpublic special education school or program is defined as a "privately owned or operated preschool, school, educational organization or program, no matter how titled, that maintains or conducts classes for the purposes of offering instruction, for a consideration, profit, or tuition, to students with disabilities." D.C. Official Code §38-2561.09 requires the SEA to conduct monitoring visits to all certified schools at least once during the period of validity for each COA and mandates that every nonpublic school must be open to inspection by the SEA, including unannounced visits. Under D.C. Official Code §38-2561.10, a COA is valid for up to three years.

### **III. Summary of Monitoring Activities**

As part of the on-site inspections of Rock Creek Academy, OSSE staff met with Shawn Meade, Chief Executive Officer; Toni Webb, Executive Director; Chanel Mason, Clinical Director; Bettye Bellamy, Program Director for Upper High School; Giselle Cohen, Special Education Coordinator; Michael Johnson, K-8 Program Director; Tina Bradley, Lower School Program Director; teachers; related services providers; and students. Parents were also interviewed via telephone calls during the visits. Additionally, OSSE met with DCPS Nonpublic Unit Progress Monitors for Rock Creek Academy and other community stakeholders who expressed concern with Rock Creek Academy's provision of special education and related services. OSSE also conducted a comprehensive file review and used other relevant information available regarding Rock Creek Academy, along with information gathered during the on-site and after the visits including Rock Creek Academy's 2007 and 2010 COA applications, to analyze Rock Creek Academy's compliance with IDEA Part B and local regulations and policies.

### **IV. General School Information**

Rock Creek Academy is a nonpublic special education school located at 4401 Connecticut Avenue, Suite 701, Washington, DC, 20008. Rock Creek Academy reported that it provides instructional services to students in grades K-12 and aged 5-22. The school serves students classified with emotional disabilities, mental retardation, specific learning disabilities, hearing impairments, speech-language impairments, other health impairments and multiple disabilities. Additionally, the school provides related services including occupational therapy, physical therapy, clinical therapy, speech-language therapy and adaptive physical education. Rock Creek Academy reported that its teacher-student ratio is 1:6.

Rock Creek Academy reported that, in its kindergarten through 8<sup>th</sup> grade program, it employs ten (10) instructional staff members including six (6) teachers certified in special education and four teachers in the process of completing an alternative teacher certification program in special education. Within its lower school program for grades 9-10, Rock Creek Academy reported employing 13 teachers including nine teachers certified in special education and four instructors enrolled in an alternative certification program in special education. Finally, in its upper school program (grades 11-12), Rock Creek Academy indicated that all 11 teachers are certified in special education. Each school program also employs a program director and related service providers. Rock Creek Academy indicated that teachers use the “District of Columbia Standards of Learning” to plan instruction. The school further explained that students are dismissed early once per week to allow time for child study teams to meet and for teachers to attend professional development activities.

Since at least 2000, Rock Creek Academy has received funds from the District government to serve students with disabilities who are District of Columbia residents or wards of the District, consistent with the students’ IEPs. Rock Creek Academy’s tuition rate in the 2009 – 2010 and 2010 – 2011 school years was \$242.73 per student per day. In August 2009, 209 District students were enrolled, at public expense, in Rock Creek Academy. In March 2011, 153 students were enrolled, at public expense, in Rock Creek Academy. For all of these students, except one, DCPS is the responsible LEA. Community Academy Public Charter School (CAPS) is the responsible LEA for one student.

## **V. Factual Findings**

### **1. Instructional School Day**

The Rock Creek Academy school day is six hours Monday, Tuesday, Thursday and Friday and two hours and 45 minutes on Wednesday. A child with a disability who is placed in a private school or facility by a public agency must be provided an education that meets the standards that apply to education provided by the SEA and LEAs.<sup>3</sup> District of Columbia regulations require public as well as non-public schools to maintain a six hour instructional school day, inclusive of time allotted for lunch periods, recesses, and class breaks, except that the six (6) hour minimum instructional school day requirement shall not be applicable to any evening school program, prekindergarten program, or other alternative program approved by OSSE.<sup>4</sup> Rock Creek Academy’s failure to maintain a six hour instructional day represents noncompliance with 34 CFR §300.146(b) and 5 DCMR §A-2806.2.

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<sup>3</sup> 5 DCMR §A-2806.2 and 34 CFR §300.146(b)

<sup>4</sup> 5 DCMR §§A-2100.5 and A-2806.2

## 2. Statewide Assessments

A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act, 20 U.S.C. §6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.<sup>5</sup> These assessments inform the District of Columbia's annual determination, required under the Elementary and Secondary Education Act, of whether schools, local educational agencies, and the District of Columbia have made adequate yearly progress toward the goal of having all students meet rigorous state academic standards by the 2013-14 school year. OSSE has clarified that nonpublic special education schools or programs must ensure that all students are appropriately included in the statewide assessment, either by taking the statewide general assessment or an alternate assessment approved by OSSE, in accordance with guidelines established by OSSE.<sup>6</sup> Rock Creek Academy reported that it administers the DC CAS and the DC CAS Alternative (DC CAS-Alt). The DC CAS-Alt exam, a portfolio assessment, has been developed for students unable to participate in the DC-CAS, even with accommodations. In its 2010 COA application, Rock Creek Academy submitted its 2010 DC CAS schedule and listed, by name, 26 students as "Non-Testers" and explained that the listed students reported to designated classrooms during the week of testing. Of these Non-Testers, at least eight students were in tested grades: five were 8<sup>th</sup> grade students, one was a 4<sup>th</sup> grader, and two were 10<sup>th</sup> graders. These students did not participate in the DC CAS or DC CAS-Alt assessments in 2009.

Rock Creek Academy's identification of students as "Non-Testers" represents noncompliance with 34 CFR §§300.146(b) and 300.160(a). Rock Creek Academy willfully failed to administer the DC CAS or DC CAS-Alt to students in the required testing grades, and thereby, willfully interfered with the LEA's obligation under the IDEA to ensure that all children with disabilities participate in the general statewide assessments. In addition, DCPS' failure to ensure that the students took the required assessment represents noncompliance with 34 CFR §§300.146(b) and 300.160(a). In order to correct this noncompliance, within 60 days of the date of this report, DCPS must submit a plan to ensure that all students in nonpublic schools will participate in the DC CAS or DC CAS-Alt in 2012.

## 3. Related Services

The IDEA and District regulations require each public agency to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.<sup>7</sup> Likewise, under District law,

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<sup>5</sup>34 CFR §300.160(a)

<sup>6</sup>5 DCMR §A-2805.3

<sup>7</sup>34 CFR §300.323(c)(2) and 5 DCMR §E-3010.2

a nonpublic special education school or program shall implement all components of each student's IEP, including any items of compensatory education, unless it has been specifically agreed by the IEP team and documented in writing that an entity other than the school or program will implement an item or items on the IEP.<sup>8</sup>

For the majority of students at Rock Creek Academy, their IEPs state that the student requires at least 25 hours of special education and related services. Rock Creek Academy has not demonstrated that it is providing the required amount of special education and related services pursuant to each child's IEP.

As a part of OSSE's responsibility to ensure that LEAs are providing related services in accordance with student IEPs, OSSE reviewed student attendance records from Rock Creek Academy in conjunction with data reported in OSSE's Special Education Data System (SEDS), specifically Related Service Management Reports (RSMRs) generated from SEDS, and student IEPs in order to align documented service delivery for each student receiving related services in September 2010 and October 2010.

- The RSMRs reviewed for DCPS students attending Rock Creek Academy indicated that in September 2010, students were prescribed a total of 91,866 minutes (approximately 1531 hours) of related services, yet only 505 minutes (approximately 8.4 hours) of related services were documented in SEDS as delivered.
- For the month of October 2010, the RSMRs for DCPS students attending Rock Creek Academy indicated that students were prescribed at total of 74,458 minutes (approximately 1241 hours) of related services, yet only 420 minutes (7 hours) were documented in SEDS as delivered. OSSE also gathered additional information from a Rock Creek Academy staff member, indicating that related service providers often sit in classrooms observing rather than providing the necessary related service.

Additionally, at least one staff member indicated that Rock Creek Academy is in need of additional behavior specialists and one-to-one assistants to appropriately meet the needs of students. Based on information in SEDS during the monitoring visit, the failure to provide related services in accordance with student IEPs, DCPS and Rock Creek Academy are out of compliance with 34 CFR §300.323(c)(2), 5 DCMR §A-2808.3, and 5 DCMR §E-3010.2 In order to correct this noncompliance, within 90 days of the date of this report, DCPS must provide documentation to OSSE that the related services, although not documented, were in fact provided or that the related services for each of these students has been subsequently provided. To the extent that DCPS provides documentation of related services that were provided but not properly documented, OSSE may issue additional

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<sup>8</sup>5 DCMR §A-2808.3

findings of noncompliance based on the failure to provide valid and reliable data.<sup>9</sup> DCPS must also ensure that documentation of the related services is recorded in SEDS.

#### **4. Parental Participation**

Rock Creek Academy reported that it implements a variety of programs to encourage parental involvement. Notwithstanding this assertion, during OSSE's review of files, OSSE found that ten of the 15 files selected were out of compliance with the provisions in 34 CFR §300.322(a)(1) and 5 DCMR §E-3003.6, which provides that an LEA must notify a parent of the IEP meeting early enough to ensure an opportunity to attend. Additionally, OSSE found that in eight of 15 files selected, the signature of the "parent" (as defined in 34 CFR §300.30) invited to the IEP meeting was not the same as the "parent" that attended and signed the IEP. In order to correct this noncompliance, DCPS must complete the required actions as listed in the Correction of Student Level Citations and Correction of LEA Level Citations sections of this report.

#### **5. Behavior Management – Permissive Use of Restraints**

Rock Creek Academy explained that it uses a level system in grades K-8 which rewards students for appropriate behavior. A similar system is also used in grades 9-12. Rock Creek Academy explained that both systems reward students with points which can be exchanged for items in the school store, privileges, school activities, and trips to the game room or computer lab. Rock Creek Academy reported that it uses timeout and in-school suspension. Rock Creek Academy further reported that staff members are trained in Therapeutic Aggression Control Techniques 2 (TACT- 2) and Life Space Crisis Intervention (LSCI) to ensure that de-escalation strategies are used prior to restraint. Rock Creek Academy stated that restraints are implemented only when students are in imminent danger of hurting themselves or others.

As a part of the monitoring visit, OSSE reviewed 264 incident reports from Rock Creek Academy from January 2009 – October 2010. In 41 or more of those reports, it clearly indicates that the student was restrained. Notwithstanding Rock Creek Academy's assertion that it only uses restraints when students are in imminent danger of hurting themselves or others, OSSE's review of 264 disciplinary incident reports revealed that, in addition to the use of physical restraint when students were likely to be in imminent danger of hurting themselves or others, Rock Creek Academy has implemented physical restraints when students have, for example, thrown candy at a teacher (September 9, 2010), run out of the classroom and slammed the door (February 12, 2009), thrown paint, kicked chairs and knocked over a table (October 14, 2010), thrown books onto the floor (March 5, 2010), refused to get on an elevator (September 28, 2010), thrown furniture and jumped on top of desks (November 30, 2009), left the cafeteria without permission (June 3, 2010), fell to the

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<sup>9</sup> 34 CFR §300.211

ground (February 19, 2009), kicked and punched walls and the chair (April 13, 2010), and disconnected equipment, threatened to throw another student's shoes and cursed (September 9, 2010). Based on Rock Creek Academy's permissive use of restraints, OSSE concludes that the environment for children at the school is unsafe in violation of D.C. Official Code §38-2561.11(a)(4).

In addition, OSSE finds that Rock Creek Academy's use of restraints in the incidents set forth above, by way of example, is a form of discipline as opposed to a restraint used when a student is in imminent danger of hurting himself/herself or others. Rock Creek Academy's use of restraints is inconsistent with the levels of progressive discipline authorized by DCPS regulations on student discipline which the Placement Act requires nonpublic special education schools and programs to follow.<sup>10</sup> Certain incidents described in the reports reviewed by OSSE constitute Tier I or Tier II behaviors in the DCPS regulations.<sup>11</sup> In response to a Tier I behavior, a school may have the following responses: (1) verbal redirection or reprimand; (2) teacher/student conference; (3) parental contact in writing or by phone; (4) teacher/parent conference; (5) temporary removal of student from classroom; (6) in-school Disciplinary Action; (7) behavior contract; and (8) other school-based consequences as approved by a person designated by the Chancellor.<sup>12</sup> Similarly, in response to a Tier II behavior, which includes behavior that may cause damage to property or minor injury to the student or others, a school may have most of the same responses as for Tier I behaviors and may also hold administrator/student conferences, have administrator/parent conferences instead of teacher/parent conferences, and take other disciplinary actions for violations of a school uniform or dress code.<sup>13</sup> Based on Rock Creek Academy's use of restraints as a form of discipline, OSSE concludes that Rock Creek Academy is out of compliance with 5 DCMR §B-2502.

To ensure the safety of students, OSSE has clarified in regulations that the use of physical restraints is prohibited in all nonpublic special education schools and programs except in emergency circumstances, which are defined as circumstances that meet the following criteria: (a) the use of the restraint is included in the student's IEP to address specific behaviors under defined circumstances, and the use by appropriate staff is therefore consistent with the student's IEP; or (b) the intervention is necessary to protect the student or other person from imminent, serious physical harm; and other less intrusive, nonphysical interventions have failed or been determined inappropriate.<sup>14</sup> Physical restraint is prohibited as a means of punishment or as a response to property destruction, disruption of

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<sup>10</sup> D.C. Official Code §38-2561.07(a)(1) and 5 DCMR §B-2502

<sup>11</sup> 5 DCMR §B-2502

<sup>12</sup> 5 DCMR §B-2502.1(b)

<sup>13</sup> 5 DCMR §B-2502.2(b)

<sup>14</sup> 5 DCMR §A-2816.1

school order, a student’s refusal to comply with a nonpublic special education school or program rule or staff directive, or language that does not constitute a threat of imminent, serious physical harm.<sup>15</sup>

## **6. Behavior Management – Prone Restraint**

In response to OSSE questioning regarding the methods of restraint used at Rock Creek Academy, with the exception of one staff member, all persons described a prone restraint. In a prone restraint, a student is held to the floor on his or her stomach with the student’s face down. Furthermore, student and staff interviews at Rock Creek Academy indicated that prone restraint is routinely used. In three incidents (on December 3, 2009, December 7, 2009, and June 9, 2010), students received facial injuries during execution of the restraint. OSSE could not determine whether a prone restraint had been used in these incidents but given the facial injuries sustained, a legitimate question is raised. OSSE concludes that Rock Creek Academy’s use of prone restraints renders the environment at the school unsafe in violation of D.C. Code §38-2561.11(a)(4). To ensure student safety, OSSE has clarified in regulations that a nonpublic special education school or program shall not use any form of prone restraint on a District of Columbia student.<sup>16</sup>

## **7. Behavior Management – Seclusion**

Rock Creek Academy reported that it does not permit the use of seclusion, however, there are incident reports referencing an “isolation room,” “crisis room,” “intervention room,” “Step-Up room,” “behavior specialist room,” “one to one room,” “timeout room,” “behavior room” or “reorientation room” and reference the intervention of leaving a student alone in a classroom. While OSSE has information to confirm that there are at least two separate rooms used for intervention, OSSE is unclear as to whether there are nine different rooms or staff members use different names for the same room and whether each of these rooms meets the definition of a “seclusion” area. OSSE believes that, at a minimum, the “isolation room” and the documented practice of leaving a student alone in a classroom meet the definition of seclusion. By way of example, incident reports provided by Rock Creek Academy documented that students have been placed in the isolation room at 11:45 a.m. and kept in the room for the remainder of the day and at 11:30 a.m. and isolated for the remainder of day. Rock Creek Academy’s use of seclusion in both of these incidents was unsafe and represents noncompliance with D.C. Code §38-2561.11(a)(4).

OSSE has clarified in regulations that a nonpublic special education school or program shall not use any form of seclusion on a District of Columbia student unless it is an emergency.<sup>17</sup>

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<sup>15</sup> 5 DCMR §A-2816.4

<sup>16</sup> 5 DCMR §A-2818.1.

<sup>17</sup> 5 DCMR §A-2819.1

Among other requirements, nonpublic special education school or program personnel must continuously monitor a student placed in seclusion and speak with the student every ten (10) minutes at minimum.<sup>18</sup> After thirty (30) minutes, the Director, Head of Special Education or other senior personnel must personally observe the student to assess the need for continued seclusion.<sup>19</sup> No seclusion shall continue longer than one (1) hour.<sup>20</sup>

## **8. Behavior Management – Incident Reports**

DCPS progress monitors reported to OSSE that, DCPS requested incident reports from Rock Creek Academy but were never provided with copies of these reports. Rock Creek Academy's failure to provide information as requested by DCPS represents noncompliance with D.C. Official Code §38-2561.11(a)(2).

## **9. Behavior Management – Positive Behavior Support**

The components of a nonpublic special education school's behavior support programs and plans are (1) an individual behavior intervention plan, where appropriate for an individual child and (2) the utilization of school-wide positive behavior intervention supports.<sup>21</sup> If the behavior of a student impedes the student's learning or the learning of other students, the IEP team shall consider the use of positive behavioral supports and other strategies to address that behavior in conformance with the IDEA and its implementing regulations (20 U.S.C. §1414(d)(3)(B)(i); 34 CFR §300.324(a)(2)(i)). While Rock Creek Academy stated that it uses Therapeutic Aggression Control Techniques 2 (TACT- 2) and Life Space Crisis Intervention (LSCI), these methods represent crisis intervention strategies and de-escalation processes and do not represent school-wide positive behavior intervention supports. Rock Creek Academy also uses a point system, which is a typical method for school-wide positive behavior intervention.

Based on OSSE's observations and review of documents, however, Rock Creek Academy's use of a point system appears to be an ineffective school-wide positive behavior intervention. On each day of the on-site visit, OSSE monitors observed students frequently in the hallways during class time, students not showing proper deference or respect for teachers and teachers ignoring inappropriate student behavior and/or correcting students in an ineffective manner. OSSE monitors also observed students running in the hallways, talking on cell phones and sending text messages during class time, roaming into classrooms other than their assigned classroom, talking to OSSE monitors, arguing with behavior

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<sup>18</sup> 5 DCMR §A-2819.5

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 5 DCMR §A-2814.1

management specialists and walking out of the school building. In one elementary classroom with only two students on the roster, when OSSE monitors arrived on October 18, 2010, both students ran out of the classroom. When questioned by OSSE monitors on where the students were going, the teacher merely shrugged his shoulders indicating that he did not know. OSSE monitors spoke with the teacher for more than 5 minutes and at no time did the teacher express concern for where the students were. OSSE staff left that class but remained in the same hallway and could still observe the teacher for another 10 minutes. The students did not return nor did the teacher look for the students. In sum, OSSE concludes that the environment at Rock Creek Academy is one in which the staff and teachers do not have control and student behavioral issues are pervasive.

Rock Creek Academy's failure to utilize effective school-wide positive behavior intervention supports represents noncompliance with 5 DCMR §A-2814.1.

## **10. Least Restrictive Environment**

A free appropriate public education must be made available to all children residing in the State and each public agency must ensure that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature and severity of the disability is such that the education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.<sup>22</sup> While IDEA regulations allow only an IEP Team or a Hearing Officer to make placement decisions, OSSE has the authority and obligation to ensure that students are receiving a free appropriate public education in the least restrictive environment.

Through OSSE's observations and informal interactions with approximately 20 to 25 students during the on-site visits and formal interviews with seven students, OSSE questions the placement of many students enrolled in Rock Creek Academy. Students were able to clearly articulate their academic strengths and weaknesses; express their concern for their lack of preparation for postsecondary settings; evaluate the ability, or lack thereof, of teaching staff; and recognize the "institutional" nature of the nonpublic school. OSSE monitors observed middle school and high school students independently traveling to the metro station (contrary to Rock Creek Academy's assertion that students are escorted to and from the metro) on October 15, 2010 from approximately 1:30 p.m. to 4:00 p.m. Rock Creek Academy staff conceded that students are afforded an "open lunch" through which they are able to independently leave campus for the lunch period. OSSE monitors also observed students leaving campus for lunch on each day of the on-site visits (June 7-8, 2010, October 18, 2010, and November 9, 2010).

If students are able to independently travel to and from the metro station where they continually interact with nondisabled peers and are able to leave campus for lunch, during

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<sup>22</sup> 34 CFR §§300.101 and 300.114 and 5 DCMR §E-3011.1

which time they independently interact with the community socially and financially, then a genuine question exists as to whether the nature and severity of the students' disabilities are such that the children need a separate school to meet their educational needs and whether those students should ever have been placed in Rock Creek Academy at all. Separate nonpublic schools for the education of children with disabilities are one step below residential placements on the continuum of placements required by the IDEA<sup>23</sup> and should be used only when the nature and severity of the students' disabilities is such that interaction outside of the restrictive setting of a separate school is inadvisable. While OSSE declines to make determinations regarding the placement for individual students placed at Rock Creek Academy, as noted above, OSSE questions the appropriateness of the placements for many students at Rock Creek Academy. Based on student observations and interviews, OSSE believes that many students at Rock Creek Academy may be successful in a regular education environment with the use of supplementary aids and services or within a separate self-contained classroom within the LEA.

The continuum of placements required by the IDEA does not exist to provide the funding of a private education for students who are able to succeed in the regular education environment. In order to ensure compliance with the provisions of 34 CFR §§300.101, 300.114, and 5 DCMR §E-3013.1, DCPS must convene IEP Team meetings to determine who may be inappropriately placed and immediately place students in the least restrictive environment in accordance with 34 CFR §300.116 and 5 DCMR §E-3013.1, within the timeframe specified below.

Additionally, in accordance with the IDEA and the Placement Act requirements for placing students in the least restrictive environment, IEP planning and service delivery by the sending LEAs and nonpublic special education schools or programs must be designed to support a transition of the student to a less restrictive setting when determined appropriate by the IEP team. This transition requirement recognizes that while there may have been an appropriate basis for placing a student in a nonpublic special education school or program in the first instance, the time may come when placement in a less restrictive environment – such as a return to general education classroom with supplementary aids and supports or to a self-contained classroom within a public school – is appropriate. The nonpublic special education school or program shall ensure that the IEP teams for students enrolled at the school or program consider a student's transition status at least annually as a component of annual IEP review.<sup>24</sup>

As a part of the monitoring visit, OSSE reviewed documentation provided by Rock Creek Academy in May 2010 in preparation for the June 2010 on-site visit, which listed each student attending the school and the date of entry for those students. From this information, OSSE noted that one student had attended Rock Creek Academy for more than

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<sup>23</sup> See 34 CFR §300.115

<sup>24</sup> 5 DCMR §A-2810.1

ten years, 13 students had attended Rock Creek Academy for more than nine years, three students had attended Rock Creek Academy for more than eight years, nine students had attended Rock Creek Academy for more than seven years, 23 students had attended Rock Creek Academy for more than six years, 12 students had attended Rock Creek Academy for more than five years, 29 students had attended Rock Creek Academy for more than four years, 20 students had attended Rock Creek Academy for more than three years, 18 students had attended Rock Creek Academy for more than two years and 42 students had attended Rock Creek Academy for more than one year. Collectively, 90 students enrolled at Rock Creek Academy as of May 2010 had attended the school for four or more years.

Interviews conducted by OSSE of teachers, related service providers, administrators, and students generally indicated that students are not transitioned out of Rock Creek Academy consistent with applicable laws and regulations. Based on interviews and review of Rock Creek Academy's billing invoices, it appears that students remain at the school until they choose to leave at the age of 18 or when they age-out of special education (age 22 in the District of Columbia). One staff member interviewed stated that students have been transferred to other nonpublic schools where "there is a focus on academics." This staff member improperly identified other nonpublic schools as less restrictive environments – not appreciating that a lateral move to another nonpublic school or program is not a move to a less restrictive environment. While IEPs reviewed indicated that placement was discussed at annual IEP meetings, data obtained during the student and staff interviews contradicts the information entered on some IEPs.

Based on the length of student attendance, interviews of staff and students, and observation of students who marginally appear to have warranted a nonpublic placement in the first place, OSSE finds DCPS and Rock Creek Academy out of compliance with 34 CFR §§300.101, 300.114, and 300.116 and 5 DCMR §§E-3011.1 and E-3013.1 and Rock Creek Academy out of compliance with 5 DCMR §A-2810. In order to correct this noncompliance, within 90 days of the date of this report, DCPS must convene an IEP meeting for each student enrolled at Rock Creek Academy to discuss placement in the least restrictive environment.

## **11. Secondary Transition**

Beginning not later than the first IEP to be in effect when the child turns 16, the IDEA requires, among other things, that the IEP include appropriate measurable postsecondary goals based on age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and transition services (including courses of study) necessary to assist the child in reaching these goals.<sup>25</sup>

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<sup>25</sup> 34 CFR §300.320(b)

Rock Creek Academy reported a commitment to providing vocational and transitional services to students with disabilities. In preparation for postsecondary transition, the school explained that the multidisciplinary team conducts interest inventories, assessments and interviews to identify student strengths, weaknesses, and interests in various careers to establish goals and objectives pertaining to the student's individual interests. The multidisciplinary team is also responsible for coordinating external resources for students including the District of Columbia Rehabilitation Services Agency (RSA) and the District of Columbia Developmental Disabilities Services (DDS) to ensure access to postsecondary opportunities.

Rock Creek Academy reported that transitional services are incorporated as early as elementary school by providing opportunities for students to visit local colleges and consider career options. The school indicated that it offers 7<sup>th</sup> and 8<sup>th</sup> grade students a Life Skills course. For students in grades 8-12, Rock Creek Academy described its Career Academy Placement program which consists of four academies focused on various career paths. Within each academy, students research careers related to the theme of the academy and learn interviewing skills and resume writing.

Rock Creek Academy reported that students participate in college tours and job fairs to increase exposure to postsecondary opportunities. Rock Creek Academy also indicated that it has established community-school partnerships with local retailers and organizations in order for students to participate in tours, explore internships and transition smoothly to college or employment.

Notwithstanding Rock Creek Academy's assertion that students are involved early in secondary transition services, the IDEA regulations at 34 CFR §300.321(b) require the public agency to invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals. OSSE notes its concern with DCPS and Rock Creek Academy's failure to comply with this particular provision based upon the following.

- One student approached OSSE monitors and asked to speak about her experiences at the school. The student indicated that she is very interested in participating in her IEP meetings and clearly expressed her preferences and interests for her postsecondary goals. Despite the student's clear interest in attending her IEP meeting to discuss postsecondary goals, the IEP meeting was scheduled for a date and time that the student had a standing medical appointment, which has remained on a consistent day and at a consistent time for three years. The student went on to say that she is interested in attending graduate school but does not believe she is being adequately prepared to pursue this goal, and she has concern that she would be academically prepared to return to a general education environment were that an option.

- Only three of 29 files reviewed for secondary transition content included documentation that the student was invited to the IEP Team meeting.
- OSSE found evidence of participation by a few students in IEP Team meetings where secondary transition content was discussed, but these students had not been given advance notice of and invitation to the IEP Team meeting as required by the IDEA. Accordingly, while the IEP Team may have, on occasion, diverted a student from class to attend the meeting, the student had not been given adequate time to prepare for a conversation on the student’s postsecondary goals, as the IDEA envisions.

In addition to the required invitation of students, the IDEA contains specific requirements for secondary transition planning.<sup>26</sup> District law also clarifies that as part of the IEP team process, staff members of the nonpublic special education school or program who are members of the student’s IEP team shall ensure that each IEP team meets all the requirements of the IDEA regarding the IEP process and content, including but not limited to secondary transition.<sup>27</sup> This notwithstanding, OSSE’s review of 29 secondary transition plans revealed that postsecondary education or training, employment and independent living were only considered in five of 29 plans. The school’s failure to properly consider the requirements of postsecondary transition planning represents noncompliance with 34 CFR §300.320(b).

In Rock Creek Academy’s most recent COA application, the school provided a copy of written policies and procedures that address transition services and transition planning. The policy states that students are interviewed annually to inform the direction of their transition plans. Additionally, the policy states that the Multidisciplinary Team considers areas such as postsecondary education or training, employment and independent living in determining transition services for students. As noted above, OSSE’s review of 29 secondary transition plans revealed that postsecondary education or training, employment and independent living were only considered in five of 29 plans. Accordingly, the school fails to follow its own policy regarding transition services and transition planning.

As a result of a determination by the U. S. Department of Education that the District of Columbia “needs intervention” for the third consecutive year based in part on the District’s noncompliance in the area of secondary transition, OSSE is required to complete a random sampling of at least 100 IEPs from all LEAs of youth aged 16 and above to be reviewed for secondary transition content for five quarterly reporting periods.

For the December 5, 2009 through March 5, 2010 quarterly reporting period, three files were selected from Rock Creek Academy for this review. None of the files were found to be

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<sup>26</sup> 34 CFR §300.320(b)

<sup>27</sup> 5 DCMR §A-2808.7(a)

compliant with all nine of the secondary transition requirements. Identification of this noncompliance was issued to DCPS on March 19, 2010 and corrective actions were due to OSSE by May 21, 2010. To date, none of the noncompliant files have been corrected.

For the March 6, 2010 through June 6, 2010 quarterly reporting period, 15 files were selected from Rock Creek Academy for this review. As with the first review, none of the files were found to be compliant with all nine of the secondary transition requirements. Identification of this noncompliance was issued to DCPS on June 15, 2010 and corrective actions were due to OSSE by August 20, 2010. To date, none of the noncompliant files have been corrected.

For the June 7, 2010 through September 1, 2010 quarterly reporting period, three files were selected from Rock Creek Academy for this review. None of the files were found to be compliant with all nine of the secondary transition requirements. Identification of this noncompliance was issued to DCPS on September 15, 2010 and corrective actions were due to OSSE by November 22, 2010. To date, none of the noncompliant files have been corrected.

For the September 2, 2010 through December 1, 2010 quarterly reporting period, two files were selected from Rock Creek Academy for this review. Neither of the files was found to be compliant with all nine of the secondary transition requirements. Identification of this noncompliance was issued to DCPS on December 10, 2010 and corrective actions were due to OSSE by February 10, 2011. To date, none of the noncompliant files have been corrected.

For the December 2, 2010 through February 1, 2011 quarterly reporting period, six files were selected from Rock Creek Academy for this review. None of the files were found to be compliant with all nine of the secondary transition requirements. Identification of this noncompliance was issued to DCPS on February 23, 2011 and corrective actions are due to OSSE by April 22, 2011.

## **12. Absenteeism and Truancy**

On October 18, 2010, OSSE requested attendance records for all students, by class period, from June 1, 2010 to October 15, 2010. Rock Creek Academy initially reported that these records could not be generated immediately. After repeated follow-up from OSSE, Rock Creek Academy eventually provided the records on November 18, 2010.

Non-public schools in the District must maintain an accurate daily record of attendance for each student.<sup>28</sup> As a part of its monitoring visit, OSSE reviewed, in detail, a sample of 20 attendance records for the month of September 2010. This review consisted of comparing

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<sup>28</sup> 5 DCMR §A-2101.1

the September 2010 student attendance records by class period with the number of days of attendance Rock Creek Academy reported on the final September 2010 invoice submitted to OSSE. As documented in attendance reports and as reported by Rock Creek Academy, the school marks a student as present if the student has been present for any portion of the day, including being seen by any staff member (including security) in the morning but never attending a single class. For example, a student may be marked present in the morning (the “AM” attendance entry) and subsequently marked absent in all six academic periods, but will be reported by Rock Creek Academy as having attended school for the day.

The IDEA, at 34 CFR §300.146(2)(b), provides that a child who is placed in or referred to a private school or facility by a public agency must be provided an education that meets the standards that apply to education provided by the SEA and LEAs. Pursuant to 5 DCMR §E-2103.2, a DCPS secondary student who has been marked present in homeroom and subsequently misses four different classes, without permission, during the same day shall be marked “absent unexcused” for both morning and afternoon sessions. The absences shall constitute full-day absences for purposes of the Compulsory School Attendance Act. However, for the purposes of the attendance record review, OSSE counted as absent only students marked absent in every entry for a given day and students marked present in the “AM” but marked absent in every other class for a given day. Even utilizing this methodology that credits more attendance than officially authorized by District regulations, there were reporting inaccuracies in 90% of the Rock Creek Academy sampled records (see Table A).

Pursuant to D.C. Code §38-2561.11(a)(2), OSSE may deny, revoke, refuse to renew, or suspend a Certificate of Approval for providing false, misleading, or incomplete information, or failing to provide information requested by the SEA or DCPS. Rock Creek Academy’s failure to provide OSSE true and complete information regarding attendance in invoices submitted to OSSE represents noncompliance with D.C. Code §38-2561.11(a)(2).

**Table A**

<b>Students</b>	<b>Days Attended in September 2010 (according to OSSE review of attendance records)</b>	<b>Days Attended in September 2010 (according to invoice submitted to OSSE)</b>	<b>Discrepancy</b>
Student 1	15	18	3
Student 2	20	19	-1
Student 3	10	14	4
Student 4	11	12	1
Student 5	5	6	1
Student 6	19	20	1
Student 7	17	20	3

Student 8	11	15	4
Student 9	6	8	2
Student 10	6	8	2
Student 11	17	18	1
Student 12	15	18	3
Student 13	19	19	0
Student 14	18	19	1
Student 15	15	16	1
Student 16	18	20	2
Student 17	1	1	0
Student 18	16	17	1
Student 19	19	20	1
Student 20	17	21	4

**VI. Additional Areas of Concern**

**1. Student Attendance and Academic Challenges**

Rock Creek Academy reported that the school implements a “case management team” model to effectively provide services for students with disabilities. The homeroom teacher serves as the lead for communication between all team members responsible for the student and his/her family. The school also explained that it convenes “child study teams” to discuss students who are experiencing attendance problems and academic challenges, among other things. The purpose of the discussion is to identify potential solutions to the specified challenges.

While Rock Creek Academy provided a description of its “case management team” and efforts to ensure student attendance and academic success, OSSE found no evidence that the endeavors of the case management team are yielding results. Specifically, OSSE’s review of class-level attendance reports for September 2010 revealed that 13 of 183 students attended all classes during the time period. Further, during OSSE’s observation of Rock Creek Academy classes, OSSE monitors observed that only two teachers from all classrooms observed (monitors briefly observed every classroom at Rock Creek Academy) were delivering direct instruction or requiring class work. In one classroom where the teacher was attempting to teach, students were throwing objects at each other and one student stood outside of the classroom for the majority of the class period. Teachers were observed sitting at their desks while none of the students appeared to be engaged in academic activities and chatting with students about non-academic matters. One teacher was observed completing a crossword puzzle during class time while students freely engaged in nonacademic activities such as text messaging, drawing pictures, and talking.

## 2. Financial Incentives for Students

As discussed above Rock Creek Academy explained that it uses a level system in grades K-12 which rewards students points for appropriate behavior, which can be exchanged for items in the school store, privileges, school activities, and trips to the game room or computer lab. Additionally, high school students are able to exchange points for money. Rock Creek Academy has a policy of providing high school students with the ability to earn as much as \$240.00 per month. Rock Creek Academy explained that in order to encourage fiscal responsibility and life skills, it implemented a financial literacy program which allows students to open accounts at local banks. While it is not impermissible to financially reward students for participation and positive behavior, OSSE is unclear as to how this particular program is administered and how it is funded. OSSE issued proposed regulations on March 25, 2011 to clarify that nonpublic schools and programs may not implement a system of monetary awards for students without first submitting a plan to OSSE and receiving OSSE approval of the plan.<sup>29</sup> If finalized, this regulation would prohibit nonpublic schools or programs from using District or other funds to provide monetary awards to students unless that use is approved by OSSE.

## 3. Incident Reporting

Non-public special education schools or programs must report and take certain follow-up steps after a student incident involving restraint or seclusion.<sup>30</sup> Specifically, if any form of restraint or seclusion is used, the school or program must prepare and file a written report which must include the following information: (a) The student's name; (b) The date of the incident; (c) The beginning and ending times of the incident, and beginning and ending times of actual restraint or seclusion; (d) A description of relevant events leading up to the incident; (e) A description of any interventions used prior to the implementation of restraint or seclusion; (f) A log of events during the restraint, including the restraint technique(s) used; (g) A log of events during the seclusion; (h) A description of any injuries (whether to students, personnel or others) and/or property damage; (i) A list and signatures of the school personnel who participated in the implementation, monitoring, and supervision of the restraint or seclusion event; and (j) A description of the short-term planned approach to addressing the student's behavior in the future. The report must be prepared for each individual incident involving a restraint or seclusion, and must be placed in the student's permanent file within twenty four (24) hours of the incident.<sup>31</sup> In addition, a copy of the report must be sent within one (1) business day of the incident to the student's parent(s),

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<sup>29</sup> See Proposed Rulemaking – Chapter 28, Subtitle A of the District of Columbia Municipal Regulations, “Nonpublic Special Education Schools and Programs Serving Students with Disabilities and Funded by the District of Columbia and Special Education Rates” at Section 2821.19, published on March 25, 2010, 58 DC Register No. 12.

<sup>30</sup> 5 DCMR §A-2820

<sup>31</sup> 5 DCMR §A-2820.3

the sending LEA and any other District of Columbia agency involved in the student's placement.<sup>32</sup> Finally, except in the case where a child's IEP authorizes the use of restraint and/or seclusion and a behavioral intervention plan (BIP) had been created, the IEP team must meet within ten (10) school days of the incident to consider the need for a functional behavioral assessment (FBA) and BIP and to discuss non-physical and non-restrictive de-escalation strategies.<sup>33</sup> If the student has a BIP in place, the IEP team must review and revise as appropriate. If the student is unable or unwilling to attend the IEP team meeting, the nonpublic special education school or program must meet with the student individually to discuss the incident as appropriate after consulting with the sending LEA.

Of the 264 incident reports provided to and reviewed by OSSE, including incidents that occurred in October 2010 after OSSE issued the regulations specifically requiring incident reporting and follow-up, none of the reports included all of the required information. Additionally, only 22 incident reports reviewed have been placed in the student's permanent file. Further, students and parents interviewed confirmed that incident reports are not routinely sent to parents and interviews with DCPS staff members indicated that incident reports are not sent to the student's sending LEA. Rock Creek Academy's failure to implement the required provisions constitutes noncompliance with 5 DCMR §A-2820 and is grounds for OSSE to revoke Rock Creek Academy's COA. OSSE, however, declines to base its intent to revoke Rock Creek Academy's COA on this violation.

OSSE also notes that there are months for which no incident reports were provided although the pattern of student behavior clearly indicates that incidents occurred. For example, one student received an incident report approximately every two days (11 incident reports) from March 10, 2010 – March 30, 2010, no incident reports April, 2010 through September 20, 2010 and an incident report approximately every two days (nine incident reports) from September 20, 2010 – October 14, 2010. Additionally, OSSE's review of student records revealed incidents documented in IEP Team notes for which an incident report did not exist. Hence, OSSE believes that incident reports have not been completed for all incidents. Parent and student interviews conducted by OSSE support this belief.

#### **4. Evaluations and Reevaluations**

The IDEA requires a public agency to ensure that a reevaluation of each child with a disability occurs at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.<sup>34</sup> As a result of a determination by the U.S. Department of Education that the District of Columbia "needs intervention" for the third consecutive year based in part on the District's noncompliance in the area of evaluation

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<sup>32</sup> 5 DCMR §A-2820.4

<sup>33</sup> 5 DCMR §A-2820.5

<sup>34</sup> 34 CFR §300.303(b)(2)

timelines, OSSE is required to report on the State's compliance with, among other areas, reevaluation timelines for six quarterly reporting periods.

For the December 5, 2009 through March 5, 2010 quarterly reporting period, Rock Creek Academy conducted three reevaluations outside of the established timeline. Identification of this noncompliance was issued to DCPS on June 7, 2010 and corrective actions were due to OSSE by August 27, 2010. DCPS submitted documentation of correction of student-level findings of noncompliance by August 27, 2010 and OSSE has verified that the three reevaluations have been completed. For the March 6, 2010 through June 6, 2010 quarterly reporting period, Rock Creek Academy conducted two reevaluations outside of the established timeline. Identification of this noncompliance was issued to DCPS on September 9, 2010 and corrective actions were due to OSSE by November 22, 2010. DCPS submitted documentation of student-level findings of noncompliance by November 22, 2010 and OSSE has verified that the two reevaluations have been completed. For the June 7, 2010 through September 1, 2010 quarterly reporting period, Rock Creek Academy conducted four reevaluations outside of the established timeline. Identification of this noncompliance was issued to DCPS on December 9, 2010 and corrective actions were due to OSSE by March 18, 2011. DCPS submitted documentation of correction of student-level findings for one of the four findings. OSSE has verified this reevaluation has been completed. The remaining three findings have not been corrected. For the September 2, 2010 – December 1, 2010 quarterly reporting period, Rock Creek Academy conducted one reevaluation outside of the established timeline. OSSE issued a finding for this noncompliance on March 29, 2010.

Given the level of noncompliance with evaluation and reevaluation timelines, OSSE has concern that Rock Creek Academy does not have adequate policies and procedures in place to address compliance with the required timelines. In fact, in Rock Creek Academy's most recent COA application in June 2010, the school did not provide a copy of written policies and procedures that address conducting evaluations and reevaluations. OSSE has clarified in regulations, that a nonpublic special education school or program shall maintain on file, at minimum, written policies and procedures that address conducting evaluations and reevaluations.<sup>35</sup>

## **5. Equipment, Materials and Supplies**

Pursuant to 5 DCMR §A-2807.1, a nonpublic special education school or program shall provide the facilities, textbooks, equipment, technology, materials, and supplies needed to provide the special education and related services specified by the IEPs of its enrolled students. Rock Creek Academy staff members reported that students lack books, SMARTboards, paper, pencils and other basic school materials to access the curriculum.

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<sup>35</sup> 5 DCMR §A-2824.1(r)

Staff members also described having to purchase, using personal funds, basic instructional supplies, such as paper and pencils, to implement daily instruction.

## **6. Educational Facilities**

During OSSE's June 7-8, 2010 visit, OSSE monitors observed multiple dark or dimly lit entryways near the elevator. OSSE monitors could not discern whether the lights were malfunctioning and needed to be replaced or if the lights were off to conserve energy. While hallways were dim, OSSE notes that classrooms were well lit. OSSE monitors also observed many areas of carpeting which were in need of cleaning, repair or replacement and walls which are in need of paint. Rock Creek Academy reported that walls are reinforced with solid wood due to student damage. Pursuant to D.C. Code §38-2561.11(a)(4), OSSE may deny, revoke, refuse to renew, or suspend a Certificate of Approval for failing to provide or maintain the premises or equipment of the special education school or program in a safe and sanitary condition as required by applicable law or regulation. While OSSE does not specifically state that Rock Creek Academy is failing to maintain the physical premises as required by applicable law or regulation, OSSE notes its concern regarding the safety and sanitary condition of Rock Creek Academy facilities.

## **7. School Management**

Staff members expressed the concern that Rock Creek Academy leadership places an emphasis on the school's profit margin rather than the education and needs of students. One staff member explained that Rock Creek Academy raffles flat-screen plasma televisions, cable subscriptions funded by Rock Creek Academy and utility gift cards in order to encourage parental participation while students lack basic educational materials. As is the case with student rewards, OSSE notes that it is not necessarily impermissible to financially encourage parental participation. It would, however, be impermissible for nonpublic special education schools or programs to use District funding intended for student services to be diverted to a program to encourage parent participation. OSSE is unclear as to how Rock Creek Academy's program of awards to parents is funded. In order for OSSE to make an appropriate determination as to the legitimacy of this program, within 30 days of the date of this report, Rock Creek Academy must submit a chart of accounts, general ledger, bank statements and/or any other financial statements which clearly indicate the funding source for this program and provide an accounting of any District funds that have been expended on incentives for parent participation.

## **8. Failure to Provide True and Complete Information**

In September 2010, OSSE received an allegation from DCPS regarding sexual misconduct of a Rock Creek Academy staff member. As OSSE was in the process of monitoring Rock Creek Academy, OSSE extended its monitoring timeline in order to review Rock Creek Academy's handling of the allegation that a, then 20-year-old, Rock Creek Academy student had become pregnant as the result of sexual contact with a Rock Creek Academy staff member.

OSSE interviewed five DCPS staff members responsible for oversight of the education of DCPS students at Rock Creek Academy and learned that DCPS notified Child and Family Services Agency (CFSA) and the DCPS School Security Unit; requested that Rock Creek Academy put the accused staff member on administrative leave; and encouraged the student to seek medical attention. According to DCPS, CFSA declined to investigate the allegation because the student was over age 18.

OSSE then attempted to interview the adult student, who no longer attends Rock Creek Academy. While OSSE spoke directly with the student by phone, the student declined to discuss the allegations or Rock Creek Academy's handling of the situation. OSSE reviewed DCPS staff and DCPS School Security notes taken during interviews with the student. Additionally, OSSE interviewed the staff member alleged to have a relationship with the student. He admitted his friendship with the student but denied any sexual relationship. Based on the available information, OSSE could not determine whether there was any inappropriate conduct between the staff member and the 20 year old student.

During its investigation, OSSE found a number of inconsistencies in the responses of Rock Creek Academy staff when questioned regarding this matter. According to Rock Creek Academy's Executive Director, Rock Creek Academy learned of the allegations in the spring of 2010, while the regular school year was in session, and conducted an internal "investigation" which ended "probably a couple weeks after they started." Rock Creek Academy did not document its investigation with a written report. The Executive Director stated that the investigation consisted primarily of speaking with the accused staff member (through the staff member's supervisor) and speaking with the student (through the student's counselor). However, when OSSE interviewed the student's counselor, the counselor stated that she did not know that the student was pregnant until the summer of 2010, after the end of the regular school year; and that when the student identified a Rock Creek Academy staff member as the potential father of the child, the counselor reported the allegation to her supervisor, but was unaware of any steps taken as a result of the report. OSSE believes that information provided by Rock Creek Academy concerning the investigation violates D.C. Official Code §38-2561.11(a)(2).

Finally, OSSE is extremely concerned about the lack of rigor in Rock Creek's investigation of allegations involving sexual contact between a member of Rock Creek's staff and a student. Further, there is no documentation indicating that Rock Creek Academy notified DCPS, the LEA responsible for the student's placement, or any other District of Columbia authorities regarding this allegation.

## **9. Community Concerns**

During the course of OSSE's monitoring of Rock Creek Academy a number of community stakeholders contacted OSSE to express various concerns regarding Rock Creek Academy. Many of those concerns have been specifically addressed in previous sections. OSSE believes that it is important to also include that it received allegations that students are involved in criminal behavior during the school day (e.g. property destruction at local businesses and illegal substance use), that improper physical relationships exist between staff and students and that the school fails to supervise students during recess times. OSSE notes that some allegations raised by stakeholders are beyond the jurisdiction of OSSE Division of Special Education monitors and that other allegations are unable to be substantiated given the investigatory methods used to monitor the school.

## **10. Role of a Local Educational Agency**

Nonpublic schools are responsible for maintaining compliance with all COA requirements and working collaboratively with the student's LEA to ensure that the student is receiving a free appropriate public education in the least restrictive environment. Ultimately, the LEA responsible for a student's placement in a nonpublic school is responsible for ensuring that the IDEA is being implemented for each student placed in the nonpublic school.

Pursuant to 34 CFR §300.324(b), each public agency must ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals, and in the general education curriculum, if appropriate; the results of any reevaluation; information about the child provided to, or by, the parents; the child's anticipated needs; or other matters. Additionally, 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.

As the LEA responsible for the education of DCPS students placed at Rock Creek Academy, DCPS was responsible for holding an IEP meeting for each DCPS student at Rock Creek Academy as soon as the LEA was aware that IEPs were not being implemented and that students were not making progress toward annual goals, and, where appropriate, relocating the students to an educational environment where special education and related services could be made available in accordance with the students' IEPs. Regardless of the COA status of Rock Creek Academy, DCPS maintained the responsibility to provide a free appropriate public education to each DCPS student placed at the school. Therefore, OSSE finds that DCPS is out of compliance with 34 CFR §300.324(b) and 34 CFR §300.323(c)(2) for its failure to hold IEP meetings for each DCPS student at Rock Creek Academy based on the children's anticipated needs and the knowledge that special education and related services were not made available in accordance with each child's IEP. In order to correct this noncompliance, within 90 days of the date of this report, DCPS must convene an IEP meeting for each DCPS student enrolled at Rock Creek Academy to discuss progress toward

annual goals, an appropriate placement and any compensatory education that may be warranted as a result of DCPS' failure to implement the student's IEP.

**VII. Notice of Intent to Revoke and Right of Appeal**

Under D.C. Official Code §38-2561.11(a), OSSE may deny, revoke, refuse to renew, or suspend a Certificate of Approval for any one or combination of the following causes:

- (1) Violating any provision of the Placement Act, rules of the SEA or DCPS, or applicable federal laws or regulations, except that noncompliance with §38-2561.12 shall not be grounds for denial, revocation, refusal to renew, or suspension;
- (2) Providing false, misleading or incomplete information, or failing to provide information requested by the SEA or DCPS;
- (3) Violating any commitment made in an application for a Certificate of Approval;
- (4) Failing to provide or maintain the premises or equipment of the special education school or program in a safe and sanitary condition as required by applicable law or regulation;
- (5) Failing to maintain adequate programs or to retain adequate, qualified instructional staff;
- (6) Failing within a reasonable time to provide information requested by DCPS or the SEA as a result of a formal or informal complaint, or as a supplement to an initial application for a Certificate of Approval; and
- (7) Allowing aversive intervention in its policy or practice.

Based on the factual findings documented above, OSSE has determined that Rock Creek Academy is in violation of subsections (1), (2), (4) and (5) of D.C. Official Code §38-2561.11(a) because of the nonpublic school's:

1. Failure to maintain a six hour instructional day as required by 34 CFR §300.146(b) and 5 DCMR §A-2806.2;
2. Failure to ensure that all students are included in all general statewide assessments as required by 34 CFR §§300.146(b) and 300.160(a);
3. Failure to demonstrate that Rock Creek Academy is providing the related services specified in each child's Individualized Education Program (IEP) as required by 34 CFR §300.323(c)(2); 5 DCMR §A-2808.3, and 5 DCMR §E-3010.2;
4. Failure to ensure parental participation in IEP meetings as required by 34 CFR §300.322(a)(1) and 5 DCMR §E-3003.6 which mandates notification to a parent of the IEP meeting early enough to ensure an opportunity for the parent to attend;
5. Utilizing restraints in violation of D.C. Official Code §38-2561.11(a)(4) and 5 DCMR §B-2502;
6. Utilizing prone restraints in violation of D.C. Official Code §38-2561.11(a)(4);
7. Utilizing seclusion in violation of D.C. Official Code §38-2561.11(a)(4);

8. Failure to provide information requested by DCPS regarding student incident reports as required by D.C. Code 38-2561.11(a)(2);
9. Failure to utilize effective school-wide positive behavior intervention supports as required by 5 DCMR §A-2814.1;
10. Failure to take into consideration the requirements of least restrictive environment at the annual review of a student's placement as required by 34 CFR §300.116 and 5 DCMR §E-3013.1, and to conduct appropriate transition planning to a less restrictive environment as required by 5 DCMR §A-2810;
11. Failure to follow the requirements of secondary transition planning as required by 34 CFR §300.320(b); and
12. Failure to provide true and complete information regarding absenteeism and truancy as required by D.C. Official Code §38-2561.11(a)(2).

As a result of the seriousness of these violations, OSSE is hereby providing notice to Rock Creek Academy and in a letter accompanying this report that OSSE intends to revoke the Certificate of Approval for Rock Creek Academy.

Within 30 days of Rock Creek Academy's receipt of this report, Rock Creek Academy may request a hearing pursuant to D.C. Official Code §38-2561.11(b)(2)(A) and DCMR §A-2843 for an independent panel to review OSSE's notice of its intention to revoke Rock Creek Academy's COA, based on the violations set forth above and in the attached file review reports dated April 27, 2011. A request for a hearing and all submissions must be addressed to the attention of the Office of the State Superintendent of Education, Office of the General Counsel, Attn: Certificate of Approval Review.