

DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION
BRANCH

FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION

DE AC 09-08

On June 3, 2009, the Delaware Department of Education ("the Department") received a written complaint from Parent on behalf of Student.¹ The complaint alleges the Christina School District ("District") violated State and federal regulations concerning the provision of special education services to children with disabilities. Specifically, Parent claims the District violated certain regulatory requirements related to the provision of services in accordance with Student's individualized education program ("IEP") that was developed at a meeting on November 3, 2008 and that the District violated other State and federal requirements.

This complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to the Delaware Department of Education's regulations at 14 DE Admin Code §§ 923.51.0 to 53.0.

The investigation included a review of the allegations in the complaint, as well as a June 2009 phone interview with Parent; a review of information from Student's educational record relevant to the complaint; and interviews with District staff knowledgeable about Student, including the District's Supervisor of Special Programs.

FINDINGS OF FACT

1. Student is 19 years of age and receives special education services through a Special Program in a High School within the District. Student is eligible for special education and related services under the Individuals with Disabilities Education ("IDEA") and 14 Del. C. § 3101 *et seq.* Student has an educational disability classification of "Severe Mental Disability" as defined in 14 DE Admin Code § 925.6.12. Student has been evaluated and determined to have severe delays in all domains.
2. At Parent's request, Student was referred to the Delaware Autism Program ("DAP") on December 5, 2008, to determine if Student meets the program eligibility criteria. A school observation was conducted on February 2, 2009, and the report was completed on March 24, 2009, by DAP staff.

¹ The Final Report identifies some people and places generically to protect personally identifiable information about 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 Final Report is released as a public record.

3. In summary, the evaluators reported that in reviewing Student's history, "there are no reports that suggest or support an educational classification of autism." Additionally, the classroom observation provided no data that contradicted the evaluation reports and Student's history. It was also reported that Student's behavior was typical during the observation. The results of this report were discussed at a meeting including Parent on March 25, 2009.
4. During the school year, Student is typically in a class with five other students and four staff persons, including one teacher, one classroom aide, and two additional dedicated aides. One aide is specifically assigned to Student, and the second aide is assigned to another student in the class. Therefore, the class to which Student is assigned has a total of six students with four adults.
5. The IEP that was in effect at the time of the complaint and subject to this investigation was developed at the IEP team meeting conducted on November 3, 2008. Parent participated in that meeting and was provided with the *Notice of Procedural Safeguards* in accordance with State and federal requirements. It is further noted Parent was not in agreement with the placement in the Special Program and wanted to pursue the evaluation by the DAP staff. (See Findings of Fact #2 above)
6. The unique educational needs and characteristics identified on Student's IEP are: "OT (Occupational Therapy), PT (Physical Therapy), Safety, Communication Skills, Behavior/Participation and Vision." Annual Goals and benchmarks or objectives for Student include: appropriate behaviors, appropriate social interaction, communication, following directions, self-care/prevocational skills, fine motor/visual motor skills, and gross motor skills, particularly to encourage and improve independent and assisted mobility (walking).
7. At the start of the 2008-2009 school year, Student began exhibiting toileting problems. This need is addressed with "Benchmarks or Objectives" in the measurable annual goal stating "Student will indicate in a socially appropriate manor when she needs to use the bathroom."
8. The IEP addresses Student's post secondary goals and transition services. The Post School Employment Goal states that Student will participate in and require a "facility based program," and will always require a "supported living situation" due to the severity of the disabilities. The IEP further states "student will need the support of DDDS (i.e., the Division of Developmental Disabilities Services)." Student has a DDDS family support worker who attended the IEP meeting on November 3, 2008, and the subsequent meeting that was conducted on March 25, 2009 when the results of the DAP screening evaluation were reviewed.

9. During the 2008-2009 school year, progress was reported and provided to Parent four times. Report cards addressing Student's progress on October 27, 2008, January 30, 2009, April 7, 2009, and May 27, 2009 state that progress was generally seen in all areas with the exception of toileting.
10. The IEP states "Student will walk a minimum of 4 times per day, when able, and use either wheeled walker or assist from staff." A wheelchair is also used to assist Student in moving through the building when going to the cafeteria from the classroom and to the classroom from the cafeteria; when going from the bus to classroom in the morning and from the classroom to the bus in the afternoon; during music class to enable Student to move safely during dance class when listening to music, and other occasions when Student refuses to walk and needs to move between locations. It was reported that Student uses the wheelchair for her safety and the safety of others, and the harness is used while in the wheelchair only for Student's safety and comfort.
11. Staff reported and data established that Student is required to walk a minimum of four times per day as stated in the IEP. The length of the walks range from approximately fifteen to thirty five minutes each, and daily data is maintained evaluating Student's performance each time that walking is required.
12. School staff confirmed that Student's toileting has been an area of concern throughout most of the school year. Early in the school year this concern was apparent and addressed. Initially, there was a question whether the problem was a result of a urinary infection. However, Student's physician ruled that out, and it was determined to be a behavioral matter rather than an issue requiring medical treatment.
13. During the 2008-2009 school year, the toileting program was revised at least three times. At the start of the school year, Student was taken to the bathroom every two hours. When this did not alleviate the wetting and soiling, the schedule was revised to include bathroom breaks at hour intervals, then again it was revised to once every thirty minutes with data maintained as to the success rate of staying dry and using the toilet appropriately.

CONCLUSIONS

In the letter of complaint addressed to the Department and in the investigator's telephone conversation with Parent, the following violations were alleged and investigated:

1. *Student's IEP is not appropriate;*
2. *Student did not make progress on IEP goals; and*
3. *Student's IEP does not include post secondary goals and transition services.*

Appropriateness of Student's IEP

In the letters written to the Department and during the telephone conversation with the investigator, Parent stated her belief that Student's IEP was not appropriate. The definition of "IEP" is addressed at 14 DE Admin Code § 925.20 and specifies what must be included. The regulation also does not limit the IEP team from including additional information that may be relevant to providing FAPE to the child. In reviewing Student's educational record, including the IEP revised on November 3, 2008, the IEP has the required content, including a statement of measurable annual goals, and academic and functional goals designed to meet Student's needs that result from the disability. Additionally, the annual goals and services are based on the results of formal and informal evaluations conducted by District personnel that were shared at the IEP team meetings in which Parent participated. There is no documentation that Student has educational needs or services other than those addressed in the IEP. Parent has expressed concern that Student's placement in the Special Program at the high school is not appropriate. Parent was provided with information regarding the procedural safeguards and parental rights, including the right to request a due process hearing and mediation regarding the program placement. To date, Parent has chosen to not exercise that right.

In conclusion, there is no evidence to support the claim the IEP does not address Student's academic and functional educational needs. Additionally, the program is quite detailed with measurable annual goals in those areas that result from Student's multiple disabilities, including communication, fine and gross motor, self-help, sensory training and social interaction. All goal areas appear to address Student's anticipated post secondary placement in a "facility based day program" such as those operated by DDDS, and there is sufficient documentation demonstrating school personnel are implementing the program as designed. There is no evidence to substantiate Parent's allegation and the IEP is appropriate, as required by the regulation.

Progress on Annual Goals

Parent alleges that Student did not make progress on the IEP goals. State regulations require each IEP to include measurable annual goals that are designed to meet the child's needs, and progress toward meeting those goals must be reported to the parents periodically. See, 14 DE Admin Code § 925.20.1.2.

In this case, based on documentation provided by District officials, Parent was provided with periodic progress reports throughout the school year. These progress reports were provided to Parent quarterly. These reports provide Parent with Student's progress on the annual goals in the IEP and provide documentation that school personnel are making good faith efforts to help Student achieve the goals developed and agreed upon by the IEP team. It is further noted that Student has made progress on most or all of the goals in the IEP. One exception to this is, clearly, the goal regarding toileting. While progress has not been made with this goal, school personnel have revised the strategy no less than three times over the course of the year by increasing the frequency of escorting Student to the bathroom. Data has been maintained daily

that demonstrates the attempts to achieve this annual goal. Based upon the Finding of Facts and the above discussion of the requirements, there is no violation with regard to this allegation.

Post Secondary and Transition Goals

Parent stated in conversation with the investigator, she believes that Student's IEP does not include Post Secondary goals and transition services. Parent's claim is not supported by the evidence. A review of Student's IEP establishes the IEP meets regulatory requirements in this regard. "Transition services" are defined at 14 DE Admin Code § 922.3.0 as a coordinated set of activities for a child with a disability that...

" Is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities...and if appropriate, acquisition of daily living skills..."

Student's IEP clearly identifies that Student will require a supported living situation and a vocational day program based on the nature and severity of multiple domains effected by the disabilities. Goals addressing communication, mobility, self-help, fine motor skills, and toileting are all functional skills addressed in the IEP and would appear appropriate for a child with disabilities who will require a post-secondary placement in a vocational day facility, such as those operated by DDDS, and a supported living environment. Additionally, the ongoing participation by the DDDS Family Support worker at Student's IEP meetings is evidence that Post Secondary and transition planning is ongoing with Student and addressed by the District. Therefore, Parent's allegation the District has not properly addressed this requirement is without merit.

The findings above are limited to the allegations in the complaint. However, these findings do not limit additional actions available to Parent under the IDEA and corresponding Delaware law. To the extent Parent believes Student's services, placement, or location the services are to be provided are not appropriate, she may exercise the right to file a due process complaint as explained in the *Notice of Procedural Safeguards* provided by the District. Having found no denial of services or systemic regulatory violation, no corrective action plan is appropriate or required.

By: Edward L. Wulkan

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Consultant

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