

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION

DE SC # 23-11

Date Issued: August 26, 2023

On June 26, 2023, REDACTED (Parents) filed a complaint on behalf of their REDACTED, REDACTED (Student), with the Delaware Department of Education (Department). Parents 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. According to federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and the Department's regulations at 14 DE Admin Code §§ 923.51.0 to 53.0, these allegations were properly investigated. The investigation included a review of Student's educational records, as well as correspondence and interviews with Parent, District Director of Special Services, and School level and District level staff.

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 June 26, 2023. Therefore, the Department's findings address violations from June 26, 2022, to current.

COMPLAINT ALLEGATIONS

Parent's allegations that the District violated Part B of the IDEA and implementing regulations are as follows:

1. District did not notify Parent or proper authorities when Paraprofessional 1 physically restrained and inappropriately touched Student.
2. School did not provide adequate supervision in order for Student to be safe.
3. Student was traumatized by physical restraint and offensive touching by Paraprofessional 1
4. Parent's repeated requests for 1:1 staff support and behavioral assessments were ignored.
5. Paraprofessional 1 was not properly credentialed by DDOE.

¹ The complaint decision identifies some people and places generally, to protect personally identifiable information about the student from unauthorized disclosure. An index of names is attached for the benefit of the individuals and agencies involved in the investigation. The index must be removed before the complaint decision is released as a public record.

FACTUAL FINDINGS

1. Student is an REDACTED -year-old REDACTED grader at REDACTED School(School) in the District. Student is eligible for special education and related services as a student with a primary educational classification of autism and a secondary classification of Other Health Impairment (OHI) due to a medical diagnosis of Hurler's Syndrome.
2. Student has history of elopement (opening doors, walking/running out of classroom and transitioning between activities) documented in Student's annual IEPs and Evaluation Summary Report (ESR) since Student's initial IEP on June 6, 2018.
3. Special Education Coordinator (SEC) stated elopements during the 2022-23 school year primarily occurred within the classroom up to 8 times daily. SEC also stated the function of the behavior was to escape tasks, especially during transitions.
4. The Student's IEP of March 23, 2023, contains an annual speech goal relating to use of an aided language system to express frustration, wants/needs in order to decrease self-injurious behavior.
5. Additionally, the IEP identified needs of sensory processing/self-regulation, managing expected behaviors, transitioning in school environments and mobility/ safety. These identified needs were addressed through accommodations only.
6. Throughout Student 's IEP include accommodations of "close adult support "and a "first/then" communication board for transitions were noted in multiple goals.
7. On February 8, 2023, District hired Paraprofessional 1. On December 29, 2022, Paraprofessional 1 passed the Para Pro Assessment. As of the date the Complaint was filed, Paraprofessional 1's application to DDOE was "open". The Department clarified the application was incomplete. Therefore, Department had not issued a Paraeducator permit.
8. On March 27, 2023, Paraprofessional 1 received certification in Crisis Intervention Techniques.
9. On or about March 30, 2023, Teacher stated that after observing Paraprofessional 1 and Student interactions Teacher determined Paraprofessional 1 and Student would not work together in the classroom.
10. However, on April 17, 2023, Teacher assigned Paraprofessional 1 to directly supervise Student during playground time. Three students and three (3) paraprofessionals were on the playground. The Teacher was not present.

11. Student eloped through a playground gate and ran 30 feet from the playground before Paraprofessional 1 grabbed the Student. Student dropped to the ground. Parent stated Paraprofessional 1 took Student by arm and leg and dragged Student back into gated area. Paraprofessional 1 then swatted Student on buttocks with open palm.
12. On April 17, 2023, Paraprofessional 2 witnessed the elopement and interaction between Student and Paraprofessional 1 and reported it to the Teacher.
13. On April 17, 2023, Teacher stated Teacher reported the incident to the Principal. especially concerned about the gate, as there had been other incidents of students escaping playground through the gate.
14. According to the Principal, Teacher provided notification of Student's elopement and expressed concern regarding the gate security. However, Teacher did not report the physical interaction between Paraprofessional 1 and Student. Principal called head custodian to address the "gap" in the gate.
15. According to the SEC, Teacher reported the elopement and physical interaction to SEC on the same day it occurred.
16. On April 17, 2023, Parent picked up Student at end of school day and was not notified in writing or verbally of the incident on the playground.
17. From April 17, 2023, through April 21, 2023, Parent stated that during daily pick-up of Student, Teacher noted Student was "inconsolable", especially after recess. However, when the Investigator interviewed Teacher, Teacher did not recall Student being inconsolable the day of or days following incident. Teacher reported at times Student was "inconsolable" due to physical discomfort (i.e., constipation) and Teacher would notify Parent on those occasions.
18. On April 25, 2023, Teacher notified Assistant Principal of the incident. Assistant Principal stated that Teacher met with Assistant Principal that day related to ongoing concerns about Paraprofessional 1's performance in the classroom. During the conversation on April 25, 2023, Teacher mentioned the April 17, 2023, incident.
19. On April 27, 2023, after retrieving and reviewing video footage of the incident, Assistant Principal reported incident to the Principal. Principal confirmed that Assistant Principal reported the incident to Principal that day.
20. On April 27, 2023, Principal contacted Parent and Human Resource Director and began an investigation.

21. On April 27, 2023, Paraprofessional 1 was put on paid leave per District policy.
22. On April 28, 2023, Principal and Assistant Principal met with the Parent and shared details (that could be released) of the incident. Parent requested Principal take Parent and Student to the area where the incident occurred. Parent reported Student displayed visible and audible signs of stress and/or trauma when Student was brought to the location of the incident.
23. Beginning May 1, 2023, Parent did not have the Student return to School for the remainder of the school year.
24. On May 2, 2023, following an investigation, Paraprofessional 1 met with Principal. Paraprofessional 1 stated that Student had such close supervision in the classroom and Paraprofessional 1 liked to let Student “be a kid” on the playground and allowed Student more space.
25. On May 2, 2023, following meeting with Paraprofessional 1, Principal notified Division of Family Services (DSF) and Delaware State Police to report the incident described in this Complaint.
26. On May 15, 2023, An IEP meeting was held. Revisions to accommodations included 1:1 Paraprofessional Student support throughout the school day and “close proximity” of adult supervision was further clarified as “an arm’s length.” Additionally, homebound services were initiated as of this date. Services included 8 hours/week of instruction plus related services.
27. On May 15, 2023, District agreed to Parent request for a tour of Delaware Autism Program (DAP).
28. On May 15, 2023, the IEP team addressed compensatory education for the two weeks Student was out of School following the incident. More specifically, Student was to receive two additional weeks of summer programming, 8 hours per week of academic instruction and all therapy services.
29. On May 23-26, 2023, Principal met with each “C” setting staff regarding mandatory reporting regulations.
30. On June 8, 2023, Parent and Special Services Director toured DAP. Subsequently, Parent stated application was made for Student to attend DAP beginning fall 2023.
31. On June 13, 2023, Director of Student Services submitted Student’s records to DAP for review and consideration of Student placement for Fall 2023.
32. On June 26, 2023, Parents filed 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 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.

1. Mandatory reporting

According to 16 Del. C. §903, Delaware law mandates any person, agency organization or entity to make an immediate oral report to the Department of Services for children, Youth and Their Families. Division of Family Services when they know of, or suspect, child abuse or neglect. **Commenting further on this allegation is beyond the purview of the Investigator.**

2. Qualifications of Paraprofessional 1

Paraprofessional 1 had passed the Para Pro test to meet the District requirement for employment on December 29, 2022. However, according to the DDOE credentialing department, paraprofessionals must also make application to DDOE for a Paraeducator Permit prior to employment.

In this case Paraprofessional 1 had an “open application” on record at DDOE, indicating Paraprofessional 1 had not provided the needed documentation to receive a Paraeducator Permit. **This is a violation of state credentialing regulations, however, paraeducator credentialing is beyond the purview of this Investigator.**

3. Appropriate aids and accommodations

Student did not have access to Student’s communication system during the incident described in this Complaint. Additionally, the Student was not supervised by an adult “within close proximity”,

prior to elopement. Both are accommodations documented in the Student's IEP. **Therefore, I find there was a denial of FAPE and violation of IDEA.**

4. Parent Notification

According to 14 Del. Admin. C. § 610... “a reasonable attempt shall be made to notify parent on the same day, but in no event later than twenty-four hours after, the physical restraint is used” ...

Due to lack of notification of the incident described in this complaint for 10 days, Parent stated Parent had no reason to check child for “bruises or lesions” the day of the incident. Therefore, there was no documented evidence of injury. **Although this is not address in IDEA, it is a violation of state regulation.**

5. Behavior Support Plan

In accordance with 14 Del. Admin. C. §900 9.2.4 Despite the consultation of Behavioral Coaches to classroom staff, Parent's requests for a Behavioral Assessment were dismissed on multiple occasions. The Director stated the observation of Student behaviors in the classroom did not rise to the level of necessitating an FBA. The Director stated behaviors escalating at home were not observed in school.

Beyond the Parent's request for assistance to address escalation of home behaviors, a “history of elopement”, an annual goal addressing self- injurious behavior, identified needs and accommodations targeting low-level and high-level behaviors and close adult supervision documented in all of Student's IEPs across multiple years should have warrant initiation of a FBA and subsequent Behavioral Support Plan (BSP). **Therefore, I find there was a denial of FAPE and violation of IDEA.**

6. Physical Restraint Reporting

During this investigation, it was discovered there was never a Physical Restraint Incident Report entered into E-School regarding the incident described in this Complaint. Teacher stated that incidents involving students with either Behavior Support Plans or behavioral accommodations that might require physical restraint are usually not reported. I find this is a technical violation of state regulation. However, this procedural violation does not rise to the level of denial of FAPE for the Student or violation of IDEA.

Corrective Action

Student Level

1. Student's IEP team will convene a meeting to determine appropriate compensatory education for Student for the week immediately following the incident described in this Complaint. This meeting will occur prior to September 30, 2023. All documentation related to this meeting, should be sent to DDOE prior to October 06, 2023.
2. Due to Student's history of elopement and dropping behaviors, an FBA will be conducted and a BSP developed by October 06, 2023. Documentation related to the completion this Assessment and Plan must be sent to DDOE prior to October 20, 2023.

School Level – Professional Development for all staff should be conducted prior to September 30, 2023, related to the following topics. All materials, as well as staff sign-in sheets must be sent to DDOE by October 06, 2023.

1. Mandatory reporting
2. Physical Restraint Reporting in ESchool
2. IEP implementation requirements

District Level - Professional Development of DDOE Paraprofessional permitting application and timeline process will be reviewed by appropriate Human Resources staff by September 15, 2023. A copy of materials utilized, and staff sign-in sheets will be submitted to DDOE by September 22, 2023.

Respectfully Submitted by:

Investigator