

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES**

**STATE COMPLAINT DECISION**

**DE SC # 24-05**

**Date Issued: January 5, 2024**

On November 7, 2023, REDACTED (Advocate) filed a complaint on behalf of REDACTED (Student) with the Delaware Department of Education (Department). The Complaint alleged that REDACTED School District (District) violated the Individuals with Disabilities Education Act (IDEA) with respect to the Student and in accord with the applicable IDEA regulations (34 C.F.R. §§ 300.151–300.153) and corresponding Delaware regulations (14 *Del. Admin. C.* §§ 923.51.0–925.53.0). The investigation included a review of Student’s educational records and interviews with Advocate, Parent, 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 Department receives the complaint. See, 34 C.F.R. § 300.153(c); 14 *Del. Admin. Code* § 923.53.2.4. In this case, the Department received the complaint on November 7, 2023. Therefore, the Department’s findings address violations from November 7, 2022, to November 7, 2023.

**COMPLAINT ALLEGATIONS**

The Complaint alleged that District violated Student’s rights by (1) ignoring Student’s individual needs and mandating Student enroll in an Advanced Placement course (AP Human Geography) without determining if Student was qualified to take the course; (2) being unresponsive to parent request for class change due to Student’s school transition and mental health challenges; (3) not providing accommodations and supports as described in Student’s IEP for identified course and (4) requiring course that does not align with IDEA regulations regarding the definition of a regular high school diploma.

**FACTUAL FINDINGS**

1. Student is a REDACTED-year-old REDACTED at REDACTED (School) receiving special education and related services as a student with Autism and Speech or Language Impairment. Student is on a regular high school diploma track.
2. Student’s latest Evaluation Summary Report (ESR), dated October 29, 2021, indicated Student was in REDACTED grade at REDACTED REDACTED School (REDACTED School District). Student had transferred from an REDACTED school in REDACTED. The ESR noted developmental and medical history. Report also noted the assessments were administered over two 50- minute sessions using Covid protocols of masking and social distancing (6 feet between examiner and Student). Consistent attendance was noted as a Student strength and there was no mention of mental health issues in the report.

3. On November 17, 2022, an IEP meeting was held. Student's IEP included goals in Attention to Task, Reading Comprehension, Written Expression, Self-regulation, Coping Skills and Sensory Strategies, Speech and Language, Occupational Therapy and Counseling.
4. On January 20, 2023, the IEP Team met to revise the IEP. Student was in REDACTED grade at REDACTED REDACTED School (District). The Prior Written Notice (PWN) indicated the purposes of the meeting were to (1) Review the evaluation from Occupational Therapy to determine eligibility for services and (2) Review current goals per Parent request and revise statements to focus on Student's present levels of performance with attention to work and remove diminishing behaviors that are no longer occurring in the school setting.
5. Student participated in 12-month program option in 2022-23 school year.
6. Parent reported mental health concerns began in REDACTED grade, while attending REDACTED REDACTED School. Student is currently receiving private treatment for depression and anxiety. Student receives treatment one hour per week from REDACTED and one hour per month from another private provider.
7. On September 20, 2023, Student had appointment with mental health provider who made medication change that caused headaches.
8. On September 22, 2023, Parent reported a call from School Psychologist who shared REDACTED had met with Student to see how REDACTED could assist REDACTED Student had complained of noise and being overwhelmed. Psychologist also requested Parent input and suggested soft earbuds for Student to dampen noise. Parent shared information about recent Student's mental health appointment and ongoing appointment schedule.
9. On September 23, 2023, Parent emailed Advocate to share Parent had gone to School Open House. Parent met with English Teacher whose co-teacher was not able to attend the Open House. Parent also met with Digital Design Teacher who had a separate room Student can use at times Student felt overwhelmed or distracted in classroom.
10. On or about Sept 24, 2023, Student spoke with School Counselor about a class change for AP Human Geography and was told it was a required course.
11. On September 26, 2023, Parent contacted School Counselor to request class change out of AP Human Geography for Student. Counselor explained AP Human Geography is a requirement for all REDACTED grade students. The course is team-taught by a general education and special education teacher, in an inclusive education environment.
12. On September 27, 2023, Student saw behavioral health doctors for Student's depression and anxiety. Parent shared medications were being tried and adjusted, which did have side effects. Doctors recommended a half-day schedule due to the severity of Student's mental health status.
13. On October 10, 2023, per Parent request, an IEP meeting was held to discuss concerns regarding Student's mental health; accommodations and supports; half-day educational

programming; increased counseling services, and 1:1 Student support. The Prior Written Notice (PWN) stated IEP Team discussed the following:

- a. Student's mental health - IEP Team had conflicting observations and concerns. School nurse observed Student "meltdowns" and doubted Student's ability to access general education curriculum even with accommodations and supports. Teachers did not report observation of "meltdowns" in class, rather described Student presenting with a sense of humor, as well as sociable and engaged with peers. Occupational Therapist (OT) continued to provide self-regulation and coping strategies support. IEP Team reported Student refused to wear noise-cancelling headset to minimize sensory overload. School Psychologist stated a visual chart of emotions and feelings to support Student's mental health would be implemented.
- b. Accommodations and supports - IEP Team reviewed data that reflected accommodations and supports were implemented with fidelity and due diligence. IEP Team agreed to increase accommodation of chunking by including smaller chunks of work to minimize Student feeling overwhelmed. For paper tasks, IEP Team agreed to present Student with a single page of work at a time. The team agreed PowerPoint and video assignments were chunked sufficiently. These changes to accommodations were effective immediately.
- c. Student schedule - IEP Team agreed Student would attend school on a half-day schedule, attend morning classes and afternoon classes on alternate weeks, until medically cleared to attend on a full day basis. Counseling sessions would be increased to 30 minutes weekly. These schedule and counseling changes were effective immediately.
- d. 1:1 Student support - IEP Team discussed, but did not agree, to provide 1:1 Student support. Teachers on IEP Team stated that after 5 weeks of multi-collaboration to provide 1:1 support to Student across content areas, the data did not reflect a change in Student performance.

14. Beginning October 12, 2023, Student attended school on a half-day schedule, alternating morning, and afternoon sessions on alternate weeks. The hours Student was not in school to receive in-person teacher instruction, Student's work and materials were posted on Schoology. However, there was no teacher instruction provided during those hours. Parent stated there were times Student could not access Schoology. Investigator requested dates Schoology was inaccessible; however, no dates regarding this request were forwarded.
15. On October 13, 2023, Counselor emailed Parent to offer course change in Earth and Space Science from an honors class to a regular class to help ease Student's anxiety. Counselor stated the AP Human Geography class would remain the same.
16. On October 12, 2023, Advocate emailed Director of Inclusive Education (Director) to follow-up on IEP meeting of October 10, 2023. Advocate stated REDACTED had reviewed District course catalog and wondered if Student could have another option for social studies credit, given current mental health status. Advocate had reached out to Secondary Curriculum Director (Director 2) on September 26, 2023 and had not received a response. Advocate also stated Parent was concerned Student had not had access to sensory room since school had started. It was not clarified at IEP meeting how that would be handled, going forward. Advocate also stated Student had started the half-day schedule on this date. Student was given a packet of Math work with neither teacher checking in with Student for needed assistance.

Chunking, teacher modeling and frequent check-in are accommodations listed in the IEP.

17. On October 17, 2023, Director responded to Advocate and indicated REDACTED would follow up with Director 2 regarding course concerns and School around sensory supports and other Student accommodations.
18. On October 18, 2023, AP Human Geography Teacher(s) contacted Parent with concern regarding Student's absences from class for previous two weeks and to discuss a plan to help Student get caught up in classwork.
19. On October 19, 2023, Parent emailed Teacher and apologized for delayed contact. Parent informed teacher of Student's September 27, 2023, mental health provider appointment (see above ff#10) and recommendation for modified school schedule. Parent shared that an IEP meeting was held on October 12, 2023, to address Student's recommended schedule change. Parent also asked Teacher how Student might begin to make up missed work.
20. On November 1, 2023, REDACTED recommended Student attend school for ½ days for "the foreseeable future."
21. Student's IEP Progress Report, dated November 2, 2023 (with a data range end date of October 2, 2023), indicated Student was not making satisfactory progress toward annual goals in Reading Comprehension (Benchmark 4). Student did not make satisfactory progress in Written Expression (Benchmark 4), with noted lack of work submission for data points, both on in-school days and asynchronous days; Student did not make satisfactory progress toward annual goal in Self-Regulation, Emotional Regulation or Handwriting despite accommodations. Impact of absences and extenuating circumstances were noted in each area. Math Problem-Solving and Pragmatic Language annual goals were mastered.
22. On November 7, 2023, Complainant filed this state complaint on behalf of Parent and Student.
23. On November 7, 2023, Director emailed Advocate to report on planned follow up from concerns raised in Advocate's October 12, 2023, email. Director stated REDACTED had contacted team regarding chunking accommodations. Also, the Occupational Therapist was working on a plan for sensory room access for Student. Director explained the AP Human Geography was the REDACTED grade required course for graduation.
24. On November 17, 2023, Student's annual IEP meeting was held, with an initiation date of December 8, 2023. PWN indicated Parent requested reduced academic workload and declined 12-month program option. There was no proposed plan for Student's transition back to a full school day schedule, despite documentation Student is on track for June 2027 graduation. Student setting was "A" with no provision for home instruction if Student is still attending school on a half-day schedule. Student has had a ½ day schedule since October 12, 2023.
25. Marking Period 1 Report Card indicated Student had a "REDACTED" in AP Human Geography. Parent reported Teacher had shared with REDACTED that the grade reflected Student effort versus test data. Report card also indicated an "I" (incomplete) in English and

Science. Student received a REDACTED in Digital Design and a REDACTED in Geometry, and a REDACTED in Physical Education.

26. Advocate stated Parent's primary concern was the requirement of an AP course, as the only offering for Social Studies credit for all 9<sup>th</sup> grade students, consistency of accommodations and supports across content areas and responsiveness to request for course changes.
27. Principal stated AP Human Geography was required for all REDACTED graders and Student's class is an "inclusion" class. Principal also stated Student was not required to take AP exam for college credit. Parent reported REDACTED was unaware that Student was not required to take exam for college credit.
28. On December 11, 2023, Director 2 stated in a letter to Investigator that the AP Human Geography curriculum was chosen for District because the Curriculum Committee determined it was the best curriculum in this content area, met state content standards and was rigorous. Director 2 also stated that the committee recognized "AP" would evoke concern and requested permission from College Board the denotation be left off the title of the course. This request was denied.

### **LEGAL CONCLUSIONS**

**Complaint Allegation #1:** District ignored Student's individual needs and mandated Student enroll in an Advanced Placement course of AP Human Geography without determining if Student was qualified to take the course.

In Delaware, Districts have the sole authority to determine curriculum and credit requirements that meet (or exceed) state requirements for high school graduation and align with State Content Standards. *See 14 Del. C. §1043; 14 Del. Admin. C. §§501, 502, 503, and 505.*

This authority is beyond the purview of the Department and therefore, beyond the purview of this investigation. Additionally, IDEA does not address the issue of curriculum for students with disabilities, rather access to the general education curriculum, provided in the least restrictive environment with appropriate accommodations and supports. *14 Del. Admin. C. §925-14.2.*

In this case, Student's peer group (all ninth graders) are required to take AP Human Geography, as part of the general education curriculum. Therefore, to earn required social studies credits toward a high school diploma in the least restrictive environment in District, Student is appropriately placed in this course.

***Therefore, I find no violation of IDEA or state special education regulations.***

**Complaint Allegation #2:** District was unresponsive to parent request for class change due to Student's school transition and mental health challenges.

As described above, District has sole authority to make curricular decisions for courses and credits that align with State Content Standards and meet or exceed minimum state requirements for a high school diploma. This course is a general education requirement for high school graduation in the REDACTED School District. IDEA requires access to the general education curriculum, in the

least restrictive environment, with appropriate individualized accommodations and services to meet the Student's unique needs, provide significant learning and meaningful benefit that is gauged to the Student's potential 14 *Del. C. § 3101(5)*. Student has documented potential to earn a high school diploma.

***Therefore, I find no violations of IDEA or state special education regulations.***

**Complaint Allegation #3:** District was not providing accommodations and supports described in Student's IEP for AP Human Geography course

The Review of Student's IEP goals, accommodations, and related services, including data driven discussion and revisions of October 10, 2023, that included doctor/parent request for significantly modified in-school attendance schedule, as well as changes in accommodations demonstrated effort to increase Student academic and counseling support. Additionally, this course being co-taught by a general and special education teacher allows for ongoing in-class support. Unfortunately, Student currently is not able to have the full benefit of this opportunity due to Student's modified half-day schedule, dictated by current mental health status. Documentation also reflected test and assignment exemptions to minimize Student's feelings of being overwhelmed with make-up work.

However, despite all the accommodations and supports provided and a half-day schedule that provided modified coursework with materials but no teacher instruction when Student is not in school, Report Card and Progress Report data indicate Student is not demonstrating significant learning or meaningful benefit gauged to potential.

*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;*

*I 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. 14 Del. C. § 3101(5).*

***Therefore, I find violations of IDEA and state regulations regarding provision of a free, appropriate education for a child with a disability.***

**Complaint Allegation #4:** District required course that does not align with IDEA regulations regarding the definition of a regular high school diploma.

The minimum requirements for a high school diploma in Delaware are determined by the State. A

District has the sole authority to require credits beyond the minimum state requirements for high school graduation. High School diplomas are conferred upon students through the individual local districts in Delaware.

*Therefore, I find no violations of IDEA or state special education regulations.*

### **Corrective Action**

#### **Student Level**

Given the Student's documented mental health status and its significant impact on school attendance and performance since Student's last re-evaluation of October 29, 2021, an updated re-evaluation is warranted to identify Student's needs, in order to provide appropriate accommodations and supports for Student to successfully access the general education curriculum.<sup>14</sup> *Del. Admin. C. §925-3.0*. Therefore, following Parent Permission to Evaluate, Student will be re-evaluated within 45 school days or 90 calendar days, whichever is less.

1. The IEP Team will meet to review the evaluation and revise the IEP as necessary.
2. The IEP Team will review re-evaluation information and make IEP revisions as appropriate.
3. The IEP team, in collaboration with Student's mental health providers, will develop a plan to address Student's return to full-time school attendance, since Student has been on this modified schedule for almost 3 months to date.

A copy of the plan for Student's return to a full-day school schedule will be forwarded to the Director of Exceptional Children Resources on or before **February 15, 2023**.

Student's ESR, IEP, PWN will be forwarded to the Director of Exceptional Children Resources on or before **April 20, 2024**.

Respectfully Submitted by:  
REDACTED  
Investigator