

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION

DE SC # 23-09

Date Issued: June 30, 2023

On May 4, 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, as well as correspondence and interviews with Parent, District Director of Special Services and District 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 May 4, 2023. Therefore, the Department's findings address violations from May 4, 2022 to current.

COMPLAINT ALLEGATIONS

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

1. Parent alleged that District did not notify Parent of alleged bully incident.
2. Parent alleged Student was the victim of two incidents of bullying by Student 2 and Parent of Student 2. Parent of Student 2 is a REDACTED.
3. Since Parent of Student 2 is a REDACTED, Parent alleged this incident as REDACTED retaliation.
4. Parent alleged the current IEP had expired.

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.

FINDING OF FACTS

Background

1. Student is REDACTED years old and is a REDACTED grader at REDACTED (School) in District.
2. Student receives special education and related services with a primary educational classification of Learning Disability.
3. Parent reported Student has been diagnosed with a brain injury from a prior incident that occurred at another REDACTED school within the District. This was confirmed through documentation provided by REDACTED Hospital which indicates a “mild TBI” (mTBI).
4. Student transferred to School at the beginning of the 2022-2023 school year.
5. On September 19, 2022, an IEP meeting was held to review/revise the current IEP of April 26, 2022. The IEP addressed Student’s medical condition and social/emotional health through specific supports/accommodations as follows:

Throughout the school day, Student benefits from teacher support and prompting when requesting Mental or Social-Emotional Breaks. When not feeling well, Student will put REDACTED head down and at times will ask to go to the nurse. When Student seems to not be feeling well, teachers should prompt to determine if Student requires a mental break, in or outside the classroom, or if Student requires a visit to the nurse's office. Student will not always seek out immediate assistance when feeling frustrated or bothered by peers. Student benefits from the following accommodations: provide Student with a brain break card, provide Student with a generic break card where Student can request to take a walk, go to student services, or take a break with a chosen staff member, inform Student of staff members who are available for support in the building (counselors, SEL teacher, Dean, Administrators, etc.), teacher check-ins throughout the lesson, instruction/counseling focusing on self-advocacy skills, teacher modeling of self-advocacy skills, opportunities to take a timed/structured break, use of verbal and non-verbal cues, support from school mental health counselor.

6. Additionally, at the September 19, 2022 IEP meeting, the following accommodations were added to the IEP per medical recommendations from Dr. REDACTED at REDACTED Hospital (dated September 8, 2022):

Student will not be participating in Physical Education class/sports until cleared by medical team, Student will be provided with rest breaks (10-15 minutes) in the nurses office or a quiet space as needed for headaches or fatigue or 5-10 minute rest breaks in class as requested by Student, Student will be provided with a break card, assignments will be modified in length, Student

will be graded on understanding of the standard and not on the quantity completed, Student will be provided extra time for tests and quizzes (up to 150%), Student will be provided with a list of missed assignments with specific due dates, make up work will be medically excused or reduced by 50%, Student will be provided extra time to turn in homework assignments and projects (100%), preferential seating to reduce distractions, reduce smartboard/computer/tablet use, print out notes to reduce the need to use technology, paper/pencil format for assignments, permission to carry a water bottle and snacks, permission to use sunglasses and or earplugs, if needed.

7. In addition, the IEP contained a self-advocacy goal to communicate brain-breaks, social emotional learning (SEL) breaks and academic needs.
8. To assist with the self-advocacy goal, Student received support from the general education and/or special education teachers five times a day for 2 minute per sessions.
9. In addition, Student also received individual counseling services four times a marking period for 15 minutes per session.
10. At the September 19, 2022 meeting, a safety plan developed by Parent was reviewed by the IEP Team; however, it was not signed.
11. On November 18, 2022, the safety plan was accepted by Parent and District during mediation. (It should be noted that during the investigation, District shared the mediation agreement document with the Investigator. Parent approved disclosure and use of the document.) The effective dates of the safety plan were September 19, 2022 through June 9, 2023. The plan affirmed that it is a personalized and practical plan to improve the safety of Student while at School during the 2022-2023 School year.
12. The safety plan states, “Any member of the School Team that witnesses or/are otherwise made aware of any harassing, intimidating, or bullying behavior directed toward Student will intervene immediately and will report such behavior to Principal/Assistant Principal, School Counselor and/or Constable. Parent will be notified via Telephone and/or Email when any incident occurs.”
13. The safety plan continued to describe methods of utilizing colored cards to express that Student feels unsafe, whether due to bullying or related anxiety. Parent must be contacted to be informed of the situation, how it was handled and what was Student’s response after processing the situation.
14. On February 16, 2023, Parent was provided Notice of Meeting, via email, to develop Student’s annual IEP which was to end on April 25, 2023. Two additional notices were sent to Parent on February 17, 2023 via written notice and February 27, 2023 via email for

an IEP meeting on April 21, 2023. In addition, another Notice of Meeting was sent to Parent for an April 28, 2023 IEP meeting to continue discussions, if needed.

15. On April 21 and April 28, 2023, meetings were held to develop Student's annual IEP. The new IEP included additional medical accommodations based on documentation from REDACTED Hospital March 16, 2023 to support Student's recovery from mTBI/concussion.
16. Additional data utilized to develop the new IEP included progress reports from the current IEP (last marking period of the 2021-2022 school year and first three marking periods of the 2022-2023 school year) of April 26, 2022. Student made satisfactory progress for reading fluency in 4 out of 4 benchmarks and for reading comprehension in 3 out of 4 benchmarks. In writing development, Student made satisfactory progress in 2 out of 4 benchmarks. In Math, Student made satisfactory progress in 3 out of 4 benchmarks. In demonstrating self-advocacy, Student made satisfactory progress in 4 out of 4 benchmarks.
17. At the April 21, 2023, the IEP Team proposed to extend Student's current IEP, dated April 26, 2022, until May 5, 2023 due to the need for an additional meeting to complete the IEP development. This extension was to ensure there was no lapse in special education services. At this time, Parent requested an educational re-evaluation to determine if Student would qualify under another educational classification due to concerns regarding mTBI, anxiety/depression and Osgood-Schlatter disease. Parent signed Permission to Evaluate at this meeting.
18. On April 28, 2023, an IEP Team meeting was held to continue IEP development. The IEP was developed; however, Parent requested a continuation of the meeting on another date so as to include the Nurse. The IEP was not yet considered complete.
19. On May 9, 2023 the IEP Team proposed to again extend the current IEP to June 2, 2023 due to Parent request to meet with the School Nurse. School Nurse was not available at the April 28, 2023 IEP meeting. This extension again was to ensure there was no lapse in special education services as outline in the IEP of April 26, 2022.
20. On May 9, 2023, a Notice of Meeting for May 15, 2023 meeting was sent to Parent proposing a discussion of IEP and health plan with School Nurse.
21. On May 15, 2023, a meeting was held for Parent to discuss IEP and health plan with School Nurse.
22. On June 2, 2023, District provided a written response to the state complaint indicating, among other things, that, in addition to actual meetings, there were 190 communication exchanges in the form of emails or meetings between Parent, Principal and/or Director, most of which concern allegations of bullying.

First Bullying Incident

23. On February 9, 2023, Parent sent email to Principal, Director, Assistant Principal and Counselor informing them of an alleged bullying incident that occurred the previous day. The email stated that Parent was never informed of the incident from school administration. Parent also demanded that administration address this incident of bullying.
24. As reported by Student to Parent, the alleged incident occurred in the cafeteria. Student 2 made threatening remarks to Student through Student 3.
25. On February 9, 2023, Principal emailed Parent thanking Parent for bringing this to their attention and informed Parent that they will look into this situation, as they were not aware.
26. On February 10, 2023, Principal called Parent to discuss Parent's email from previous day.
27. On February 13, 2023, Parent sent email to Principal, Assistant Principal, Director and Counselor expressing significant concern with the ongoing issues that Student and Parent are experiencing with District, in particular, miscommunication with Principal. In addition, Parent demanded an investigation take place regarding the bullying incident of February 8, 2022.
28. On February 14, 2023, Director sent an email serving as a response to Parent's emails from February 9, 2023 and February 13, 2023. Director explained that Coordinator would be reaching out to schedule an IEP meeting. Director suggested that the IEP Team utilize Special Education Partnership for the Amicable Resolution of Conflict (SPARC) to help facilitate the meeting. Director also explained that the Principal was in the process of conducting the investigation based on the claims made in Parent's February 9, 2023 email. Director informed Parent that at the conclusion of the investigation and upon review of the Bullying Committee, Parent would be notified of the outcome.
29. On February 15, 2023, Parent responded by email that Parent's schedule permits availability every other Friday for an IEP meeting with no accommodations of any other day availability. Parent agreed to SPARC facilitation. Therefore, the IEP meeting was scheduled to be held on April 21, 2023.
30. On February 15, 2023, Principal sent Parent an email with an attachment of a letter from the Department of Justice, Office of School Criminal Offense and Bullying Ombudsperson. The letter stated that a complaint of bullying was reported, the school will investigate the incident and will contact Parent with its resolution.
31. On February 23, 2023, Principal sent Parent an email which included a letter stating that the incident was investigated and was not substantiated as bullying.

Second Bullying Incident

32. On February 24, 2023, Parent met with Principal, Director and Dean concerning ongoing incidents and voiced concern about Student's safety and threats made.
33. On February 28, 2023, Parent reported that REDACTED received a phone call from Counselor 2 regarding an inappropriate exchange of photos about Student. This was reported by REDACTED(REDACTED) to Counselor 2.
34. That evening, Parent received a threat on Student's phone from two students. Parent sent screen shots of the message to District and School administration.
35. On March 1, 2023, Director sent an email to Parent communicating that there would be an immediate investigation and follow-up.
36. School administration conducted the investigation.
37. On March 7, 2023, Principal sent Parent an email communicating that Student was a victim of bullying as the reported incident was substantiated as such. Attached to the email was an official letter stating the substantiation. The letter informed to Parent that the following actions have taken place: a) the incident was reported to the Department of Education, b) a letter was provided to Parent from the Department of Justice, Office of School Criminal Offense and Bullying Ombudsperson, c) contact and/or attempt to contact you was made either verbally, by phone or e-mail on March 7, 2023, d) follow-up interventions and/or supports were put in place to proactively prevent future incidents.

CONCLUSIONS

The Office of Special Education and Rehabilitative Services (OSERS), together with the Office of Civil Rights (OCR), informed States through a Dear Colleague Letter on Bullying of their responsibility of providing a free, appropriate, public education (FAPE) during a bullying incident. OSERS states, "Whether or not the bullying is related to the student's disability, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of FAPE under the IDEA that must be remedied."² States and school districts have a responsibility under the IDEA, 20 U.S.C. § 1400, *et seq.*, to ensure that FAPE in the least

² OCR also has authority to investigate complaints alleging denial of FAPE under Section 504 and Title II. See the July 25, 2000, joint Dear Colleague Letter on Disability Harassment; (available at: <http://www.ed.gov/ocr/docs/disabharassltr.html>); OCR's October 26, 2010, Dear Colleague Letter on Harassment and Bullying (available at: <http://www.ed.gov/ocr/letters/colleague-201010.html>) and OSERS Dear Colleague Letter on Bullying of August 20, 2013 <https://sites.ed.gov/idea/files/bullyingdcl-8-20-13.pdf>

restrictive environment (LRE) is made available to eligible students with disabilities. In order for a student to receive FAPE, the student's individualized education program (IEP) must be reasonably calculated to provide meaningful educational benefit.³

1. Parent alleged that District did not notify Parent of alleged bully incident.

According to the Safety Plan for Student, discussed at the September 19, 2022 meeting and agreed upon at mediation on November 18, 2022, "Any member of the School Team that witnesses or/are otherwise made aware of any harassing, intimidating, or bullying behavior directed toward Student will intervene immediately and will report such behavior to Principal/Assistant Principal, School Counselor and/or Constable. Parent will be notified via Telephone and/or Email when any incident occurs".

After conducting this investigation, it is determined that School Principal could not have informed the Parent of an alleged bullying incident if Principal or any other staff members were not aware of the alleged situation/incident. Immediately upon learning of this allegation, School Principal conducted an investigation and informed the Parent of the outcomes of the investigation. The allegation of bullying was unsubstantiated.

Therefore, I find no violation of the Student's Safety Plan reviewed during the September 19, 2022 meeting and agreed upon during mediation, nor any provisions under IDEA.

2. Parent alleged Student was the victim of two incidents of bullying by Student 2 and 3, including Parent of Student 2. REDACTED.

According to OSERS and OCR, once a school knows or reasonably should know of possible student-on-student harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. In addition, if harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent its recurrence. In addition, the letter states that schools have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive FAPE in accordance with his or her IEP. The school should, as part of its appropriate response to the bullying, convene the IEP Team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide meaningful educational benefit.

Upon knowledge of the first alleged bullying incident, District conducted a full investigation, and reported information to Delaware Department of Education. At the conclusion of the investigation, it was determined that this alleged incident of bullying was unsubstantiated.

³ See *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 201 (1982).

Upon knowledge of the second alleged bullying incident, District again conducted a full investigation. At the conclusion of the investigation, it was substantiated as bullying. The District sent a letter to inform Parent that the following actions have taken place: a) the incident was reported to the Department of Education, b) a letter was provided to Parent from the Department of Justice, Office of School Criminal Offense and Bullying Ombudsperson, c) contact and/or attempt to contact you was made either verbally, by phone or e-mail on 03/07/2023, d) follow-up interventions and/or supports were put in place to proactively prevent future incidents.

During the course of the 2022-2023 school year, six IEP meetings were held to review current information, medical updates and/or safety/health plans. The IEP Team met to review/revise the current IEP on June 23, 2022, September 19, 2022, and November 3, 2022 and to develop a new IEP on April 21 and 28, 2023 and May 15, 2023. In addition to actual meetings, there were 190 communication exchanges in the form of emails or meetings between Parent, Principal and/or Director, most of which concern allegations of bullying according to the District's written response to the state complaint.

Upon review of Prior Written Notices of the above meetings, as well as the 190 communication exchanges, there was evidence that Student was receiving FAPE.

Therefore, I find no violation concerning the provision of FAPE under IDEA.

3. Reporting of a bullying incident by Parent of Student 2, REDACTED. Parent alleged this as REDACTED retaliation.

IDEA does not have jurisdiction over REDACTED behavior. This is a matter that is directly related to the REDACTED.

Therefore, since this matter is a REDACTED issue and not addressed under IDEA, I cannot render an opinion.

4. Parent alleged that the current IEP has expired.

The current IEP end date was April 25, 2023. On February 15, 2023, Parent gave notice to the District that her availability for attendance at IEP meetings are limited to every other Friday. District provided Parent with Notice of Meeting on February 16, 17 and 27, 2023 for the April 21, 2023 annual review and development. At the April 21, 2023 IEP meeting, the IEP Team proposed to extend Student's current IEP, dated April 26, 2022, until May 5, 2023 due to the need for an additional meetings to complete the development. This extension was to ensure there was no lapse in special education services. At this meeting, Parent requested an educational re-evaluation to determine if Student would qualify under another disability classification due to concerns

regarding mTBI, anxiety/depression and Osgood-Schlatter disease. Parent signed Permission to Evaluate on April 21, 2023.

On May 9, 2023, the IEP Team proposed to again extend the current IEP to June 2, 2023 due to Parent request to meet with the School Nurse. School Nurse was not available at the April 28, 2023 IEP meeting. Again, this extension was to ensure there was no lapse in special education services as outlined in the IEP of April 26, 2022. On May 9, a Notice of Meeting for a May 15, 2023 meeting was provided to Parent. On May 15, 2023, Parent met with IEP Team and School Nurse to discuss the IEP and health plan for Student.

According to 14 DE Admin Code § 925.11, “Amendments: Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in subsection 11.4, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.” The IEP Team first convened on April 21, 2023 to develop the IEP. However, the IEP Team, as a whole, agreed to further extend the IEP after a number of IEP meetings to complete the IEP and ensure Parent’s requests were addressed.

Furthermore, the School has a responsibility to ensure that one (1) or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including: 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 scheduling the meeting at a mutually agreed on time and place. *See* 14 DE. Admin Code § 925. 9.0. The School did provide proper Notice of Meeting well in advance. The alleged lapsed IEP was extended due to an inability to convene the IEP Team on limited days as directed by Parent. In addition, the IEP Team had additional medical data to consider in the development of the IEP, a request by parent to re-evaluate Student, and the need for the School Nurse to be in attendance per Parent request. The District proposed to extend the current IEP to ensure there was no lapse in special education services.

Since the IEP Team, including Parent, agreed to extend the current IEP due to the need for additional meetings to complete the new IEP, I find no violation of IDEA.

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 Department shall be taken.

Investigator