

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES**

**STATE COMPLAINT DECISION**

**DE SC # 24-04**

**Date Issued: December 15, 2023**

On October 15, 2023, REDACTED (Complainant) filed a complaint on behalf of REDACTED (Student) with the Delaware Department of Education (DDOE).<sup>1</sup> The Complaint alleged that REDACTED School (School) violated the Individuals with Disabilities Education Act (IDEA) with respect to the Student. The Complainant has no custodial or educational rights regarding the Student. However, investigation of this complaint is within the supervisory responsibilities of DDOE and in accord with the applicable IDEA regulations (34 C.F.R. §§ 300.151–300.153) and corresponding Delaware regulations (14 DEL. ADMIN. CODE §§ 923.51.0–925.53.0). The investigation included a review of Student’s educational records and interviews with the Parents and pertinent District personnel.

**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 DDOE receives the complaint. See, 34 C.F.R. § 300.153(c); 14 DE Admin. Code § 923.53.2.4. In this case, the DDOE received the complaint on October 15, 2023. Therefore, the DDOE’s findings address allegations from October 15, 2022, to October 15, 2023.<sup>2</sup>

**COMPLAINT ALLEGATIONS**

The Complaint alleged that School staff violated Student’s rights by: (1) failing to provide an appropriate and safe education for a child with a disability (2) failing to respond to Student’s chronic absenteeism, including tardiness (3) failing to respond appropriately to incidents of bullying directed toward the Student, and (4) failure to respond to ongoing issues<sup>3</sup> related to the Student.

**FACTUAL FINDINGS<sup>4</sup>**

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<sup>1</sup> This final report identifies people and places generically to protect personally identifiable information about the Student from unauthorized disclosure. These generic labels include “Parents” regardless of whether referring to one or more individuals in that role. The Appendix, which must be removed before release as a public record, identifies the individuals by names and role/affiliation for internal purposes only.

<sup>2</sup> Multiple documents submitted by the Complainant were outside of the one-year limitation period of this case.

<sup>3</sup>There are allegations regarding some issues under the jurisdiction of Delaware Family Services and Delaware Family Court which are beyond the purview of this investigation.

<sup>4</sup> These Factual Findings (FFs) are numbered generally in chronological order. The subsequent Legal Conclusions section of this report cross refers, for the sake of brevity, to particular ones by “FF #\_\_.”

1. Student is presently a REDACTED year-old REDACTED grader at School. Student has an Individualized Education Plan (IEP) and receives special education services under the educational classification of Mild Intellectual Disability.
2. Student was retained in kindergarten and second grade.
3. According to Student's Evaluation Summary Report (ESR) dated December 8, 2021, Student received tiered interventions in reading and math with minimal progress documented. Although, teachers expressed concern related to Student progress during the 2019-20 school year, Parent did not give permission to evaluate Student at that time.
4. On October 7, 2021, Parent met with Director of Student Services (Director) to discuss Student progress and to sign Permission to Evaluate form.
5. On December 8, 2021, Parent met with the IEP team to discuss Student's evaluation. The IEP team determined Student was eligible for special education and related services as a student with a Mild Intellectual Disability.
6. On December 9, 2021, the IEP team met with Parent to develop an IEP for the Student. The IEP described the Student's needs, goals, and accommodations as follows:

#### Reading Comprehension

Goal: Given level text (middle of first grade) Student will be able answer oral and written comprehension questions with 70% accuracy in at least 4/5 trials.

Accommodations; (i.e.) Small group support, verbal prompts, chunking, direct instruction, appropriate time breaks, modeling, scaffolding teacher guidance

Services: Direct and small group instruction; 3 times/week; 20 minutes per session; Special Education setting

#### Listening Comprehension

Goal: When read aloud a lower second grade level text, Student will be able to answer comprehension questions with 70% accuracy in at least 4/5 trials.

Accommodations; (i.e.) preferential seating, small group instruction, frequent redirections, chunking, adult and peer modeling, visual cues, direct feedback

Services; Direct and small group instruction; 2 times per week; 25minutes per sessions; Special Education setting

#### Math

##### Goals;

1. Addition – When given 10 addition problems with and without regrouping within 100, Student will be able to solve problems with 60% accuracy in at least 4/5 trials.

Accommodations: (i.e.) hundreds chart, number line, grid paper, modeling strategies, small group opportunities for reinforcement, proximity away from distractions, concise, direct

prompts or chunked instructions, positive praise and narration

Services; Direct and small group instruction; 2 times per week; 25 minute per sessions;  
Special Education setting

2. Subtraction- When given 10 subtraction problems with and without re-grouping within 100, Student will be able to solve problems with 60% accuracy in at least 4/5 trials.

Accommodations: same as listed above in Goal 1

Services: Direct and small group instruction; 2 times per week; 25 minutes per session; Spec Education setting.

#### Language

##### Goals:

1. Student will learn the meaning of idioms/ nonliteral language by recalling reviewed sayings with 80% accuracy in 3/5 trials.

Accommodations: (i.e.) immediate feedback, visual cues, verbal cueing, manipulatives

2. Student will explain concrete double meanings of words with 80% accuracy at least 3/5 trials

Accommodations: same as listed above in Goal

Related Services included individual counseling to support social/ emotional needs. The IEP team also determined the Student qualified for a 12-month program “based on regression/ recoupment and significant degree of impairment in the areas of reading comprehension and math fluency.” The IEP team also requested the Student receive a speech evaluation.

7. The February 18, 2022, Progress Report stated Student made satisfactory progress toward all annual IEP goals.
8. In March 2022, (3 separate sessions) Student participated in speech evaluation.
9. On March 23, 2022, the IEP team met with Parent to revise the IEP to add related services in Speech /Language. Language goals remained the same. However, the IEP team added individual speech therapy for 30 minutes once per week in the Spec Ed setting to the IEP.
10. The June 10, 2022, Progress Report stated Student mastered three goals and made satisfactory progress toward all other annual goals.
11. On November 17, 2022, School provided Notice of Meeting to Parent for a December 9, 2022 IEP meeting. However, due to Student’s placement in REDACTED until December 13, IEP team met on December 13, 2022.
12. The November 18, 2022 Progress Report stated Student mastered all reading and math annual goals. However, Student did not make satisfactory progress toward annual language goals due to absences from school. There was insufficient data to report.
13. On November 29, 2022, Student was admitted into REDACTED until December 13, 2022.

School was unaware of this placement until notified by REDACTED for services. At this time, School approved provision of services for Student while admitted in REDACTED.

14. On December 13, 2022, the IEP team met with Parent for annual review of Student's IEP. Due to Student progress, goals included reading comprehension given text at the lower second grade level; listening comprehension given third grade level text; math goals addressed 1 and 2 digit multiplication; language goals included Student identification of 15 new objects/concepts and answering "wh" questions about passage being read aloud.
15. The March 3, 2023 Progress Report stated Student made satisfactory progress toward all annual IEP goals.
16. In Spring and Fall 2023, Social Worker had ongoing contact with Division of Family Services (DFS) case manager. The issues of concern were Student guardianship and visitation.
17. The June 09, 2023 Progress Report stated Student made satisfactory progress toward all annual goals.
18. On August 30, 2023, Parent contacted Social Worker and requested Student receive additional counseling due to Student's feelings about death of maternal grandmother and the conflict between Parent and Complainant Parent completed necessary paperwork to begin additional outside counseling (provided at School). Student continued to receive individual counseling with Social Worker.
19. On November 11, 2023, Principal verified there were no bullying incidents within the one-year limit of this complaint. On November 13, 2023, Director stated Student was always well groomed and dressed appropriately for school. Complainant had stated there was an altercation (name-calling) related to the Student often arriving at School disheveled and having strong body odor, due to Parent not providing necessities for Student.
20. Between October 15, 2022 and October 15, 2023 (date complaint was filed), Student had a total of 10 unexcused absences, three excused absences, and 14 days at an outside agency (REDACTED). In addition, Student had 12 days of unexcused tardiness (15–20-minute average).
21. From February 22, 2023 until May 03, 2023, Student was in the temporary custody of Complainant. During this time, the Student had four unexcused absences of the 10 noted above, and four unexcused tardiness occurrences of the 12 noted above.
22. On October 15, 2023, Complainant filed this State Complaint.
23. On October 18, 2023, both parents reported satisfaction with Student's educational setting and program to the DDOE Education Associate. Parents did not give permission for the Investigator to speak with the Complainant. Parents also reported signature on Release of Information form, dated October 17, 2023, was forged by the Complainant.
24. On November 22, 2023, Social Worker confirmed Parent communicated consistently and was

available to teachers, Social Worker, and DSCYF case worker as needed.

## **LEGAL CONCLUSIONS**

### **Complaint Allegation #1 (Provision of appropriate and safe education for a child with a disability)**

*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 special 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).*

According to documents submitted, and interviews with Parent and School staff, the Parent signed permission to evaluate (FF#6) per 14 DE Admin Code § 925.1.1 (Parental consent for initial evaluation: The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability shall, after providing notice consistent with 14 DE Admin. Code 926.3.0 and 926.4.0, obtain informed written consent from the parent of the child before conducting the evaluation.). The Student was evaluated and found eligible for special education and related services as a Student with a Mild Intellectual Disability (FF#7) per 14 DE Admin Code § 925.6.1 (General: Upon completion of the administration of assessments and other evaluation measures, the child's IEP team shall determine whether the child is a child with a disability, as defined in 14 DE Admin. Code 922.3.0, in accordance with subsection 6.3, and shall determine the educational needs of the child. The IEP team shall document its eligibility determination in an evaluation summary report. The public agency shall provide a copy of the evaluation summary report and other reports created to determine eligibility at no cost to the parent.)

School provided timely Notice of Meeting and Student's IEP team (including Parent) met and developed an IEP for the Student per 14 DE Admin Code § 925. 7.1 (General: Each child who is determined eligible for special education and related services shall have a single IEP. As used in these regulations, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with Sections 7.0 through 11.0.) The IEP was per state regulations (FF#8).

Student Progress Reports evidenced Student made satisfactory progress toward goals (other than Speech/Language goals noted in one marking period due to Student absences), necessary revisions and annual reviews occurred in a timely fashion. Director and Social Worker reported Parent was accessible to teachers and staff and attended IEP and other requested meetings.

***Therefore, I find no violation of IDEA or state regulations regarding provision of a free, appropriate education for a child with a disability.***

#### **Complaint Allegation #2 (Failure to respond to bullying of Student)**

During the time period relevant to this Complaint, there were no incidents of bullying toward the Student reported. In the complaint, the Complainant described hygiene and grooming issues that contributed to bullying incidents. However, Director reported to the contrary, the Student was always very well groomed with no hygiene issues at school (FF#18.)

***Therefore, I find no violation of IDEA or state regulations regarding appropriate response to bullying of Student.***

#### **Complaint Allegation #3 (Failure to respond to chronic absenteeism, including tardiness)**

IDEA does not specifically address attendance. In this case, Student was in REDACTED receiving mental health services for 14 days of the 27 days absent. These absences were excused per *14 DE Admin Code § 2702 (d) The following provisions shall be applicable in regard to statewide minimum mandatory attendance requirements in each school year for children in grades K through 12...*

*(j) A pupil's absence from school for a mental or behavioral health reason is a necessary and an excused absence. Each school district and charter school shall determine the maximum number of excused absences allowable under this section.*

*(1) "Excused absence" means a full school day and does not require a medical or doctor's note.*

*(4) The Department of Education shall provide the technical ability, via the state student information system, for local education agencies to code and create reports related to these absences.)*

As soon as School was notified Parent had taken Student to REDACTED and Student was admitted, School approved educational services to be provided there.

***Therefore, I find no violation of IDEA or state regulations regarding chronic absenteeism.***

#### **Complaint Allegation #4 (School disregarded ongoing Student issues)**

Beyond the educational services provided, School Counselor was in routine contact with Division of Family Services Student case manager regarding Student guardianship issues. School Counselor had ongoing weekly 1:1 counseling session to support Student's social/emotional needs related to family conflicts. Counselor also supervised additional outside agency counseling provided on

school grounds, requested by Parent. Counselor stated Parent was involved with and accessible to counseling and school staff (FF#24).

***Therefore, I find no violation of IDEA or state regulations regarding School's lack of regard to Student's ongoing issues.***

### **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.

Submitted by:

***REDACTED***  
**REDACTED**  
Investigator