

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES**

**STATE COMPLAINT DECISION**

**DE SC # 24-03**

**Date Issued: December 1, 2023**

On October 2, 2023, REDACTED (Parent), filed a complaint on behalf of REDACTED REDACTED, REDACTED (Student), with the Delaware Department of Education (Department). The complaint alleges 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).<sup>1</sup> The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151–300.153 and according to the Department’s regulations at 14 Del. Admin. Code §§ 923.51.0–923.53.0.

The investigation included a review of Student’s educational records, as well as correspondence and interviews with Student, Parent, District Senior Director of Student Service and Special Education, District Instructional Supervisor of Special Services, School Educational Diagnostician, School Guidance Counselor and School Psychologist.

**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 October 2, 2023. Therefore, the Department’s findings address violations from October 2, 2022, to October 2, 2023.

**COMPLAINT ALLEGATIONS**

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

1. Failed to implement the accommodations outlined in Student’s IEP;
2. Failed to place Student in the least restrictive environment (LRE);
3. Failed to provide counseling services and behavior supports as outlined in Student’s IEP;
4. Failed to conduct Student’s reevaluation within a 3-year period;
5. Failed to provide Extended School Year (ESY) services; and
6. Failed to provide transition services.

## **FACTUAL FINDINGS**

### **Background Information**

1. Student is currently REDACTED years of age and attends REDACTED. Student currently has earned a total of 5.25 credits and is in REDACTED grade.
2. Throughout Student's educational career, Student attended 27 schools including a unique alternative placement for behavior issues and REDACTED (REDACTED).
3. On September 1, 2022, Student enrolled in the District for REDACTED grade with an expired Individual Education Plan (IEP). Student received special education services under the primary educational classification of Mild Intellectual Disability (MID) and a secondary educational classification of Other Health Impairment (OHI).
4. On September 21, 2022, District, Student and Parent met to review an Evaluation Summary Report (ESR), dated June 8, 2021. District agreed to adopt the current ESR and determined that Student continued to be eligible for special education services as a student with MID and OHI. The IEP team also reviewed a newly developed IEP. Student and Parent were in agreement with the proposed IEP.
5. During the September 21, 2022 IEP meeting, the IEP team removed the Behavior Intervention Plan (BIP) and Time-on-Task annual goal, and determined that Student did not meet the eligibility criteria to receive extended school year (ESY) services.
6. Three previous IEPs indicated Student qualified for ESY due to regression recoupment. However, District IEP indicated Student did not qualify for ESY. The IEP team indicated that, "based upon the factors of regression recoupment, degree of impairment, breakthrough opportunities, vocational skills, and extenuating circumstances, Student does not meet the eligibility criteria for ESY. Student's regression and recoupment are not impacted by the summer break and her degree of impairment is not great enough to need these services at this time."
7. On October 19, 2022, Parent emailed the School's Educational Diagnostician (ED) and requested an independent neuropsychological evaluation due to Student's inability to count numbers, count money, and lack of progress in all classes. Parent also alleged that Student had not been evaluated within a three year period of time.
8. District 2 completed an ESR in June, 2021. District adopted that ESR upon transfer into the District in September 2022. Thus, Student was not due for a reevaluation at that time. Parent reported the recommendations from the Student's 2015 Independent Educational Evaluation (IEE) were not considered during the development of Student's 2022 IEP.
9. On October 19, 2022, the ED and School Psychologist (SP) contacted Parent by phone to discuss the request and to garner information toward why Parent was requesting the evaluation. During the phone call, Parent informed the ED and SP that the request was based upon Student receiving an IEE in 2015.

10. Also on October 19, 2022, the ED emailed the District Instructional Supervisor of Special Education (ISSE) to garner information toward the District's IEE process. The ISSE responded to the email by informing the ED that the District's policy is that the District must conduct a psychoeducational evaluation before agreeing to an IEE at public expense.
11. During the October 19, 2022 phone call, the ISSE informed the ED that Student would have to be in agreement with the Parent's request because Student signed an age of attainment form on September 21, 2022. Additionally, the ED was told that District would only agree to an IEE if Student disagreed with the results of the District's evaluation.
12. On November 2, 2022, the ED responded to Parent's IEE request via email and explained the District's IEE process. Parent replied and let the ED know that Parent would "forward that to the consultant attorney."
13. On December 13, 2022, Student signed a Notice & Consent to Conduct an Assessment(s) for Evaluation form giving District permission to conduct a psychoeducational evaluation. The District issued Student a Prior Written Notice (PWN), outlining its proposal to conduct the evaluation.

### **Progress**

14. On October 21, 2022, Student received a disciplinary referral for cutting class, and on October 26, 2022, Student received another disciplinary referral for misusing technology, warranting removal from the classroom.
15. On November 4, 2022, marking period one progress report shows that Student made progress toward benchmark(s), but only passed two classes. However, the November attendance report documents twenty-two unexcused absences and six tardy to school instances during the first marking period.
16. Student continued to be absent on multiple days during the month of November. According to attendance documents, Student did not complete any work when present. This prompted Teacher1 to send an email to Parent and Student which included marking period one progress report, a link to sign up for parent conferences and a reminder regarding the importance of attendance and completing work.
17. On November 21, 2022, a conference with Teacher2 and Parent was held to discuss Student's lack of academic progress and extensive unexcused absences.
18. Student was absent seven times between November 28, 2022 and December 7, 2022. Student arrived late to school on December 7, 2022 and received two disciplinary referrals while in attendance for: disrupting the educational process while arguing with teacher, and walking out of class without permission. Student was removed from the classroom for

both infractions. Student's absences continued from December 8, 2022 to December 12, 2022.

19. On December 21, 2022, School Counselor (SC) emailed Parent due to Student's unsatisfactory progress toward annual goals and failing grades to share information regarding the online credit recovery option offered by the District.
20. On January 3, 2023, SC emailed Student and Parent to inform them that an online credit recovery account had been set up for Student. The email also contained login instructions, Students username and password and a list of the courses assigned to Student.
21. There is no documentation of this in a prior written notice (PWN).
22. On January 12, 2023, SC met with Student in person to explain the online credit recovery courses.
23. The progress report for the remainder of the 2022-2023 school year documents that Student logged into the credit recovery classes for a total of forty-nine minutes.
24. On January 23, 2023, School conducted a psychoeducational evaluation. The SP emailed evaluation input forms to Parent on December 13, 2022 and January 25, 2023 but forms were not returned within the evaluation timeline.
25. On January 26, 2023, second marking period progress reports show that Student was not making satisfactory progress toward IEP annual goals due to absenteeism. Student attendance report documents twenty-four unexcused absences and seven tardy to school instances.
26. On February 23, 2023, Student and Parent met with District to review the results of the psychoeducational evaluation. The IEP team determined that Student continued to meet the eligibility criteria to receive special education and related services as a student with a MID and OHI. The IEP team considered Emotional Disability (ED), as an additional classification due to the depression and unhappiness that Student reported to the school psychologist during the evaluation interview.
27. The IEP team rejected the recommendation because Student did not display all of the symptoms of the disability and the SP did not observe any symptoms of the disability during the observation performed on January 23, 2023. Additionally, the SP noted that depression and unhappiness may be affecting Students ability to attend school and recommended that the IEP team address Student's social-emotional needs through individual and consultative school-based counseling services.
28. At the February 23, 2023 IEP team meeting, the IEP team revised the IEP to include a coping skills goal and individual counseling services. In addition, the IEP team changed Student's LRE from an A-setting to a B-setting. The IEP team indicated,; "Student benefits from the instruction provided in a more restrictive and structured setting with reduced student to teacher ratios. Student participates in small group setting for all academic

courses. Student's challenges in the area of reading comprehension, written expression and math calculations impedes Student's ability to access the curriculum without more individualized supports."

29. On March 30, 2023, third marking period progress reports show that Student was not making satisfactory progress toward IEP annual goals due to absenteeism. Student's attendance report documents thirty unexcused absences and one tardy to school instance.
30. SP shared with Investigator that consultation minutes outlined in Student's IEP were met through parent e-mails and consultation with teachers. The SP attempted to provide individual counseling sessions on 14 separate dates but was unsuccessful in all attempts due to Student absenteeism. SP was successful in providing a 45-minute session on April 4, 2023.
31. On March 30, 2023, Parent filed a Due Process Complaint on behalf of Student alleging: Student's inability to count numbers and money, and lack of progress in all classes. Parent also alleged Student had not been evaluated within a three-year period of time, and that the recommendations from the Student's 2015 IEE were not considered during the development of the February 23, 2023 IEP. Parent also alleged that parent was not given enough notice prior to the District conducting its evaluation.
32. In Spring 2023, District, Student and Parent agreed to resolve the complaint through mediation.
33. On April 11, 2023, a due process resolution meeting was held, Director met with Parent to resolve the complaint. As a result of the meeting, the District agreed to garner information toward online credit recovery and vocational training options that might be available to Student. The Director also agreed to follow-up with REDACTED to determine whether or not Student earned credits while in attendance previously.
34. On April 28, 2023, Director emailed Parent and relayed information regarding online credit recovery and vocational training programs available in District available to Student. The Director concluded the email by asking Parent if Parent would like to have an IEP meeting to discuss the options further. However, an IEP meeting was not held.
35. On June 26, 2023, Parent emailed Director and stated that Parent would proceed with the March 30, 2023 DP filing without legal representation. The Director responded to the email by asking if the Parent wanted to move forward with mediation to discuss the Parents; placement, credit and vocational training concerns.
36. On June 27, 2023, Parent emailed Director and agreed to mediation. The Director replied to the Parents email and included a representative from the Department's mediation resource so that Parent could initiate the mediation process. However, the Parent did not follow through with initiating mediation.

37. On August 22, 2023, District received a request for Student's records from REDACTED.
38. In September 2023, Student attended REDACTED. Student stopped attending shortly after due to REDACTED REDACTED.
39. On October 2, 2023, Parent filed a state complaint on behalf of Student.

### **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 Implement the Accommodations Outlined in Student's IEP.**

According to 14 DE Admin. Code § 925.10.3, each public agency shall ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and each teacher and provider described in this paragraph is informed of:

- 10.3.1 Their specific responsibilities related to implementing the child's IEP; and
- 10.3.2 The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.

School developed an IEP that the Student and Parent agreed upon at the September 21, 2022 meeting. The IEP was implemented and Student made sufficient progress toward each annual goal during the first marking period which shows that the accommodations outlined in Student's program were implemented. Progress for the second, third and fourth marking period was insufficient due to Student's repeated unexcused absences across the school year. **Therefore, I find that there was not a violation of FAPE and/or violation of IDEA.**

## **2. Failed to Place Student in the Appropriate Least Restrictive Environment.**

According to 14 DE Admin. Code § 923.14.2, Each public agency shall ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of cannot be achieved satisfactorily.

Student attended the District school assigned to the address Parent used during the September 21, 2022 enrollment. The team agreed that the September 21, 2022 IEP was appropriate and Student received services in an A-setting. The IEP was revised on February 23, 2023 and team agreed at that time that a B-setting was the appropriate LRE due to the results of the ESR. The IEP team indicated that; “Student benefits from the instruction provided in a more restrictive and structured setting with reduced student to teacher ratios. Student participates in small group setting for all academic courses. Student’s challenges in the area of reading comprehension, written expression and math calculations impedes Student’s ability to access the curriculum without more individualized supports.”

The agreed upon revised IEP accurately documented the appropriate academic, transition and related service annual goals. Additionally, the supplementary aides, supports and services outlined in the September 21, 2022 and the February 23, 2023 IEPs were available at School. **Therefore, I find there was not a denial of FAPE and/or violation of IDEA.**

## **3. Failed to Provide Counseling Services and Behavior Supports as Outlined in Student’s IEP.**

According to 14 DE Admin. Code § 925.10.3, Accessibility of child's IEP to teachers and others. Each public agency shall ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and each teacher and provider described in this paragraph is informed of:

- 10.3.1 Their specific responsibilities related to implementing the child's IEP; and
- 10.3.2 The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.

Student received consultative counseling services as indicated in the IEP. On February 23, 2023, the IEP was revised to include individual counseling services, in addition to consultative services, as a result of the evaluation conducted by SP. The School submitted documentation that supports many attempts to provide individual counseling services. Student’s absenteeism prevented School from providing counseling services outlined in the current IEP. **Therefore, I find that there was not a violation of FAPE and/or violation of IDEA.**

#### **4. Failed to Conduct Student's Reevaluation within a 3-year period.**

According to 14 DE Admin. Code §§ 925.4.0 through 925.12.0, A public agency shall ensure that a re-evaluation of each child with a disability is conducted if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance of the child warrant a re-evaluation; or if the child's parent or teacher requests a re-evaluation. A re-evaluation conducted may occur not more than once a year, unless the parent and the public agency agree otherwise; and shall occur at least once every three (3) years, unless the parent and the public agency agree that a re-evaluation is unnecessary.

On September 21, 2023, the District met with the Student and Parent to review the ESR and consequently adopted the evaluation. The evaluation timeline from the adopted ESR was within the three three-year regulatory period covered by the state complaint date submission. **Therefore, I find there was not a denial of FAPE and/or violation of IDEA.**

#### **5. Failed to Provide Extended School Year Services.**

According to 14 DE Admin. Code § 923.6.2, extended school year services shall be provided only if a child's IEP Team determines, on an individual basis, in accordance with 14 DE Admin. Code 925, Sections 20.0 through 24.0, that the services are necessary for the provision of FAPE to the child or are otherwise specifically authorized by statute.

District held an IEP meeting on February 23, 2023 and agreed that student was not eligible for ESY services although REDACTED was eligible the previous three years due to regression recoupment. Student did not make progress toward any of the second, third or fourth marking period annual goals outlined in the IEP. The School did not hold an IEP meeting after February 23, 2023 to review progress and to determine if Student qualified for ESY services given the consecutive marking periods that documented insufficient progress and the extenuating circumstances created by Student's high level of absences. **Therefore, I find there was a denial of FAPE and/or violation of IDEA.**

#### **6. Failed to Provide Transition Services.**

According to *14 DE Admin. Code § 925.7.2*, the IEP shall include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services and activities (including courses of study) needed to assist the child in reaching those goals. The IEP team shall discuss employment options with children and parents consistent with Delaware's Employment First Policy articulated by 19 Del.C. §743. 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. The child's strengths, interests, and postsecondary preferences, and plans to make application to high school and career technical educational programs.

The September 21, 2022 IEP developed by School included transition activities and annual goals. Student completed a transition survey used to develop the activities and goals included in the IEP. According to the first marking period progress report, Student made sufficient progress toward each transition goal. However, due to repeated absences, Student did not make progress toward



any of the second, third or fourth marking period annual goals outlined in the IEP. Additionally, Student signed a request for information so that Student and School could collaborate with post-secondary transition resources, including Division of Vocational Rehabilitation (DVR) and supports. **Therefore, I find there was not a denial of FAPE and/or violation of IDEA.**

### **CORRECTIVE ACTIONS**

#### **Student Level Corrective Action**

1. School shall hold a meeting considering Student's extenuating circumstances at the time. School and Student shall determine comparable ESY services Student will receive commensurate to the District's summer school ESY program given the consecutive marking periods that documented insufficient progress and the Student's previous extenuating circumstances. This meeting will occur prior to **January 30, 2024**. An official letter from the District detailing the amount, type, and plan for provision of services shall be sent to the Student and the Director of Exceptional Children Resources prior to **February 28, 2024**.
2. The provisions of compensatory education services shall be completed by **November 1, 2024**.

#### **School Level Corrective Action**

1. Professional development for special education staff and related service staff related to the factors under which a student may qualify to receive Extended School Year services shall be conducted by **March 30, 2024**. All materials, as well as staff sign-in sheets must be sent to the Director of Exceptional Children Resources by **April 30, 2024**.

**REDACTED**

Investigator