

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION

DE SC # 24-10

Date Issued: March 5, 2024

On January 5, 2024, REDACTED (CLASI Attorney); Community Legal Aid Society Inc. (CLASI) filed a complaint on behalf of REDACTED (Parent) and REDACTED (Student), with the Delaware Department of Education (Department). The complaint alleges the REDACTED School District (District) and State Board of Education (SBE), 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, Parent, Supervisor of Student Services, CLASI Attorney and Associate Administrator.

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 January 5, 2024. Therefore, the Department's findings address violations from January 5, 2023 to January 5, 2024.

COMPLAINT ALLEGATIONS

CLASI Attorney alleges District violated Part B of the IDEA and implementing regulations, as follows:

1. Failing to follow the procedures necessary for a Student's immediate removal pending disciplinary action;
2. Failing to hold a Manifestation Determination within 10 days after proposing a change of placement; and
3. Failing to provide Student with due process rights during a disciplinary investigation.

CLASI Attorney alleges the State Board of Education (SBE) violated Part B of the IDEA and implementing regulations, as follows:

1. Failing to provide Student with due process rights during a disciplinary investigation.

FACTUAL FINDINGS

Background Information

1. Student is currently a REDACTED year-old REDACTED grade student enrolled at School. However, Student receives educational services at an interim alternative educational placement due to code of conduct violation.
2. Student has a medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and receives special education services under the primary educational classification of Other Health Impairment (OHI).
3. During the 2022-2023 school year, Student had nine conduct referrals.
4. On October 19, 2023, Student participated in an away soccer game. While in the team's locker room, Student threatened to hurt another student with a box cutter. After the game, Student also threatened to kill REDACTED coach with the same weapon.
5. Additionally on October 19, 2023, prior to boarding the bus, the coach searched Student's soccer bag and found the box cutter. When the team arrived at School, the coach informed Parent that Student had threatened to hurt another student and had threatened to kill one of the team's coaches.
6. On October 20, 2023, Student attended school, but Parent was called to pick up Student due to the conduct referral and investigation into the allegations made by the other student and staff.
7. On October 20, 2023, Student was admitted to REDACTED care due to Parent's behavioral concerns. While admitted, Student received virtual educational services through REDACTED.
8. On October 21, 2023, Student received a psychiatric evaluation by REDACTED and was diagnosed with Depression and Oppositional Defiant Disorder (ODD). During the evaluation, Student told REDACTED therapist that REDACTED did not threaten the other student, but REDACTED did threaten REDACTED coach. The Student also stated, "I was just mad. I wasn't going to do it."
9. On October 25, 2023, School sent the Parent a Notice of Meeting (NOM) for a Manifestation Determination (MD) meeting via email and phone.
10. On October 26, 2023, Student was discharged from REDACTED inpatient care.
11. On October 31, 2023, Student was admitted to REDACTED While admitted, Student received virtual educational services through REDACTED.

12. On November 1, 2023, the IEP Team held an MD. During the meeting, the Parent shared that Student started a new ADHD medication a week prior to the October 19 incident. Parent also stated that Student's teacher and coach were informed about the new medication. The Parent informed the Team that historically, ADHD medications make Student irritated when the medication wears off. Additionally, the Team reviewed the October 21 psychiatric evaluation and the Parent informed the Team that the Student's behavior was caused by the impulsivity associated with the Student's ADHD diagnosis.
13. During the November 1, 2023 MD, the Team determined that the Student's behavior on October 19 was a manifestation of REDACTED disability. The Team also agreed to reconvene after Student's discharge from outpatient treatment services at REDACTED to discuss educational services during the pending 45-day placement. Additionally, the Team agreed to conduct a Functional Behavior Assessment (FBA) later, to determine what behavioral supports Student may need moving forward.
14. On November 2, 2023, the District issued a Prior Written Notice (PWN) from the MD meeting. The PWN outlined the Teams decision to change of placement for up to 45-days to an interim alternative education setting due to Student possessing a weapon (box cutter) in school. The PWN also noted that the Parent opposed the 45-day interim alternative placement.
15. On November 8, 2023, The IEP Team met and determined the Student's appropriate setting for services during the 45-day interim alternative placement was a D setting at the REDACTED where Student would have a small class size, high staff to student ratio, and behavioral and social-emotional supports. Additionally, at the time of the meeting, the Student was receiving medical treatment at REDACTED. The Team agreed that the interim alternative placement would begin once the Student was discharged. The Team agreed that Student would return to an A setting at the end of the 45-day placement.
16. On November 8, 2023, the Parent appealed the 45-day interim alternative placement decision to the Superintendent and received a response from District counsel the same day stating, "The decision to place Student in a 45-day interim alternative education setting was made because this is a special circumstance where Student brought a weapon to school. This is permitted under Regulation 616, and if the Parent disagrees, recourse would not be within the appeal rights set forth in Regulation 616 or the District's discipline appeal process."
17. On November 9, 2023, the Parent received the PWN from the November 8 change of placement meeting.
18. On November 27, 2023, the Parent submitted an appeal of the 45-day interim alternative placement decision to the REDACTED School District Board of Education.
19. On November 28, 2023, the Parent received written communication from the District's counsel stating, "Authority for your client's purported appeal is rooted in 14 DE *Admin. C.* §616; however 14 DE *Admin. C.* § 616 is inapplicable under these circumstances. Here we

have student with a disability, and an IEP team found that REDACTED conduct was a manifestation of REDACTED disability. REDACTED has been removed to a 45 day interim alternative education setting because REDACTED conduct falls under special circumstances for bringing a weapon to school pursuant to 14 DE *Admin. C.* § 926.30.7.1, and the IEP team determined REDACTED placement. The remedy with regard to this issue, if any, does not lie in 14 DE *Admin C.* § 616 or Board Policy.”

20. On November 28, 2023, the Parent appealed the 45-day interim alternative placement decision to the Delaware State Board of Education (SBE).
21. On November 31, 2023, Student was discharged from REDACTED. The next day the District received an email stating that Student was discharged from the REDACTED education program.
22. On December 4, 2023, the Parent received a response to the 45-day interim alternative placement decision from the SBE stating, “It appears the most appropriate grievance process for this issue is through the dispute resolution options available under IDEA. A state complaint or IDEA due process complaint could be filed; mediation can be explored; and through IEP facilitation. Due to the facts related to this request, the Delaware State Board of Education does not believe it has appropriate jurisdiction to hear this matter. The State Board will take no further action on this complaint.”
23. On January 5, 2024, a state complaint was filed with the Department of Education.
24. After the complaint was filed, later that day, the Parent contacted the School via email to request that Student remain at the REDACTED beyond the January 22, 2024 45-day interim alternative placement date. The Parent also requested, via email, to not have an in-person IEP meeting.
25. On January 11, 2024, School issued a PWN documenting the Parent requested to waive a full IEP team meeting and to instead revise 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. Failing to follow the procedures necessary for a Student's immediate removal pending disciplinary action.

According to 14 DE Admin. Code § 926.30.; Discipline Procedures Authority of School Personnel:

30.1 Case by case determination: School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

30.7 Special circumstances: School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

30.7.1 Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the DOE or an LEA;

The School followed the MD process and determined that Student's behavior during the October 19, 2023 code of conduct violation was a manifestation of REDACTED disability. Additionally, the Student had a weapon in REDACTED possession on school property and admitted, to REDACTED therapist, that REDACTED made threatening comments toward REDACTED coach. REDACTED also added, "I was mad. I wasn't going to do it."

However, the District has an obligation to protect the health and safety of staff and students regardless of Student's assertion that REDACTED was not going to harm REDACTED coach. Special circumstances, such as possessing weapons on school property, allow schools to exclude students when the interests of maintaining safe learning environments outweigh the dangerous child's right to receive FAPE.

Therefore, I find that the special circumstances involved in the incident support the student's change of placement and there was not a violation of FAPE and/or violation of IDEA.

2. Failing to hold a Manifestation Determination within 10 days after proposing a change of placement.

According to 14 DE Admin. Code § 926.30.5.; Manifestation determination: Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

30.5.1 If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

30.5.2 If the conduct in question was the direct result of the LEA's failure to implement the IEP.

30.6 Determination that the behavior was a manifestation: If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall either:

Conduct a functional behavioral assessment...or review the current behavioral intervention plan and modify it as necessary to address the behavior...and return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

30.7 Special circumstances: School personnel may remove a student to an interim alternative educational setting for not more than forty-five 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the DOE or an LEA.

The code of conduct violation occurred on October 19, 2023 and the Student was removed from school on October 20, 2023 pending an investigation of the incident. On October 20, 2023, Student was admitted to REDACTED inpatient care due to the Parents behavioral concerns. Student was subsequently transferred to REDACTED

The School District issued a Notice of Meeting on October 25, 2023 and the Team met on November 1, 2023 for a MD. The Team determined that Student's behavior was a manifestation of REDACTED disability. Because the incident involved a weapon on school property and at a school function, school personnel had the authority to remove the Student to an interim alternative educational setting for not more than forty-five 45 school days without regard to whether the behavior was determined to be a manifestation of the child's disability.

However, the IEP Team conducted the MD 9 days after the October 19th incident and determined that the behavior was a manifestation of REDACTED disability. The school personnel determined the alternate educational placement for not more than 45 school days was REDACTED. Additionally, the parent appealed the interim alternative placement to the SBE. The SBE responded to the parents appeal and determined that it would take no further action on the complaint.

Therefore, I find that the MD meeting was held within the required 10-day timeline and there was not a violation of FAPE and/or violation of IDEA.

3. Failing to provide Student with due process rights during a code of conduct violation investigation.

According to 14 Del. Admin. C. § 616.4.0, the initial due process rights for students facing disciplinary action shall include: (1) the opportunity to be informed of the Student Code of Conduct; (2) being informed orally, or in writing, of the allegations, the conduct, and the policy, rule, or regulation violated; and (3) the opportunity to be given an explanation of the evidence supporting the allegation and the opportunity to present his side and any evidence. 14 Del. Admin. C. §§ 616.4.1.1.1-4.1.1.3.

Local Education Agencies are responsible for ensuring that due process is afforded to students during an investigation of a code of conduct violation. The SBE responded to the parents appeal and determined that it would take no further action on the complaint stating, “If Student was not covered under IDEA, then an appeal to SBE would have been appropriate after the district grievance process was complete and the school district’s board of education decided upon the disciplinary issue.

Therefore, it shall be documented that adhering to disciplinary due process procedures are beyond the purview of this Investigator and cannot be addressed through the IDEA 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 DE Admin. Code § 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