

DELAWARE DEPARTMENT OF EDUCATION

**ADMINISTRATIVE COMPLAINT
LETTER OF FINDINGS**

DE AC-16-15 (August 22, 2016)

On June 6, 2016, Parent filed a complaint with the Delaware Department of Education (“Department”) on behalf of Student.¹ The complaint alleges Student was improperly removed from the school bus based on Student’s race and status as a special education student causing Student to be isolated from Student’s peers. The Department’s investigation is limited to claims alleging a violation of Part B of the Individuals with Disabilities Education Act (“IDEA”) and implementing State and Federal regulations. Parent’s allegation of racial discrimination is not a claim that falls under Part B of the IDEA and therefore was not investigated. The complaint has been investigated in the manner required by Federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to the Department’s regulations at 14 DE Admin Code §§ 923.51.0 to 53.0 to determine whether Student’s removal from the school bus violated Part B of the IDEA or implementing state and federal regulations concerning the provision of a free, appropriate public education (“FAPE”) to Student. The investigation included a review of Student’s educational records and interviews with Parent, as well as District and school staff.

FINDINGS OF FACT

1. Student is currently 14 years of age and was enrolled in High School in the Colonial School District (“School”) for the 2015-2016 school year. Student receives special education and related services as a student identified with a learning disability as defined in 14 DE Admin Code § 925.6.11. Student received instruction in both regular education and special education settings.

Relevant Facts From 2014-2015 School Year

2. On March 9, 2015, the IEP Team convened to conduct Student’s triennial reevaluation to determine Student’s continued need for special education and related services. The IEP Team concluded that Student continued to meet the eligibility criteria for a student with a “Learning Disability” and required special education and related services to address reading decoding, reading comprehension, math computation, math problem solving, and written expression.
3. Parent reported that Student had previously been diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”) and had received special education services in X State under the Other Health Impairment classification. No current medical documentation has

¹The 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.

been provided to the District. An Evaluation Summary Report dated March 9, 2015, indicates that an independent evaluation was completed in the Winter of 2014-2015. The Psychologist who completed the independent evaluation wrote, "These findings are indicative of Persistent Depressive Disorder (Dysthymia)."

4. On May 26, 2015, the IEP Team developed Student's IEP for the 2015-2016 school year. Student's IEP contained goals for reading skills, written expression, math reasoning and problem-solving strategies, work completion, and appropriate response to staff/redirection. The IEP also contained accommodations for communication, as well as processing/attention skills. Related services included consultative psychological services and consultative speech/language therapy.
5. At the May 26, 2015 IEP meeting, the IEP Team concluded there were no special transportation needs and it was not necessary to place the Student, who is transported from the school by bus into the charge of a parent or other authorized responsible person.

Relevant Facts From 2015-2016 School Year

6. Student exhibited behaviors on the school bus requiring staff interventions. On October 1, 2015, the Principal was summoned to the bus to remove Student due to Student's behavior. This resulted in a two day bus suspension. Discipline records indicate Student cursed at the Principal and Bus Driver.
7. An October 15, 2015 bus conduct report describes Student's behaviors as pushing/tripping/horseplay, walking/standing, slapping/fist fighting, abusive language/profanity/obscene gestures. Student was given an assigned seat on the bus and warned that future disruption would lead to bus suspension.
8. On November 5, 2015, Student received a one-day bus suspension due to an incident in which Student said Student threw paper at another student and broke a pen outside the bus. The other student said Student threw a pen at him.
9. On December 14, 2015, Student received a bus referral for "disruption on the school bus," described as excessive horse playing on the school bus. Parent was contacted by telephone.
10. District staff indicate that any concerns about Student's bus conduct between December 2015 and April 2016 would have been dealt with via telephone calls home, rather than through discipline referrals. The Special Education Department is not informed of all bus discipline procedures concerning students.

11. On April 11, 2016, the IEP Team convened to review and revise Student's IEP. The Parent, Student, two special education teachers, an administrator, an assistant principal, career-tech education teacher, guidance counselor, school psychologist, and speech/language pathologist were present at the meeting. A regular education teacher was not present for the meeting.
12. At the April 11, 2016 IEP meeting, the IEP Team concluded there were no special transportation needs and it was not necessary to place the Student, who is transported from the school by bus into the charge of a parent or other authorized responsible person. However, according to the Special Education Director and the Special Education Coordinator, the IEP Team discussed Student's problem behaviors on the bus, including Student not remaining seated and calling out. The IEP Team agreed Student required behavioral supports for transportation.
13. The Prior Written Notice form the April 22, 2016 IEP meeting contained the proposal that the District "Not provide [Student] with specialized transportation, but provide [Student] with behavior supports." The District explained in the Prior Written Notice, "[Student] does not exhibit any signs to show [Student] warrants specialized transportation, but [Student] does warrant behavior supports to help support [Student's] needs in the school environment." According to the Special Education Director and the Special Education Coordinator, the IEP Team discussed supports could be provided by revising Student's point card. Student used a point card to address Student's behavior in school, which was monitored by the school psychologist. However, the point card contained no reference to implementation on the bus.
14. Student's IEP identifies processing/attention skills as an area of need and includes accommodations such as chunking information, being seated away from noises/windows/doors, and frequent check ins for understanding and to address those needs. Appropriate response and interactions to the following: arrival to class, following of directions, respectful to school staff, appropriate with peers, and completion of task/activities is another area of needs which is addressed through accommodations including providing wait time when a request is made, using a calm/assertive voice, and allowing time to self-regulate. However, there is no reference to implementation on the school bus.
15. An April 27, 2016 bus conduct report completed by the school Bus Driver describes Student's problem behaviors as walking/standing, defacing property/vandalism, extremities out window, abusive language/profanity/obscene gestures. The Bus Driver noted Student was repeatedly opening the emergency window and kicking it, and not responding to the Bus Driver's directive to stop. Student did not provide Student's name when asked.

16. When interview District staff, they reported that the Bus Driver voiced concern to the bus service owner about transporting Student.
17. On Thursday, May 12, 2016, Student attempted to board the school bus to return home but was refused entry by the Bus Driver. A District staff member then drove Student home on a District bus.
18. Beginning on Friday, May 13, 2016, Student was suspended from the bus according to the Special Education Director.
19. Special Education Director reported that on May 13, 2016, District staff drove Student to and from school on a District bus.
20. Special Education Director reported that on May 13, 2016, Parent was informed that District was making arrangements for private transportation for Student to begin on Monday, May 16, 2016.
21. The District arranged for a private bus company to transport Student. Private bus company contacted Parent the weekend of May 14 and 15, 2016. According to the Special Education Director, after talking on the phone, the private bus company and the Parent mutually declined the service. The private bus company contacted the District on May 16, 2016 and reported that Student would not be transported by the company.
22. On the morning of Monday, May 16, 2016, Student attempted to board the school bus Student was suspended from and was refused entry by the Bus Driver. The Bus Driver called to confirm Bus Driver's action with the District transportation office. Parent then transported Student to school that day.
23. The District informed Parent arrangements were made for a second private company to transport Student for the remainder of the school year beginning on May 17, 2016.
24. Parent expressed concern and disagreement, but the District continued with its decision to transport Student using a private company.
25. Student was transported to and from school through the private transportation company contracted by the District from May 17, 2016 through the remainder of the school year.
26. On May 18, 2016, the Bus Driver submitted a statement to the Bus Contractor via email describing the details of the earlier April 27, 2016 incident.
27. Parent reports incidents of miscommunication between the transportation company and the School. As an example, there were occasions when the transportation company attempted to pick Student up from school on days when Student was absent.

CONCLUSIONS

A. *Participation of Regular Education Teacher at IEP Team Meeting.*

State and Federal regulations require the District to ensure the IEP Team includes at least one regular education teacher of the child. *See*, 34 C.F.R. § 321(a)(2); 14 DE Admin Code § 925.21.0 In this case, a regular education teacher did not attend Student's IEP Team meeting on April 11, 2016, and there was no record of the regular education teacher's excusal from the meeting. As a result, **I find a violation of Part B of the IDEA and corresponding State regulations regarding the requirement Student's IEP Team include at least one regular education teacher of the child.**

B. *Student's Transportation and the Provision of FAPE.*

Transportation is a "related service" under the IDEA, and includes travel to and from school and between schools, travel in and around school buildings, and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for a student with a disability. *See*, 34 C.F.R. § 300.34(c)(16); 14 DE Admin Code § 922.3.0.

The IEP Team is responsible for determining whether transportation is required as a related service in a student's IEP to allow the student to benefit from special education and related services, and how the transportation services should be implemented. The IEP Team determines whether the student requires transportation as a related service in order to receive FAPE. *See, Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, 53 IDELR 268 (OSERS 2009).

If the IEP Team determines the student does not require transportation as a related service, the school district is only required to provide transportation in the same manner it would be provided for students without disabilities, and consistent with local district policies. *See, Analysis of Comments and Changes to the IDEA*, Fed. Reg., Vol. 71, No 156, August 14, 2006, p. 46576.

In this case, Student exhibited disruptive behaviors on the regular school bus throughout the year. Student's behaviors eventually led to the Bus Driver's refusal to transport Student on the bus with Student's peers. There was clearly a lack of communication among the District's transportation office, the contracted Bus Driver, and the educators responsible for providing FAPE to Student. Many of Student's bus behaviors were documented weeks after they occurred, or not all. Student's bus behaviors should have been communicated to the appropriate educators in a timely way so that necessary supports could have been determined earlier in the school year. In addition, Student's bus behaviors were similar in nature to Student's problem behaviors in school reinforcing that better communication was warranted among transportation providers, District staff, and educators for students with disabilities.

The school year had almost concluded for Student by the time of the April 11th IEP Team meeting. While the IEP Team did not write an express provision in Student's IEP stating Student required transportation as a related service, the IEP Team was constructively treating

transportation as a related service for Student. The IEP Team discussed Student's problem behaviors on the bus at the April 11th meeting, and agreed Student required behavioral supports for transportation. In addition, the District's prior written notice proposing the IEP expressly states Student would receive "behavioral supports" for transportation on the bus.

I find the behavior supports deemed necessary by the IEP Team should have been described and documented with more specificity so the supports could have been implemented. The prior written notice only generally states Student will receive "behavioral supports" for transportation, leaving Parent to guess what the provision means.

Equally concerning is the fact Student was removed from the regular school bus with Student's peers without receiving the behavior supports deemed necessary by the IEP Team. Student was denied entry when trying to board the bus, and then placed on more restrictive transportation, without receiving the support Student's IEP Team determined Student needed to receive FAPE.

The District is obligated to provide the special education and related services determined necessary by Student's IEP Team. Based on the IEP Team's determination at the April 11, 2016 meeting that behavioral supports were necessary for Student on the bus, the failure of the District to provide the behavioral supports identified by Student's IEP Team, and the lack of communication among transportation providers, District staff, and the educators responsible for Student, **I find a violation of Part B of the IDEA and corresponding State regulations regarding the provision of FAPE to Student in the provision of transportation.**

CORRECTIVE ACTIONS

The Department is required to ensure that corrective actions are taken when violations of Federal or State regulations are identified through the complaint investigation process. *See* 14 DE Admin. Code § 923.51.3.2. In this case, the following corrective actions are to be taken:

1. The District will allow Student to ride the regular school bus effective the student's first day of school.
2. The District will schedule an IEP Team meeting in which to discuss what supports are needed for Student to ride the school bus and revise the IEP as necessary. Supports may include accommodations, a functional behavioral assessment, and/or a behavior support plan designed to address the bus behavior violation(s) so they do not recur. Travel training may also be included. *See* 14 DE Admin. Code § 923.51 (addressing remedying "appropriate future provisions of services for all children with disabilities"). The regular education teacher needs to be in attendance at this meeting. District shall provide a copy of the IEP and prior written notice to the Director of the Exceptional Children's Resources on or before **October 14, 2016**.
3. District must provide professional development to staff regarding 1) required members in attendance at IEP Team meetings, 2) transportation as a related service, and 3) ensuring consistency between the IEP and the Prior Written Notice. *See* 14 DE Admin. Code §

923.51 (addressing remedying “appropriate future provisions of services for all children with disabilities”). District shall provide evidence of this plan to the Director of the Exceptional Children’s Resource on or before **September 16, 2016**. The professional development must be completed and the associated documentation (sign in sheet, agenda, copy of handouts, copy of Power Point etc.) must be sent to the Director of Exceptional Children’s Resources by **October 14, 2016**.

By: _____
Assigned Investigator