

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION

DE SC # 23-07

Date Issued: June 9, 2023

On April 11, 2023, REDACTED (Parent) filed a complaint on behalf of REDACTED, REDACTED(Student), with the Delaware Department of Education (Department). The complaint alleged 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 to 300.153 and according to the Department's regulations at 14 DE Admin Code §§ 923.51.0 to 53.0.

The investigation included a review of Student's educational records, correspondence and interviews with Parent, District Director of Special Services, Special Education Coordinator (Special Education Coordinator 2), and former Special Education Coordinator (Special Education Coordinator 1).

Complaint Allegations

1. Parent alleged District violated Part B of the IDEA and implementing regulations related to a violation of the Student's transition planning evidenced by the following:
 - a. Student's transition goals were created without parent input.
 - b. Student's transition goals from 2021-2022 were never completed.
 - c. Transition goals were not appropriate for Student's identified needs.
 - d. Transition goals were not measurable,
 - e. Transition goal progress data from 2021-22 was never provided.
 - f. Appropriate assessments to determine Transition goals were not provided.

Finding of Facts

1. Student is REDACTED years-old and in the REDACTED grade at REDACTED. Student has a primary educational classification of Other Health Impairment (OHI) and a secondary educational classification of Specific Learning Disability (SLD).
2. Student has an etiology of Fetal Alcohol Syndrome (FAS). Parent reports the characteristics of FAS that Student manifests include mental health issues, impulsive behavior, social relationship challenges, reading and math comprehension difficulties, decision- making difficulties, challenges with organizational skills, and struggles with decision/choice making skills grounded in reality.

3. Student transferred into District as a REDACTED in December 2021, due to behavioral challenges in previous school.
4. Student is on track for REDACTED graduation with a regular diploma.
5. Parent reports Student was placed in a “C” setting within the Behavioral Intensive Learning Center (BILC) class full-time from December 2021 until November 2023.
6. The BILC had a class ratio of 5 students: 1 teacher and 1 paraprofessional. Student had a Behavioral Support Plan (BSP) from December 2021- February 2023.
7. Special Education Coordinator 2 stated, per District policy, students in the BILC must “earn their way out” to an “A” setting to participate in Career Pathways. Career Pathway is described in 14 DE Admin Code § 505.1.0 as follows:

Career Pathway means the three (3) credits of pre-planned and sequential courses required for graduation designed to develop knowledge and skills in a particular career or academic area.
8. Special Education Coordinator 2 stated BILC students have a School Connect class daily that addresses transition goals. A copy of district policy regarding this practice was requested but not received by Investigator.
9. On February 8, 2022, a Student Career Survey and Career Assessment was to be completed by Case Manager, as documented in the February 18, 2022 IEP. However, Special Education Coordinator 2 stated Student did not attend class to complete these transition activities. There are no records of a completed Career Assessment. An incomplete Student Career Survey was reviewed by Investigator; however, it is not dated.
10. On February 18, 2022, an IEP meeting was held and states Student would complete a career survey and aptitude assessment by December 19, 2022.
11. On February 18, 2022, a transition goal stated, “Student will graduate from high school and attend a four-year university.” Three activities stated that the Student would understand and explain coursework necessary to graduate from high school. There were two transition goals. (1) Student would be able to recite to Student’s social security number by memory and (2) An independent living goal that included activities related to Student learning how to budget and explain the term “cost of living.” All transition activities had the same beginning and end dates of February 19, 2022- December 19, 2022. The IEP contained a Sophomore Transition Planning document and a recommended course of studies form attached to the IEP.
12. On April 27, 2022, Teacher and Parent met to develop proposed revisions to accommodations and 2022-23 courseload in preparation for a May 2, 2022 IEP meeting. This meeting was to confirm Student’s goals and schedule for upcoming school year. Teacher proposed continuation of Student’s goals of self-regulation and executive functioning. Teacher stated Student would typically be assigned a vocational rehabilitation (VR) counselor in REDACTED

year; however, Teacher reported beginning the application process immediately. Teacher stated VR Counselor would assist Student in employment and independent skills goals.

13. On May 2, 2022, there was an IEP meeting. Documentation submitted from District had only one signature on the document and that was on the sign-in page (Special Education Coordinator 1 signature). The IEP indicated data considerations included vocational survey and assessments had been completed February 8, 2022. Transition goals were noted as “changed June 8, 2022.”
14. On May 18 and May 21, 2022, Parent followed up via emails with Special Education Coordinator 1 requesting “any paperwork” from the meeting for review, since meeting had occurred more than 2 weeks prior.
15. On May 26, 2022, Special Education Coordinator 1 sent IEP from May 2, 2022 meeting, requesting Parent review and make any changes, if needed.
16. On May 26, 2022, Parent responded to Special Education Coordinator 2, questioning if any revisions to the transition goals had been made. Parent also stated in an email, Parent had requested the meeting occur prior to spring break so that Student’s goals and schedule would be set for the 2022-23 school year. However, meeting did not occur until May 2, 2022 and goals and schedule were still not revised appropriately.
17. On May 31, 2022, Teacher sent Parent notes of April 27, 2022 meeting between Parent and Teacher regarding proposed revisions for May 2, 2022, IEP meeting.
18. On June 8, 2022, IEP meeting was held to revise transition goals and related activities. Goals from February 18, 2022 were restated in the revision with a completion date(s) targeted for first two marking periods of the 2022-23 school year. Parent and Special Education Coordinator 1 stated these revisions were made since Student had been in SAT Prep class; therefore, goals were not addressed. However, they were documented as “completed.”
19. On June 22, 2022, Teacher left the District. Investigator requested Student transition goal progress data. No documentation was submitted.
20. In November 2022, Student began attending half time classes in BILC and half time in “A” setting, due to improved behavior Parent reported. No documentation of a meeting regarding change in setting was submitted to Investigator.
21. In January 2023, Parent stated Student questioned why other students had a Career Pathway and Student did not. Parent stated Parent was unaware of Career Pathway requirement for high school graduation in Delaware.
22. On January 18, 2023, an IEP revision meeting was held to revise accommodations and consider least restrictive environment (LRE) placement according to the prior written notice (PWN). The PWN also noted the meeting date as May 2, 2022. Transition planning was also noted on the IEP. This IEP document indicated the vocational survey and assessment and Major Clarity

had been completed on February 8, 2022. This IEP document also indicated Student was not on a Career Pathway.

23. On January 20, 2023, the Student Progress Report states goal activities related to Student's assessment survey and aptitude assessment of June 8, 2022 revised IEP were "completed." Student progress toward other transition goal activities noted on June 8, 2022, revised IEP and slated to be completed by December 19, 2022, not "completed," rather "making satisfactory progress toward goal."
24. On January 24, 2023, Parent emailed Special Education Coordinator 2 with a list of concerns regarding January 18, 2023 IEP revision document and meeting. Parent asked if the documents were supposed to be sent home prior to meeting or shown on the screen in meeting (Parent was on Zoom). Special Education Coordinator 2 responded to Parent's email that Zoom did not allow the documents to be shown.
25. On February 6, 2023, an IEP meeting was held. Parent attended by Zoom. The IEP had an initiation date of February 20, 2023 and proposed new transition goals including:
 1. Student wants to become a nurse after high school
 2. Student will attend college to earn a degree in nursing
 3. Student will live independently upon completion of REDACTED education and secure employment.Transition activities and services included: Student researching requirements for a career in nursing; completing Major Clarity to make career choice; Student taking SAT in spring 2023; and Student researching schools with nursing programs; Independent living goals included Student managing finances and shopping within a budget for personal items. A student survey/questionnaire was noted as data source. However, no vocational assessment was marked as data source, nor identified as a transition goal.
26. On March 2, 2023, an IEP meeting was held to revise transition goals. Revised goals included:
 1. Student to pursue a career in the medical field as a cardiothoracic surgeon.
 2. Student will attend Hampton University to obtain a bachelor's degree in the Pre-Med Program, then apply to medical school.
 3. Student will live on campus or off campus in an apartment with roommates if financially possible.Transition activities included Student with researching requirements to become cardiothoracic surgeon; researching admissions, scholarships and financial aid related to attending Hampton University; complete a budgeting project and compare on and off campus living expenses.
27. Parent stated the goals proposed were not appropriate and Parent had not been contacted for input. Special Education Coordinator 2 stated a parent input survey had been sent to Parent prior to the meeting and was not returned. Parent reported receiving an input survey months prior of the meeting. Parent did not state it was completed or returned to school.
28. On March 2, 2023, Parent also stated there were other concerning issues regarding technical errors related to confidentiality and lack of individualization of transition goals and activities specific to Student's unique learning needs.

29. On March 2, 2023, the PWN proposed the Student's setting be changed to setting "B" and the BSP be removed from the IEP.
30. On March 10, 2023, Parent returned a copy of the IEP to school. Parent noted "A" setting in margin on IEP and BSP "was to be eliminated" per February 6, 2023, IEP meeting. Parent signed IEP "with the exception of the transition plan" noted.
31. On March 30, 2023, Special Education Coordinator 1 emailed Parent a list of suggested IEP revisions, as follow up to concerns and errors discussed at IEP meeting of March 2, 2023, including Setting error changed from "B" to "A"; BSP discontinued. Special Education Coordinator 2 stated in email if Parent wanted any further revisions to please contact Special Education Coordinator 2. If everything was acceptable as revised, and if Parent agreed with IEP, to please sign and return IEP. PWN dated March 30, 2023 stated Student would be in "A" setting and proposed revised transition goals as stated above (#26).
32. On March 31, 2023, Parent responded to Special Education Coordinator 1 that Parent had reached out to DDOE and was having the Transition Specialist at DDOE contact District to assist in addressing Parent concerns. Parent reported being more comfortable waiting to respond to Special Education Coordinator 1 until Parent followed up with DDOE regarding revisions.
33. On April 10, 2023, Parent emailed Director of Special Services (Director) to request a meeting regarding ongoing concerns around Student's transition planning (lack of assessments, appropriate goals) and Parent participation in the process.
34. On April 11, 2023, Director responded to Parent's email and offered several meeting dates and times the following week.
35. On April 11, 2023, Parent filed State Complaint with DDOE.

Conclusions

The 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 DE Admin Code § 923.1.2. 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 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 IDEA and implementing state and federal regulations also set forth requirements for development of an IEP with consideration of special factors. In the case of a child with limited reading proficiency, the IEP Team must consider the use of services, supports and evidence-based interventions to address those needs. *See*, 34 C.F.R. § 300.324(a)(3)(ii); 14 DE Admin Code § 925.24.2.7.

Additionally, the IEP Team may address 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 DE Admin Code § 925.20.1.2. The child's IEP may 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 DE Admin Code § 925.20.1.4.

Transition services should be a part of a child's IEP beginning with the earlier of the first IEP to be in effect when the child turns fourteen (14) or enters the eighth (8th) grade, or younger if determined appropriate by the IEP team, and updated annually thereafter... *See*, 14 DE Admin Code § 925.7.2. Furthermore, the transition part of the IEP must include the following as per 14 DE Admin Code §§ 925.7.2.1-925.7.2.3:

- (a) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (b) The transition services and activities (including courses of study) needed to assist the child in reaching those goals.
- (c) The IEP team shall discuss employment options with children and parents consistent with Delaware's Employment First Policy articulated by 19 Del.C. §743.
- (d) Progress made on activities and services that reasonably enable the child to reach the child's postsecondary goals in transition IEPs shall be reported with the same frequency as academic goals
- (e) The child's strengths, interests, and postsecondary preferences, and plans to make application to high school and career technical educational programs.

A. Student's current transition goals were created without parent input.

LEAs are required to ensure parent participation in IEP meetings. This is done in a variety of ways including the following as per 14 DE Admin Code §§ 925.9.1-14 DE Admin Code §§ 925.9.4:

- (a) Notifying parents of the meeting, in writing, no less than ten (10) school days prior to the IEP team meeting (unless mutually agreed otherwise) to ensure that they will have an opportunity to attend, and no less than five (5) school days prior to a meeting to conduct a manifestation determination under 14 DE Admin. Code 926.30; and
- (b) Scheduling the meeting at a mutually agreed on time and place.
- (c) Information provided to parents: The notice required under subsection 9.1 shall:

- (d) Indicate the purpose, time, and location of the meeting and who will be in attendance; and
- (e) Inform the parents of the provisions in subsections 8.1.6 and 8.3 (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child), and subsection 8.6 (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP team meeting for a child previously served under Part C of the Act).
- (f) The IEP team shall provide notice to the parent, and if appropriate, the child, that they may request the presence of any teacher, paraprofessional, and any additional staff members at an IEP meeting.
- (g) A summary of the procedural safeguards shall be included with the notice of meeting and a full copy of the procedural safeguards shall be provided to the parents at the IEP meeting.
- (h) The IEP team shall provide notice to the parent, and if appropriate, the child, that they may request any data (e.g. classroom assessments, formative assessments, behavior data, related service reports, multi-tiered system of support data) in the agency's possession relevant to the child's needs or disability prior to the IEP meeting.
- (i) The IEP team will ensure parent input through the following:
- (j) The IEP team shall provide a questionnaire requesting the input of a child's parent, and where appropriate, the input of the child, with respect to the child's progress to date and additional proposed steps that should be taken to adjust the child's goals, curriculum, services, aids, modifications, or other elements of the child's IEP.
- (k) The questionnaire shall be sent with or prior to the written meeting notice inviting the parent to attend the IEP meeting.
- (l) If the IEP team prepares a draft of the IEP prior to the date of the IEP meeting, the IEP team shall provide the parent, and if appropriate, the child, with a copy of the draft IEP accompanied by a letter clearly indicating that the document is a draft for discussion purposes only and is therefore subject to revisions.
- (m) The Department in collaboration with the Governor's Advisory Council for Exceptional Citizens shall create and provide a draft letter and associated guidance to assist public agencies with the content and application of the letter referred to in subsection 9.3.2.
- (n) For a child with a disability beginning with the earlier of the first IEP to be in effect when the child turns fourteen (14) or enters the eighth (8th) grade, or younger if determined appropriate by the IEP team, the notice shall also indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with subsection 7.2 and that the agency will invite the student; and identify any other agency that will be invited to send a representative. The invitation to the child shall be in writing.

Special Education Coordinator 2 stated parent input survey was sent for March 2023 IEP meeting; however, it was not returned. Parent stated the input survey was sent months ahead of the meeting. Parent did not dispute it was not completed. In the absence of prior Parent input in this case, transition goals were proposed by IEP team in writing at the IEP and sent to Parent for review and/or signature after the meeting. Parent stated Parent requested discussion and development of the goals at the IEP meeting. However, parent attended IEP meetings where she had opportunities to provide input.

For these reasons, I find there was no violation of the IDEA and corresponding state and federal regulation regarding the denial of parent participation.

B. Student's transition goals from the 2021-2022 IEP were never completed.

Student's transition goals of the February 18, 2022, IEP should have been completed. These goals were re-stated in revision meeting on June 8, 2022, with new completion dates of December 19, 2022. Student did not complete goals within revised dates of December 19, 2022.

The Progress Report dated January 20, 2023, indicated transition goals related to completion of career survey assessment had been completed, which was untrue. These goals were originally identified on the IEP dated February 18, 2022.

For these reasons, I find there were violations of the IDEA and corresponding state and federal regulation regarding the denial of FAPE

C. Transition goals were not appropriate or specific to Student's needs.

During the April 27, 2022 meeting with the Parent and Teacher, Teacher reported beginning the application process for a VR counselor. As of March 2, 2023, the application for VR services had not been completed.

The revised June 8, 2022 IEP transition goals included understanding and explaining courses needed for graduation. This activity was not unique to this Student or Student's identified needs and was repeated as three separate activities within the Student's IEP transition plan.

Additionally, the goal of reciting Student's Social Security number, with a two-marking period timeline for instruction, was inappropriate for a Student with reading comprehension and math calculation identified needs. Simple accommodations to make this information accessible in print and secure for the Student would allow for more instructional time targeted to employment and independent living goals, that are critical given the Student's etiology of FAS. Independent living skills goals and activities were identified in a single brief statement.

Within the IEP dated June 8, 2022, independent living skills goals and activities were to be addressed with the Student by the Case Manager and Counselor. However, in the March 2, 2023 IEP, the independent living goals identified the Student and Parent as the responsible parties as Student was currently in "A" setting."

As of the date the State Complaint was submitted, there had not been a career assessment completed with the Student.

For these reasons, I find there were violations of the IDEA and corresponding state and federal regulation regarding the denial of FAPE

D. Transition goals were not measurable.

Regarding measurable goals, Title 14 of the Delaware Administrative Code §§ 925.7.1 -925.7.2 states:

- (a) A statement of measurable annual goals, including academic and functional goals designed to:
- (b) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability;
- (c) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

Specific student performance data supporting quarterly Progress Reporting was not provided when requested by Parent, nor when requested by this Investigator of the Director of Special Services and Special Education Coordinator 2. Transition goals and activities that occur for all students (i.e understanding and explaining courses needed for graduation) within the breadth of curriculum are not goals/activities toward identified measurable and meaningful outcomes for the Student, based on identified needs. Determination of transition goals should be informed by career interest and aptitude assessment. While a career survey was reviewed, it was incomplete, not dated, and it is unknown if accommodations and supports were provided. An interest survey is not an adequate assessment to determine Student career aptitude.

For these reasons, I find there were violations of the IDEA and corresponding state and federal regulation regarding the denial of FAPE

E. Progress data related to transition goals from 2022-23 was never provided.

Progress made on activities and services that reasonably enable the child to reach the child's postsecondary goals in transition IEPs shall be reported with the same frequency as academic goals *See*, 14 DE ADMIN Code §925.7.2.

Parent requested in writing student performance data supporting progress reporting on Student's transition goals as stated on IEP. Supporting data was also requested by Investigator; however, none were produced beyond IEP and Progress Reporting. Additionally, under "Data Considerations" of the IEP dated February 6, 2022 and the IEP dated March 3, 2023 "vocational assessment" was not identified as a data source.

For these reasons, I find there were violations of the IDEA and corresponding state and federal regulation regarding the denial of FAPE

F. Appropriate assessment to determine Transition goals was not conducted

According to 14 DE Admin Code §925.7.2.1, the IEP team must develop appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills...

An incomplete career assessment survey was reviewed by Investigator; however, there was no date on the document, nor any explanation as to accommodations or supports provided for Student to complete the survey.

The January 20, 2023 Progress Report, stated a career assessment was completed through Major Clarity (an online academic and career planning tool). The goal of completing a career assessment utilizing Major Clarity was then stated as goal identified in the February 18, 2023 IEP Transition Plan with new timelines for completion. Major Clarity does not provide career aptitude assessment. However, in the Data Considerations for the IEP stated a career survey and assessment completed on February 8, 2022. Neither was done on February 8, 2022.

Beyond the inconsistent information related to Transition goals related to career assessment and completion status, as well as the Student's identified learning needs appropriate and timely career aptitude and interest assessments should have informed Student's transition planning.

For the reasons shared above, I find there were violations of the IDEA and corresponding state and federal regulation regarding the denial of FAPE.

G. Confidentiality

Evidence indicated that another student's name was written on Student's IEP, thus a breach in confidentiality occurred. The Delaware regulations address staff's responsibility of "...safeguarding the confidentiality of all records and information pertaining to the child to comply with State and federal regulations, including the use of discretion when sharing information with appropriate people for the purpose of furthering the interests of the child." *See*, 14 DE Admin Code § 926.19.10.3

For the reasons shared above, I find there was a procedural violation of the IDEA and corresponding state and federal regulation regarding confidentiality.

Corrective Actions

Student Level Corrective Actions

1. The District should provide Student's with a comprehensive career assessment. All appropriate accommodations and supports identified on Student's current IEP should be provided throughout the assessment process. Assessments should be completed by **August 1, 2023**.
2. The District should then hold an IEP meeting to review the assessment results and incorporate them into the IEP as appropriate **before September 30, 2023**. A copy of the PWN and IEP should be provided to the Director of Exceptional Children Resources **by September 30, 2023**.
3. Student's IEP team will determine an appropriate amount of compensatory education, related to transition goals and activities for the period from February 18, 2022 through the date of which the IEP revision meeting is held. The calculation of hours and timeline for their provision should be provided to the Director of Exceptional Children Resources by **October 31, 2023**.

School Level Corrective Actions

1. Professional Development related to Transition Planning (including federal and state regulations confidentiality and access to Career Pathways for all students aged 14 and older who are on the diploma track) shall be provided for all special education staff and all administrators serving special education students. This training must be conducted **by September 30, 2023**. Training materials (i.e., Power Points, media, handouts, sign -in sheets, etc.) must be sent to the Director of Exceptional Children Resources **by October 6, 2023**.
2. The Special Education Director in collaboration with the High School Administrative Team will create or revise an efficient and effective means by which student instructional and performance data be collected and confidentially accessible for review by staff and others, regardless of personnel or student placement changes.

Respectfully submitted by:
REDACTED