

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

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 06-01
(January 30, 2006)**

On September 16, 2005, Parent filed a complaint with the Delaware Department of Education on behalf of her son ("Student"). The complaint alleges that the Brandywine School District has violated state and federal laws relating to children with disabilities. Parent is concerned that the District did not provide a program designed to meet her son's educational needs, particularly those related to reading.

The complaint has been investigated as required by existing federal regulations at 34 C.F.R. § 300.660 to 300.662 and according to the Department of Education's regulations and procedures, including Sections 15.12 to 15.14 of the *Administrative Manual for Special Education Services* ("AMSES"). Specifically, the investigation included interviews with Parent; with Beth Mounir, a Coordinator of Special Programs for the District; with the Educational Diagnostician at Student's current school; with one of Student's current teachers and with his itinerant Braille teacher. The investigation also included a site visit to Student's current school and a review of Student's educational records, including recent IEPs, progress updates, various evaluation and assessment reports, meeting minutes and course schedules.

FINDINGS OF FACT

1. Student is in the 11th grade and attends high school ("High School") within the District. He is eligible for special education and related services because of his disability-related education needs. Student is currently on course to acquire sufficient course credits to graduate next school year.
2. Student's educational needs are extensive. His level of verbal intellectual functioning is in the borderline handicapped range. Student also has a rare syndrome of visual impairments, including a restricted field of vision, impaired visual acuity, restricted daylight vision and "night blindness." The syndrome is degenerative and generally leads to severe visual impairment by early adulthood. Evaluative reports reflect that Student's visual acuity and visual field have worsened over time and by the fall of 10th grade, his visual impairment fell into the legally blind range.

8th Grade

3. Student's limited reading skills, particularly related to decoding, have been recognized for several years. Student's 8th grade IEP contained goals addressing word

recognition and reading comprehension, including a decoding objective. Student made little progress on this objective and remained at the primer to 1st grade level, as measured on a particular reading series. His reading comprehension did improve somewhat, though he remained at the 2nd to 3rd grade level.

9th Grade

4. In 9th grade, Student participated in the District's Community Based Program, a functional, non-diploma track program of instruction. His schedule included a reading class, along with life skills and community and vocational skills instruction. These courses were provided in a separate classroom with some inclusion opportunities for electives. Student's course grades in the Program were generally Bs.
5. Student's 9th grade IEP specifically identified decoding as a concern, and included a goal to increase decoding skills to a 2nd grade level. By January of 9th grade, Student had made slight progress on one of the four objectives supporting this goal. He had made no progress on the other decoding objectives. There is no indication that the IEP team met in 9th grade to address the lack of progress toward the goal of improving Student's decoding skills.
6. Student also began receiving intensive, systematic Braille instruction in the fall of 9th grade. As explained by Student's Braille Instructor, fluent reading in Braille requires the same skills required for reading print, including letter recognition, phonemic awareness and decoding skills. Within a few months of beginning intensive Braille training, Student had learned the twenty-six Braille alphabet symbols and twenty-six additional whole word Braille symbols (symbols for common, high frequency words).

10th grade

7. In 10th grade, at Parent's suggestion, Student was switched from the functional Community Based Program to a diploma track course schedule. A one-on-one paraprofessional supported Student in most classes. An assistive studies course was built into his schedule; during this course, Student was given extra time to finish his other coursework under the direction of a special education teacher. Student earned mostly As and Bs in 10th grade. Some IEP team members noted that Student had performed better in this setting than they had anticipated he might.
8. A functional vision assessment performed in October of 10th grade indicated Student could read Braille at the primer level, but reached frustration when he tried to read 1st grade level words. It also confirmed that Student had maintained his command of most of the Braille alphabet symbols and previously acquired whole word symbols. The vision assessment report concluded that Student's "Braille reading levels and print reading levels are the same," and that he appeared "to have a significant problem with decoding the written word, whether it be in print or Braille." Given the ongoing lack of decoding skills, the assessment report recommended that Student be instructed in a more functional Braille system.
9. Student's progress on his reading and Braille goals and objectives on his 10th grade IEP tend to confirm the assessment report. Student continued to acquire Braille whole word symbols but made little progress in reading via Braille. The 10th grade IEP also

included the goal of improving reading skills. The objectives supporting this goal were based on Student's listening to a passage and answering comprehension, inferential and definitional questions about it. The 10th grade IEP contained no explicit decoding goals or objectives.

11th grade (Current School Year)

10. Student's current IEP continues to include a goal of improving reading skills, with objectives relating to comprehension. Braille goals and objectives include advancing to a 2nd grade reading level in Braille. Student remains in diploma track classes and his course schedule this school year has included at least one, and sometimes two, assistive studies periods. Student receives instruction in Braille twice per week, two hours per session.
11. The IEP team has met several times this school year to specifically address Student's reading needs. In December 2005, District completed a full reading assessment for Student. This report thoroughly detailed Student's strengths and weaknesses, including the particular skills necessary to reading. It did confirm that Student's present level of reading performance is at the 1.0 or 1.2 level on most skills, with significantly better word-meaning skills (at the 6.0 level). His needs run to elision and word analysis skills.
12. The District and Student's IEP team is in the process of determining an appropriate reading program for Student based on the recent reading assessment and Braille Instructor confirms that Braille instruction can be adapted to deliver the appropriate reading program to student via Braille.

CONCLUSIONS

Parent's letter of complaint was filed in September 2005. Generally, the DOE investigates complaints alleging violations that occurred not more than one year before the date it receives a complaint letter. Here, however, Parent has clarified that she is requesting compensatory services. In addition, the issues presented for investigation make it difficult to neatly delineate a precise date on which a violation may have occurred; rather the effect is cumulative, and in that sense, continuing. Because of these factors, I believe that a longer time period is reasonable in this instance and have investigated Parent's concerns for the three-year period preceding the complaint letter, namely beginning in September 2002 (8th grade).

Applicable Regulations.

State and federal regulations governing the education of children with disabilities require that public agencies receiving assistance under the IDEA offer a free, appropriate public education to children with disabilities, including providing special education and related services "in

conformity with an individualized education program....” (AMSES Section 1.0; 34 CFR §§ 300.17, 300.300 and 300.350(a)(1)).¹

Among other things, the IEP must include annual goals and objectives related to “meeting the child’s needs that result from the child’s disability to enable the child to be involved in and progress in the general curriculum....” (34 CFR §§ 300.347(a)(2)(i)). In the case of student with visual impairments, the IEP team must also “provide for instruction in Braille and the use of Braille,” unless the team determines after evaluation that Braille instruction or use is not appropriate for the child. (34 CFR §§ 300.346(a)(2)(iii)).

School districts must also ensure that a student’s IEP team reviews the IEP at least annually to “determine whether the annual goals for the child are being achieved....” Districts must also assure that IEP teams revise the IEP as appropriate to address “any lack of expected progress toward the annual goals...and in the general curriculum.” (34 CFR §§ 300.343(c)).

Program did not address all of Student’s needs or lack of reading progress.

Parent’s central concern is Student’s progress in reading. She believes that Student’s program, and thus his progress, deteriorated during middle school, including 8th grade. While Parent believes that Student’s needs have been better addressed in High School, she also notes that Student received no systematic reading instruction or program in 10th grade because of the complexity of his schedule related to his move to a diploma track program. Parent is also concerned that Student is not receiving adequate Braille instruction.

Student’s needs are quite complicated. Almost all team members agree that his cognitive impairments and learning difficulties, coupled with his visual impairments, make it challenging to determine an appropriate program for him. Team members interviewed have varying opinions about the probability that Student will learn to read fluently. Most agree (and evaluations seem to support) that Student learns best auditorily. To their credit, the District and Student’s IEP team have worked very hard to give Student auditory access to the general curriculum. They have also put services and supports in place to increase Student’s inclusion in the regular setting. Through these efforts, Student is on track to graduate with a diploma next year.

The District has also appropriately addressed Student’s needs related to Braille instruction. In anticipation that Student’s vision would continue to deteriorate, the District considered Braille instruction as early as elementary school and added it in 9th grade. The frequency and duration of Braille instruction has permitted Student to make solid progress in acquiring Braille alphabet symbols and many whole word symbols. While progress *in reading* via Braille essentially halted once Student mastered the Braille alphabet and basic whole word symbols, this result appears to stem from Student’s decoding deficits, not from insufficient Braille instruction. Student has continued to acquire other functional, whole word Braille symbols through his ongoing Braille

¹ Most of the provisions of the *Individuals with Disabilities Education Improvement Act of 2004* became effective on July 1, 2005 and new federal implementing regulations have been proposed. Those statutory and proposed regulatory changes do not significantly change the provisions pertinent to this investigation. Accordingly, for ease of reference, citations in this Report continue to be to state and federal regulations promulgated as part of the 1997 reauthorization of the IDEA.

services, but his lack of decoding skills has significantly limited his ability to truly read in Braille.

Despite its many important efforts on Student's behalf, and the obvious dedication of all his team members to his education, I must conclude that the District has not assured that Student's program would address *all* of his needs and has not consistently revised his program to address his lack of progress in reading. Student's needs with respect to decoding skills have been known for several years. While each of his IEPs for the period under investigation have included Braille instruction, decoding goals have either been absent or have included objectives directed more to comprehension.

In addition, Student's progress in reading has been minimal, whether measured by progress towards IEP goals, or on standardized instruments. The IDEA does not require schools to guarantee that students with disabilities will make progress. Districts must, however, assure that teams revise the IEP as appropriate to address "any lack of expected progress toward the annual goals...and in the general curriculum." (34 CFR §§ 300.343(c)). Until the current school year, Student's team appeared to address his reading needs only at his annual meeting, with no notable response to his lack of improvement. While this is almost certainly due in part to the team spending time addressing Student's other significant needs, the result is that in the last three years, Student has made very limited progress in reading, even as the team continues to agree that he requires reading goals.

These findings make *no* conclusion about how Student's learning difficulties and cognitive impairments might affect his capacity to read fluently, or the rate at which he might be expected to learn to read. It is possible that even with an exceptionally well-designed and monitored reading program, and continued dedicated instruction, Student's progress in reading will be less than Parent hopes. The problem is that the violations identified in this Report (with respect to IEP design around reading needs and response to minimal progress) prevent conclusions about Student's reading capacity and require compensatory services to assure that Student is offered a true opportunity to make progress in reading.

CORRECTIVE ACTION PLAN

Accordingly, through its general supervisory responsibility and its authority at 34 CFR §300.660(b), the Department of Education must address: (1) how to remediate the denial of those services; and (2) the appropriate future provisions of services.

The Department directs the District take the following corrective actions:

- 1. Within thirty (30) school days of the date of this report, the District shall convene an IEP meeting to develop a compensatory services plan to remedy the denial of appropriate reading services for student. The details of this plan are left to the mutual agreement of the team and Parent, subject to the following:**
 - a. Compensatory services should focus on Student's reading needs and on Braille services designed around Student's reading needs.**

- b. **The compensatory service plan may include the ability to redirect compensatory services to instruction in functional Braille skills should an increased need for those services become apparent once Student's reading program is in place and a more accurate assessment of his reading progress is available.**
 - c. **Compensatory services must be delivered in addition to Student's ongoing program of education, that is, compensatory services may not supplant the other services to which Student is entitled.**
 - d. **The compensatory service plan should assure that services are designed to support Student's transition related needs, and specifically, to advance his timely, but appropriate graduation.**
- 2. Within fifteen (15) calendar days of the date of the above referenced meeting, the District shall send the Department* a copy of the compensatory service plan agreed to by Parent and the District. In the event that Parent and District are unable to agree on a compensatory service plan, the District shall supply the plan it proposes to deliver to Student.**
- 3. Not later than June 30, 2006, the District shall send the Department* a status report on the delivery of the compensatory service plan.**

** Reports to the Department of Education should be sent to the Director of the Exceptional Children and Early Childhood Education Group.*

By: _____
Louann Vari
Education Associate, ECECE Branch
Assigned Investigator

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