

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION

DE SC 24-06

Date Issued: January 11, 2024

On November 13, 2023, REDACTED (Parent) filed a complaint on behalf of REDACTED REDACTED, REDACTED (Student), with the Delaware Department of Education (Department). The complaint alleges the REDACTED School District (District) violated state and federal regulations concerning the provision of a free, appropriate public education (FAPE) to Student under the Individuals with Disabilities Education Act (IDEA).¹ The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151–300.153 and according to the Department’s regulations at 14 *Del. Admin. C.* §§ 923-51.0–923-53.0. The investigation included a review of Student’s educational records and interviews with Parent and District personnel.

ONE YEAR LIMITATIONS PERIOD

In accordance with IDEA and corresponding state and federal regulations, the complaint must allege violations that occurred not more than one (1) year prior to the date the Department receives the complaint. See, 34 C.F.R. § 300.153(c); 14 *Del. Admin. C.* § 923-53.2.4. In this case, the Department received the complaint on November 13, 2023. Therefore, the Department’s findings address violations from November 13, 2022, to November 13, 2023.

COMPLAINT ALLEGATIONS

Parent alleges the District violated Part B of the IDEA and implementing regulations by: 1) failing to implement Individualized Education Program (IEP) as written; 2) failing to provide appropriate accommodations; 3) failing to provide appropriate services, including failing to provide services in a timely manner; 4) failing to evaluate in a timely manner; 5) failing to provide progress notes; and 6) failing to provide Student with a safe and supportive environment.

¹ Since the complaint is against a state agency, it is named the first time and thereafter refer to it generically. Second, to protect personally identifiable information about the student from unauthorized disclosure, this complaint decision identifies people and places generically. The temporarily attached index lists the name corresponding to each generic role exclusively for the benefit of the individuals and education agency in the investigation. The index must be removed before the complaint decision is released as a public record.

FACTUAL FINDINGS

1. Student is REDACTED years old and currently attends the REDACTED (School 1) as a REDACTED grader.
2. On June 14, 2019, the District team determined that Student was eligible for special education and related services under the educational classification of Other Health Impairment (OHI). At that time, Student was attending a private school and received services under an Individual Service Plan (ISP).
3. Student enrolled in District on September 5, 2021. On September 29, 2021, the IEP Team from REDACTED School (School 2) met to review and adopt the Eligibility Summary Report (ESR) since the Student was transferring from a private school. At that meeting, an IEP was developed.
4. On May 23, 2022, the IEP Team met to discuss data regarding Student's re-evaluation. The IEP Team found Student continued to be eligible for special education and related services. However, the IEP Team found Student eligible as a student with a Learning Disability (LD) in Math Problem Solving. A secondary classification of Speech or Language Impairment (SLI) was also identified. The IEP Team also recognized that deficits from a previous diagnosis of Attention Deficit Disorder (ADD) continue to be present.
5. On May 23, 2022, the IEP Team met to develop the annual IEP. The goals and accommodations include:
 - Reading Comprehension by answering literal and inferential questions. Instruction will be provided in a small group, three times a week for 15 minutes per session.
 - Mathematics by solving multi-step word problems. Instruction will be provided in a small group, three times a week for 15 minutes per session.
 - Behavior by demonstrating time on task. Instruction will be provided in teacher conferences on classroom expectations, five sessions per school week, 5 minutes per session.
 - Receptive and expressive language by demonstrating understanding and use of figurative language. Speech and language services will be provided in a group, 4 times per marking period, 30 minute per session.
 - Accommodations include small group instruction and testing, extended time, familiar testing administrator, notes used during testing, study buddy, directions, questions and answers read aloud, modified assignments in length, preferential seating, graphic organizers, frequent breaks, multiple opportunities to practice, color coded reference sheets, provide background knowledge and multiplication charts.

6. On May 19, 2023, the IEP Team met to develop the current annual IEP. The goals and accommodations include:
 - Reading Comprehension by answering inferential questions. Instruction will be provided in a small group, two times a week for 20 minutes per session.
 - Mathematics by solving multi-step word problems. Instruction will be provided in a small group, two times a week for 15 minutes per session.
 - Behavior by demonstrating time on task. Instruction will be provided in teacher conferences on classroom expectations, five sessions per school week, 3 minutes per session.
 - Receptive and expressive language by demonstrating understanding and use of figurative language. Speech and language services will be provided in a group, 2 times per month, 30 minute per session. In addition, consultative services will be provided 1 time a month for 15 minutes.
 - Accommodations include graphic organizers, checklists, modeling, repetition, scaffolding, multiplication charts, use of calculator, formula sheets, modified assignments, small group testing, extra time, all grade level text read aloud, read directions, specific instruction and practice using aids for comprehension/expression such as highlighting and using dictionaries, use of text reader, review rules, routines, and frequent breaks.
7. Student entered School 1 for the 2023-2024 school year.
8. On October 11, 2023, Parent spoke with Assistant Superintendent stating that Student's IEP was not being followed.
9. Assistant Superintendent notified Supervisor of Student Services (Supervisor) of the communication. Supervisor called Parent on October 12, 2023 to discuss the concerns. During the conversation, Parent shared that the setting did not match Student's IEP, there were no aids in class or in small group settings, there was a distracting iguana in the classroom, accommodations (color-coded paper and dictionary) were not being provided and had concerns about the teacher. Supervisor agreed to follow-up and observe the Student and classroom.
10. On that same call, Parent shared that Student was told by Teacher that he/she would not help Student with a locker combination, even though Student recently had a cast removed. Parent communicated that Teacher closed the door and marked Student tardy. The same Teacher would not allow Student to attend a school pep rally to participate in the band because a test was being given in class on the same day. Parent requested a change in Math teachers.

11. On October 16, 2023, Supervisor called Parent to explain the specific accommodations of colored paper and dictionary were not listed on the current IEP of May 19, 2023. These accommodations were listed in the previous IEP of May 23, 2022.
12. However, upon review, the current IEP states accommodation of “specific instruction and practice using aids for comprehension/expression such as highlighting and using dictionaries” under speech services for Oral Communication: Receptive/Expressive Language.
13. During the school visit on October 16, 2023, Supervisor observed second and third period classes but did not have the opportunity to observe small group instruction occurring during this time.
14. As part of the investigation, Principal explained to the Supervisor that the teachers assigned to Student had provided small group instruction, but they had no documentation to support providing the services. Due to lack of documentation, District determined that implementation of providing small group instruction could not be substantiated and that Student would receive compensatory services from the first day of school in in the 2023-2024 school year through the current week, ending October 20, 2023.
15. On October 19, 2023, Assistant Principal advised Supervisor, via email, that a conversation was conducted with Student’s teachers, discussing supports and accommodations needed for Student. Assistant Principal created a bulleted list of the identified supports for Student in English/Language Arts and Math, as well as the compensatory services for the teachers to reference.
16. On October 20, 2023, the Principal shared the compensatory education plan, which included accommodations and services, with Parent, via phone and email.
17. Compensatory services include 280 minutes of Multi-Tiered Systems of Support (MTSS) small group instruction in ELA and 210 minutes of MTSS small group instruction in Math. Each session will be provided in 45 minute increments. Compensatory services include small group instruction, accommodations, modifications and supports.
18. On October 27, 2023, Assistant Principal stated that Student was being moved to a different teacher for Math.
19. On October 30, 2023, Parent met with Supervisor and reported that Student’s Math teacher was not yet changed. Also, Parent felt that Student was being bullied by the Teacher. Supervisor sat with Parent to complete the online bullying form.

20. The bullying complaint was investigated. On October 31, 2023, Principal advised Parent, via email, that the allegation was unsubstantiated.
21. On November 8, 2023, an IEP meeting was held. There was a question regarding the compensatory services in Math because there had been a teacher change. Assistant Principal stated the need to further explore this issue. It was stated at the IEP meeting that Student would continue to receive compensatory services for all undocumented time. Parent stated the desire to have compensatory services provided after school with a tutor chosen by Parent. The IEP Team agreed.
22. In this meeting, Parent shared Student should receive small group testing as an accommodation in all subjects. It was discussed that Student's current IEP has accommodations of small group testing for English/Language Arts and Math. Special Education Coordinator (Coordinator) from School 2 shared that Student had received small group testing in Science and Social Studies the previous year though it was not written in the IEP. The IEP Team discussed the need and agreed to add small group testing accommodations for all subjects to the IEP.
23. In this IEP meeting, Parent stated that REDACTED had not received a progress report. It was explained that Monday, November 13, 2023 was a student holiday. This allowed teachers to complete grading and progress reports which were to be shared with parents via home access. In addition, a copy of the progress report was to be sent home. A progress report was sent to Parent on November 25, 2023.
24. Adequate progress was reported on each IEP goal except for Math Problem Solving: Multi-Step Problems. It was stated that the "goal could not be assessed at this time due to the unit of study at the beginning of the year."
25. On November 9, 2023, Parent sent an email to Supervisor, Coordinator and Assistant Principal stating that Parent disagrees with ESR from May 23, 2022 because it's not sufficiently comprehensive, it has failed to adequately assess memory and learning, as well as anxiety. In a phone conference with Supervisor on November 10, 2023, Parent requested the District to fund an Independent Educational Evaluation (IEE). Supervisor agreed that District would fund the IEE.
26. Supervisor indicated that, upon document review, there were no notes of disagreement related to the May 23, 2022 ESR.
27. On November 13, 2023, District communicated with tutor expressing their approval of tutoring sessions.

28. On November 13, 2023, District sent Parent a letter confirming approval for an Independent Educational Evaluation. The letter contained the names of approximately fifteen approved psychologists from which the Parent can choose.
29. On November 13, 2023, Parent filed a State Complaint with the Department.
30. On November 29, 2023, District confirmed the pay rate with tutor and advised that tutoring could begin.

LEGAL CONCLUSIONS

Complaint Allegations #1, #2 and #3: Failure to implement IEP as written, failure to provide appropriate accommodations and failure to provide appropriate services, including failure to provide services in a timely manner.

Special Education is governed by both Federal and State laws and regulations. IDEA and implementing state and federal regulations require school districts to provide a free appropriate public education (FAPE) to students with disabilities. *See*, 20 U.S.C. § 1401(9); 34 C.F.R. § 300.101(a); 14 *Del. Admin. C.* § 923-1.2. IDEA requires special education that is specialty designed instruction, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions, and related services, as defined by the DDOE rules and regulations approved by the State Board of Education, and as may be required to assist a child with a disability to benefit from an education that:

- (a) Is provided at public expense, under public supervision and direction and without charge in the public school system;
- (b) Meets the standards of the Delaware Department of Education;
- (c) Includes elementary, secondary or vocational education in the State;
- (d) Is individualized to meet the unique needs of the child with a disability;
- (e) Provides significant learning to the child with a disability; and
- (f) Confers meaningful benefit on the child with a disability that is gauged to the child with a disability potential. *See*, 14 *Del. C.* § 3101(5).

The IEP contains information regarding a child's needs through a statement of measurable annual goals in the IEP. *See*, 34 C.F.R. § 300.320(a)(2)(i); 14 *Del. Admin. C.* § 925-7.0 through 11.0. This allows the team to monitor a student's progress on IEP goals and help determine if more or fewer supports are needed. The child's IEP may also include a statement of the program modifications or supports for school personnel that will be provided to advance appropriately toward attaining the annual goals. *See*, 34 C.F.R. § 300.320(a)(4); 14 *Del. Admin. C.* § 925-7.0 through 11.0. This allows the educators the opportunity to properly implement the student's IEP.

In addition, according to 14 *Del. Admin. C.* § 925-10.3, each public agency shall ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related

services provider, and any other service provider who is responsible for its implementation; and each teacher and provider described in this paragraph is informed of: their specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.

As part of the investigation, Principal informed Supervisor that the teachers assigned to Student had provided the services of small group instruction, but they had no documentation of providing those services. Due to lack of documentation, District determined that implementation of small group services could not be substantiated, and that Student would receive compensatory services from the first day of school in in the 2023-2024 school year through the current week ending October 20, 2023. At that time, the Assistant Principal had a conversation with Student's teachers, discussing all services to be provided to Student. Assistant Principal created a bulleted list of the identified accommodations, modifications and supports for Student in English/Language Arts and Math, as well as the compensatory services for the teachers to reference.

The compensatory education plan, which included accommodations, modifications, supports and services, was shared with Parent on October 20, 2023 by Principal, via phone and email. On November 8, 2023, during an IEP meeting, there was a question regarding the compensatory services in Math because there had been a teacher change. Assistant Principal stated the need to further explore this issue. It was stated that Student would continue to receive compensatory services for all undocumented time. Parent stated the desire to have compensatory services provided after school with a tutor chosen by Parent. The IEP Team agreed. Although the District communicated with tutor expressing their approval of tutoring sessions on November 13, 2023, tutoring still had not begun until the pay rate was confirmed with the tutor on November 29, 2023.

District admitted accommodations, modifications, supports and services were owed to Student due to lack of documentation to insure services had been provided. In addition, the progress report stated that the math goal could not be assessed at this time due to the unit of study at the beginning of the year.

Therefore, I find a violation of IDEA and Delaware regulations in failing to implement the IEP as written, failing to provide appropriate accommodations and failing to provide appropriate services, including failing to provide services in a timely manner.

Complaint Allegation #4: Failure to evaluate in a timely manner.

In accordance with 20 U.S.C. §1414(a)(2) and 14 Del. Admin. C. § 925-4.0 through 925-6.17.7, a public agency shall ensure that a re-evaluation of each child with a disability is conducted if the public agency determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a re-evaluation; or if the child's parent or teacher requests a re-evaluation. A re-evaluation conducted under subsection 3.1 may occur not more than once a year, unless the parent and the public agency agree otherwise; and shall occur at least once every three (3) years, unless the parent and the public agency agree that a re-evaluation is unnecessary.

Student was originally identified as a student eligible for special education and related services on June 14, 2019 while attending a private school. Student enrolled in the District in September 5, 2021 and the IEP Team met on September 29, 2021 to review and adopt the current ESR. The District conducted a re-evaluation in the Spring of 2022 and held a meeting on May 23, 2022 to review the results of the evaluation. At that time, the IEP Team determined the Student was eligible for special education and related services primarily as a student with a Learning Disability in Math Problem Solving. A secondary classification of Speech or Language Impairment was also identified.

In this case, Student's re-evaluation was conducted within the three-year timeframe as identified by IDEA and Delaware regulations.

Therefore, I find no violations of IDEA or state regulations regarding the timeliness of a re-evaluation for eligibility to receive special education and related services.

Complaint Allegation #5: Failure to provide progress notes.

In accordance with 20 U.S.C. § 1414(a)(2) and 14 *Del. Admin. C.* § 925-7.1.3, each child who is determined eligible for special education and related services shall have a single IEP. As used in these regulations, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with Sections 7.0 through 11.0, and that shall include: A description of how the child's progress toward meeting the annual goals described in subsection 7.1.2 will be measured; and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

During the November 8, 2023 IEP meeting, Parent stated that REDACTED had not received a progress report as yet. It was explained that Monday, November 13, 2023 was a student holiday. This time allowed teachers to complete grading and progress reports which were to be shared with parents via home access. In addition, progress reports were to be sent home. A progress report was sent to Parent on November 25, 2023. This timeframe is concurrent with the issuance of report cards within the District.

Therefore, I find no violations of IDEA or state regulations regarding providing progress notes of special education and related services.

Complaint Allegation #6: Failure to provide Student with a safe and supportive environment.

The U.S. Department of Education's *Dear Colleague* letter of July 25, 2000 informs States and school districts that they have a responsibility under Section 504, Title II, and the Individuals with Disabilities Education Act (IDEA), which is enforced by OSERS, to ensure that a free appropriate public education (FAPE) is made available to eligible students with disabilities. The letter states that disability harassment that adversely affects an elementary or secondary student's education

may be a denial of FAPE under the IDEA, as well as Section 504 and Title II. The IDEA was enacted to ensure that recipients of IDEA funds make available to students with disabilities the appropriate special education and related services that enable them to access and benefit from public education. The specific services to be provided to a student with a disability are set forth in the student's individualized education program (IEP), which is developed by a team that includes the student's parents, teachers and, where appropriate, the student. Harassment of a student based on disability may decrease the student's ability to benefit from his or her education and amount to a denial of FAPE. When disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. When the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.

On October 12, 2023, Supervisor called Parent to discuss concerns brought to the attention of Assistant Superintendent. Parent shared that Student was told by Teacher that he/she would not help Student with a locker combination, even though Student recently had a cast removed. Parent communicated that Teacher closed the door and marked Student tardy. The same Teacher would not allow Student to attend a school pep rally to participate in the band because a test was being given in class on the same day. Parent requested a change in Math teachers. On October 30, 2023, Parent met with Supervisor and reported that Student's Math teacher was not yet changed and Student was being bullied by the Teacher. Supervisor sat with Parent to complete the online bullying form. The bullying complaint was investigated. On October 31, 2023, Principal advised Parent, via email, that the allegation was unsubstantiated.

Therefore, I find no violation of IDEA or state regulations regarding the provision of a safe and supportive environment.

CORRECTIVE ACTIONS

Student Level Corrective Actions

1. The District shall meet with the Parent and determine appropriate compensatory education services owed to Student for all violations regarding IEP implementation that occurred from first day of school this year until November 13, 2023. The District shall contact SPARC to request IEP Facilitation services for this meeting. In determining the provision of compensatory education, the District should account for failures in providing appropriate services for specially designed instruction within small and large group settings, accommodations, modifications and supports. The determination of compensatory education services, calculation of time owed, and timeline for delivery should be discussed and agreed upon with Parent and documented. This official document shall be provided to the Parent and a copy sent to the Director of Exceptional Children Resources by **February 15, 2024**.

All compensatory services shall be completed by **June 30, 2024**.

2. After the Independent Educational Evaluation (IEE) is completed, the IEP Team shall reconvene an IEP meeting to review the new data, information and recommendations. The IEP Team must revise the IEP, as necessary. A copy of the IEE and IEP, if revised, including the PWN, shall be sent to the Director Exceptional Children Resources by **April 30, 2024**.

School Level Corrective Actions

1. Professional development related to development and implementation of an IEP, including data collection and progress monitoring shall be provided to all School general and special education staff. Training must be conducted **by March 15, 2024**. Training materials (i.e., Power Points, media and handouts) and sign-in sheets must be sent to the Director of Exceptional Children Resources **by March 29, 2024**.

Respectfully submitted,

REDACTED

Complaint Investigator