

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION

DE SC # 24-09

Date Issued: February 16, 2024

On December 18, 2023, REDACTED (Teacher), filed a complaint on behalf of REDACTED (Student), with the Delaware Department of Education (Department). The complaint alleges the Adult and Prison Education Resources Workgroup (APER), 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 complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 through 300.153 and according to the Department's regulations at 14 *Del. Admin. C.* §§ 923-51.0 through 923-53.0.

The investigation included a review of Student's educational records, as well as correspondence and interviews with Student, Prison Education Instructor, State Director of Adult and Prison Education Resources Workgroup (APER), Educational Diagnostician, Prison Education Adult Basic Education Instructor, Education Associate; Adult and Prison Education, School Psychologist, and Education Associate; Adult and Prison Education. The Parent was unresponsive to email correspondence; therefore, an interview was not held within the decision 60-day timeline.

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 December 18, 2023. Therefore, the Department's findings address violations from December 18, 2022, to December 18, 2023.

COMPLAINT ALLEGATIONS

Teacher alleges APER violated Part B of the IDEA and implementing regulations, as follows:

1. Failing to provide parental participation in an IEP meeting;
2. Failing to provide appropriate, adequately trained staff;
3. Failing to protect the Americans with Disabilities Act (ADA) rights of a student with a disability and;
4. Failing to protect the Section 504 of the Rehabilitation Act of 1973 rights of a student with a disability.

FACTUAL FINDINGS

Background Information

1. Teacher filed the complaint against APER on behalf of the Student who receives special education services while incarcerated at the REDACTED (REDACTED).
2. Student is currently REDACTED years of age and currently attends James H. Groves Adult High School (School) at REDACTED. Student is currently working toward a diploma.
3. According to the Delaware Students Information System (DELSIS), Student received special education services from August 29, 2011 through August 30, 2016. However, Student's DELSIS profile did not include special education services from September 1, 2016 through August 22, 2022.
4. On February 16, 2023, Student was incarcerated at REDACTED.
5. On March 16, 2023, the Educational Diagnostician (ED) reviewed Student's DELSIS profile to ascertain Student's educational history. The ED found that Student received special education services under the primary educational classification of Specific Learning Disability (SLD). After reviewing this information, the ED and School Psychologist (SP) made the decision to perform an evaluation to determine eligibility for special education services.
6. On April 4, 2023, Student started taking classes at REDACTED.
7. On April 23, 2023, Student signed a Permission to Evaluate (PTE) form so that APER could determine if Student was eligible for special education and related services.
8. On July 25, 2023, the SP evaluated the Student to determine if Student was eligible for special education and related services.
9. On July 28, 2023, Student attended REDACTED last day of classes at REDACTED and was released on REDACTED.
10. On October 12, 2023, Student returned to REDACTED.
11. On October 18, 2023, ED met with Student. Student indicated that REDACTED would like to enroll into School through APER by signing documentation to receive educational services.
12. On October 24, 2023, Student attended an education orientation, facilitated by the ED, for inmates who were interested in receiving special education services while incarcerated. During the orientation, Student completed enrollment paperwork. At that same time, the ED and Student discussed Age of Majority provision and Student requested parental involvement in the special education process.

13. On November 15, 2023, the ED notified Parent by phone to inform Parent of the Student's request to include REDACTED in the eligibility meeting. ED sent a calendar invite to Student's IEP Team, which included Parent, listing November 30, 2023 as the eligibility meeting date.
14. On November 17, 2023, the ED met with the Student, reviewed the evaluation results, and gave Student a copy of the Delaware Procedural Safeguards. Student also received and signed a Notice of Meeting (NOM) for the eligibility of special education services and the Age of Majority provision. Parent was listed on the NOM as a person who was invited to attend the meeting.
15. Also, on November 17, 2023, ED emailed Parent as a follow up to their November 15th phone call confirming the November 30th eligibility meeting date. The ED included a link for the virtual meeting, informed Parent that a calendar invite would be sent as a reminder, and attached the Delaware Procedural Safeguards. The ED also attached a copy of the evaluation results and directed Parent to contact the SP if Parent had questions after reviewing the report.
16. On November 30, 2023, the IEP Team, Student, and Parent met to review the evaluation results and to determine eligibility for special education services and related. At 9:03 am, ED called and emailed Parent to confirm Parent's attendance because Parent had not yet joined the virtual meeting. The ED attached the draft Evaluation Summary Report (ESR), Age of Majority form, and SP evaluation report to the email and informed Parent that the documents would be reviewed at the meeting. The link to join the meeting was shared again.
17. During the November 30, 2023 eligibility meeting, Student requested that the meeting not start without Parent being present. The Teacher and Student reported that the ED informed Student that Student was old enough to meet without Parent. Student repeated REDACTED request to have Parent in attendance.
18. Additionally, during the meeting, Teacher and Student went to Director's office to report that Parent was not on the call and that ED wanted to proceed with the meeting against Student's request to not start without Parent in attendance. The Director contacted the Parent by phone and Parent was able to join and attend the entire virtual meeting. The Parent provided information that was used to complete the historical background portion of the ESR.
19. On November 30, 2023, the IEP Team determined that Student was eligible for special education services as a student with a SLD. Since Student is REDACTED years old, the Team determined that Student can advocate for REDACTED and can provide informed consent. However, the Student requested that Parent be invited to IEP meetings and receive duplicate copies of educational-related records.
20. On November 30, 2023, The IEP Team mutually agreed to reconvene on December 27, 2023 to develop an IEP.

21. On December 20, 2023, the Student received the Prior Written Notice (PWN) from the November 30th meeting and NOM for the upcoming December 27, 2023 meeting.
22. On December 22, 2023, the ED shared the draft IEP with Student and Parent. In addition, the ED emailed the virtual meeting link and Procedural Safeguards to the Parent.
23. On December 27, 2023, the IEP Team met to review the draft IEP. However, the Team agreed to reschedule the meeting because the Parent started a new job and could not get time off to participate. On the same date, the ED spoke to the Parent by phone to reschedule the meeting to January 4, 2024.
24. On January 4, 2024, the Team met to review the draft IEP. Parent was unable to participate but Student agreed to continue the IEP meeting without Parent present. Student informed the Team that REDACTED wanted Parent to review the finalized copy of the IEP.

CONCLUSIONS

The IDEA and implementing state and federal regulations require school districts to provide 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. FAPE is special education that is specially 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.

1. Failed to provide parental participation in an Individual Education Plan (IEP) meeting

According to 14 *Del. Admin. C.* § 926-1.3, Parent Participation in Meetings: The parents of a child with a disability shall be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child.

The School followed the Child Find process and determined that Student was eligible for special education services. Additionally, since the Student is REDACTED years old, the Team determined Student can advocate for REDACTED and can provide informed consent. The Student requested that Parent be invited to IEP meetings and receive duplicate copies of educational-related records during the November 30, 2023 Age of Majority determination meeting. The ED submitted paperwork that documents phone and email attempts to have the Parent participate in the

November 30, 2023 eligibility meeting. The Parent was not in attendance at the start of the meeting so the Director called and was able to speak with Parent by phone. The ED followed-up with a phone call and email reminding Parent that the meeting was starting. It should also be noted that the ED attached the documents that were being reviewed at the meeting to the follow-up email and the Parent participated in the entire meeting.

According to 14 Del. Admin. C. § 926-20.1, Age of majority: To assure that children with disabilities who have reached age 18 have an identified decision-maker, which may be the child with a disability, the IEP Team shall discuss the potential need for an educational representative during the transfer of rights at age of majority review, and annually thereafter. In determining the need for an educational representative, the IEP Team shall consider:

20.1.1 A child with a disability without a court-appointed guardian of the person shall be presumed to have capacity and be accorded the rights of a parent upon attainment of age 18.

20.1.1.1 The public agency shall notify both the child and the parents that all rights accorded to parents under 14 *Del. C.* §3132(b) transfer to the child.

20.1.2 A child with a disability with capacity may authorize an adult agent to exercise rights through execution of a power of attorney or a standard voluntary grant of authority form published by the Department of Education.

The APER followed procedural safeguard guidelines, at the Student's request, by including the Parent when trying to identify a mutually agreeable day and time to meet, sharing documents that were relevant to the meeting and by ensuring that Parent was able to participate in the entire meeting.

Additionally, during the meeting, Parent gave historical background information that was included in the evaluation summary report. **Therefore, since the Parent was in attendance at the meeting and fully participated, I do not find a violation of FAPE or a violation of IDEA.**

2. Failed to provide appropriate, adequately trained staff

According to 14 DE Admin. Code § 923.56.1, Personnel necessary to carry out the purposes of these regulations shall be appropriately and adequately prepared and trained, and shall have the content knowledge and skills to serve children with disabilities, all as established in DOE certification regulations and requirements.

Local Education Agencies are responsible for adhering to state credentialing regulations. The determination as to whether APER staff have the content knowledge (FAPE, IDEA, Title II and 504 regulations), and skills to serve students with disabilities is the responsibility of the DOE Human Resources Department. **Therefore, personnel matters are beyond the purview of this Investigator and cannot be addressed through the IDEA state complaint process.**

3. Failed to protect the Americans with Disabilities Act (ADA) rights of a student with a disability

Title II of the ADA prohibits discrimination on the basis of disability in all programs, services, and activities provided or made available by public entities (state and local governments and special purpose districts). An allegation that falls under Title II of the ADA does not fall under the IDEA, or federal or state special education regulations. **Therefore, ADA matters are beyond the purview of this Investigator and cannot be addressed through the IDEA state complaint process.**

4. Failed to protect the Section 504 of the Rehabilitation Act of 1973 rights of a student with a disability

Section 504 of the Rehabilitation Act provides that no qualified individual with disabilities should, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

An allegation that falls under section 504 of the Rehabilitation Act does not fall under the IDEA, or federal or state special education regulations. **Therefore, Section 504 matters are beyond the purview of this Investigator and cannot be addressed through the IDEA state complaint process.**

CORRECTIVE ACTIONS

The Delaware Department of Education is required to ensure that corrective actions are taken when violations of the requirements are identified through the complaint investigation process. *See*, 14 *Del. Admin. C.* § 923-51.3.3. In this case, no violation of Part B of the IDEA was identified. Therefore, no further action by the DDOE shall be taken.

REDACTED

Investigator