

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION

DE SC # 23-08

Date Issued: June 16, 2023

On April 20, 2023, REDACTED (Parent) filed a complaint on behalf of REDACTED, REDACTED (Student), with the Delaware Department of Education (Department). The complaint alleged 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, and Parent Advocate.

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 DE Admin. Code § 923.53.2.4. In this case, the Department received the complaint on April 20, 2023. Therefore, the Department's findings address violations from April 20, 2022, to current.

Complaint Allegations

Parent alleged District violated Part B of the IDEA and implementing regulations, by refusing to conduct an IEP meeting due to the fact Parent was accompanied by Advocate.

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).
2. On November 16, 2022, Student's triennial eligibility meeting was held. Following this meeting, Student's annual IEP meeting was conducted.
3. On March 02, 2023, an IEP meeting was held. The purpose of this meeting was to conduct a Functional Behavior Assessment, develop a Behavior Intervention Plan and revise Student's IEP. The revision included a goal in Self- Management /Work Completion.
4. At the end of March, REDACTED requested an IEP meeting to discuss Student's progress and the supports Student is receiving.

5. On March 29, 2023, an Invitation for an IEP meeting (Zoom) was sent to Parent via email. The meeting was scheduled for 12:00 pm on April 18, 2023.
6. On April 06, 2023, Parent requested the IEP meeting be held in person on a Thursday.
7. On April 11, 2023, the IEP meeting was re-scheduled for April 20, 2023 at 8:30 am, in person, at REDACTED.
8. On April 17, 2023, per Parent request for an administrator to be in attendance, the IEP meeting was again rescheduled for April 20, 2023, at 12:30 pm.
9. On April 17, 2023, the Notice of Meeting was sent stating the purposes:
 - Transition planning
 - Revise IEP
 - Address Parent concerns about services
10. On April 17, 2023, the Notice of Meeting was sent to Student also. This document included suggestions on how Student could prepare to participate in the IEP meeting. One suggestion stated, “consider inviting people who have knowledge of your strengths, educational needs, or future goals.”
11. On April 20, 2023, Parent arrived at the IEP meeting with Advocate. At that time, Principal informed Parent the meeting would need to be re-scheduled due to the Advocate’s attendance without prior notice.
12. Supervisor of Pupil Services stated to Investigator that District policy allowed cancelation of meetings if advocates were in attendance without prior notice. Investigator requested District policy regarding this practice. However, no formal documentation of this policy exists.
13. On April 20, 2023, Parent filed State Complaint on behalf of Student.

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).*

District refused to conduct an IEP meeting because the Parent was accompanied by Advocate.

Under IDEA, 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:

- (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).

In addition, DELAWARE PROCEDURAL SAFEGUARDS PARENT AND CHILD RIGHTS IN SPECIAL EDUCATION states:

“You may invite other individuals with knowledge or special expertise regarding your child to participate in an IEP team meeting. You may also request the presence of any teacher, paraprofessional, and additional staff at an IEP team meeting.”

Pursuant to the reasons set forth above, the actions of the LEA did not impede Student's reasonable progress and the cancellation of the meeting does not, by itself, create a substantive FAPE violation. However, there is nothing in IDEA that requires the parent to inform the LEA, in advance, of the non-LEA people they want to participate in the meeting.

Therefore, I find only a procedural, and not a substantive, violation of IDEA.

Corrective Actions

Student Level Corrective Action

1. District shall hold an IEP meeting to address the original purposes of the April 20, 2023 meeting. A copy of the PWN and IEP must be sent to the Director of Exceptional Children Resources **by August 15, 2023.**

District Level Corrective Action

1. Professional Development related to DELAWARE PROCEDURAL SAFEGUARDS PARENT AND CHILD RIGHTS IN SPECIAL EDUCATION shall be provided to all District administrators and special education staff. Training must be conducted **by September 30, 2023.** Training materials (i.e., Power Points, media and handouts) and sign-in sheets must be sent to the Director of Exceptional Children Resources **by October 6, 2023.**

Respectfully submitted by:
REDACTED