

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION BRANCH**

**FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 10-10 (April 6, 2010)**

On February 5, 2010, Complainant filed a complaint with the Delaware Department of Education on behalf of Student.<sup>1</sup> The complaint alleges the Christina School District (“the District”) violated state and federal regulations concerning the provision of a free, appropriate public education to Student (“FAPE”).

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 of Education’s regulations at 14 DE Admin Code §§ 923.51.0 to 53.0.

**FINDINGS OF FACT**

1. Student is currently 16 years of age, and at all relevant times, attended an Alternative 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 currently has an educational disability classification of “Other Health Impairment” as defined in 14 DE Admin Code § 925.6.14.
2. By way of background, Student attended a private treatment program during the summer of 2008 for treatment for major depression, oppositional defiant disorder, and attention deficit hyperactivity disorder (“AD/HD”).
3. Following her participation in the treatment center, Student attended the 9<sup>th</sup> grade at the high school within the District for the 2008-2009 school year. On or about August 27, 2008, the District convened a meeting to evaluate Student and determine her eligibility for special education services. The team determined Student was eligible for special education services under the disability category of “Other Health Impairment”.
4. Consistent with state and federal regulations, the District developed an IEP for Student in a timely manner following the eligibility determination. The team also completed a functional behavior assessment and behavior plan to address Student’s behaviors as they presented in school. Student began receiving special education services as outlined in her IEP.

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<sup>1</sup> The Final Report identifies some people and places generically, 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 Final Report is released as a public record.

5. On or about March 18, 2009, however, the State Attorney General's Office notified the District Student had been arrested in the community for the possession of a deadly weapon during the commission of a felony. The weapon possession occurred off of school property.
6. Student's felony arrest violated specific provisions in the District's Student Code of Conduct, and District administrators changed Student's educational placement to the Alternative School as a result of the weapon offense. But, the District did not conduct a manifestation determination before changing Student's placement. On May 19, 2009, the District's school board formally expelled Student for one school year and assigned her to the Alternative School. Again, no manifestation determination was held.
7. On October 12, 2009, Complainant filed a complaint with the Department of Education (DE AC 10-5) alleging Student's possession of a deadly weapon was a manifestation of her disability. Complainant also alleged Student was not receiving appropriate services at the Alternative School and was denied FAPE as a result.
8. On December 11, 2009, the Department issued a letter of findings in response to the complaint. The Department concluded the District violated state and federal regulations by failing to conduct a manifestation determination prior to changing Student's placement to the disciplinary setting at the Alternative School. The Department also concluded Student was receiving FAPE in the Alternative School. The District was ordered to conduct a manifestation determination on or before February 1, 2010 for the purpose of determining whether the weapon offense in the community was a manifestation of Student's disability. In the interim, Student continued to receive special education services at the Alternative School.
9. On January 15, 2010, the District held a manifestation determination meeting. The meeting was properly noticed, and all required participants were in attendance. Student attended the meeting with her parents and Complainant. Also in attendance were the assistant principal of the high school, the school psychologist, the educational diagnostician, a general and special education teacher, as well as two English language interpreters.
10. During the meeting, the team discussed the behavioral incident (i.e., the weapon offense) and Student's felony arrest. The team also reviewed and discussed relevant information from Student's records, including a summary of Student's disciplinary record, evaluation data, information provided by Student's parents, teacher observations, as well as Student's current IEP. Once the team reviewed the required information, the team applied the appropriate standards to the questions the team had to answer. Specifically, the team determined: (a) the March 2009 behavioral incident was not caused by, or directly and substantially related to, Student's disability; and (b) the March 2009 behavioral incident was not the direct result of the District's failure to implement Student's IEP. The District concluded the behavioral incident was not a manifestation of Student's disability, thus permitting school officials to change Student's educational placement to the disciplinary setting.

11. During the meeting, Complainant and Student's parents voiced their disagreement with the conclusion. They felt Student's felony arrest was caused by Student's disability, and it was a direct result of the District's failure to implement Student's IEP and provide adequate services. The District documented the separate opinions of Complainant and Student's parents in the meeting minutes to reflect their disagreement. The District also provided Student's parents with a copy of the Notice of Procedural Safeguards as required by state and federal regulations.
12. On February 5, 2010, Complainant filed this Complaint with the Department challenging the outcome of the manifestation determination.

### **COMPLAINT ALLEGATIONS**

Complainant alleges:

- (1) The manifestation determination was made in error, and the March 2009 behavioral incident was a manifestation of Student's disability.
- (3) Student is not receiving a free, appropriate public education at the Alternative School

### **CONCLUSIONS**

#### ***The Manifestation Determination Met IDEA Requirements***

When conducting a manifestation determination, state and federal regulations require the school district to convene a team to review all relevant information in the student's file, including the IEP, any teacher observations, and any relevant information provided by the student's parents. The team conducting the manifestation determination must include the school district representatives, the parents, and relevant members of the student's IEP team. *See*, 14 DE Admin Code § 926.30.5. The team must then determine:

- (a) Whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (b) Whether the conduct in question was the direct result of the school district's failure to implement the IEP.

If the team answers "yes" to either questions (a) or (b) above, the conduct must be considered to be a manifestation of the student's disability, and the school district must return the student to the placement from which the student was removed. *See*, 14 DE Admin Code §§ 926.30.5 to 30.6.

Otherwise, if the team answers "no" to both questions (a) and (b) above, school officials may apply the relevant disciplinary procedures to the student (including changing the student's

educational placement), as long as they are applied in the same manner and for the same duration as the procedures that would be applied to students without disabilities. *See*, 14 DE Admin Code § 926.30.03.

In this case, the District convened a proper team meeting with all required participants present. The team properly discussed the behavioral incident that was the subject of the manifestation determination meeting. The team then applied the required IDEA standards in determining that: (a) the March 2009 behavioral incident was not caused by, or directly and substantially related to, Student's disability; and (b) the March 2009 behavioral incident was not the direct result of the District's failure to implement Student's IEP. Because the team concluded the behavioral incident was not a manifestation of Student's disability and applied the correct standards and process, District officials were permitted to change Student's educational placement to the disciplinary setting at the Alternative School. ***For the reasons stated, I find no violation of state or federal regulations related to the manifestation determination conducted by the District.***

#### ***The Provision of FAPE in the Alternative School***

Complainant also alleges Student is not receiving FAPE in the Alternative School. However, Complainant asserted this same allegation in his prior complaint (DE AC 10-5). The Department investigated it, and concluded Student was receiving FAPE in the Alternative School. (*See*, the Department's letter of findings for complaint DE AC 10-5, dated December 11, 2009).

By: /s/ Jennifer L. Kline  
Jennifer L. Kline, Esq.  
Assigned Investigator  
Education Associate

Date Issued: April 6, 2010