

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION

DE SC #23-03

DATE ISSUED: March 6, 2023

On January 5, 2023, the Delaware Department of Education (Department) received a state complaint filed by REDACTED (Legal Guardian) on behalf of REDACTED (Student) against the REDACTED School District (District). The state complaint alleges the 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).

The investigation included review and consideration of the records provided by Legal Guardian, and the District. Interviews were conducted with Legal Guardian and District staff. The records and interviews were reviewed and considered in the investigation. The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to Department regulations at 14 DE Admin Code § 923.51.0 to 53.0.

COMPLAINT ALLEGATIONS

The Complaint alleges: 1) the Student was the subject of bullying by other students resulting in a physical assault. The Legal Guardian indicated the school did not protect the Student from being bullied and assaulted thus requested a change in schools for safety and trauma purposes, 2) the Student did not receive a free and appropriate public education (FAPE) as outlined in the Individual Education Plan (IEP) including lack of assistive technology application (written and text-to-speech), addressing pragmatic language, failure to implement the Behavior Intervention Plan (BIP), failure to provide paraprofessional support, failure to provide a higher level of adult supervision and support in unstructured situations, and failure to provide weekly counseling and speech services, and 3) the Legal Guardian's rights under the Family Educational Rights and Privacy Act (FERPA) were violated because the District did not comply with the sharing of information as requested by the Legal Guardian. The Legal Guardian requested the Student be allowed to attend a high school in the REDACTED School District (District 2) and receive services as identified in the Student's IEP.

FINDINGS OF FACT

Background Information

1. Student is REDACTED years-old enrolled in REDACTED (School), and receives special education services as a student with an educational classification of Emotional Disability.
2. Student attended School at the beginning of the 2021-2022 school year as a REDACTED grade student.

3. Student is enrolled at School for the 2022-2023 school year as a repeating REDACTED grade student.
4. On May 23, 2022, Student's IEP for the 2022-2023 school year was developed. The initiation date was June 6, 2022.
5. In the Fall of 2022, the Student's grades declined. Core academic grades in Math and English are reported to have changed from "REDACTED" and "REDACTED" respectively to "REDACTED" for both subjects. Grades in other subjects such as Culinary Arts, Science and Spanish are reported to be "REDACTED."
6. On September 28, 2022, Student was involved in an aggressive incident in School which resulted in a 3-day out of school suspension.
7. On November 28, 2022, Student was involved in an incident at School in which Student was assaulted. Legal Guardian requested Student not return due to Student not feeling safe. Legal Guardian requested for Student to participate virtually until a placement in a different school could be obtained.
8. On December 12, 2022, the IEP team convened and amended the IEP to change placement to homebound instruction while the Legal Guardian sought Student's enrollment in District 2.
9. On December 22, 2022, Legal Guardian received notification from District 2 that the Student was denied enrollment.
10. The IEP reflecting the change of placement to homebound continues to be in effect through May 22, 2023. The Legal Guardian notified the District on January 4, 2023 to continue homebound instruction.

Instructional Performance and Practice

11. According to the May 23, 2022 IEP, Student's disability affects Student's math performance. Student scored at the beginner level on an 8th grade universal screener. Student needs significant support to stay on task, requires direct instruction, as well as repetition, and extra practice to understand a concept.
12. According to the May 23, 2022 IEP, Student's reading comprehension skills are near grade level as measured on the Reading Inventory screener. Student struggles with reasoning and answering questions about text. Student's reading skills impact REDACTED access to the general education curriculum.
13. According to the May 23, 2022 IEP, Student's written responses are fragmented, and contain spelling, grammar and punctuation errors. Student requires basic writing skill

practice to convey information. Student requires graphic organizers, chunked writing assignments, teacher check-ins for immediate feedback, teacher models, extended time and peer/teacher editing.

14. According to the May 2022 IEP, Student requires small group and individualized instruction with accommodations and modifications to allow for access to state content standards in core academic classes. Student is reported to require significant supports to keep pace with grade level expectations and to complete grade level assignments.
15. Student's grades for marking period one and two ranged from 3-REDACTEDs (Health, English 1, Civics); 1-REDACTED (Science), 2-REDACTEDs (Culinary Arts, Integrated Math), and 2-REDACTEDs (Spanish I, Parenting).
16. Progress report for Marking Period 1, dated November 6, 2022, states that Student is making satisfactory progress toward annual goal on the following: Behavior-Peer Interactions and Task Completion. Student is reported as not making satisfactory progress on Mathematical Reasoning, Reading Comprehension and Written Expression. In addition, there was no benchmark statement for Pragmatic Language.
17. However, during the third marking period, Student's grades declined relative to performance during the earlier marking periods. In Marking period three grades were reported as follows: 2-REDACTEDs (Physical Education, Civics), 1-REDACTED (Art), and 5-REDACTEDs (Culinary Arts, Science 1, Integrated Math I, English 1, Spanish I).
18. According to the Principal, when a student begins to receive failing grades, each teacher is to assume responsibility for addressing failures directly with the student and the student's parents.
19. The Student's special education intervention team reported there was discussion about the Student's poor progress on several of the Student's IEP goals and in Student's core academic courses during the May 23, 2022 IEP meeting, prior to the current school year. As a result, the team indicated the Student was moved to a resource setting this current school year that included a paraprofessional in the room. "One-on-one support (if available)" is listed as an accommodation in the IEP.
20. The Legal Guardian indicated in the complaint that the Student has not received paraprofessional support.

Student Behavior

21. In the May 23, 2022 IEP, it is noted that the Student's disability impacts Student's ability to consistently regulate emotions and make progress in general education curriculum.
22. Additionally, Student requires designated staff support to assist with regulating emotions and handling stressful/frustrating situations. Student is able to independently demonstrate an awareness of feelings by generating an appropriate response to the situation 100% of opportunities. Students has significantly improved in ability to engage and maintain conversations by taking appropriate conversational turns, using social inferencing skills to "read" a situation, and apply perspective-taking to understand the view or opinion of others.
23. Student reportedly falls asleep frequently during classroom instruction. Student reportedly works at a slower pace than peers and requires direct instruction, repetition, and extra practice to understand content.
24. Student's speech and language pathologist (SLP) reports Student is well behaved and independently engages in and takes appropriate conversational turns with SLP and group peers.
25. Within the Student's May 23, 2022 IEP, it states that the Student may become quickly frustrated by peer comments/jokes/actions, often resulting in verbal altercations or fighting. Student was reported to have multiple major behavioral incidents at school that resulted in disciplinary actions including in and out-of-school suspensions.
26. Student's May 23, 2022 IEP includes scheduled counseling services once a week for 15 minutes.
27. On June 1, 2022, Student's IEP was amended to include a Behavior Intervention Plan (BIP). The BIP was included to address the Student's IEP goal focusing on Behavior-Peer Interactions. Services to address this need involved receiving direct instruction, modeling and feedback on peer interaction 1 time per school week for 15 minutes in the special education setting. The BIP included a listing of target behaviors and was accompanied by a listing of preventative strategies and antecedent modifications, alternative skills options, reinforcement strategies, adult responses to target behaviors, a safety plan, and data collection plan.
28. The BIP provides a listing of accommodations, modifications and supports. These include prevention strategies in the areas of counseling and speech therapy, paraprofessional support in the resource room setting and elective/regular education settings when possible, direct support with perspective taking and empathy skills with resolving conflicts, higher level of adult supervision in unstructured situation, sensory room breaks, and Fast Pass/Break Pass use.

29. During the 2021-2022 school year, Student was reported to have 65 days of attendance, and three separate out of school suspensions (January 21, 2022, March 17, 2022, April 27, 2022) for a total of 8 days.
30. During the Fall of 2022, Student's attendance was sporadic. Student was in school for 36 days and absent 19 days. Three of the 19 days included out of school suspensions. REDACTED was suspended on September 28, 2022.
31. All of the suspensions were for physical altercations. The behaviors that involved physical altercations appear to have occurred while the student was not in a regular classroom and in another setting within the school building (hallway and/or bathroom).

Assault Incident

32. Legal Guardian reported that the Student experienced a series of bullying incidents beginning in October and into November of 2022. Legal Guardian reported that the bullying occurred by one particular individual.
33. On November 28, 2022, the Deputy Principal reported that the Student arranged to meet the individual who was bullying REDACTED in a bathroom in a section of the School, which was substantially outside of the Student's normal and expected building location. A physical altercation occurred and progressed to involve three other students.
34. The incident occurred near the cafeteria where a number of school administrators were present. The Deputy Principal immediately intervened. Each of the individuals involved in the incident were identified and the school resource officer became involved. At that time, the Student was taken to the nurse and then to the wellness center in an attempt to stop bleeding from the assault. The Legal Guardian was called and took the Student to the local emergency room for medical attention.
35. The state police were called and a crime report was developed.
36. Both the Director of Student Services and the Deputy Principal reported that a no contact order had been issued between the Student and one of the students involved in the incident.
37. Medical records reflect the Student experienced a laceration to the right ear, a closed head injury without loss of consciousness, and injury of back. The Legal Guardian reported the injuries have required additional medical follow-up.
38. The Legal Guardian reported the incident has required additional emotional support and the Student is attending a once-a-month, privately-arranged, counseling session outside of the school which focuses on trauma resolution.
39. The three other students involved in the incident were immediately suspended. The Deputy Principal reported that all three students no longer attend the school.

40. The Student did not immediately return to school. The Legal Guardian provided a note from the Student's doctor that attendance be excused for the following two days.
41. The District reported that the Student was offered the option to return, and the Legal Guardian indicated that the Student would not be returning and was requesting the Student be able to attend school in a different district.
42. On December 12, 2022, an IEP team meeting was held and a decision was made to change the Student's placement to Homebound. No changes were made to the Student's goals, accommodations, or modifications for instruction or related services.
43. On December 16, 2022, the Legal Guardian notified the District via email that homebound instruction was declined and only remote education would be accepted. Schoolwork was to be completed via Schoology while the Legal Guardian sought a potential change in school district (District 2) attendance for the Student.
44. On December 22, 2022, the Legal Guardian was notified that a decision was made by a District 2 that enrollment in District 2 was denied.
45. On December 29, 2022, the Legal Guardian provided a letter from the private counselor that provides trauma-focused services to the Student. The letter states that the Student communicated to the counselor that returning to school feels equivalent to "entering a war zone." The counselor recommended the student attend a different school and until that happens, the Student would benefit from participating in supportive remote learning.
46. On January 4, 2023, the Legal Guardian notified the District via email that a decision was made to accept homebound instruction for the student, "until REDACTED is able to be placed in another school."

Provision of Related Services

Speech and Language Services

47. The May 23, 2022 IEP states that the Student receives speech and language services through consultation, two times per month for fifteen minutes for each session. There is one goal listed in the IEP related to the use of pragmatic language that includes, "need for specialized consultative speech-language pathology services to address pragmatic language delays." There is a listing of accommodations, modifications, and support listed that include visual/verbal prompts scripts, and role-playing, models of expected behavior, explicit instruction and practice with conversational conventions, initiating and maintaining conversations, opportunities to practice taught skills/strategies with feedback, cues and prompts to refocus and redirect back to conversational topic, and others.

48. According to the SLP, speech services were consultative and include speaking with the Student's teachers, parent and directly with the student. The SLP reported in an email with the Legal Guardian, dated January 20, 2023, that speech services were identified as "checking in on the Student's use of pragmatic language across the school day without pulling REDACTED out of class." The SLP indicated that there is not a location for service and the service occurs within the school and across the school day.
49. The Student's IEP was amended on December 12, 2022, changing placement and the location of services to be provided through homebound instruction.
50. According to an email from the SLP dated January 20, 2023, the first virtual consultation directly with the Student was to occur on January 20, 2023; however, the Student did not attend. The Legal Guardian was reportedly unaware of the virtual appointment. The SLP indicated the appointment had been established directly with Student through Schoology.

Counseling

51. The IEP states that Student is to receive counseling services individually one time per week, fifteen minutes for each session.
52. The School Psychologist was identified as the school personnel with responsibility for providing counseling services.
53. The School Psychologist indicated that no counseling services had been implemented with Student since the IEP was developed on May 23, 2022 as the School Psychologist "had a full load and there was not time available in that person's schedule to provide individual counseling services to the Student."
54. The School Psychologist reported attempting to establish a virtual counseling session with the Student on January 11, 2023. The Student reportedly did not like the time and it was changed.
55. On January 26, 2023, the Legal Guardian contacted the Investigator inquiring as to why the School Psychologist was contacting the Legal Guardian to set up a counseling appointment with the Student. The Legal Guardian reported that the Student did not want to meet with the School Psychologist as the School Psychologist was unfamiliar and no previous contact had been made with the Student when attending school in the building.
56. The Student attends weekly counseling outside of school, arranged privately by the Legal Guardian. In addition, the Student attends a separate counseling service once a month, privately arranged, to address issues of trauma from a November 2022 school-related assault event.
57. The School Psychologist indicated that no contact has been made with either outside counseling service to coordinate interventions. School Psychologist reported being unaware of the outside counseling taking place.

Homebound Instruction

58. The amended IEP from December 12, 2022, which placed the student on homebound, identifies Student was to receive up to 10 hours of instructional support weekly in the subject areas of Biology, Integrated Math I, Human Development, English II, Economics, Integrated Math II, Physical Education, and Spanish I. Teachers are to supply schoolwork activities including materials through Schoology which the Student will access at home. Homebound instruction was to be provided through a combination of virtual access to school work and online support from a designated homebound instructor. No transition plan was developed to bring the Student back into the school building.
59. On December 19, 2022, the Legal Guardian sent an email to the Director of Special Services, informing District that the Student would continue receiving education remotely on a temporary basis, while waiting for the outcome of the school choice (District 2) request. The Legal Guardian indicated in this email that the Student would not enter into a homebound program with a homebound instructor and requested that the District inform the Student's current teachers the Student will continue to submit work via Schoology.
60. On January 4, 2023, Legal Guardian communicated that the choice district (District 2) would not accept the Student due to poor attendance, poor grades and behavior. Legal Guardian further indicated in the email that Legal Guardian decided to accept homebound instruction for Student, "until (Student) is able to be placed in another school."
61. On January 9, 2023, the District contacted the Legal Guardian to confirm that the homebound teacher had been in contact to begin homebound instruction. The District indicated that the SLP would be connecting with the Student twice a month via a Zoom link, and the school psychologist would be connecting with the Student weekly on a specific day and time via a Zoom link.
62. According the District IEP Team, homebound instruction was to be structured so each academic content course teacher would post the student's work daily on Schoology. The Student would access the work virtually on Schoology and complete the work at home. The homebound instructor was scheduled to meet with the Student up to 10 hours per week to provide virtual instructional support to the Student.
63. At present, the Student is home without adult supervision during the regular school day. The Student must individually log into Schoology to obtain the schoolwork daily and complete the work individually.
64. According to the homebound instructor, instruction includes individualized direct instruction focused on reading comprehension, writing strategies and math strategies.
65. Records shared by the homebound instructor reflect the duration of homebound instruction was provided as follows:
- Week of January 9-13, 2023 – 6 hours
 - Week of January 16-20, 2023 – 8.45 hours

- Week of January 23-27, 2023 – 5 hours
- Week of January 30-February 3, 2023 – 8 hours
- Week of February 6-20, 2023 – 8 hours
- Week of February 13-15 – 2.5 hours.

66. On February 15, 2023, the homebound instructor discontinued providing instruction due to medical leave.
67. The District shared information that a homebound instructor reported to have met with the Student on February 21, 2023, and February 23, 2023, to provide instruction in math. Instruction reportedly included reviewing uncompleted assignments and directing Student to task completion.

Family Educational Rights and Privacy Act (FERPA) Compliant

68. The state complaint included an allegation that records were requested and not provided.
69. On November 29, 2022 the Legal Guardian requested the names of each of the students involved in the November 28, 2022 assault. The Legal Guardian received a copy of the assault report from the School Resource Officer (SRO).
70. On December 19, 2022, the Legal Guardian requested a copy of the Student's psychoeducational report.
71. On December 21, 2022, the District provided the Legal Guardian with a copy of the report. The Legal Guardian acknowledged receipt of the report via email.
72. On December 21, 2022 the Legal Guardian requested records on the assault incident from the special education coordinator. The special education coordinator indicated the Legal Guardian needed to contact the administration at the school.
73. Also on December 21, 2022, the Legal Guardian sent an email requesting the assault incident records from the Deputy Principal of Academics. The Deputy Principal of Academics responded the same day indicating that the Legal Guardian needed to request this information from the Deputy Principal of Operations.
74. On December 21, 2022 the Legal Guardian requested the Deputy Principal of Operations send her "all documentation and information pertaining to the assault incident that Student endured while at School." The Deputy Principal of Operations responded on the same date with the following: "What information are you looking for? SRO REDACTED shared the police report with you."

75. On December 31, 2022, the Legal Guardian requested the following reports from the Deputy Principal of Operations: “I am following up because I have NOT received any documentation from you or the school as requested below. Again, I am requesting any documentation, incident report, suspension report, etc. that involved (Student) since attending School.”
76. On December 31, 2022, the Deputy Principal of Operations responded to the request with the following: “Student does not have any other documentation regarding the incident. The police report captures this incident. Due to confidentiality laws, we cannot provide information (consequences, etc.) regarding the other students involved. The information requested in the email sent to our attorney asked us to release requested documents to School District 2 to apply for Choice in which we complied with on Wednesday, December 21, 2022. Are you looking for his behavior, attendance, and academic history? I can get you that information when I return next week once you confirm that this is the information you are requesting.”
77. On December 31, 2022, the Legal Guardian sent an email to the Deputy Principal of Operations requesting the following be sent, “Student’s behavior, attendance, academic history, counseling notes, and ANY documents pertaining to any incident that involved Student since REDACTED has been a student at School.”
78. On January 2, 2023, the Deputy Principal of Operations sent the Legal Guardian the following reports: Student Discipline Detail Reports, Student Attendance Reports, Interim and Final Report Cards.

CONCLUSIONS

A. Change of School to Another District

During the interview with the Legal Guardian on January 18, 2023, REDACTED reported that the November 28, 2022, incident was the result of a series of bullying incidents between the Student and one other particular student within the school building. As a result, Legal Guardian wanted Student placed in a different school.

The Student has been involved in a number of behavioral incidents that had resulted in school related disciplinary actions. Several of these experiences have involved the Student’s inappropriate use of language, inappropriate behavioral responses to peer interactions, and inappropriate physically aggressive responses.

Due to trauma experienced, the private counselor recommended Student receive remote instruction. The IEP team met to place Student on homebound. Initially, the Legal Guardian was resistant to “homebound” but agreeable to “remote instruction.” However, when District 2 refused admission, the Legal Guardian was then agreeable to homebound instruction until an appropriate school could be identified. The District indicated that the Student was offered the opportunity to

return to the District for educational services. There is only one high school in the District therefore, there are no other opportunities for the Student to receive secondary educational services within the District. When asked if the District offered a plan to the Student and Legal Guardian to transition the Student back into the school, the District indicated that no plan had been offered.

According to the Delaware Administrative Code, Title 14, §923.14.3: “When a child’s IEP Team determines the child’s needs cannot be met appropriately in the LEA of residence or other public agency, inter-LEA or interagency programs shall be considered within least restrictive environment requirements.” The District directly indicated that the LEA continues to be able to meet the child’s needs and the Legal Guardian disagrees. The law allows for other options to be considered. As of the complaint being filed, no official option was being pursued by the IEP Team. A parent’s disagreement with a placement does not automatically rise to a FAPE violation. There was evidence that the District could meet the needs of the Student in the current school with some modifications to his IEP.

I find the District did not violate LRE. While the Legal Guardian wanted Student to attend a different school district, the District could meet Student’s needs in REDACTED IEP. A change in placement, such as the one parent requested, is only appropriate if the needs of the Student cannot be met within the District.

B. Provision of FAPE

1. Prior to the Change in Placement- Counseling

The Student’s May 23, 2022 IEP noted student required “designated support staff to assist REDACTED with regulating REDACTED emotions and handling stressful/frustrating situations. Student was to receive counseling services and check-in with school psychologist to address social/emotional/behavior, medical, academic, goals/expectations and crisis.” The counseling services listed in Student’s IEP were designed to address Student’s behavior and peer interactions.

The Student’s IEP dated May 23, 2022, and amended on December 12, 2022, provided individual counseling services one time per week, fifteen minutes per session. The school psychologist indicated that no counseling services had been implemented since the IEP was developed due to the school psychologist having a full caseload and no time available in the schedule to provide individual counseling. No counseling services were provided as required by the May 2022 IEP.

2. Prior to the Change in Placement- Speech and Language Services

The student’s May 23, 2022 IEP indicates that speech and language services, with a focus on pragmatic, or social language, could assist with Student’s social-emotional development by addressing pragmatic language delays.

The Student was to receive 15 mins twice per month of consultative speech and language services.

According to the SLP, speech services were consultative and include speaking with the Student's teachers, parent and directly with the student. The SLP reported in an email with the Legal Guardian, dated January 20, 2023, that speech services were identified as "checking in on the Student's use of pragmatic language across the school day without pulling REDACTED out of class." The SLP indicated that there is not a location for service and the service occurs within the school and across the school day.

It is not clear and no records were provided to evidence the frequency of consultative services and the skills that were the focus of the consultations.

3. Prior to the Change in Placement-Specially Designed Instruction

Student's grades in core subjects of math and English reflected REDACTED and REDACTED respectively during Interim grade period 1. Beginning with Interim Reporting Period 3, the Student was now failing math and English, along with a continuation of failing in science, culinary arts, and Spanish. The District reported taking no actions to explore the reasons for the failing grades. The math teacher did report that some of the failing grades in math reflected the Student not completing the math assignments. The Student's IEP progress report completed on November 6, 2022, reflected the Student to be making satisfactory progress, which is in contradiction to the Student's grades during the same time period.

It appears that the Student was not making satisfactory progress in the goals that were established at the IEP meeting. The Student continued to experience behavioral incidents resulting in disciplinary action including suspension. The Student was struggling in core academic and noncore academic areas and there appeared to be no additional exploratory assessments or intervention implemented to prevent what appears to be a slide in the Student's academic performance.

The Student's special education intervention team reported there was discussion about the Student's poor progress on several of the Student's IEP goals and in Student's core academic courses during the May 23, 2022 IEP meeting, prior to the current school year. As a result, the team indicated the Student was moved to a resource setting this current school year that included a paraprofessional in the room. "One-on-one support (if available)" is listed as an accommodation in the IEP. The Legal Guardian indicated in the complaint that the Student has not received paraprofessional support.

The BIP provides a listing of accommodations, modifications and supports including paraprofessional support in the resource room setting and elective/regular education settings when possible, direct support with perspective taking and empathy skills with resolving conflicts, and higher level of adult supervision in unstructured situation.

If an IEP team has identified a student need, it must be addressed in the IEP. This is not contingent on whether a District has the resources available to do so. Thus, it is inappropriate to state "if available" in an IEP.

The IDEA and implementing state and federal regulations require school districts to provide FAPE to students with disabilities.¹ This means that the Student's IEP must be such to allow for reasonable progress in light of the Student's disability.²

I find a violation of FAPE in the District's failure to follow the Student's IEP and BIP and appropriately implementing the supports needed to meet the IEP goals. The District did not provide paraprofessional support in regular education settings, weekly counseling and provide higher levels of adult supervision, and supports in unstructured situations beginning June 6, 2022 through December 12, 2022.

B. After the Change in Placement

Following the physical assault on the Student on November 28, 2022, an IEP meeting was held. The Legal Guardian was concerned for the Student's safety and provided a note from the Student's private counselor recommending the Student receive educational services at home.

On December 12, 2022, the Student's IEP was amended to change the Student's placement. A decision was made by the IEP team that the Student required additional support to meet with success and REDACTED was registered to receive homebound instruction and receive direct support from a teacher. The IEP reflected a continuation of related services. No changes to any of the accommodations, modifications or supports were recommended from the May 23, 2022 IEP in the amended December 12, 2022 IEP.

On December 16, 2022 the Legal Guardian sent an email notifying the District that the Legal Guardian was requesting to have the Student receive education remotely with REDACTED current teachers and a request was made for the District to have the Student's teachers submit schoolwork through Schoology. There was no mention by the Legal Guardian nor any discussion by the District concerning any changes to related service supports or the consideration of accommodations, modifications and supports.

¹ See, 20 U.S.C. § 1401(9); 34 C.F.R. § 300.101(a); 14 DE. Admin. C. § 923.1.2.

14 Del. C. § 3101(5): "...FAPE is 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 Department 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."

² See *Endrew F. v. Douglas County School*, 580 U.S. ____ (2017).

On January 4, 2022, the Legal Guardian sent an email notifying the district that the Legal Guardian made a decision to accept homebound instruction and requested the Student receive the instructional supports REDACTED is entitled to receive.

1. After the Change of Placement -Counseling

The school psychologist reported attempting to establish a virtual counseling session with the Student on January 11, 2023. The psychologist reported the Student did not like the time and it was changed. On January 26, 2023 the Legal Guardian contacted this investigator inquiring about why the school psychologist was contacting the Legal Guardian to set up an appointment with the Student for counseling. The Legal Guardian reported that the Student did not want to meet with the school psychologist. The Student indicated that person was unfamiliar, and no previous contact had been made with the Student when the Student was attending school in the building.

The Legal Guardian informed this investigator that the Student attends private weekly counseling outside of school. In addition, the Student also attends separate private counseling services to address issues of trauma from the November 2022 school assault. Neither outside counseling service was arranged by the District. The school psychologist was asked during an interview if any contact has been made with either of the outside counseling services to coordinate intervention. The school psychologist indicated that no contact has been made and was unaware of the additional outside counseling.

2. After the Change of Placement- Speech and Language Services

On January 20, 2023, there were a number of emails between the Legal Guardian and speech and language pathologist concerning the related service of speech consultation. The Student questioned why the pathologist was contacting the Student for services when the Student did not remember having any contact with the pathologist. The pathologist indicated that was most likely because most of the consultation occurred in the halls with the Student, during small check-ins and did not “pull REDACTED out of class.”

3. After the Change of Placement-Specially Designed Instruction

Records shared by the homebound instructor reflected that an initial contact was made with the Legal Guardian to set-up virtual homebound instruction to begin on January 9, 2023. The District sent an email to the Legal Guardian on January 9, 2023 indicating a request was made for the school psychologist and speech and language pathologist to initiate related services online via Zoom and that a schedule to begin those services would be set-up in the student’s Schoology account.

Records shared by the homebound instructor reflect the duration of homebound instruction to be less than 10 hours a week. The regular homebound instructor discontinued services after February 14, 2023 due to medical leave. Homebound math instruction was provided on two days in February 2023.

I find a violation of FAPE in the District’s failure to follow the Student’s IEP and BIP and appropriately implementing the supports needed to meet the IEP goals. The District did not

provide paraprofessional support in regular education settings, weekly counseling and provide higher levels of adult supervision, and supports in unstructured situations beginning December 13, 2022 through present.

3. FERPA

IDEA and FERPA, along with state and federal regulations require school districts to permit parents to inspect and review any education records relating to their children.³ In addition, the IDEA, along with state and federal regulations LEAs may provide parents copies of records at no charge or subject to a fee not to exceed the actual cost of the records.⁴

More specifically, and in accordance with both Federal and State law,

Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under these regulations. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to **DE Admin. Code** 926.7.0 or 926.30.0 through 926.32.0 or resolution session pursuant to **DE Admin. Code** 926.10.0, and in no case more than 45 days after the request has been made.” Each participating agency may either provide copies of records to parents under these regulations at no charge or subject to a fee not to exceed the actual cost of the records. Under no circumstances shall a fee be assessed which effectively prevents the parents from exercising their right to inspect, review and copy the records.”⁵

The Legal Guardian requested, over multiple occasions, records from the District. The records were provided both by the special education coordinator, school resource officer and Deputy Principal. The District did not request any fees for the records. While the provision of records may have required multiple requests from the Legal Guardian, all records were provided and within the time limits set by state and federal regulations.

The District did comply with the Legal Guardian’s request to provide records. Therefore, the District did not violate the requirements of FERPA or IDEA.

³ 34 C.F.R. §300.613; 14 *DE Admin. C.* §927.13.1.

⁴ 4 C.F.R. §300.617; 14 *DE Admin C.* §926.1.2

⁵ See 14 Del. Admin. C. §927.13

CORRECTIVE ACTIONS

Student Level Corrective Actions

1. The District will develop a plan that reflects the provision of supports the School can provide to offer the Student a safe and smooth transition back into the school building for instruction **no later than March 31, 2023**. The District shall provide a copy of the transition plan to the Director of Exceptional Children Resources on the same date.
2. The District will complete a comprehensive evaluation (including academics, language, and behavior) **no later than May 31, 2023 as REDACTED triennial evaluation is due in October 2023**. The District shall send copies of the PTE, PWN, and ESR to the Director of Exceptional Children Resources upon completion.
3. The District will revise the Student's IEP to address needs identified through the evaluation. The District shall provide a copy of the revised IEP to the Director of Exceptional Children Resources by **June 15, 2023**.
4. The District will calculate compensatory education services owed to the Student from June 6, 2022 through the revision date of #2 above based on the revised IEP. Then, based on the revised IEP, if additional needs are identified and they are identified due to the lack of previous IEP implementation, the District will calculate the additional amount of compensatory education services owed to the Student. The determination of compensatory education services, calculation of time owed, and the timeline for delivery will be discussed with the Legal Guardian and documented. The final plan providing this level of detail shall be submitted to the Director of Exceptional Children Resources **on or before June 30, 2023**.

District Level Corrective Actions

1. The District will provide professional development to School staff regarding IEP development, and services in regards to FAPE including the implementation of goals, benchmarks, services, and accommodations as identified in the IEP. The professional development must be completed and the related documentation (sign in sheet, agenda, copy of handouts, copy of power point, etc.) must be provided to the Director of Exceptional Children Resources by April 7, 2023.

REDACTED Administrative Complaint Investigator