

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION
DE AC 15-03 (April 4, 2015)**

On February 4, 2015, Parent filed a complaint with the Delaware Department of Education (“DOE”) on behalf of Student. The complaint alleges that Seaford School District (“District”) violated state and federal regulations concerning the provision of a free, appropriate public education (“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. The investigation included a review of Student’s educational records, as well as interviews with District, school staff members, and Parent.

COMPLAINT ALLEGATION

The complaint cites numerous violations of Delaware code in the dismissal of Student from Occupational Therapy services. Specifically cited codes include: 14 DE Admin Code §§ 925.4.1, providing notice to parent regarding evaluation procedures that District proposed to conduct; 14 DE Admin Code §§ 925.4.2.2 and §§ 925.4.3.3, use of technically sound instruments and selecting and administering assessments so as to measure what the test purports to measure; 14 DE Admin Code §§ 925.5.1.4.2, review of existing data and input from parents to ascertain what additional data is needed to determine continued eligibility for services; 14 DE Admin Code §§ 925.5.5, completing an evaluation prior to determining change in eligibility; 14 DE Admin Code §§ 926.1.2.2, honoring parents’ rights to obtain copies of educational records; and 14 DE Admin Code §§ 926.3.2.2 and §§ 926.3.2.3, provision of Prior Written Notice which includes an explanation for proposed actions and describes the evaluations used as basis for decision in proposed change of identification.

FINDINGS OF FACT

1. The Department’s investigation is limited to alleged violations that occurred not more than one year prior to the date the complaint was received by the Department. See 34 C.F.R. § 300.153(c). The Department received the complaint on February 4, 2015; therefore, this decision addresses the alleged violations occurring between February 4, 2014 and February 4, 2015.
2. Student is currently twelve years old and in the sixth grade. Student receives special education services as a student with an Other Health Impairment.

3. Student was originally referred and evaluated for Occupational Therapy (OT) services in 2011. Parent signed permission to evaluate on January 25, 2011 and the evaluation was conducted on February 16, 2011 and March 2, 2011. Evaluation tools used included: Bruininks-Oseretsky Test of Motor Proficiency (BOT), Beery Buktenica Developmental Test of Visual-Motor Integration (Beery VMI-5), Motor-Free Visual Perception Test (MVPT), Touch Inventory for Elementary School-Aged Children (TIE), sensory profiles, clinical observation, and handwriting samples. Results indicated delays in fine motor and visual motor functioning. Parent reported that the evaluation was reviewed with him/her.
4. On January 27, 2014, the Beery Buktenica Developmental Test of Visual-Motor Integration (Beery VMI-6) was administered to Student during Student's OT session. Student scored above average, at the 79th percentile. Parent did not sign Permission to Evaluate prior to the assessment and no report was written communicating the results.
5. On February 5, 2014, an IEP was developed for implementation from February 6, 2014 until February 5, 2015. Parent attended the IEP meeting. The IEP indicated that Student was fully included in the general education classroom for all subjects with push-in, small group support to address educational needs in the areas of reading fluency, math problem solving, and written expression. Student's attention/social skills needs were addressed throughout the school day.
6. OT was specified as an educational need "...to address visual motor and dexterity skills, as well as visual perceptual skills to assist Student's success in the classroom." In the Services, Aids, and Modifications section of the IEP, it is noted that Student received pullout OT services one time per week, for 2 units per session (1 unit equaling 15 minutes). Dates of services were indicated as February 6, 2014 through February 5, 2015.
7. In the Related Service section of the IEP, OT services were listed as pull out in a group one time per week, for 2 units per session (1 unit equaling 15 minutes). Dates of services were indicated as February 6, 2014 until June 12, 2014.
8. The OT annual goal was for Student to "... use 95% or greater accuracy with spacing when writing at least three sentences for improved handwriting legibility." The annual goal had a start date of February 6, 2014 and an end date of February 5, 2015. Student's present level of performance was "...84% accuracy when writing in print and close to 100% accuracy with cursive writing." There were two benchmarks, one for marking period 3 and one for marking period 4.

9. There is a Prior Written Notice (PWN) form from the IEP meeting held on February 5, 2014. Meeting minutes are embedded in the PWN form, which Parent signed. District proposed the following, "Provide special education services through an IEP to address reading fluency, math problem solving, written expression, attention, and fine motor skills. Student will receive OT services for the remainder of fifth grade." OT services are listed to occur as a pull out service from February 6, 2014 through June 12, 2014 once per week for 2 units per session. In the Explanation of Why the School District is Proposing or Refusing to Take the Action section of the PWN the following is stated, "Goals and accommodations for reading fluency, math problem solving, written expression, attention, and fine motor skills were discussed. Student will receive OT for the remainder of this year but will be dismissed from OT for sixth grade." In the Description of Each Evaluation, Procedure, Assessment, Record, or Report Used in Deciding to Propose or Refuse the Action section of the PWN, items listed included "DIBELS Next, MAP assessments, classroom/IEP progress, parent and teacher input, evaluation summary report, and DCAS. However, no reference is made to observations by occupational therapist nor OT evaluation results. Parent signed the PWN form.
10. Parent signed a Permission to Evaluate form at the IEP meeting held on February 5, 2014. Handwritten on the form was "OT only."
11. On April 2, 2014, progress notes within the IEP Progress Report, dated April 2, 2014, indicated that Student made "Sufficient" progress for Benchmark 1. It was noted, Student "works hard in therapy with all presented tasks. He/She demonstrates good understanding of expectations and has exceeded his/her benchmark goal with 95% or higher accuracy. Carryover of these skills into the classroom is encouraged."
12. The Beery Buktenica Developmental Test of Visual-Motor Integration (Beery VMI-6) was again administered to Student during Student's OT session on June 4, 2014. Student scored above average, at the 81st percentile.
13. The occupational therapist noted the following on the IEP Progress Report dated June 12, 2014, Student "has been a joy to work with this year and always tries (his/her) best in OT! (He/she) has easily met this benchmark goal but progress will also continue to be monitored for carryover into the classroom. Testing was initiated for visual motor skills and will be completed in the fall." The progress report indicated that Student made "Sufficient" progress. Parent received a copy of the IEP Progress report.

14. The occupational therapist left the District in August 2014. The assessment, which was started on June 4, 2014, was not completed and no report was written or reviewed with Parent. According to the occupational therapist who left the District, he/she intended to complete the evaluation, provide a written report, and monitor Student during the transition to sixth grade. Along with the Beery VMI-6 assessment, the partial evaluation had included consideration of classroom progress and observations from OT sessions.
15. Parent disagrees with the degree of improvement described in the progress reports and subsequent classroom observations by the sixth grade staff.
16. Parent explains that he/she expected OT services to be provided in the Fall of 2014.
17. Parent states that he/she did not know about the June 2014 evaluation, although he/she received the end-of-year Progress Report which stated that testing had begun and was to be completed in the Fall.
18. Parent communicated with the sixth grade teaching staff regarding the lack of OT services in the Fall of 2014. This communication took place early in the 2014-2015 school year at an initial parent conference.
19. The special education teacher made a referral to the occupational therapist. The occupational therapist reviewed Student's records and spoke with Parent by phone on December 23, 2014. The occupational therapist explained to Parent that he/she had signed the PWN and the IEP. Parent stated that he/she had not understood them. The occupational therapist agreed to consult with the special education coordinator regarding what to do next regarding OT services.
20. The occupational therapist consulted with the special education coordinator. The special education coordinator then spoke with Parent by telephone that same day, December 23, 2014. The special education coordinator and occupational therapist focused upon the portions of the February 5, 2014 IEP and PWN form that indicated dismissal from OT services. They requested permission for re-testing in order to complete the process that had been initiated by the previous occupational therapist.

21. On February 3, 2015, an IEP was developed for implementation to begin on February 12, 2015 until February 11, 2016. Parent attended the meeting. That IEP indicates that Student is fully included in the general education classroom for all subjects with push-in, small group support to address the following areas: reading fluency, math reasoning, written expression, and attention/following directions. In the Data Considerations section of the IEP, it is noted that prior goals/benchmarks in reading fluency and written expression were not met. Math problem solving and attention/social skills goals/benchmarks were met. The OT benchmarks from the previous IEP are not mentioned.
22. The Conference Minutes from the February 3, 2015 IEP meeting state that OT "will be discussed at an additional meeting."
23. Parent signed the Conference Minutes from the February 3, 2015 IEP meeting. Parent also signed the PWN form, notifying Parent that services, as stipulated in the IEP, would begin after the 10-day waiting period.
24. The occupational therapist was not able to attend the February 3, 2015 IEP meeting. At that time, the District requested permission to complete an OT evaluation but Parent refused to sign the Permission to Evaluate form. Parent stated that he/she refused because he/she believed the District would arrive at a preconceived finding that Student did not qualify for OT services.

CONCLUSIONS

This investigation is limited to determining whether there was a violation of Part B of the IDEA or state regulations concerning the provision of special education and related services from February 4, 2014 to February 4, 2015.

Records document the educational needs of Student and the original need for OT services in 2011. The Beery Buktenica Developmental assessment of Visual Motor Integration (Beery VMI-6) administered on January 27, 2014 and June 4, 2014, OT progress notes from Spring 2014, and classroom reports from the Spring and Fall of 2014 indicate progress and improvement since 2011. The question is whether Student was appropriate for dismissal from OT services and whether the appropriate procedures were used to dismiss Student from OT services.

Parent cites numerous violations of Delaware code in the dismissal of Student from OT services. Each area will be addressed while considering Student's right to FAPE, as it applies to OT services, and whether the dismissal process was executed properly, relative to IDEA and the corresponding Delaware code.

State regulation 14 DE Admin Code §§ 925.4.1 requires the public agency to provide notice to the parents of a child with a disability, in accordance with 14 DE Admin Code §§ 926.3, that describes any evaluation procedures the agency proposes to conduct. State regulation 14 DE Admin Code §§ 926.3.1.1 requires that parents be given prior written notice before conducting an evaluation. Prior to the IEP meeting held on February 5, 2014, a partial evaluation was completed and Permission to Evaluate was not signed prior to assessment administration. PWN was not provided to Parent. However, that event falls outside the dates of February 4, 2014 to February 4, 2015, and therefore outside the bounds of this investigation.

On February 5, 2014, the District obtained permission to complete an OT evaluation. However, the PWN dated February 5, 2014 made no mention of the evaluation. **Therefore, I have identified a violation of Part B of the IDEA and corresponding state regulations for District's provision of notice to parent regarding evaluation procedures that it proposed to conduct.**

A second area of complaint involves the appropriate use and selection of assessment tools. 14 DE Admin Code §§ 925.4.2.2 states, "In conducting the evaluation, the public agency shall use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors." 14 DE Admin Code §§ 925.4.3.3 states that assessments should be selected so as to measure what the test purports to measure rather than reflecting the child's impaired sensory, manual, or speaking skills. The instrument used was the Beery-Buktenica Developmental Test of Visual-Motor Integration (Beery VMI-6). It assesses deficits in visual perception, fine motor skills, and hand-eye coordination. This instrument is an age-appropriate, normed, culture-free, nonverbal assessment with documented reliability and validity. This instrument was used in 2011 and again in 2014. It focuses directly on skills that are related to eye-hand coordination, the area of need being addressed by the OT services, and is a technically sound instrument. The occupational therapist who began an evaluation and the current occupational therapist are certified professionals, with licensing credentials and training that would enable the appropriate selection and administration of OT evaluation instruments. **Therefore, I have not identified a violation of Part B of the IDEA and corresponding state regulations for District's use of technically sound instruments and administration of those instruments appropriately.**

14 DE Admin Code §§ 925.5.1.4.2 provides for a review of existing evaluation data, as part of any reevaluation, and "on the basis of that review, and input from the child's parents, to identify what additional data, if any, are needed to determine ... whether the child continues to have such a disability, and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related services." Parent participated in the IEP process, but the question is whether Parent's input was considered in the evaluation process. There is no documentation of the Parent's view relative to OT services, and progress made or needs therein. **Therefore, I have identified a violation of Part B of the IDEA and corresponding state regulations in terms of District's consideration of what additional data is necessary to determine whether continued provision of OT services was necessary.**

According to DE Admin Code §§ 925.5.5, "A public agency shall evaluate a child with a disability in accordance with 4.0 through 12.0 before determining that the child is no longer a child with a disability." The District prepared a new Permission to Evaluate form in order to correct the fact that an evaluation had not been completed prior to the occupational therapist leaving the District. Parent refused to sign Permission to Evaluate. The lack of an evaluation was a violation that the District recognized and tried to remedy. The District will need Parent to grant Permission to Evaluate for an evaluation to be completed. **Therefore, I have identified a violation of Part B of the IDEA and corresponding state regulations relative to District's completion of an evaluation prior to determining a change in eligibility for services.**

According to 14 DE Admin Code §§ 926.1.2.2, "Parents shall have the right to obtain copies of all educational records, except the actual evaluation or examination instrument." There was no report written for the June 4, 2014 initial part of the OT reevaluation. The following written statement was made by the Occupational therapist, "Testing will be completed in the Fall." However, the evaluation was not completed and no report was written. Parent did not receive a copy of an evaluation report because no report was produced. **Therefore, I have not identified a violation of Part B of the IDEA and corresponding state regulations for District's provision of copies of educational documents and records to the parent.**

14 DE Admin Code §§ 926.3.2.2 mandates that PWN include "an explanation of why the agency proposes or refuses to take the action." The following statement is found in the PWN, "Student will receive OT services for the remainder of this year but will be dismissed from OT for sixth grade." No explanation is provided for that action. 14 DE Admin Code §§ 926.3.2.3 requires "a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action." The PWN made no mention of the occupational therapist's observations nor Beery VMI-6 assessment results. **Therefore, I have identified a violation of Part B of the IDEA and corresponding state regulations for District's provision of an explanation for proposed actions and provision of a description of evaluations used as a basis for the decision in a proposed change of educational placement.**

CORRECTIVE ACTIONS

The District must develop a plan to remedy the incomplete dismissal process from OT services, covering the time period beginning September 2014 through present. The District must provide compensatory services for OT services that were not provided during this period. Remedy will also include an OT evaluation, following the proper procedures which includes providing Parent with Permission to Evaluate and PWN to sign. Parental input must be considered as part of the evaluation. Following the provision of services and completion of an evaluation, the IEP team will reconvene to determine continued need for OT services. The District will submit a proposed professional development plan regarding the procedures and documentation necessary for the evaluation/reevaluation process. The plan must address the following: permission to evaluate, prior written notice, evaluation timelines, soliciting parental input, what constitutes information versus formal assessments, and dismissal from services. The District will submit the proposed plans to the Director of Exceptional Children Resources for the Department of Education *on or before May 15, 2015* for approval.

By: *Mary M. Herrera*
Mary M. Herrera, Ed.D.
Assigned Investigator

Date: April 2, 2015