

DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION BRANCH

FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION

DE AC 10-13 (May 3, 2010)

On March 4, 2010, Mr. Jea P. Street, Executive Director, Hill Top Lutheran Neighborhood Center, Inc., 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 (“FAPE”) to Student.

The complaint has been investigated as required by federal regulations at 34 CFR. §§ 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 conversation on April 26, 2010, with the District’s Director of Special Services, and a review of Student’s educational records, such as the August 31, 2009 Student Registration Form signed by Student’s mother, Enrollment History data from the Delaware Department of Education’s Student Information System (DELSIS) and other records and documents provided by the District.

**FINDINGS OF FACT**

1. Student is currently eleven (11) years of age and is in an alternative placement a “District School”.
2. By way of background, Student returned to the District after attending the “Charter School” during the 2008 – 2009 school year. He began the 2009-2010 school year as a 6<sup>th</sup> grade student at “District School”.
3. On August 31, 2009, Student’s mother registered the student at “District School” for the 2009 – 2010 school year.
4. No documentation was provided at the time of registration (Aug. 31, 2009) that the parent informed school personnel that the student had been identified as a student with a disability, had a current Individualized Education Program (IEP), or was receiving special education services.
5. The DELSIS Enrollment History form for the student indicates that the student had never received special education services while attending schools in Delaware.
6. On March 8, 2010, Jennifer Kline, Esq., Education Associate, Procedural Safeguards and

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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.

Monitoring, DE Department of Education, sent correspondence to the complainant requesting a signed release from Student's parent to permit the Department to share confidential information about Student with the complainant.

7. On April 23, 2010, this investigator contacted the complainant via telephone, and again requested a signed release to allow the Department share confidential information about the student. Additionally, the complainant was asked to forward any and all documentation that supports the claim that Student was identified as a student with a disability under State and federal regulations. The requested information had not been provided as of April 27, 2010.
8. Attempts to contact Student's mother on April 27 and 28, 2010 were unsuccessful. Voice mail messages left on parent's home and cell phones to call the investigator with information supporting the allegation were not returned. Additionally, an e-mail was sent to the current head of the Charter School that the student attended during the 2008 – 2009 school year. No response was received regarding this attempt to get information supporting the claim that Student was identified as disabled under the Individual with Disabilities Education Act (IDEA).

### **COMPLAINT ALLEGATIONS**

The Complainant alleges:

- (1) The District failed to provide Student with FAPE as a student with a disability under applicable laws and regulations; and
- (2) The District did not follow proper procedures when changing Student's placement for disciplinary reasons regarding an incident that occurred on September 10, 2009.

### **CONCLUSIONS**

#### ***Provision of FAPE to Student***

FAPE "shall be available to all children with disabilities residing in Delaware..." Specifically, each school district and other public agency who provide special education services to students with disabilities is responsible for ensuring that those services are provided as required by State and federal statute and regulations.

In this case, as stated above in the Findings of Facts, there is no documentation that the student had been identified as a student with a disability under the (IDEA) or applicable State law and regulation. While the complainant alleges that Student had been previously identified as a "special needs student," no documentation has been provided to support that the child is an eligible student under the IDEA.

Complainant further states that Student is currently on medication for Attention Deficit/Hyperactive Disorder; however, that, in and of itself, does not qualify Student for special education services under IDEA. Additionally, in reviewing Student's last report card for the 2008 – 2009 school year while enrolled in the Charter School, Student had excellent attendance, had passed all classes and was recommended for promotion to the 6<sup>th</sup> grade.

***For the reasons described, I do not find a violation of state and federal statute and regulations regarding the obligation to make FAPE available to Student.***

#### ***Change in Placement***

Students with disabilities and, under certain conditions, students not yet identified as students with disabilities, have certain protections under applicable federal and State law when a school or school district proposes removing the student from their current educational placement for disciplinary reasons. See 14 DE Admin Code §§ 926.30.1 – 30.8.

In this case as stated above, no documentation has been provided that supports the complainant's claim that the student was identified as a student with a disability and received special education services under applicable laws and regulations. Additional attempts to gather supporting documentation that the student had been identified as disabled from the complainant and Student's parent were not successful. School records provided by the District document that in April 2007 an IEP team met to review Student's progress and determine if a psychoeducational evaluation was warranted. Minutes from that IEP team meeting state that based upon Student's academic performance and progress, "a psychoeducational evaluation is not recommended at this time." Parent acknowledged receipt of the Procedural Safeguards and that the due process rights under those procedural safeguards had been explained to her.

***For the reasons described above, the student was not entitled to the protections provided under applicable laws or regulations and therefore, I do not find a violation regarding this allegation.***

Having found no denial of services violation of applicable statutes or regulations, no corrective action plan is appropriate or required. Since the complainant has not provided the Department with signed consent to release information about the student from the parent, this report of findings is being provided to the parent who may share it with the complainant.

By: /s/ Edward Wulkan

Edward L. Wulkan  
Assigned Investigator

Date Issued: May 3, 2010