

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION
DE AC 16-05 (November 25, 2015)**

On September 30, 2015, Parent filed a complaint with the Delaware Department of Education (“DOE”) on behalf of Student. The complaint alleges the Caesar Rodney School District (“the 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 DOE’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 administrators, school staff, and Parent.

COMPLAINT ALLEGATION

The complaint alleges the District denied Student FAPE by failing to provide an appropriate educational setting and services to meet Student’s needs as a high functioning student with autism.

FINDINGS OF FACT

1. The DOE’s investigation is limited to alleged violations that occurred not more than one year prior to the date the complaint was received by the DOE. *See* 34 C.F.R. § 300.153(c) and 14 DE Admin Code § 923.53.2.4. The DOE received the complaint on September 30, 2015. Therefore, this decision addresses alleged violations occurring between September 30, 2014 and September 30, 2015.
2. Student is currently eleven years old, and in the 5th grade. Student receives special education services as a student with autism.
3. Student has a medical diagnosis of Attention Deficit/Hyperactivity (“ADHD”), Combined type and Pervasive Developmental Disorder – Not Otherwise Specified (“PDD-NOS”).
4. The record demonstrates Parent is very active in advocating for services and supports for the child. As an example, Parent had Student evaluated at a hospital at Parent’s own expense in March 2013. Parent then provided the evaluation to the school and Student was found eligible for a Section 504 plan.

5. The March 2013 evaluation from the hospital states Student's academic achievement was average, but Student's cognitive abilities were high average, such that Student's ADHD "may be restricting (Student) to average scores when above average work might be possible." The evaluation suggests the possibility that Student's academic achievement level "may worsen and/or lead to increased behavior problems and opposition in the future, if ignored." The evaluation noted significant disruptive and oppositional behaviors as per parent and teacher responses indicating Student has "difficulties modulating Student's behavior to meet the demands of regular education classroom without formal learning and behavioral supports."
6. At the end of Student's 3rd grade year, the 504 plan was developed for Student and included a functional behavior assessment ("FBA") and behavior intervention plan ("BIP").
7. At the end of Student's 4th grade year, however, Parent requested a special education evaluation.
8. In May, 2015, a child study team meeting was held to review Parent's request for a special education evaluation. Parents were concerned Student's behavior was impeding Student's learning as Student was having meltdowns, work refusals, and obsessions with Pokeman and origami. In addition, Student's was disruptive in the classroom and easily distracted. Student's Section 504 plan had been only moderately successful. The team recommended a special education evaluation take place over the summer.
9. On July 24, 2014, Parent provided written consent for the special education evaluation.
10. On October 9, 2014, the Evaluation Summary Report was completed and reviewed with Parent. Student was identified as eligible for special education services under the disability category of "Autism".
11. On October 9, 2014, Student's IEP was also developed, and included goals for improved task organization, frustration management, and listening comprehension. An FBA and BIP were also included with Student's IEP to address Student's behaviors.
12. The team documented Student's behavior concerns as: restlessness, hyperactive movements, inconsistent reciprocal communication skills, poor attention span, trouble handling frustration, weak behavior control, difficulty with changes in routine, and struggles with following direction. The teacher recommended "more individualized support within the classroom to help Student be more successful."
13. Student's BIP, dated October 9, 2014, includes techniques, such as, redirection using non-verbal prompts, redirection with verbal prompts using specific language, reminders of positive consequences, reminders of negative consequences, use of a cool-down area, active ignoring of behaviors, support for problem solving, provision of quiet praise, and removal from classroom for additional cool-downs, if needed.

14. Checklists were developed for each IEP goal and quarterly progress notes were made. Student made sufficient progress quarterly and annually in task organization, with an increase from 32% of the time to 54%. Student also made sufficient progress quarterly and annually in frustration and temper control, with an increase from 22% to 41%. Student made insufficient progress in listening comprehension with Student beginning with 41% accuracy and ending the year with 35% accuracy.
15. On February 13, 2015, and in response to Parent's request, it was determined Student may need occupational therapy ("OT"). Parent provided consent to evaluate. On March 2, 2015, an occupational therapy evaluation was completed.
16. On February 24, 2015, Student also received a speech-language assessment by a Private Speech Language Pathology Company at Parent's expense. The assessment notes Student was taking medications: Vyvanse, Abilify, Straterra, and Clonidine. Student was found to struggle with specific and multi-step directions, such as understanding some language concepts, sequencing, and short-term memory for sentences.
17. On March 23, 2015, an IEP meeting was held to review the OT and speech-language evaluations. The team determined Student did not qualify for OT services, but did qualify for speech-language therapy. Student's IEP was revised to include speech-language therapy one time a week for 30 minutes. The goals for speech-language therapy include sequencing oral and visual information and following directions.
18. On May 19, 2015, an IEP meeting was held to review Student's IEP and plan for Student's 5th grade year. The list of concerns was substantially different from the previous IEP, and incorporated numerous accommodations from the BIP for use in the classroom. Student's goals of improved task organization, controlled frustration and temper outbursts, and increased listening comprehension continued to be considered impediments to Student's success in the general education classroom, and were continued as goals in the IEP. Speech therapy was included two times a week for 30 minutes in a small group.
19. Student's FBA and BIP were continued. The BIP included sixteen strategies, and incorporated a behavior checklist and teacher observations.
20. The team recommended Student be placed in Setting A, consistent with Student's prior placements, but Parent disagreed. Parent noted disagreement with Student's placement on Student's IEP.
21. On June 9, 2015, Parent provided consent for Student to be observed by a behavior consultant, and records reviewed.

22. On August 19, 2015, the IEP team met to review Student's progress. Parent reported that Student was no longer taking medication. Parent stated Parent's belief that Student had not made academic or behavioral growth over the past four years. The team discussed various educational placements, and agreed to change Student's placement from Setting A in the general education setting to Setting B.
23. A behavior consultant attended the meeting on August 19, 2015. Arrangements were made to collect data on Student and complete a new FBA at the beginning of the 2015-16 school year.
24. At the beginning of the 2015-16 school year, Student's special education teacher reviewed Student's IEP, and contacted Parent to establish Parent's preferred mode of communication. Student's teachers reported that accommodations were in place for Student and provided the first day of the school year.
25. On September 10, 2015, Student's teachers began formally documenting Student's behaviors in the classroom. Interventions included: redirecting, prompting, taking timeouts, visiting to counselor, office or Student Behavior Intervention (SBI) room, ignoring problem behaviors, and using reward system. However, minimal work was completed by Student during a typical day.
26. A conference was held with Parent following "parent information night" on September 17, 2015. Parent then became aware Student was not completing work in school. Parents communicated by E-mail to Student's teacher following the meeting to request work be sent home when not complete. Parents expressed concern they were not informed earlier of the problem. Student's teacher agreed to send home work at the end of the week.
27. Student's teachers report that notes and classwork were sent home, but that due to Student's poor organization of materials, it is possible that information did not arrive home. Student's teacher e-mailed a consolidated report on October 30, 2015.
28. In early October 2015, Student was placed back on medication. While some Student's behavior problems continued, Student's teachers also reported a noticeable difference in work completion and cooperation in the classroom.
29. On September 28, 2015, an IEP meeting was held to review the FBA report and recommendations of the behavior consultants. The consultants recommended Student participate in a smaller, more structured setting and Student's medication be overseen by a psychiatrist specializing in children with ADHD.
30. According to IEP meeting minutes, the team discussed the benefits of the elementary Intensive Learning Center ("ILC") setting and invited Parent to visit the ILC. The tentative plan was to revise the BIP for the ILC setting at a future IEP meeting.

31. On September 28, 2015, Parent visited the elementary ILC. Parent felt the ILC setting was not an appropriate setting for Student and requested that another IEP meeting be scheduled.
32. On November 3, 2015, an IEP meeting was held. The recommendations of the behavior specialists were incorporated in the development of a new BIP for Student. Goals for work refusal, inappropriate verbalizations, and property destruction were added. Speech therapy was added in the form of two small-group sessions each month and one consultation each month to work on pragmatic communication skills. Student's placement was changed from setting B to setting A with inclusion TAM. This placement allows two teachers to work with Student. The team also noted Student would receive services under the twelve month program. Parent also requested Student receive an evaluation for assistive technology ("AT") and provided consent to evaluate.
33. According to IEP meeting minutes, the team discussed one-on-one support for Student simultaneous with Student's transfer to the TAM program. It was noted that an Applied Behavior Analysis company is working with Student and will provide an individual to work with Student in school. The District expressed its concern to first review the background of any individual working within the school. Therefore, one-on-one support was not included in Student's IEP at that time.
34. Parent plans to take Student off of medication in the future. At no time did District personnel require Student to take medication. The IEP developed on November 3, 2015 addresses Student's level of functioning, whether on or off of medication.

CONCLUSIONS

State and federal regulations require each public agency to ensure FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade. In addition, a student's IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to be involved in and make progress in the general education curriculum.

Student presents a difficult set of challenges with a strong level of cognitive ability, but with significant interfering behaviors and severe ADHD interference. Yet, there is no evidence the District omitted services as required by Student's IEP and FBA and BIP.

Student's BIP outlined appropriate interventions designed to guide Student toward more acceptable and productive classroom behaviors. The initial BIP was written when Student was taking medication. A more intensive approach was needed when Student returned to school in the fall and was not taking medication. An appropriate program was then developed to address Student's more intensive needs.

The District developed and implemented an appropriate IEP for Student. The District devoted a substantial amount of educational resources to Student. While the record evidences minimal progress for the first quarter of the 2015-2016 school year, Student had meaningful progress in the IEP goals for the 2014-2015 school year. While medication seems to be impacting the level of special education services Student requires, Student's teachers have clearly met to meet Student's intensive needs. Since March 2015, the IEP team met approximately every two months to develop an appropriate IEP that would enable Student to make progress in the general education curriculum. **For these reasons, I find no violation of Part B of the IDEA or corresponding state and federal regulations.**

RECOMMENDATIONS

The DOE is required to ensure that corrective actions are taken when violations of the requirements are identified through the complaint investigation process. *See* 14 DE Admin Code § 923.51.3.3 In this case, no violation of Part B of the IDEA was identified. Therefore, no further action by the DOE shall be taken.

By: /s/
Assigned Investigator

Date: November 25, 2015